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HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION PURPOSES IN GUATEMALA



CICIG Comisión
Internacional contra
la Impunidad en Guatemala



unicef 



Human trafficking for sexual exploitation purposes in Guatemala

CICIG International
Commission against
Impunity in Guatemala



unicef 

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Human trafficking for sexual exploitation purposes in Guatemala

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Prologue

Human trafficking for the purpose of sexual exploitation is a human and social drama, a human rights violation and a criminal offense. It is an illegal practice that affects particularly girls, boys and adolescents, robbing them of their innocence and dignity. It is an unacceptable offense that violates basic rights, while perpetrators benefit, profit, torture and truncate the lives of persons by inflicting suffering on those who are more vulnerable.

Trafficking in persons is a form of contemporary slavery that should compel society at large, and authorities, particularly, to reject and decisively eradicate it.

The United Nations Children's Fund (UNICEF) and the International Commission against Impunity in Guatemala (CICIG), present the report *Sexual Trafficking in Persons in Guatemala* within the framework of their mandates, sharing common goals in the area of human rights protection and the fight against impunity, which documents the significance and the consequences of this criminal phenomenon in the country. The objective of this effort is to provide guidance for public policy, budget and investigation strategies in order to identify and dismantle criminal structures, as well as to promote other efforts that ultimately help to prevent and fight the scourge, provide assistance to victims and impart justice to prevent offenses from remaining unpunished.

The report includes extensive theoretical and field investigation that identifies Guatemala as a country of origin, transit and reception of trafficking victims. Universal consensus rates this crime as a grave human

rights violation, made more serious by the ability of criminal structures to operate transnationally, which makes the problem more complex and imposes difficulties on States to identify, prosecute and dismantle criminal groups.

According to the analysis and findings of the report, there are an estimated 48,500 direct victims of trafficking for the purpose of sexual exploitation in Guatemala, and the illegal profits produced by this offense amount to 12.3 billion quetzales, equivalent to 2.7% of the Gross Domestic Product (GDP), that is, more than the total budget to educate children and adolescents, estimated at 1.44% of the GDP in 2014.

In view of the complexity involved in human trafficking, this offense repeatedly involves State agents to gain illegal access to identity records, migration mobility, ease of transportation, sanitary permits and others.

In view of the characteristics of this offense and its consequences for victims and society, a dual response is required: from the citizens and from national institutions. This response needs to be aimed at three priority areas: to eradicate trafficking for the purpose of sexual exploitation, to provide assistance to victims and to impart justice.

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CICIG Commissioner
International Commission against Impunity in Guatemala

Christian Skoog
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Introduction

Human trafficking for the purpose of sexual exploitation is a grave human rights violation, particularly against boys, girls and adolescents, as it involves devastating consequences for victims, such as long-lasting physical and psychological trauma, sexually transmissible diseases, drug-addiction, undesired pregnancies, malnutrition, social isolation and, in some cases, suicide or death at the hands of exploiters or customers. These impacts also affect families, communities and society at large.

Although sexual trafficking is visible and occurs openly in many areas of Guatemala, official information about it is incomplete, inaccurate and extremely fragmented, and even if it would appear contradictory, it seems to go unnoticed by authorities and society, thus making it invisible.

Because of its geographic location, Guatemala is particularly vulnerable to human trafficking. Intensified migration flows in recent years have turned it into a country of origin, transit and destination of transnational trafficking. Weak economic conditions in Guatemala also promote significant internal trafficking. Sexual trafficking is, then, a widely spread offense in the country. The seriousness of this situation presents huge challenges for the Guatemalan Government and society. The presence of national and international organised sexual trafficking crime networks is, additionally, a very serious problem of citizen security in view of the huge profits obtained from this illegal activity that corrupt security and justice officials.

As a consequence, Guatemalan Law absolutely prohibited human trafficking in, 2009 and

established that consent of this form of contemporary slavery by the victim is not admissible. In recent years, the Guatemala State has engaged in significant efforts to fight human trafficking through legal reform and the creation of an institutional framework to address sexual violence and trafficking in persons specifically. Although slow, work is also underway to build a proactive, dynamic and effective criminal investigation model. These actions show that early steps have been taken to meet international commitments in compliance with the *United Nations Convention against Transnational Organised Crime* and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which supplements the Convention.

However, institutions continue to report a relatively low number of convictions in cases of sexual trafficking. A situation of poor resource availability, limited personnel with specialised knowledge and few adequate facilities to assist and protect victims and witnesses persists. This situation makes it easier for trafficker networks and organisations to proliferate unpunished and to become stronger, especially in certain areas of cities outside the capital.

The main role of CICIG is to determine the existence of illegal groups and clandestine security apparatus (CIACS) in the country, and to promote the investigation, prosecution and punishment of offenses committed by their members, as well as to produce recommendations for the State on public policies to eradicate them and prevent their reappearance.

To meet this mandate, CICIG has the authority to collect, assess and systematise information provided

by individuals, public or private agencies, NGOs and authorities from other States, and to publish reports on the outcomes of its work in order to influence public policy-making.

For its part, the United Nations Children's Fund (UNICEF) works with governments, civil society organisations (CSO) and other organisations around the world to promote advances in the area of the rights of children, guided by the *Convention on the Rights of the Child* and the *Convention for the Elimination of All Forms of Discrimination against Women*.

CICIG and UNICEF attach great value to joint studies about criminal acts that affect children and adolescents in Guatemala conducted through a cooperation agreement between the two organisations signed in 2009. In 2010, investigative work was done and a public report produced about the actors involved in the process of illegal

adoptions in Guatemala, based on the entry into force of the *Adoptions Act*.

This time, CICIG and UNICEF decided to produce a thematic report on sexual trafficking to describe the *modus operandi* and the interactions that facilitate or permit human trafficking in Guatemala, as well as to analyse the actions by national institutions that have responsibility over this offense. The report seeks to make a contribution to improve prevention and the State's response to the human trafficking offense, with an emphasis on women and boys, girls and adolescents by two basic means: identification of the magnitude of trafficking throughout the country and the analysis of judicial proceedings related to the sexual trafficking offense, to qualify the offense, its cycle, to identify the major relevant players and every element that can help to ensure effective proactive criminal prosecution.

Methodology

Open and private sources as well as applicable domestic and international standards, bibliography available, media information, annual reports produced by the Human Rights Ombudsman and the State Department of the United States, reports from United Nations agencies such as the United Nations Office on Drugs and Crime (UNODC), the UN Office of the High Commissioner for Human Rights (OHCHR), the International Organization for Migration (IOM), UNICEF, the Committee for the Rights of the Child and UN rapporteurs were consulted to produce the report.

Legal documents of human trafficking cases where convictions have been ruled, and documents of cases that are still under criminal investigation were also reviewed. To carry out the investigation, a Letter of Understanding was entered into on 27 August, 2014 between the Attorney General and Head of the Prosecution (MP in Spanish), CICIG's Commissioner and the Representative of UNICEF. That agreement made it possible to gain access to information and follow several sexual trafficking cases prosecuted by the Attorney-General's Office for Trafficking Cases, and specifically, the Unit on Sexual Trafficking.

Interviews were held with national and international experts, persons who work with victims, persons who have been prosecuted or convicted of trafficking, state agency officials and CSOs that engage in the prevention, care, persecution and prosecution of the human trafficking offense.

Knowledge held by CSOs that specialise in the topic and carry out permanent observation and social audits, such as End Child Prostitution, Child

Pornography and Trafficking of Children for Sexual Purposes (ECPAT), and especially organisations working directly with victims of violence and sexual exploitation such as *El Refugio de la Niñez*, *La Alianza* and *Fundación Sobrevivientes*, among others, was particularly important.

The instruments to compile and analyse information were designed specifically for the report and used by the team in charge of the investigation.

Recommendations made by CICIG in 2010 on the human trafficking offense were reviewed to make legal reform proposals.

Regarding judicial cases, a quantitative analysis of human trafficking and sexual exploitation complaints filed and recorded on the IT Case Management System of the Attorney-General's Office (SICOMP) was done. The way those claims were handled between 2001 and 2014 was also analysed. To that end, the Fdx analysis IT tool of the Prosecution, which allows data crossing, was used.

The analysis of judicial cases included the production of a database that systematised information on convictions ruled between 2011 and 2013 where the accusation was made by the Attorney-General's Office Section against Trafficking in Persons, specifically in cases of sexual trafficking. This allowed the quantitative analysis, but particularly the *qualitative* analysis of the actions by the Justice System in cases that reached procedural completion.

To produce the report, support was also provided to the Attorney-General's Office Section against

Trafficking in Persons to follow six cases; particularly to identify the owners of the sexual exploitation centres, to investigate the finances of the criminal structure and to quantify the comprehensive reparation owed the victims. Three workshops were organised for this purpose.

The outcome of this interaction was the production of a financial investigation methodological proposal and an IT program to request information to obtain documentary evidence from trade, tax, banking and fiscal institutions that can also help keep control of the investigation. This system could be included in SICOMP as a complement to Instruction 1-2006 that deals with the application of criminal investigation methods.

The lack of reliable data from public records stands out as an important obstacle to learn of the problem. This shortfall makes crime investigation difficult, and particularly, hinders the design of effective and focused prevention, care, reparation and punishment policies. Reliable and consistent data are missing in State records regarding the magnitude of the problem, the profiles of victims (age, sex, nationality) modes of exploitation, traffickers' profiles, businesses that engage in this offense, quantification of profits obtained, and resources dedicated by the State to prevention, protection and the comprehensive reparation of victims.

To address these shortcomings, specific methodologies were developed to produce the demographic and economic quantification of the crime of trafficking, which was submitted to experts that participated in a workshop held on 15 April, 2015 for validation. This meeting was attended by experts from State agencies such as the Central Bank of Guatemala (BANGUAT), the Special Verification Unit (IVE), the Bank Supervisor, the National Statistics Institute (INE), the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET), CSOs, the Human Rights Ombudsman, UNODC and UNICEF. Approximate data about the demographic and economic-financial magnitude of the crime of trafficking have

been obtained with this methodology. These data need to be complemented with in-depth studies.

Field work involving the direct observation of certain practices and in-depth interviews with key players took place to learn how people perceive human trafficking and the response by State institutions. This involved interviews of State institutions representatives in charge of preventing this scourge, of protecting victims and of conducting inter-agency coordination, members of specialised CSOs (including those that work in different regions of the country to learn firsthand of the situation in areas where there is greater prevalence of the crime), prosecutors and public officials in charge of criminal investigation and prosecution, as well as judges.

The investigating team carried out field visits and interviewed key persons in areas of Jutiapa, Chiquimula, Zacapa, Izabal, Chimaltenango, Escuintla, Quetzaltenango, Retalhuleu, Huehuetenango and Petén. Prosecutors, delegates from the Solicitor's General Office (PGN) and from the Human Rights Ombudsman's office in these areas were interviewed. Also, meetings were held with CSOs, particularly those that work to defend the rights of children and women.

Lastly, persons who work directly with victims and persons who have been convicted or prosecuted for this offense and who are serving their sentence in different places in the country were also interviewed. Four prisons were visited: el Centro de Orientación Femenino (Centre for Female Orientation), in Guatemala City; the prison in Los Jocotes, Zacapa; the rehabilitation centre in Izabal, and the correctional centre in Suchitepéquez.

Organización Casa Artesana deserves special mention as it helped with field visits and facilitated an approach with local organisations that work in favour of the rights of women and children victims in the regions mentioned before. It also helped to coordinate visits of convicted felons in the Correctional System.

After collecting inputs, information was systematised and the final report was drafted in five Chapters. The names of underage persons and other informants mentioned in the report have been changed to protect their identity. Also, the names of certain interviewees are omitted if their safety might be put at risk by naming them in view of the nature of the information revealed.

The first Chapter covers the international and domestic legal framework as it concerns the protection of human rights in general, and human trafficking particularly. The international obligations of the Guatemalan State and the degree of compliance by the State through the adaptation of internal laws in this matter are analysed.

The second Chapter provides an analysis of the institutions in charge of addressing human trafficking for sexual exploitation from three perspectives: prevention, victim assistance and protection, and the Justice System.

Chapter three, related to context, defines the magnitude of the human trafficking offense through a demographic tally of victims, victim profiles,

vulnerability factors that lead to their recruitment and the impact of sexual exploitation on their life projects. International and internal trafficking routes are described.

Chapter 4 analyses exploitation networks, the profile of traffickers as well as recruitment, transfer, harbouring, reception and exploitation mechanisms used. It qualifies sexual exploitation centres by economic segment and estimates illegal financial flows generated by sexual trafficking.

The fifth Chapter examines the response of the Judiciary, taking into account the activities carried out by the institutions in charge of criminal investigation and persecution, prosecution of defendants accused of human trafficking and dignified reparation measures. This section contains a qualitative analysis of the outcomes of the enforcement of the law in various human trafficking case convictions.

Finally, conclusions and recommendations to strengthen sexual trafficking prevention and suppression are offered.

1 Legal framework in the area of sexual trafficking

1.1 International legal framework

1.1.1 *The prohibition of sexual trafficking in international law*

Background

Trafficking is an offense that concerns the international community, both because it is considered a serious human rights violation¹ and because of its transnational nature.

The international magnitude of this offense has been recognised since the adoption of the *Convention on the Abolition of Slavery* that dates back to 1926.² It includes sexual slavery and forced labour

or forced prostitution. Article 1.2 of this instrument describes trafficking as «[...] all acts involved in the capture, acquisition or disposal of a person with a view to selling or exchanging him or her; all acts of disposal by sale or exchange of a slave acquired with a view to sell or exchange him or her and, in general, every form of trade or transport of slaves». Human trafficking is trade for the purpose of slavery, including boys, girls and women to be subjected to sexual slavery or forced prostitution and other forms of sexual exploitation.

The prohibition of slavery and trafficking of slaves is part of International Common Law and is *jus cogens*.³ In that regard, the International Court of Justice provides that protection against slavery is an obligation *erga omnes* that originates in the International Human Rights Law that States have with the international community as a whole.⁴ This leads to the conclusion that slavery and the trafficking of slaves are universally considered to be international offenses and their persecution is compulsory by all civilised nations.

1 This concern translates into action programs and plans against trafficking and the various international instruments established to combat it, among them, the Declaration and Action Program of the 1st World Congress against the Commercial Sexual Exploitation of Children, or Stockholm Declaration (1996), and the 11nd World Congress against Sexual Commercial Exploitation of Children or Yokohama Declaration (2001), that provides a consistent and dynamic framework for action at the national, regional and international levels for the purpose of eradicating sexual commercial exploitation of children in 159 States. Likewise, the adoption of relevant international instruments, particularly Convention 182 of the ILO Related to the Worst Forms of Child Labour and immediate action for its elimination; the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, among others.

2 Approved by the Society of Nations on 25 September, 1926. Ratified by the Guatemalan State in 1983. Hereinafter, the *Convention on Slavery* of 1926.

3 The prohibition of slavery is included in Article 4 of the *Universal Declaration of Human Rights* that provides that «[...] nobody shall be subjected to slavery or servitude; slavery and trafficking of slaves in every form are forbidden». Article 2 of the *Convention on Slavery* makes it mandatory for States to «prevent and suppress trafficking in slaves ». See in: United Nations (1963). *International Law Yearbook 1963*, vol. II, United Nations publication, Sale N°: 63.V.2, p. 232.

4 *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, ruling of 5 February, 1971, I.C.J. Reports, 1970, p. 32.

Since the XIX Century, the International Human Rights Law also forbids trafficking in women for the purpose of sexual slavery, forced prostitution and sexual exploitation (Bassioni, 1991). Different international instruments have been adopted between 1910 and 1997 to eradicate sexual trafficking, among them the *International Convention for the Suppression of White Slave Traffic* (1910) and the *International Convention for the Suppression of Women of Full Age* (1933),⁵ that established the obligation to punish the recruitment of women and girls for prostitution purposes, but did not cover the outcome of the prosecution and left gaps in the ability to punish in relation to their retention or captivity in brothels or places where the victims were exploited (as these were outside the scope of international law at the time) (Gallagher, 2010).

Subsequently, the *Convention for the Suppression of Trafficking in Persons and the Exploitation of the Prostitution of Others* (1949) was the legal basis to criminally prosecute the international sexual trafficking of children and women,⁶ until the *Protocol against Trafficking in Persons of the Palermo Convention* was signed in 2002 (Gallagher, 2010).

This evolution ends with the *Statute of Rome* of the International Criminal Court (1997), which typifies sexual slavery, forced prostitution and other serious forms of sexual violence as crimes of war⁷ and as crimes against humanity (under letter «f» of Paragraph 2, Article 7 of the *Statute of the International Criminal Court*,⁸ ratified by Guatemala in 2012).⁹

5 Came into force on 24 August, 1934.

6 Adopted by the United Nations General Assembly in *Resolution 317*, of 2 December, 1949.

7 Article 8, paragraph XXII of the Statute of Rome considers sexual slavery, forced prostitution and forced pregnancy to be war crimes.

8 Adopted and approved by the General Assembly on 17 July, 1998.

9 Guatemala deposited the instrument of accession to the *Statute of Rome* on 12 April, 2012 and therefore it came into force on 1 July of that year.

1.1.2 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the Palermo Convention

Origin

In 1998, resulting from the need to establish a legal system capable of effectively combatting transnational organised crime and, in particular, trafficking in persons, the General Assembly of the United Nations established a Special Committee for the purpose of producing a specific treaty on the matter.¹⁰ The result of this effort was the *United Nations Convention on Transnational Organized Crime* (CTOC)¹¹, an international cooperation instrument that provides legal mechanisms to fight transnational organised crime and its main manifestations, among them trafficking in persons. According to Anne Gallagher (2010), CTOC is the first serious attempt by the international community to use International Law in its fight against transnational organised crime.

This Convention is supplemented by three Protocols: the Protocol against the Illegal Trafficking of Migrants by Land, Sea and Air (known as the *Protocol on the Illegal Trafficking of Migrants*);¹² the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (hereinafter Protocol against Trafficking);¹³

10 *Resolution 53/111* of the Assembly General, dated 9 December, 1998.

11 Approved on 15 November, 2000 (United Nations document *A/55/383*).

12 Supplements the *Convention of the United Nations on Transnational Organised Crime* (as does the *Protocol on Trafficking in Persons*). It was approved through *Resolution 55/25* of the Assembly General of the United Nations on 15 November, 2000. See in: *Official documents of the Assembly General, fifty-fifth period of sessions, Supplement N.º 49 (A/55/49)*, vol. I.

13 Adopted by the Assembly General in *Resolution 55/25*, of 15 November, 2000, *Official Documents of the Assembly General, fifty-fifth period of sessions, Supplement N.º 49 (A/55/49)*, vol. I.

and the *Protocol against the Manufacture and Illegal Trafficking of Fire Arms*.¹⁴

The *Protocol against Trafficking* is different from previous instruments –such as the 1949 Convention– in its objectives, since it includes innovative provisions related to special investigation mechanisms and addresses victim care and protection (UNODC, 2007). Without a question, this is a sign of the passing of time, because in 1949, victimology had not been consolidated as a scientific discipline, and for this reason, the necessary expertise was not available to develop mechanisms to provide assistance and reparation to victims.¹⁵ In the *Protocol against Trafficking*, the purpose established in Article 2, «To protect and provide assistance to trafficking victims, with full respect for their human rights», is extensively developed in the second part that addresses the issue of protection for the victims of this scourge. It establishes the rights of victims, particularly from the receiving State, that must avoid adopting migration measures that harm the victim or that hinder prosecution.

Elements of trafficking in persons according to the *Protocol*

According to Article 3 of the *Protocol against Trafficking*, the definition of human trafficking includes three elements:

- a) Actions that may consist of the recruitment, transportation, transfer, harbouring or receipt of persons.
- b) The means employed, as threats or the 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 obtain the consent of a person having control over another person.

- c) The desire for exploitation that operates as a subjective element of the offense and that is its most characteristic feature. The purposes recognised in the *Protocol*... represent the minimum: the exploitation of the prostitution of others or other forms of sexual exploitation; forced labour or service; slavery or practices similar to slavery; servitude or the removal of organs.

The means to commit the crime of trafficking in persons covers direct violence as well as threats and abuse in situations of vulnerability. The definition of «situations of abuse» in the *Protocol on Trafficking in Persons* is an innovation that goes beyond the means of control and coercion mentioned in the previous conventions regarding slavery. Deception, abuse of power and abuse of vulnerability have been added as new means of control and coercion. As such, it is clear that trafficking does not necessarily require the use of force (Global Rights, 2005).

Deception is another means included in Article 3: deception is understood to exist when a person is recruited under the offer of false conditions or under false pretense that then place that person in a position of vulnerability or abuse by the exploiter. Pursuant to the *Model Law on Trafficking in Persons* proposed by UNODC in 2010, deception is understood to exist when a false offering is made regarding the nature of the work or the services to be provided; the conditions of the work; the degree to which the person will be able to leave his/her place of residence or other circumstances that include the exploitation of a person (p.12). For example, persons are normally lied to about the work being offered to them or the conditions in which they will live so that when they reach the site they have no choice but to submit to the conditions and situation imposed by the trafficker. The interpretation notes to the *Protocol on Trafficking in Persons* state that this abuse must

14 Adopted by *Resolution A/RES/55/255* of the General Assembly of the United Nations.

15 This evolution can be seen in international instruments related to assistance to victims, among them the *Declaration on the Fundamental Justice Principles for the Victims of Crimes and Abuse of Power* (United Nations, 1985). On this evolution, you may consult García Pablos de Molina, J.A. (2012).

be understood as «[...] referred to every situation where the victim has no true or acceptable option other than to submit to the abuse in question».¹⁶

The *Protocol*... addresses the situation where a third party is compensated (for example the parents of the victim) for the purpose of gaining control over her, and taking advantage of the situation of vulnerability. For example, if a woman has no choice but to submit to the desires of her husband, her parents or her employers, with the outcome of her recruitment or transfer to a situation of exploitation, the abuse of power or of the dominant position is produced. The use of forbidden means applies only if the victim of trafficking is 18 years of age or older. In the case of persons under 18 years of age, it is not necessary for coercion, deception, or the use of any other means to occur. In this regard, Article 3, letter «c» of the *Protocol*..., is decisive when it provides that «recruitment, transportation, transfer, harbouring or receipt of a child¹⁷ for the purpose of exploitation shall be considered to be “human trafficking” even when none of the forbidden means is used». Likewise, the consent of the victim is irrelevant in the case of persons over 18 years of age when any of the means listed in the *Protocol on Trafficking in Persons* has been resorted to. It is necessary to bear in mind that in many cases of trafficking in persons there is initial consent or cooperation between victims and traffickers, followed by a situation of coercion, abuse or exploitation. Every initial consent is effectively rendered irrelevant when deception begins, followed by coercion, or when there is abuse of power at some moment of the process as provided in paragraph «b» of Article 3 of the Protocol.

The third element is the purpose of the exploitation. In Article 3 of the Protocol, the term ‘exploitation’ includes «[...] at least, the exploitation of the

prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs». This provision, together with the second element (the mode of operation), means that the *Protocol on Trafficking in Persons* qualifies the recruitment of adult women and men for the purpose of prostitution as trafficking if it involves threats or the use of force or other forms of coercion, deception, abuse of power or payment to obtain control of these women or men, and if a third party benefits from the prostitution activities of these men and women.

This Protocol requires States to focus on the fight against involuntary prostitution and other crimes involving force or coercion, setting aside internal provisions on the prostitution of adults that does not involve the forbidden means listed in Article 3 even when third parties may receive money for the prostitution of others (Weisbrod, 2012). Therefore, according to the *Protocol on Trafficking in Persons*, adults who have migrated to willingly work in the sex industry may not be considered to be trafficking victims unless any form of coercion, deception or intimidation have been used. In conclusion, defendants may not argue the consent of a victim of trafficking when a forbidden mean has been used in any stage of the process (recruitment, transportation, harbouring or receipt) (UNODC, 2007).

Whether victims have entered a country legally or illegally is totally irrelevant according to the clearly transnational viewpoint adopted by the Protocol. Furthermore, in an adequate teleological interpretation, it is understood that if the victim entered the country illegally, be it willingly or through the use of forbidden means by the trafficker, she is exposed to greater vulnerability of being more easily exploited (Weisbrodt, 2012). In fact, many of the victims in an illegal migration situation are threatened with being reported to migration authorities if they do not accept exploitation.

16 Interpretation notes (*Travaux préparatoires*) (A/55/383/Add.1 Additions) may be found at: http://www.unodc.org/unodc/crime_cicp_convention_documents.html

17 *Convention on the Rights of the Child*, Article 2.

1.1.3 **Obligations resulting from the Protocol on trafficking in persons**

The Protocol is structured taking into account that each State Party must adopt different types of measures against trafficking, based on the following three basic objectives (Article 2):

- a) To prevent and combat human trafficking, paying particular attention to women and children;
- b) To protect and assist the victims of such trafficking, with full respect for their human rights;
- c) To promote cooperation among States Parties in order to meet those objectives.

Obligations are therefore not limited to punishing trafficking, but also to guiding institutional policies towards prevention and victim assistance, all of which must result in a public policy to combat human trafficking. Additionally –yet not less important– are all the international cooperation obligations that provide an international legal framework able to accomplish swift and effective criminal prosecution of the offense, in view of its transnational nature, as well as assistance and support for the victim from an inter-State cooperation perspective.

1.2 **The national legal framework**

The qualification of crimes associated with sexual trafficking can be divided into three periods: the first one framed in the legislation prior to the United Nations Convention on Transnational Organised Crime that covers from 1973 to 2005, called pre-Convention period. The second period covers the time when the human trafficking offense was introduced in Guatemala pursuant to the provisions of the *Protocol on Trafficking in Persons*, or Convention Period, which occurred in 2005. This qualification was insufficient to meet international

criminal law obligations, which caused many reactions, among them by UNICEF that advocated for a more comprehensive law that would respond more globally to all the obligations resulting from the *Protocol on Trafficking in Persons*. Finally there is a third moment, or post-Convention period, with the entry into force of the *Law against Sexual Violence, Exploitation and Trafficking in Persons*, passed through *Decree 9-2009*.

In view of this, in this Chapter we will analyse the regulatory framework of each stage, the form of enforcement by the agencies in charge of criminal investigation, criminal prosecution and justice administration, as well as compliance with the obligations to care for and provide assistance to victims and other commitments resulting from the *Protocol on Trafficking in Persons*.

1.2.1 **Legislation in force prior to the Palermo Convention**

The Criminal Code (1973) was issued in the framework of the internal armed conflict and its standards do not reflect a human rights protection perspective; especially, it did not include the rights of women and children.

Regulations on sexual exploitation offenses in the *Criminal Code* were presented under the logic that victims deserved no protection but rather that society was offended with the performance of their immoral acts. Boys and girls subjected to sexual exploitation were considered to be socially dangerous and should be the object of security measures to mitigate the possibility of them committing criminal acts; they were viewed as deviant persons who needed no legal protection but strict surveillance. This created a commercial sexual active police control system that is still in place today and which leads to financial, physical and sexual abuses against the persons who work in or are exploited through sexual activities.¹⁸

¹⁸ Focus group with women's organisations, 2 March, 2015.

Exploiters benefited from a legal system that was lenient in its action against them, which facilitated the business of sexual exploitation. Their behaviours were punished with monetary sanctions or prison sentences that could be suspended¹⁹ or commuted.²⁰

As a result, victims were always criminalised, subjected to security measures or to police abuse. This abuse included violent acts against victims, illegal demands made of them, illegal or administrative detentions, and the demand for sexual favours, always in collusion with pimps or sexual exploiters. Victims were therefore usually abused twice, first by their pimps and then by the police. In other words, a system was in place that did not recognise any rights for the victims, nor gave them any assistance or support. Victims were considered to be the sole culprits of their situation due to their vicious morals, and deserving of no protection but rather only of State control or surveillance.

The legal system became, then, a catalyst for sexual exploitation, where victims, both adults as well as minors, faced total lack of protection of their rights

and were subjected to dual exploitation, by police agents as well as by pimps. This situation of abuse led even to the violent death of sexual workers, men, women, boys and girls, who faced the risk of violence and police abuse.

Convention stage: qualification of the offense of trafficking in Decree 14-2005 and its enforcement

The second period of the evolution of the legal framework analysis is the time when Guatemala signed important international instruments on transnational organised crime and on the protection of the rights of the child. In addition, a ruling made by the Inter-American Human Rights Court (IACHR) also established the obligation to produce a legal framework and institutional practices to defend children, particularly street children.²¹

In fact, Guatemala started an important process to adapt its legal framework to international commitments signed, which include, among others, the following instruments:

19 *Criminal Code*, Article 72: «Upon passing judgement, Courts may conditionally suspend the execution of the sentence. This suspension may be granted for a period of not less than two years or more than five years, if the requirements are met where the prison sentence does not exceed 3 years in prison».

20 *Criminal Code*, Article 55: «Commutation of prison sentences. Commutable are: 1st, a prison sentence not exceeding five years ».

21 IACHR (2001). *Ruling of 26 May, 2001 (Reparations and Expenses)*. In item 5, this ruling provides that: «[...] the State of Guatemala must adopt in its domestic Law, pursuant to Article 2 of the American Convention on Human rights, legislative, administrative and any other measure necessary to adapt Guatemalan regulations to Article 19 of the Convention».

Convention on the Rights of the Child of the United Nations	Signed on 6 June,1990
ILO Convention 182 on the Worst Forms of Child Labour	Signed on 11 October,2001
Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	Signed on 10 May, 2002
UN Convention on Transnational Organised Crime	Signed on 25 September, 2003
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (that supplements the UN Convention on Transnational Organised Crime)	Signed on 5 May,2004

The first important regulatory amendment was the passage of the *Law for the Comprehensive Protection of Children and Adolescents*²² that produced a paradigmatic change to approach the irregular situation of the comprehensive rights protection doctrine. With that, at least from the regulatory perspective, the State pledged to produce policies to prevent the violation of the rights of the child and began to design a new institutional framework.

Accession by Guatemala to the UN Convention on Transnational Organised Crime (CTOC) and its protocols therefore opened up the discussion on the regulatory adaptation of every obligation resulting from these instruments. As a result, several public institutions, NGOs and international cooperation agencies formed partnerships to lobby for the qualification of the crime of trafficking. This effort ended in 2005 with the passage of *Decree 14-2005*, which came into force on 3 March of that same year.²³

Decree 14-2005 contains one single article, which amends the human trafficking crime described in Article 194 of the *Criminal Code*. It fails to comprehensively address the obligations resulting from the *Protocol on Trafficking in Persons*, and specifically, matters related to assistance for victims, prevention of trafficking and international cooperation. It does not consider the creation of an institutional framework to prosecute trafficking or the adoption of a special method of investigation.

Therefore, it lacks basic tools to properly investigate the crime.²⁴

This deficient legislative technique led to huge difficulties in the enforcement of the human trafficking crime. Convictions for this crime during the time when *Decree 14-2005* was in force were few: Courts acquitted defendants for lack of confirmation of evidence against them, or they changed the crime to different offenses that carried lighter penalties (Rivera Meza, 2010).

This is reflected in the *Trafficking in Persons Report* of the Department of State of the United States (2007): «Trafficking offenses include “the corruption of children” which carries penalties of two to six years in prison, and “pimping” which is punished with fines rather than prison. Judges continued to reject charges under Article 194 in favour of more familiar but less serious crimes such as pimping, the penalties for which are not sufficiently strong to deter trafficking».

The conditions of prostitution victim exploitation or sexual trade continued without change, and this led the Department of State of the United States (2008) to list Guatemala among the countries with insufficient efforts against trafficking and to mention the existence of «[...] credible reports that police and migration service agents were accomplices in trafficking in persons, and that owners of brothels allowed police agents and migration officials to have

22 *Decree 27-2003*, passed by Congress on 4 June, 2003.

23 *Diario de Centroamérica*, 3 March, 2005.

24 When *Decree 14-2005* was passed, the *Law against Organised Crime, Decree 21/2006* had not passed yet.

sex with children victims at no charge» (paragraph 7, «Human trafficking»).

The same report states that the owners of massage parlours and other establishments that exploited adolescents sexually had a good relationship with Government authorities that forewarned the business of impending police raids (*Ibid.*)

Due to this, in 2006, NGOs, State agencies and international cooperation agencies began efforts to draft a comprehensive law to fully address the obligations contained in the *Protocol on Trafficking in Persons*. In 2007, these organisations formed the Inter-Agency Group against Trafficking in Persons that subsequently became the Inter-Agency Commission to Fight Human Trafficking and Related Offenses.²⁵ This Commission reached the conclusion that *Decree 14-2005* was inadequate to fight human trafficking and that judges were not enforcing Article 194. A discussion took place that led to several proposals to reform the Criminal Code, submitted by civil society and UNICEF. These were later complemented with proposals to address the matter of victims and culminated with the drafting of a new more comprehensive and complete law: *Decree 9-2009*.

Post-Convention stage: Law against sexual violence, exploitation and trafficking in persons, *Decree 9-2009*

The *Law against Sexual Violence, Exploitation and Trafficking in Persons* was passed by the Congress of the Republic of Guatemala on 18 February, 2009 through *Decree 9-2009*. This law includes provisions that comprehensively cover the obligations contained in the *Protocol on Trafficking in Persons* and therefore is more comprehensive than *Decree 14-2005*.

In fact, the Law contains three major State wide actions required to fight human trafficking, namely: prevention; assistance and protection for victims;

²⁵ Government Resolution 246-2007.

and the prosecution of offenders. It also includes comprehensive reparation measures for victims. It is based on the *Model Law against Trafficking in Persons* of UNODC (2010). For that reason it also includes the creation of an agency for the effective coordination of policies and actions by State institutions through the establishment of SVET.

The *Law against Sexual Violence, Exploitation and Trafficking in Persons* reflects the principle of comprehensive interpretation. Article 60 provides that standards on organised crime, aggravating circumstances, the media, special investigation methods, rules of cooperation and other provisions contained in the *Law against Organised Crime* shall be applied to investigate and prosecute human trafficking. It thus complies with Article 1 of the *Protocol on Trafficking in Persons* that provides that the Palermo Convention is applicable, *mutatis mutandis*, to provisions on trafficking in persons.

In view of this comprehensive approach, the *Law against Sexual Violence, Exploitation and Trafficking in Persons* is not limited to the qualification of the trafficking offense but is a true revolution in terms of sexual violence crime regulations. One of the first hits resulting from recommendations made by human rights surveillance bodies is the suppression of the legal concept of *modesty*, changing Title III of the Criminal Code to «crimes against sexual freedom and sexual indemnity of persons» (Article 26). This banishes the moralistic view that protected only «honest» women and despised female victims who did not behave sexually according to socially «acceptable» norms. This change also included revokal of the consideration of «prostitution» as a dangerous activity, contained in Article 87, paragraph 9 of the *Criminal Code*.²⁶ With that, for the first time since 1973, prostitution ceased to be an illegal act warranting security measures.

The legal system considered in the *Law against Sexual Violence, Exploitation and Trafficking of Persons*

²⁶ Article 69 of the *Law against Sexual Violence, Exploitation and Trafficking in Persons*.

seeks to adopt a comprehensive approach on sexual crimes, which is the reason why obsolete figures like rape and sexual abuse are abolished. Also abolished is the term «honest woman», and Chapters V and VI of Title III are redrafted to remove the anachronistic figures pimping, pandering and corruption of minors, and rename them as new offenses.

Decree 9-2009, created a special Chapter to penalise the various commercial sexual exploitation offenses (Chapter VI) and whoever benefits financially from sexual exploitation. The crimes covered by this Chapter and which amend Chapters of the *Criminal Code* are: promoting, facilitating or encouraging prostitution;²⁷ promoting, facilitating or encouraging aggravated prostitution;²⁸ paid sexual activity with children;²⁹ payment to promote, facilitate or favour prostitution.³⁰

27 **«Article 191. To promote, facilitate or favour prostitution.** The exploitation of a person of full age through promoting, facilitating or encouraging their prostitution will be punished with a five to ten year prison sentence and with a fine amounting to fifty to one hundred thousand quetzales».

28 **«Article 192. To promote, facilitate or favour aggravated prostitution.** The penalties listed in the previous Article will increase by one third in the following cases:

- a. If the woman becomes pregnant during her sexual exploitation.
- b. When the perpetrator is a relative of the victim, or responsible for her education, her guardianship, care, protection or former spouse, or one of the parents.
- c. When violence or abuse of authority come into play.

29 **«Article 193. Paid sexual activities with children.** A person who provides or promises a child or third parties a financial or another kind of benefit on his own behalf or on behalf of third parties, in exchange of a sexual act with a child, regardless of whether he accomplishes the purpose, will be punished with three to five years in prison».

30 **«Article 193 Bis. Payment to promote, facilitate or favour prostitution.** A person who, for himself or for a third party, in exchange for any sexual act with a person of full age, provides or promises a financial benefit or any other kind of benefit to a third party regardless of whether he accomplishes the purpose, shall be punished with three to five years in prison».

Additionally, commercial exploitation also includes the marketing of persons images, particularly children, for which reason behaviours related to child pornography are forbidden;³¹ as is the marketing or dissemination of child pornography³² and the possession of pornographic material.³³ This regulation seeks to comply with the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and the use of Children in Pornography*,³⁴ since there was a legal gap in 2007 that prevented the investigation and prosecution of persons who engaged in the production of pornographic material.

Finally, the «use of tourism activities for the commercial sexual exploitation of children is also qualified». Guatemala has become an important sexual destination. Tourism packages that promote these activities are offered particularly in areas like Panajachel, Sololá and Antigua Guatemala.

31 **«Article 194. Production of pornography of underage persons.** A person who, in any way and through any means, produces, manufactures or develops pornographic material containing real or simulated images or voice of one or more underage persons or with volitional or cognitive impairment, in pornographic or erotic acts, shall be punished with six to ten years in prison and a fifty thousand to five hundred thousand quetzales fine».

32 **«Article 195 Bis. Marketing or broadcasting of pornography showing underage persons.** Whoever publishes, reproduces, imports, exports, distributes, transports, exhibits, produces propaganda, disseminates or markets in any form and through any means, pornographic material of underage persons or with volitional or cognitive impairment, where his or her real or simulated image or voice is used, shall be punished with six to eight years in prison and a fifty thousand to five hundred thousand quetzales fine».

33 **«Article 195 Ter. Possession of pornographic material of underage persons.** Whoever knowingly possesses or acquires pornographic material of one or more underage persons or with volitional or cognitive impairment in pornographic or erotic acts shall be punished with two to four years in prison».

34 Article 5 of the *Protocol against Trafficking in Persons* provides that every State shall adopt measures to typify, at a minimum, the conducts forbidden in Article 3 in its criminal legislation.

The major amendment is in the human trafficking offense. Crimes against the freedom and safety of persons are transferred to Title IV as Article 202 ter that seeks to change the perception that limits the trafficking offense to only sexual exploitation, to include the other purposes considered in this criminal type. The new qualification of the offense considers sixteen purposes of trafficking, many of which have no links to sexual activities, such as labour exploitation, begging, any form of slavery, servitude, the sale of persons, the removal of organs, or the recruitment of children for organised criminal groups. Also included are illegal adoption, forced pregnancy and servile marriage, among others. Upon establishing the legal right of freedom and personal safety, the protective scope of the criminal legal right is clarified, thus avoiding mistaken interpretations by judges that formerly required a sexual component to be present in order to enforce the crime.

Another important hit is the broadened description of the purposes of trafficking that consider those included in the Protocol on Trafficking in Persons, which had not been included before, such as forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs. In this regard, the new regulations reflect positive steps in compliance with State obligations related to the protocol.

It should be said that UNICEF had broadly denounced many of these practices, such as illegal adoptions or the sale of persons, as an important source of human trafficking.³⁵ It is also now said that forced or servile marriage is a practice that occurs in the country often due to patriarchal notions that

still consider girls to be merchandise or tradable objects.³⁶

Decree 9-2009 does not envisage the means, and this shortcoming was to be corrected with the provision that *the consent of the victim or her representative is in no case accepted*. While this omission has been well received by UNODC – that states that it makes trafficking in person offense prosecution easier and has been effective in that context – (UNODC, 2010:32), current jurisprudence shows that omitting the list of means is an important gap which hinders prosecution. In fact, when forbidden means are not listed (basically deception, fraud, abuse of a situation of vulnerability or payment or benefits given to persons who have the power to decide over another, like parents, tutors, etc.), these have not been taken into account by judges when enforcing trafficking laws.³⁷

CICIG proposed in 2010 the amendment of the human trafficking offense to correct these shortcomings. It was then said that «[...] since the means to commit an offense is not a criminal element, the consequences are two: (1) children, who need more protection, receive, as victims, the same treatment as adults in the human trafficking offense; and (2) behaviours are punished which

35 The report by the Special Rapporteur on the sale of children, child prostitution and the use of children in pornography, Najat Maalla M'jid, highlights the fact that at least 70 per cent of international adoptions could be linked to offenses or serious irregularities. *Report A/HRC/22/54/Add.1*, 21 January, 2013, p. 5.

36 According to this same report by the Special Rapporteur (2013), 35 per cent of the population is estimated to marry early, and 18 per cent of girls between 15 and 19 years of age have marriage-like or couple relationships. Forced marriage in girls under 14 years of age: 1,657 early pregnancies were recorded in 2011 in Las Verapaces alone (p. 5).

37 In the so-called Jordanians case, a group of Guatemalan women was recruited to work in Jordan with false working condition pretenses. Upon their arrival there, the women were sent to families that kept them locked and in infamous work conditions, involving thirteen hours of work per day. Despite that, the 11th trial court acquitted the accused with the argument that the victims did not travel against their will since the job offer was posted in an advertisement, and therefore, they were not deceived. Criminal case 1080-2011-00836. Conviction passed 30 May, 2013 by the 11th Court for Criminal Sentence, Drug Trafficking and Environmental Cases of Guatemala.

have been eventually allowed without taking the means into account» (CICIG, 2010: 7).

When a regulation on trafficking in person contains very open parameters, the possibility exists that the same event can be subsumed in other criminal offenses; especially in crimes of commercial sexual exploitation, which exist as autonomous offenses. Therefore, judges may enforce sanctions with lighter penalties, and this favours impunity. In view of the above, CICIG recommended, from the criminal policy perspective, an amendment to Article 202 ter, on the crime of trafficking, for a better understanding and enforcement of related conducts which are regulated in the *Criminal Code*.

In conclusion, Decree 9-2009 has been a positive step to regulate the legal framework of trafficking in persons, particularly, upon regulating a specific institutional framework to coordinate the work of State institutions in charge of the matter, namely SVET. The change in the regulation related to sexual offenses that demands legislative amendments regarding the legal asset of modesty eliminates "honest woman" concept and provides more protection to victim women and children, especially in commercial sexual exploitation.

Complementary legislation to punish trafficking in persons

In compliance with the *Palermo Convention* and additional protocols –especially the *Protocol on Trafficking in Persons*–, the State of Guatemala has passed a number of complementary laws that seek to produce an adequate legal framework for the elimination of this practice.

The first standard was the *Law against Organised Crime* that has adapted the main obligations of the *Palermo Convention* to the national context. Every provision in the *Law against Organised Crime* is applicable by virtue of Article 60 of the *Law against Sexual Violence, Exploitation and Trafficking in Persons*.

Two more laws have been passed to comply with the *Palermo Convention* and the *Protocol on Trafficking in Persons*: the *Asset Forfeiture Act* and the *Law against Corruption*.

Asset Forfeiture Act

An important mechanism in the fight against organised crime is asset forfeiture, that is, the confiscation, in favour of the State, of assets originating directly or indirectly from offenses or that have been used as an instrument or medium to commit them. In the case of Guatemala, asset forfeiture was approved through passage of *Decree 55-2010* of 29 December, 2010 which came into force on 29 June, 2011.

Decree 55-2010 was drafted for the purpose of identifying, locating, recovering, repatriating assets as well as illegal or criminal earnings, products, yields or exchanges and forfeit rights to them, and establishes the competence and authority of the appropriate institutions.

The *Asset Forfeiture Act* established real action in a class of its own that goes after assets independently from their holder, provided that they come from one of the criminal or illegal activities listed in the Law. It is autonomous and independent from criminal liability and prosecution (Article 7). Thus, dismissal or judgement in criminal proceedings do not jeopardise the forfeiture process and do not prevent continuation of the action. Along the same lines, contempt by the accused, statements for dismissal, temporary closing, and termination of prosecution proceedings or of criminal liability do not preclude forfeiture. In fact, this action may be initiated even if the accused has not been identified. Death of the criminal does not impede forfeiture since Article 4, letter «j», provides that it is applicable «in the case of assets of hereditary succession if the deceased acquired those goods by means of illicit or criminal activities», or if the holder of the assets is prosecuted, provided that the asset comes from illegal activities and not from third parties in good faith who are «free from guilt».

The Law lists exhaustively and *numerus clausus* the illegal activities that may be subject to asset forfeiture, so that the action covered by *Decree 55-2010* may be taken only in these cases. So far until now, no asset forfeiture action has been taken in human trafficking cases.

Law against corruption

Organised crime and particularly human trafficking are criminal activities that can only take place with the active or passive participation of State authorities. Omission in the fulfillment of obligations to investigate, judge and punish perpetrators of criminal activities promotes strong criminal structures. Marcelo Sain (2010) has stated that irregularities committed by these authorities come from a number of factors such as high corruption levels and institutional abuses linked to the protection and regulation of highly profitable criminal activities, human trafficking among them. Based on these considerations, the *Palermo Convention* listed measures to prevent corruption (Articles 8, 9 and 10) and established the obligation to qualify obstruction of justice (Article 23).

In compliance with this mandate, the State of Guatemala qualified the crime of obstruction of justice in the *Law against Organised Crime* and passed the *Law against Corruption, Decree 31-2012*. It has created important institutions to more properly prosecute corruption by public officials through new criminal figures like illegal enrichment,³⁸

38 «**Article 448 Bis. Illegal enrichment.** An official, public employee or a person who working in civil service commits the crime of illegal enrichment until five years after he has ceased to exercise civil service, who obtains an equity benefit for himself or for any person, an increase in his level of spending, payment of debts or obligations at a level that does not correspond to what he could have paid, originating from the exercise of the position, or from any revenue whose legal origin he is unable to justify. The culprit of this crime will be punished with five to ten years in prison, fines ranging from fifty to one hundred thousand quetzales and disqualification».

influence peddling,³⁹ acting as straw men and blocking criminal action.

These criminal figures not only serve to criminally punish public officials who acquire accelerated enrichment through acts of corruption, but permit special focus on the excessive accumulation of their assets. This permits the punishment of the generalised inability by law enforcement agencies to efficiently investigate or prosecute trafficking activities, and the cases of excessive or unreasonable asset accumulation by Justice System officials when their salary level does not warrant it.

On the other hand, the *Law against Corruption* included criminal liability of legal persons in Article 38 of the *Criminal Code*.⁴⁰ In trafficking in person cases,

39 «**Article 449 Bis. Influence peddling.** Influence peddling is committed by a person who, himself or through an intermediary, or acting as an intermediary, influences a public servant or official, through the use of his hierarchy, position, friendship or another personal link, to obtain undue benefit for himself or a third Party in a matter that said official or public servant hears or must resolve, whether it harms State property or that of a third party. The culprit of this crime will be punished with two to six years in prison and disqualification. The same penalty will be imposed on a person who directly or indirectly requests or accepts a benefit in order to use his real or assumed influence on a public servant or official to obtain undue benefit for himself or a third party. If the public servant or official in charge of hearing or resolving the matter is an employee of justice administration, twice the penalty will be assessed».

40 This article provides for the direct and autonomous liability of legal persons as follows:

Legal persons shall be liable in every case when the following participate with their authorisation or approval: their directors, managers, executives, representatives, administrators, officials or employees; and when one of the following circumstances occurs:

- a) When a crime is committed due to lack of control or supervision and the outcome is favourable to them.
- b) When the crime is committed as a result of a decision by the decision-maker.

In every crime where legal persons are culprits and a penalty has not been imposed, a fine from ten thousand U.S. dollars (US\$10,000.00) to six hundred twenty-five thousand U.S. dollars (US\$625,000.00), or their equivalent in local currency will be assessed.

this rule permits the prosecution of incorporations and other organisations created to hide, transfer or assign the financial benefits obtained from criminal activities, or of public officials in charge of prosecuting them and who cover them up. Many criminals adopt financial engineering structures to launder their illegal earnings. With the provision of criminal liability by legal persons it is possible to access the property of a criminal enterprise and there by hit its financial gains.

Unfortunately, the penalties defined by Article 38 are insignificant when the financial benefits obtained from human trafficking are considered. Despite that, it is an important mechanism to fight this offense by tackling economic structures (businesses, financial groups) that engage in covering up their acts. In this framework, it is important to change the financial punishment of fixed fines currently in place to a method of economic units, equivalent to minimum wages (UMES). This system allows updating the punishment value since it is based on minimum wages and the Judge determines the

penalty within a range, for example, between ten and one thousand UMES. This system is used by the *Spanish Criminal Code*.

Finally, it is necessary to reinforce criminal prosecution of the legal representatives of legal persons that use these structures to commit crimes. It is necessary to amend Article 38 of the *Criminal Code* to punish the persons who hold shares or actual administrative control of these businesses, in addition to their representatives or partners who are formally registered in public records. In other words, criminal liability for acting on behalf of legal persons must extend to the actual administrators, who are the real beneficiaries of criminal activities and hide behind straw men to elude their criminal liability. Compared Law has already addressed this issue by extending criminal liability to actual administrators, as is the case in Spanish legislation. Therefore, amending Article 38 through the figure of the actual administrator like in Article 31 of the *Spanish Criminal Code* is suggested.

The fine will be assessed according to the financial capacity of the legal person and will take into account the circumstances in which the crime was committed.

In the event of a second offense, the final cancellation of its legal personality will be ruled.

2

Institutions in charge of addressing trafficking in persons for the purpose of sexual exploitation

A broad approach is required to effectively combat trafficking which includes prevention measures that address the cultural, social and economic factors that lead to the existence of this scourge, as well as measures to protect victims and prosecute traffickers (UNODC, 2010: 173).

This Chapter will analyse State obligations in terms of: a) the prevention of trafficking; b) victim assistance and protection; and c) prosecution and reparation. All of these are duties originating in international human rights treaties, the *United Nations Convention on Transnational Organised Crime* (CTOC, known as the *Palermo Convention*) and the *Protocol on Trafficking in Persons*. These obligations will be compared against the policies and strategies developed by the institutions in charge to determine effective compliance as well as the aspects that need strengthening.

2.1 State obligation to prevent trafficking

Article 9 of the *Protocol on Trafficking in Persons* provides that *State Parties* must establish policies, programs and other broad measures to prevent and combat trafficking in persons, and to protect victims from a the risk of renewed victimisation, especially women and children.

Prevention measures foreseen *suggest* to States the development of investigation activities to learn of

the magnitude and characteristics of trafficking, to carry out information and dissemination campaigns as well as to undertake social and economic initiatives to prevent and combat this offense.

The Organization for Security and Cooperation in Europe (OSCE) developed a practical manual (OSCE, 2004) that offers guidance on the way to design and implement sustainable mechanisms and structures to prevent human trafficking and to provide assistance to victims. It also offers guidance on the way to supervise the implementation of the plan. Among the instruments contributed is a country situation assessment system.

Governments have the obligation to work on the underlying causes of trafficking in persons and to adopt legislation that ensures equal justice opportunities for all persons, regardless of their ethnic group, gender, age group and other variables. In addition, they have the obligation to take measures against other relevant factors that lead to human trafficking such as violence against women, a patriarchal culture, the lack of adequate labour laws, child abuse and poorly designed economic development strategies (UNODC, 2010: 178). All these measures must be included in comprehensive national plans that contribute to cultural changes in society and to institutional practices that traditionally have reflected androcentric values resulting in ineffective prosecution.

Cultural patterns and institutional practices are, without a doubt, two of the most important factors

leading to sexual exploitation of women and children: the patriarchal nature of society, the “macho” culture where women and children are deemed objects owned by men; and the structural economic conditions that drive women and children to sexual exploitation (Instituto Andaluz de la Mujer, 2011: 29). Institutional practices, in turn, can lead to the expulsion of victims when those responsible for their care and protection and for prosecution respond to their complaints with negative comments, disbelief, abuse, indifference, or simply with a negative response (García Pablos de Molina, 2014).

For this reason, measures to tackle the cultural and socioeconomic factors that underlie the phenomenon of human trafficking have been included in other important treaties. Article 8, paragraph «c» of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*, or *Convention of Belem do Para*, provides that States are required to undertake progressively specific measures to promote education and training for justice administration personnel, police and other officials responsible for law enforcement, as well as personnel in charge of policies to prevent, punish and eradicate violence against women. The aim is to overcome gender bias and lack of sensitivity by officials that impede the full implementation of legislation protecting women and children victims.

The second report of the *Monitoring Mechanism of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women* (MESECVI) underscores that the participation of organised citizens and other non-State actors in public processes – including the design, implementation and monitoring of public policies – is crucial as a democratic practice to incorporate their views, perspectives and experiences, thus ensuring greater positive impact on the lives of women and men (OAS, 2012: 53). In this regard, the *Protocol on Trafficking in Persons* states that strategies and policies should involve NGOs and other relevant entities as well as bilateral and multilateral cooperation agencies.

OHCHR has stated that to prevent trafficking it is necessary to review legislation, administrative controls and prevailing conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage, employment, or travel agencies, hotels and escort services.⁴¹

Finally, the *Model Law against Trafficking in Persons* (UNODC, 2010) suggests the creation of a national coordinating body for combating human trafficking, to include officials from government institutions in charge of justice, health and welfare, work, social issues, migration issues, officials from other relevant government institutions, and representatives of local service providers, governmental and non-governmental services. This body should coordinate the enforcement of the law against trafficking as well as formulate the national plan of action to prevent this scourge.⁴²

In Guatemala, the *Law against Sexual Violence, Exploitation and Trafficking in Persons* created SVET for this purpose through Article 4.

2.1.1 Principles related to prevention

Within the framework of international human rights obligations, OHCHR has established the following principles regarding human trafficking:

To prevent demand: Strategies to prevent trafficking should take demand into account, that is, the social and cultural patterns that lead «customers» to pay for sexual services and to

41 OHCHR (2010). *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 4. Number 2. Addition to the Economic and Social Council Report (E/2002/68/Add.1)*, 2010, p. 268.

42 Among the suggested measures which the plan should contain are the following: to identify victims and provide assistance and protection, including victims repatriated from another State; prosecuting traffickers and train staff of relevant state and non-state bodies; and coordinate and monitor implementation (UNODC, 2010: 88).

view victims (women, children) as commodities, i.e. that discriminate against them.

To prevent vulnerability: States and government organisations will make sure that in their interventions they address the *factors that increase the vulnerability* to trafficking, including inequality, poverty and discrimination in all its forms.

Fighting corruption: States shall exercise due diligence to detect and eliminate the involvement or complicity of the public sector in trafficking. Public officials whose involvement in trafficking in persons is suspected shall be investigated, tried and, if convicted, appropriately punished.

2.1.2 ***Institutions in charge of prevention***

The Secretariat against sexual violence, exploitation and trafficking in persons of the Vice Presidency of the Republic

The *Law against Sexual Violence, Exploitation and Trafficking in Persons* required the creation and installation of SVET under the Vice Presidency. It has the status of an advisory body to the various departments or State agencies that enforce actions in the fight against sexual violence, exploitation and trafficking. Its main functions are: a) to design and implement policies and plans that enable compliance with the *Law against Sexual Violence, Exploitation and Trafficking in Persons*; b) to carry out studies to find, measure and evaluate the factors that facilitate sexual violence, exploitation and trafficking, including migration policies and procedures.

SVET plays a central role in the articulation of state plans for the prevention of trafficking and is the body responsible for planning prevention policies, care, protection, repatriation and compensation actions in coordination with specific State agencies

and civil society organisations (CSOs). In this context, SVET developed the *Public Policy against Trafficking in Persons and Comprehensive Protection to Victims 2014-2024* that was endorsed by *Government Resolution 306-2014*.

In its strategic plan, the central problem that SVET recognised is weak coordination of public institutions to enforce the *Law against Sexual Violence, Exploitation and Trafficking* (Guatemala, SEGEPLAN, 2012: 43-46). In this regard, the plan includes the following main objectives «[...] institutional strengthening of the justice system and other security agencies including consulting, technical assistance and specialised training on issues related to sexual violence, exploitation and trafficking, for the purpose of influencing effective investigation and prosecution of these crimes, in order to achieve the effective combat of these [sic] offenses and to ensure that their interventions are implemented within the framework of the law; and to ensure the adequate enforcement of measures against criminal offenses, to prevent impunity and to improve the rates of judicial effectiveness» (*Ibid.*).

The same plan includes «[...] the prevention of violence and crime, and [actions to] improve care for victims of trafficking and commercial sexual exploitation. Finally, it proposes “strengthening processes for the systematisation and updating of statistics on violence against women and femicide” through a Single Integrated System on Sexual Violence, Exploitation and Trafficking [sic]» (Guatemala, SVET: 2012).

The plan also addresses some of the strategic actions envisaged by the OSCE, including crime prevention and improved care for victims of trafficking and sexual exploitation. However, a comprehensive and coherent view of prevention, to cover all principles and strategies provided by the OHCHR and the OSCE in this matter in a coordinated manner is not evident. In particular, the plan does not present a line of work to address the “machismo” social and cultural patterns that give rise to the demand for sexual services.

A significant gap is also evident in measures to control the sex business, because no specific actions are planned to develop a more adequate regulatory framework to authorise and oversee businesses where sexual exploitation occurs, such as bars, taverns, night clubs, strip bars, etc.

Regarding the strategy to improve living conditions to make persons less vulnerable, especially children and adolescents, it appears that a work plan has not been coordinated, but rather support is sought from other institutions or ministries such as the Ministry for Social Development (MIDES), with programs to alleviate malnutrition and by distributing food. That is, specific actions have not been foreseen to empower children, adolescents and sex workers to enable them to overcome the socio-economic conditions that led them to sexual exploitation.

Overall, a plan to establish an indicator and monitoring system for State institutions to collect and process information, and to develop plans, programs and projects required by law is not evident. While SVET plans to implement the Single Integrated Sexual Violence, Exploitation and Trafficking in Persons System, this initiative is limited to collecting data entering the investigation and prosecution system, but does not focus on collecting field information on human trafficking, namely, census or surveys on number of victims, operating centres, places where more persons are subject to exploitation. This, even when the plan recognises that «[...] the number of sexual exploitation victims is not known with certainty to date, as there are no reliable mechanisms to determine the number of persons who are exploited in the commercial sex industry» (SVET, 2012: 30).

In any case, SVET's budget is small for the number of roles it must carry out, in particular, coordination of prevention mechanisms, as well as care and protection for victims, and training and awareness-raising on the issue for the entire population

and, in particular, for potential victims.⁴³ SVET has developed outreach activities on trafficking, its forms of recruitment or uptake and on exploitation methods; these activities were aimed at students, professionals and the general public institutions.⁴⁴ According to the report submitted by SVET in 2015, to the Inter-American Commission on Human Rights (IACHR) it has provided training to 61,657 adolescents and children and to 1,628 teachers.⁴⁵

The Human Rights Ombudsman's Office (PDH) reported that in 2014 it trained and raised the awareness of 136,004 officials from different institutions regarding trafficking, among them the Office for the Defense of Indigenous Women (DEMI), the Ministry of Education (MINEDUC), SVET, and others (Guatemala, PDH, 2014: 53).

However, the Association to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) pointed out that at least 1 per cent of primary and secondary education students know what trafficking is and are familiar with the mechanisms to avoid recruitment and exploitation.⁴⁶

One of the major prevention actions developed by SVET is the drafting of the *National Plan for the Prevention and Protection of Boys, Girls and Adolescents from Sexual Exploitation in the Tour and Travel Sector*. A working group was created as part of this plan, which is in charge of the issue that includes SVET, ECPAT, NGOs, the Guatemalan Tourism Board (INGUAT), the Chamber of Tourism (CAMTUR), the Guatemalan Hotel Owners Foundation (FUNGUAT), the Association

43 SVET's Budget for 2014 was Q17, 400,000, of which Q13, 332,088.75 were executed, that is, 76 per cent execution (SVET, 2015).

44 Interview with the Director of SVET, 17 March, 2015.

45 Report submitted by Franklin Azurdia to the IACHR. Thematic hearing on Trafficking in Women, Boys and Girls in Guatemala to the Inter-American Human Rights Commission (IACHR), 154 period of sessions, 19 March, 2015.

46 Report submitted by ECPAT Thematic hearing on Trafficking in Women, Boys and Girls in Guatemala to the Inter-American Human Rights Commission (IACHR), 154 period of sessions, 19 March, 2015.

of Small Hotels of Guatemala (APEHGUA), and international organisations, such as UNICEF.

One of the main products of this working group is the *National Code of Conduct for Individual and Legal Persons working in the Tourism and Travel Sector*, as well as the *Inter-Agency Action Protocol for Immediate Response to Cases of Sexual Exploitation of Boys, Girls and Adolescents in Travel and Tourism* that seeks the immediate reporting of sexual exploitation cases in this sector. With the support of this working group SVET also launched the National Campaign for the Prevention of Sexual Exploitation in the Travel and Tourism Sector called «No Permiso» («I Don't Allow») that seeks to prevent hotels or tour operators from allowing the sexual exploitation of children through their businesses.

SVET has also promoted the creation of inter-agency networks with the coordination of department-level governments. This process has been implemented in all twenty-two departments and department-level networks have been formed.⁴⁷ These efforts at organisation were proposed in order to design institutional-level guidelines, processes, content and activities, awareness-raising and combat of sexual violence, exploitation and human trafficking. They are grouped around four lines of work: (a) prevention; (b) detection, care, protection and repatriation; (c) prosecution and punishment; and (d) institutional strengthening.⁴⁸

However, one of the major problems is that these initiatives do not have a budget to operate with and are dependent on the capacity or sponsorship of local organisations.⁴⁹ A member of the Trafficking Prevention Network in Petén, for example, stated that «Department-level networks have not followed the issue of trafficking properly because it is not a mandate; there are no resources to implement

actions, at times not even for fuel. For that reason, this work cannot be done as a matter of routine».⁵⁰

Other organisations state that they have been excluded by the current SVET administration and add that «the policy was updated, but since 2012 there has been no follow-up or calls to fine-tune it». PDH stated that the Inter-Agency Commission against Trafficking in Persons (CIT) has a prevention sub-committee in place «[...] in charge of producing basic guidelines for a strategy to prevent this offense. During 2014, this Commission met very few times and therefore did not produce a plan of action to implement prevention mechanisms» (Guatemala, PDH, 2014: 53).

Finally, organisations stated that «Lines of work for care, protection, repatriation, prosecution and punishment are very weak and need to be developed and reinforced. Everyone wants to work on prevention because that is their comfort zone and where their skills lie. Another problem is that civil society organisations are not a part of the SVET Network and this organisation needs to be built».⁵¹

Organisations that control the licenses and oversee businesses related to commercial sexual exploitation

One of the major lines of work in the area of human trafficking is controlling the parties that enable the offense (Clarke, R. and Eck, J., 2003), in this case, businesses that engage in commercial sexual exploitation.

There is no adequate strategy at present to have a licensing and surveillance system in place for businesses where trafficking for the purpose of sexual exploitation might occur, which may be of three types:

47 Report by Franklin Azurdia, from SVET, to IACHR, in the hearing of 26 March, 2015.

48 Interview with the head of SVET, 17 March, 2015.

49 Interview with Giovana Lemus of the Guatemalan Group of Women (GGM).

50 Meeting of the Network against Violence, Sexual Exploitation and Trafficking in Persons in Petén, Flores, 9 April, 2015.

51 Meeting of the Network against Violence, Sexual Exploitation and Trafficking in Persons in Petén, Flores, 9 April, 2015.

- a) Public entertainment centres, such as night clubs, discotheques, bars and strip clubs.
- b) Places that provide lodging, such as hotels, motels, inns, etc.
- c) Businesses that sell alcoholic beverages, food, both or similar: beer bars, ceviche diners, cafeterias, taverns and others.

Legislation enforceable in all types of businesses and the laws that specifically regulate businesses where sexual exploitation takes place will be reviewed. In addition to the deficiencies listed in this section, it is also necessary to bear in mind that most of these companies and businesses operate informally in the country, that is, these are businesses that are not registered as such, they do not pay taxes and they do not comply with labour laws.⁵²

General rules to authorise a commercial business

Regardless of the specific type of trade that a business will engage in, every legal commercial activity must meet the following registration requirements:

- a) Trade business registration
- b) Tax registration
- c) Registration with labour and social security agencies
- d) Health permits
- e) Municipal-level regulations

Trade business registration

Traders, whether individual or legal persons, must register in the Trade Registry to obtain a business license.⁵³

52 BANGUAT estimates that 69,3 per cent of the population 15 years of age or older work in the informal economy, while 77 per cent do not receive social security benefits (INE, 2014).

53 Article 334 of *Code of Commerce* provides for the obligation of every business person and trade business

Weak trade business controls enable a person to use a forged or stolen personal identification document (DPI) to register a business. The number of complaints for this crime is quite high, and this led the Metropolitan Prosecution to create a specific investigation unit for the cases of trade businesses incorporated with forged documents.⁵⁴

On the other hand, many times trade businesses are incorporated by straw men. Passage of the *Asset Forfeiture Act, Decree 55-2010*, forced the change from bearer shares to registered certificates in order to ensure greater control of the origin and destination of capitals and thus prevent investment by unknown individuals or institutions (Article 77). Notwithstanding the conversion into registered certificates, the true identity of shareholders continues to be hidden since the shareholder register is a private document belonging to each company.

In the specific case of sexual exploitation, it has been determined that traffickers register businesses in the name of straw men to elude their criminal, fiscal and administrative liability. In the case of the Prestige Spa, the court determined that the accused, who was registered as the owner of the business, was a straw man.⁵⁵ In another case, a Judge confirmed that a bar where adolescents were sexually exploited was in the name of a mentally disabled person.⁵⁶

Weak control mechanisms enable businesses to become crime vehicles. In fact there are no oversight mechanisms in place once businesses are incorporated. Businesses are subject to very light punishment if they have not registered their legal representatives, if they fail to carry

with a capital of two thousand quetzales or more to register in the Trade Registry.

54 Interview with Luis Arturo Archila, Metropolitan District Attorney of the Prosecution (MP), 26 March, 2015.

55 While the accused was convicted for trafficking in persons the real owner remain unpunished. Criminal case C-1073-2007-21345. Conviction of 1 April, 2011, Third Court of First Criminal Instance, Drug Trafficking and Crimes against the Environment.

56 Interview of 3 March, 2015.

out partnership activities (such as shareholder assembly meetings) or if they fail to meet other obligations.⁵⁷ The Trade Registry does not have a supervisory role that would allow it to know if a company carries out illegal activities, and at any rate, it does not have the authority to suspend or cancel the business should it discover these offenses.

Registration with tax authorities

Individual persons, traders and companies must register at the Tax Administration (SAT) in order to meet their fiscal obligations under the *Trade Code* and fiscal laws. Due to weak controls in the Trade Registry, many companies obtain a tax identification number (NIT) simply to evade taxes or to commit illegal acts.⁵⁸ Some register only to be able to issue invoices that are then used to obtain tax credit or for other purposes. The use of invoices for tax evasion was discovered with the Norman Tejada networks that issued these documents to falsely record accounting operations and thus defraud the State for sixty billion quetzales between 2003 and 2011.⁵⁹

It is noteworthy that compliance with tax obligations is quite low in Guatemala, which is the country with the lowest tax collection rate of the Continent, at only 11 per cent of GDP compared to the 20 per cent average of Latin America (United Nations Development Program, UNDP, 2013).

57 Article 356 of the *Trade Code* considers a fee of Q25 to Q1,000.

58 Marcelo Sain (2010) has stated that one of the reasons for the growth of organised crime in Latin America is the existence of dual accounting systems and the use of front companies to launder illegal benefits.

59 With the use of forged identity and license documents, Norman Tejada created and registered in the Trade Registry 76 «front» companies because none of them carried out real commercial activities. In August 2013, the Seventh Court for Criminal Sentence, Drug Trafficking and Crimes against the Environment passed a six-year prison sentence and a fine of Q96 million.

Registration with labour and social security authorities

Article 278 of the *Labour Code* provides that the General Labour Inspectorate must supervise and ensure compliance with labour laws and work conditions. These include the prohibition to hire children under 14 years of age⁶⁰ or under 16 years of age for certain types of activities (Article 148, letter «a»), like work in bars or similar businesses. The Committee for the Rights of the Child has recommended to the State of Guatemala «[...] that it enforce the elimination of child labour in the country as a priority in view of its high prevalence and seriousness [...] and that it redefine the minimum age for work to make it consistent with the completion of mandatory schooling».⁶¹

IGT has a small budget⁶² and has only 288 inspectors to verify compliance with labour obligations throughout the country⁶³ (which makes Guatemala the country with the lowest compliance rate in Central America).⁶⁴ Labour legislation violations and IGT weakness have been broadly reported by different international agencies such as the International Labour Organization (ILO), that has repeatedly asked the Government to «[...] adopt additional measures to improve labour

60 Article 148, letter «e» of the *Labour Code*. Article 150 of the code allows IGT to make exceptions in qualified cases such as learning or the need to help to household revenues.

61 Committee for the Rights of the Child (2010). *Examination of States parties under article 44 of the Convention. Final observations on Guatemala. CRC/C/GTM/CO/3-4*. 55th period of sessions, 2010 (paragraph 89).

62 Only 20 per cent of the Budget of the Ministry of Labour and Social Welfare (MTPS) is dedicated to substantive functions. The rest is used to pay pensions to the elderly. See monthly budget execution information by item line for 2014 according to the Integrated Accounting System (SICOIN). Available at: http://www.mintrabajo.gob.gt/images/organizacion/accesoinformacion/57-2008/2014/Diciembre/Art_10_Num_8_Ejec_Presup_por_Renglón.pdf

63 According to the Payroll and Personnel Registration System, Employee Roster, MTPS.

64 According to the ILO (2010), while Guatemala dedicates USD1.20 to every working person, Costa Rica dedicates USD8.9.

inspection. [Likewise...] the High Level Tripartite Mission expressed its concern over the inability of inspectors to assess administrative sanctions and deemed it urgent to make amendments to the law to allow the General Labour Inspectorate to meet its mandate of overseeing effective compliance with labour laws» (2015: 95).

The most serious breach occurs with the lack of action in the case of persons who sexually exploit boys, girls and adolescents, one of the worst forms of child labour. In this context, a positive development is that 271 labour inspectors have received training to detect human trafficking cases, with funds from international cooperation.⁶⁵

Health permits

As a general requirement, the *Health Code* provides that the establishment and operation of public or private businesses that serve food and beverages to the public may only be allowed with a permit from the Ministry of Public Health and Social Welfare (MSPAS). This is done through the issuance of a sanitation license (Article 121).

MSPAS has also recommended oversight and control of these activities, without prejudice of oversight that is the responsibility of municipalities (Article 121). In addition, the *Health Code* provides that fiscal offices may only issue or renew licenses to businesses that have submitted a sanitation license (Article 122). This cross-control should prevent the authorisation of sexual exploitation businesses. However, in practice, there is no evidence that licenses are withheld.

Article 231 of the *Health Code* provides that fines and the temporary or permanent suspension of a business (depending on the seriousness of the breach) may be assessed for administrative misdemeanors or violations, including the refusal to grant a sanitation license.

⁶⁵ This, according to the State Department's Report on Trafficking in Persons (2014).

Notwithstanding this, when search operations are conducted in night clubs by the Multi-sector Commission,⁶⁶ health inspectors merely determine whether the business has a sanitation license and, if there are sex workers, whether they have health control cards.⁶⁷ These health control cards are issued by health centres to protect sex workers as well as customers from sexually transmissible diseases.⁶⁸

Most sanctions are monetary. Temporary or permanent closing of businesses has not been decreed in any case yet because «that requires repetition» according to health authorities.⁶⁹

Health controls are weak, a result of lack of personnel and also due to corruption.⁷⁰ Businesses that engage in sexual exploitation should be closed when sex workers do not have a sanitation license. However, not only is this not done, the business remains open illegally. UN Rapporteur Najat Maalla M'jid,

⁶⁶ About the Multi-sector Commission, see the section «Authorisation, control and oversight of businesses where there is greater prevalence of trafficking», later in this report.

⁶⁷ Breaches detected more often are the lack of health cards by the person who work in the centres, the lack of sanitation licenses or of their renewal. Interview with César Pérez, health inspector, delegate of the Multi-Sector Commission, 12 May, 2015.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ At a bar in Alotenango, a 13-year old girl suffered exploitation for several months. The delegate in charge of environmental and health control of MSPAS in Alotenango stated in trial that «[...] she inspected the Bar Los Illegales, verified the sanitation license and the prophylactic control card. Prophylactic control is a test that workers undergo once a week at the health centre [sic]. Of the four workers of the bar, one seemed to be a minor, but since no documents were offered, no documents were requested». The inspector allowed the teenager to work at the bar for several months, where there were other adolescents. Because of the characteristics of Alotenango, a small town, it was difficult not to detect the exploitation of adolescents in that bar, particularly since the workers had the prophylactic control every week. During the trial it became evident that the inspector and the owner of the bar know each other and treated each other with familiarity. Criminal case 109-2012-2. Conviction of 9 January, 2013, by the First Criminal Court for Drug and Crimes against the Environment Cases in Sacatepéquez.

who stated that she visited authorised businesses where boys and girls were kept in a back shop to be sexually exploited, confirmed this. «According to information received, the real use given to these businesses is well known, but authorities issue and renew licenses constantly».⁷¹

Municipal regulations

The *Municipal Code* authorises municipalities to approve the operation of businesses in their jurisdiction. In particular, it provides that municipal authorities must ensure compliance and enforcement of sanitary control standards for the production, marketing and consumption of food and beverages, in order to guarantee the health of the citizens (Article 68, paragraph «f»). That leads to doubling supervision by the Ministry and municipalities, which will end up in a void in supervision. Article 14 of the Code provides that among other things, municipal authorities have the power to issue permission for the use of megaphones or sound equipment, and therefore, all night clubs must obtain permission to operate commercially.

However, it was stated during interviews conducted in different parts of the country that municipalities do not issue specific resolutions to prevent human trafficking for the purpose of sexual exploitation in their jurisdictions. It was also stated that municipal regulations are extremely lax and do not contain specific provisions to prevent trafficking in businesses where sexual activities are presumed to occur. Sexual activities are therefore in a limbo, between the legally permitted and forbidden zone. This lack of regulatory definition operates against sexual workers and victims of trafficking, since there are no clear rules that define what is legal and when you are dealing with illegal activities. Therefore, a priority should be strict regulations on the

71 *Report by the Special Rapporteur on the sale of children, child prostitution and the use of children in pornography, Najat Maalla M'jid, on her mission to Guatemala presented to the Human Rights Council. 22nd period of sessions. Document A/HRC/22/54/Add.1. 21 January, 2013, paragraph 21.*

requirements to open businesses in municipalities and to conduct strict supervision to avoid trafficking, particularly of girls, boys and adolescents.

By contrast, unfortunately, in several places that were visited as part of this investigation, organisations that provide assistance to victims have stated that municipal officials and employees are users of sexual services of girls and adolescents. Across regions, repeated reports were received of mayors or councilmen who have sexual relations with girls and adolescents, some of whom are at times are offered by their mothers in exchange for a job at the municipality.

The first step to counter this was the creation, by 80 mayors, of municipal offices to protect children, encouraged by the municipal protection system model promoted by UNICEF. In some places, however, organisations that coordinate with local municipalities state that they come into contradiction with municipal officials due to a patriarchal culture and their excessive tolerance of sexual exploitation.

In conclusion, lack of compliance with trade, tax, labour, municipal and social security obligations does not cause the closing of businesses where sexual exploitation occurs. A generalised complaint by CSOs is the absolute impunity with which these businesses operate, since even if they are closed down, they reopen later.

Authorisation, control and supervision of businesses with higher prevalence of trafficking

Night club authorisation

The Control and Registration Department of the Technical Entertainment Bureau of the Ministry of Culture and Sports (MICUDE), based on the *Public Entertainment Act*, passed on 29 February, 1956, is in charge of keeping the record of these entertainment centres (including dancers) where

public entertainment is offered.⁷² The requirements to open a strip club or a similar business are quite lax, and to offer entertainment, the applicant merely needs to present authenticated photocopies of the personal identification document (DPI) of the persons participating in the entertainment (if they are foreigners, the work permit issued by the Ministry of Labour and Social Welfare must be submitted).⁷³ The procedure involves inspection by the bureau to confirm the conditions of the facilities where the business is set up.

According to information provided by the Public Entertainment Bureau, as of April 2015 there were 525 authorised night clubs in the country (237 strip clubs, 172 restaurants with live music and 116 discotheques).⁷⁴ The largest number of strip clubs is in Guatemala, with 50.2 per cent of them; throughout the southern corridor, from Escuintla to San Marcos is 25 per cent of them, which shows how widespread this activity is, particularly in cities like Escuintla, Mazatenango and Retalhuleu. These centres exist in cities with a large presence of drug traffickers, such as Puerto Barrios and Chiquimula.

As noted before, a large number of these places operate illegally, sometimes, across the street from public buildings, even justice buildings. Social organisations stated that even though foreign women are working illegally next door from the headquarters of the Prosecution, the Public Entertainment Bureau has not supervised the business, although one of the requirements is to show the work permits of foreigners who do «artistic nudity».

This bureau also fails to enforce the prohibition for minors to enter discotheques or night clubs. It was

stated in several regions of the country that the owners of discotheques contact adolescents for sexual exploitation and none of these centres have been punished, much less closed down.⁷⁵

Authorisation for hotels, inns, motels and others

The Guatemalan Tourism Board (INGUAT) is in charge of authorising lodging establishments through *Decree 1701*.⁷⁶ It requires the presentation of a form, identity documents, a trade license, and registration in the Unified Tax Registry (RTU). Legal entities are also required to present a company license, appointment of their legal representative and record of their company incorporation charter. Failure to meet these requirements causes admonishments, minor fines (ten to one hundred quetzales) or larger fines (from one hundred to one thousand quetzales), temporary suspension of the service and permanent cancellation of the business. Due to lack of access control, many motels that offer fractional rates allow access to minors without their parents, as well as the use of their facilities for sexual activities with minors. In Centroamérica, two teenagers stated that they were regularly taken to motels in Guatemala City such as Omni, AQA, or Chocolate.⁷⁷ In many areas of zones 1, 2, 7, 8, 9, 11 and 12 in Guatemala City, motels operate openly as brothels, offer minors and sell drugs. In fact, women have even been murdered in these places without

72 Guatemala, Ministry of Culture and Sports (MICUDE, 2012). *Ministerial Resolution 536-2012. Organization and Functions Manual*. Guatemala, 29 May, 2012, p. 83.

73 Information available in the webpage of the Public Show Directorate: <http://mcd.gob.gt/tramite-de-licencias-para-centros-nocturnos/>. Consultation made on 19 March, 2015.

74 See Annex 1, table by type of centre and by region.

75 Meetings with department-level organisations and networks against sexual violence and trafficking in persons in Petén (9 April, 2015), Escuintla (10 March, 2015) and Izabal (24 February, 2015).

76 Article 4, letter «p» of this Law provides that it is the responsibility of INGUAT, maximum rates for hotels, motels, buses and taxis that work for tourism, according to the classification by category (previously established by INGUAT) and to ensure enforcement. Article 29 of this law provides the obligation of lodging establishments to register with INGUAT. The *Regulations for Lodging Establishments* was issued for the authorisation of lodgings, through *Government Resolution No. 1144-83*, of 29 December, 1983.

77 Statements by victims. Criminal case 43-2013. Conviction of 29 August, 2013 by the Third Court for Criminal Sentencing, Drug Activities and Crimes against the Environment of Guatemala.

them getting closed down.⁷⁸ This occurs in other areas of the country as well, where CSOs provide specific information on hotels, motels and inns where girls are sexually exploited and authorities, the governor or persons in charge of coordinating the network against exploitation are not doing their work to assess sanctions.⁷⁹ In Petén it was stated that «In 2010, a woman was accused of trafficking two girls who were taken to a hotel for prostitution activities. However, cases are not followed through. No hotel engaging in these activities has been closed down».⁸⁰

Together with CSOs, INGUAT is developing the campaign called «No Permiso» (*Don't allow*), that seeks to establish a code of ethics⁸¹ to prevent sex tourism and trafficking in persons in the hotels of the country. This is a very positive initiative to raise the awareness of tour operators about human trafficking and involve them in the ethical commitment to fight the scourge. However, this effort needs to be complemented with other stricter control practices that include effective punishment.

The multi-sector commission for the control and sale of alcoholic beverages and for common violations associated with this activity

The Multi-Sector Commission for the Control of the Sale and Consumption of Alcoholic Beverages and for Common Transgressions Associated to this Activity (hereinafter Multi-Sector Commission) was created through *Government Resolution Number 112-99*, of 25 February, 1999. It includes representatives of the Ministry of Public Health and Social Welfare (MSPAS), the Ministry of Public Finance (MINFIN), the Ministry of the Interior (MINGOB), the National Civil

Police (PNC), the Migration Service, the Presidential Human Rights Commission (COPREDEH), and has the support of the Ministry of Culture and Sports through its Public Entertainment Bureau, the Ministry of Labour and Social Welfare (MTPS), department-level governments and municipalities of the country.

Its role is to ensure strict compliance with provisions related to the sale and consumption of alcoholic beverages and to avoid common transgressions associated with them (prostitution, trafficking and consumption of drugs, illegal possession of weapons, excessive volume in sound equipment, washroom hygiene and tax evasion, among others).

The Agreement authorises the Multi-Sectoral Commission to identify and search the public, to arrest persons who are caught red-handed (like with illegal possession of firearms, violation of the health and safety of minors, among others). It also authorises the delegates of the Migration Service to control and verify the permanence of foreigners in the country, in order to enforce legal and regulatory migration provisions. In this regard, the detention in the shelter of undocumented foreigners or persons who are illegally in the country may be ordered, leaving the decision to the discretion of migration authorities, without judicial control to determine the duration of their detention and the legality of their deportation.

The Multi-Sector Commission carries out search operations, usually in strip clubs and other night clubs. Many of them have led to the prosecution of individuals, usually the managers. Foreign women who are found in these sites are sent to the Migration Shelter, and are generally deported. In these cases, no psychological assessment is done of them to find out if the victims were subject to forms of abuse or coercion to work in prostitution.

Many such operations of the Multi-Sector Commission fail because information leaks, as reported by justice operators and even members of the Commission. As a result, when delegates reach

78 See *Prensa Libre* of 23 December, 2014, «Woman murdered in a zone 1 hotel room».

79 Interview with CSO, Flores, Petén, 8 April, 2015.

80 *Ibid.*

81 *National Code of Conduct for individual and legal persons working in the tourism sector, as well as the Protocol for Immediate Inter-Agency Response to Sexual Exploitation of Boys, Girls and Adolescents in Travel and Tourism.*

the site, the children or foreigners have already been hidden. Also, in cases where the exploitation of underage children has been detected, usually only managers or administrators are arrested, never the owners. The work of the Multi-Sector Commission is not fully coordinated with that of the prosecution. While a large number of human trafficking cases have been reported thanks to its work, the lack of investigation in advance of the operations means that only the persons who are caught red-handed are detained, and many times, they cannot be convicted due to lack of sufficient evidence.

In the opinion of an organisation that protects the rights of sexual workers «There is collusion between the owners of the businesses and the Commission... The latter forewarn the owners of the businesses. These raids harm mostly the women who work there because they get penalised either through discounts from their pay for not working, or by having to provide sexual services to police agents».⁸²

It has also been confirmed that many of the establishments that have been closed down by the Multi-Sector Commission go back to operating later, sometimes under a different name and sometimes with the same name. This has therefore been a failed control mechanism, both to prevent trafficking and to accomplish the prosecution of traffickers. This is the case of a bar in Huehuetenango, where an operation of the Multi-Sectoral Commission found underage and foreign victims. The place reopened three months later with the announcement of specials to celebrate the reopening.⁸³

The Alba Keneth Protection system

One of the novel mechanisms to protect girls, boys and adolescents from abduction for purposes of sexual abuse or human trafficking is the Alba Keneth System. The Law is thus called because of the tragic

death of children Alba Michelle⁸⁴ and Keneth Alexis.⁸⁵ Formerly, law enforcement waited 48 hours before starting a search for missing children. To prevent new tragedies, the *Alba Keneth Act, Decree 28-2010*, includes an early alert system to immediately search for children who have been abducted or who are missing, to protect them from abduction, smuggling, sale and trafficking for any purpose or in any form. Its objective is to coordinate the work of institutions in charge of protecting the rights of children and, basically, to coordinate urgent and immediate actions to accomplish the recovery of missing children. To that end, the law created the National Coordinator of the Alba-Keneth Alert System that includes:

- PGN through the Solicitor for Children and Adolescents, who presides it
- The National Civil Police (PNC)
- The Migration Service
- The Secretariat of Social Communications of the Presidency of the Republic
- The Attorney-General's Office through the Prosecution for cases of Trafficking in Persons

The Law requires the PGN to keep a nation-wide record of missing children through the Alba-Keneth System Operations Unit.

This system has been enormously effective to prevent the abduction of children for sexual exploitation purposes. For example, in the case of Kenny, activating the alert led to the return to Guatemala of four girls who had been clandestinely taken to Mexico, where the victims were kept in

⁸² Interview with organisation that protects the rights of sex workers, on 3 March, 2015.

⁸³ Interview with a worker of the First Court for Cases of Femicide in Huehuetenango, on 24 March, 2015.

⁸⁴ Alba Michelle España Díaz was eight years of age when she disappeared on 14 June, 2007, in Camotán, Chiquimula. Her body was found in a ravine with her organs removed. Three women abducted the child apparently for the purpose of removing her organs. Two of them were convicted to fifty years in prison.

⁸⁵ Keneth Alexis López Agustín, 4 years of age, disappeared on 16 December, 2009, in Jalapa. Seven days later, his body was found buried in the yard of a neighbouring house. Two women faced trial and were convicted to prison.

a diner and sexual exploitation establishment in Tuxtla Gutiérrez, México.

A total of 16,425 Alba-Keneth alerts were reported between 2012 and 2014 throughout the country (Table 1).⁸⁶

Table 1
Alba Keneth Alerts(2012-2014)

Year	2012	2013	2014	Total
Cases	4,487	5,985	5,780	16,252
Deactivated	2,417	4,577	4,126	11,153
Active	2,070	1,408	1,654	5,132
Percentage of active alerts	46%	23%	29%	31%

Source: Produced by authors based on data provided by the Alba-Keneth System Operations Unit

Undoubtedly, the system has been quite effective to locate children, and in many cases, has made it possible to rescue children who were going to be subject to forms of trafficking. A significant improvement is evident in 2013 when the percentage of missing boys, girls and adolescents dropped from 46 per cent to 23 per cent. This was the result of reorganisation and of building the personnel as well as of the creation of the Alba-Keneth System Operations Unit at the National Police, with the assistance of SVET.⁸⁷

Despite this, there are still, on average, 31 per cent victims still missing. This is of greater concern because most alerts are for girls and adolescents (71 per cent) (Guatemala, PGN, 2014). This alert system has become an important prevention mechanism and has forced agencies to react immediately when boys, girls and adolescents have been abducted or who have gone missing, but it needs to be further strengthened to operate fully.

86 Information provided by the Alba-Keneth System Operation Unit of PGN.

87 Interview with the head of SVET, 17 March, 2015.

2.2 Obligation to assist and protect victims

Article 25 of the *Convention on Transnational Organised Crime*⁸⁸ generally sets forth the obligations of the State in terms of assistance, protection and reparation. The obligation for special assistance for victims of trafficking is part of the general obligation to provide adequate and specialised assistance according to the most urgent needs for medical, psychological and legal care, that are now recognised as part of the duty to protect human rights (IACHR, 2009).

Section II of the *Protocol on Trafficking in Persons* seeks to protect the rights of victims and develops these obligations. Article 6.1 provides that States must safeguard the identity and privacy of victims by ensuring confidentiality in legal proceedings, and protecting them from the risk of reprisal against them. It should be noted that many human trafficking cases are transnational, so publishing the names of the victims enables traffickers to take reprisal in the country of origin, against family members or persons who are close to them.⁸⁹ The *Protocol*... also provides that States shall protect the rights of victims described in the following sections.

88 «Each State party shall adopt adequate measures within its possibility to provide assistance and protection for the victims of the crimes included in this Convention, in particular in cases of threats for reprisal and intimidation».

89 An example of that occurred for a long time in the cases of Colombian victims of sexual exploitation in Guatemala. The trafficker «Evelyn» threatened the women by saying to them that should they report it or file action, she knew her relatives back in Medellín (Restrepo, E., 2012).

2.2.1 Information on relevant judicial and administrative procedures

This is a form of assistance aimed at allowing the opinions and concerns of victims to be presented and examined in the appropriate stages of criminal proceedings against criminals without detriment to the rights of the defense.

It considers measures aimed at ensuring the physical, psychological and social recovery of victims, even, when appropriate, in cooperation with NGOs, other relevant organisations and other sectors of civil society and, in particular, through the provision of:

- Adequate lodging
- Advice and information, in particular with regard to their legal rights, in a language that the victims can understand
- Medical, psychological and material assistance
- Employment, education and training opportunities

Services in favour of victims of trafficking need to be provided by the State with the support of NGOs. To that end, the Organization for Security and Cooperation in Europe (OSCE, 2007) recommends the implementation of referral networks, which are ideal mechanisms for a public policy to accomplish adequate assistance for victims.

International standards of care for trafficking victims are complemented with instruments developed by OHCHR that drafted the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (OHCHR 2010) to offer a practical guide on the prevention of human trafficking and the protection of its victims. The purpose of this instrument is to promote and facilitate the integration of a human rights perspective in laws, policies and interventions against trafficking at the national, regional and international levels.

Guideline 6 recognises that «It is not possible to break the trafficking cycle without paying attention to the rights and needs of victims. It is necessary to provide adequate assistance and protection to all the victims of trafficking in persons without discrimination». And guideline 8 expands on the obligation to provide special protection to children in view of the physical, psychological and psychosocial harm that they suffer as well as their greater vulnerability to exploitation. This requires different treatment than for adult victims of trafficking in the laws, standards, programs and actions. The best interest of the child should be a primordial consideration in every measure related to victims of trafficking of children followed by public or private welfare institutions, courts, administrative authorities or legislative bodies. Children victims of trafficking must receive adequate assistance and protection and their rights and special needs must be taken fully into account.⁹⁰

The World Health Organization (WHO, 2003) has also adopted specific standards to care for victims of trafficking and specifically, with regard to the need for interviews, in order to prevent further victimisation of women. In this case, WHO seeks to explain the risks, ethical considerations and practical realities related to human trafficking to help minimise the risk, while at the same time improve the possibility for victims to provide relevant and accurate information.

Finally, each State party must ensure that its internal laws contain measures that give victims of trafficking the possibility to obtain compensation for the harm

⁹⁰ In this regard, the guideline does nothing more than gather and systematise State-wide obligations contained in the *Convention on the Rights of the Child* (Articles 3 and 6) and in the *Optional Protocol on the Sale of Children, Child Prostitution and the Use of Children in Pornography*. It provides in Article 8 that States shall adopt measures to protect the rights and interests of children victims in every phase of the criminal proceedings and, in particular, recognise their vulnerability and adapt procedures in order to have their special needs recognised (including special needs to declare as witnesses).

suffered. This may mean the creation of a State fund to compensate victims, provided that those funds do not offer compensation that is lower than what victims could obtain from judicial proceedings.

2.2.2 Institutions in charge of victim protection

Solicitor General of the Nation (PGN)

In the case of boys, girls and adolescent victims, the Solicitor General has been asked to legally represent underage victims who lack parents, tutors or legal representatives⁹¹ and to handle all necessary protection measures to protect the rights of children.⁹²

The Solicitor General has a division for Children and Adolescents that, in turn, has a Protection and Rescue Unit and a Criminal Unit. The former deals with developing the protection process foreseen in the *Law for the Comprehensive Protection of Children and Adolescents* and to obtain rulings that protect the rights therein listed.⁹³

In 2014, the division for Children and Adolescents participated in 8,192 cases involving protection and rescue activities. It also provided support in 983 cases as a joint complainant or legal representative of children (Guatemala, PGN, 2014).

On the specific issue of trafficking, PGN initiates the process to rescue boys, girls and adolescents who are being exploited. An example is the event in Retalhuleu, where PGN rescued eight children of sex workers who were being held in order to coerce the mothers into working. Once rescued, it was

proven that some of the children had been sexually abused.⁹⁴

Many of the establishments where this type of practice takes place are not closed down even when society voices its rejection. This is the case of discotheques,⁹⁵ ceviche vending sites and other places where the presence of girls trafficked for the purpose of sexual exploitation has been reported.

There is also lack of coordination in the beginning of the rights protection process, since the complaint may be heard by one of various organisations, PDH, PNC or the Prosecution, but there are no assistance protocols in place.⁹⁶ In addition, trafficking is many times not evident. Some delegates stated that district attorneys fail to coordinate their work to rescue victims from the places of sexual exploitation. Likewise, they state that information is leaked and when they go to rescue the victims, the girls and adolescents have already been moved to other establishments⁹⁷ or hidden in a way that it is impossible to find them.⁹⁸

Generally speaking, department-level delegations of the PGN have very limited personnel,⁹⁹ do not have sufficient budget and are overwhelmed with work, which makes it difficult for them to act in trafficking cases,¹⁰⁰ since they must also take care of sexual violence cases. Likewise, there is weakness

91 Article 108, paragraph «a» of the *Law for the Comprehensive Protection of Children and Adolescents*

92 Article 108, of the *Law for the Comprehensive Protection of Children and Adolescents*

93 Chapter II of the *Law for the Comprehensive Protection of Children and Adolescents*

94 Interview with Virginia Moreno, former PGN delegate in Coatepeque, 8 March, 2015.

95 Interview with department-level delegate of the PGN in Escuintla, 10 March, 2015.

96 Interview with María Eugenia Villareal from ECPAT, Guatemala City, 26 January, 2015.

97 Interview with Organización Generando, Chimaltenango, 3 March, 2015.

98 Interview with Virginia Moreno, former PGN delegate in Coatepeque, 8 March 2015.

99 Interview with María Eugenia Villareal from ECPAT, 26 January, 2015.

100 Interview with Department-level delegate from PGN in Coatepeque, 9 March, 2015. She pointed out that she was responsible for covering five municipalities in two departments and that she is the only attorney available to cover hearings.

in their training and lack of assistance protocols.¹⁰¹ The Judge in charge of Child and Adolescent cases confirms this when she points out that«[...] Personnel at the PGN is constantly on leave; which means work gets built up and inefficient».¹⁰²

Another obstacle for PGN's work is the linkage of security forces and local trafficking networks. A Judge stated about the case of «[...] a young employee of PGN who went to do a search at a bar in Antigua Guatemala where a police agent of the Multi-Sector Commission approached her and said to her: "you have one minute to go to hell; otherwise I will not be responsible for what may happen". Now the young employee is afraid of doing searches because the police agents themselves are involved in corruption networks».¹⁰³

Because of this lack of sufficient personnel, PGN faces difficulties to follow through cases and to enforce protection measures ruled by judges.¹⁰⁴

Courts in charge of children and adolescent cases

Judges in charge of children and adolescent cases must process protection measures based on the *Law for the Comprehensive Protection of Children and Adolescents* and issue protection measures to safeguard the rights of children who are victims of trafficking.¹⁰⁵

These judges state that in their respective jurisdiction there are red zones or bars where children work.¹⁰⁶ Despite the fact that the law authorises them to act *ex officio* and issue a large number of protection measures,¹⁰⁷ most are not enforced. Institutionalising surviving victims of trafficking is the measure frequently used in the few cases that are detected.¹⁰⁸ Likewise, judges in charge of children and adolescent cases do not dare to close down the establishments suspected of sexually exploiting boys, girls or adolescents as a protection measure.¹⁰⁹

106 Interview with Judge in charge of children and adolescent cases in Chimaltenango; Interview with Judge in charge of children and adolescent cases in Coatepeque, 9 March, 2015.

107 «**Article 112. Measures.** Courts in charge of children and adolescent cases may issue, among others, the following measures:

- a) Verbal or written reprimand of the person responsible for the violation or threat of violating the human rights of children and adolescents.
- b) Statement of responsibility to parents, tutors or care-takers.
- c) Referral of families to official or community-based assistance, guidance, support and temporary follow-up programs.
- d) Ordering the enrollment of boys, girls and adolescents in official schools and ensuring that they attend and take advantage of school.
- e) Ordering medical, psychological or psychiatric in-hospital or outpatient treatment.
- f) Ordering parents, tutors or care-givers to participate in official or community based assistance programs involving guidance, treatment and rehabilitation from deviant conduct, alcoholism or drug-addiction
- g) Temporary placement of the boy, girl or adolescent with a Foster family
- h) Temporary shelter for the boy, girl or adolescent in a public or private institution, on a case-by-case basis
- i) In the event of an offense or misdemeanor committed by an adult or adolescent, report as appropriate to the corresponding court »

108 Interview with María Eugenia Villareal, from ECPAT, Guatemala City, 26 January, 2015

109 Interview with women's organisations in Chimaltenango, 3 March, 2015

101 Interview with María Eugenia Villareal, from ECPAT, 26 January, 2015

102 Interview with Judge in charge of children and adolescent cases in Coatepeque, 9 March, 2015.

103 Interview with Judge.

104 Interview with María Eugenia Villareal, from ECPAT, Guatemala City, 26 January, 2015.

105 Judges for Children and Adolescent cases are responsible for hearing, processing and ruling on cases sent or reported to them, or heard *ex officio*, which may be a threat or violation to the rights of children and adolescents and where, through the Judge's ruling, the violated right is recovered or the threat of its violation ceases. They are also responsible for the judicial control of the measure(s) ordered provisionally.

Protection and criminal prosecution processes are duplicated, which leads victims to be interviewed by too many persons and this accentuates their renewed victimisation.¹¹⁰ Resources are also misused in that situation of lack of inter-agency coordination: «[...] Closed-circuit deposition should be used by every agency to ensure one single deposition per victim».¹¹¹ Repeating statements causes, in addition, much tiredness and discouragement in victims and their relatives. They also point to the lack of interpreters for victims' languages, which is an important barrier for victims to gain access to justice.¹¹²

The disconnect in the actions between the Attorney-General's Office (MP) and PGN causes victims to have to go to two agencies, and many times, neither does a close follow-up of the case. This also ultimately causes actual lack of protection of the victims. The Attorney-General's Office takes too long, and in the meantime, victims may be in State shelters or homes. «This is negative because during this time, traffickers visit their victims, threaten them, and then the victims change their statement about the events. Perpetrator relatives can go into the homes or shelters with the authorisation of parents, who sometimes are the ones who send them to work. Negotiations take place and therefore the owners of these exploitation centres are set free».¹¹³

When boys, girls or adolescent victims of trafficking are rescued, judges order a study done of their relatives to find a suitable family where the children can live. If no suitable resources are found, the children are sent to shelters while judicial proceedings take place. Judges state that they face problems to protect children because State-owned shelters or homes are not suitable to protect victims of trafficking and for that reason are used as a last resource when all other options have been exhausted. When suitable families are not found, judges favour referring children to private

shelters such as Alianza or El Refugio that run better protection programs.¹¹⁴

Serious human rights violations occur in some homes, like in the Hogar Seguro Virgen de la Asunción and therefore are not considered to be «safe homes» to protect the rights of girls and adolescents.¹¹⁵ In the case of Violeta, other protected girls abused her sexually and the Judge had to rule against the personnel of the home for human rights violations.¹¹⁶

In conclusion, Judges in charge of children and adolescent cases do not act *ex officio* to protect children victims. They believe that the best conditions to protect and rehabilitate victims of trafficking do not exist at present due to lack of specialised protection centres and state-wide rehabilitation programs. There is no capacity to monitor enforcement of the protection measures ordered either, plus lack of personnel specialising on the issue in those courts.

Shelters or protection centres for trafficking victims

At present there are four types of protection centres for trafficking victims:

- Safe homes managed by the Social Welfare Secretariat (SBS) of the Presidency of the Republic
- SVET shelters
- Centres for Comprehensive Support for Women Survivors of Violence (CAIMUS)
- Private shelters

110 Interview with Judge in charge of children and adolescent cases in Chimaltenango, 3 March, 2015

111 *Ibid.*

112 *Ibid.*

113 *Ibid.*

114 Interview with Judge in charge of children and adolescent cases in Coatepeque, 9 March, 2015.

115 Interview with Judge in charge of children and adolescent cases in Chimaltenango, 3 March, 2015.

116 *Ibid.*

Safe homes

These are managed by SBS to protect children and adolescents victims of human rights violations. Therefore, they do not specialise in victims of trafficking for the purpose of sexual exploitation but have a broad population with different victim profiles.¹¹⁷ Some persons are protected because they have been the victims of sexual abuses, but others have simply been abandoned or are victims of labour exploitation, begging, or other. The most serious part is that at times, victims of trafficking live together with adolescents who have committed crimes, among them, members of youth gangs who have committed serious offenses such as murder or sexual violence.¹¹⁸

The most serious problem in these homes is that human rights violations occur through aggression by other children living there, or from the staff. PDH determined that several serious offenses were committed in 2013, among them that five adolescents sexually attacked an adolescent girl who lived at a home.¹¹⁹ This victim was isolated and upon examining her «[...] we found that she had cuts and scars on her arms». ¹²⁰ The most serious event was that two fourteen and fifteen year-old girls with psychiatric problems¹²¹ strangled a fourteen year-old girl with a scarf on 16 October, 2013.¹²²

117 ECPAT (2015). *Thematic Hearing on Trafficking in Women, Boys and Girls in Guatemala at the Inter-American Human Rights Commission*. 154th period of sessions, 19 March, 2015.

118 Interview with personnel from an SBS centre.

119 This report is being heard by the Dejudicialization Unit of the Prosecution for Children and Adolescents. Criminal case MP 001-2013-56996.

120 Guatemala, PDH (2013). *Ruling of 29 October, 2013*. REF. EXP.ORD.GUA.3153-2013/DE.

121 ECPAT (2015). *Thematic Hearing on Trafficking in Women, Boys and Girls in Guatemala at the Inter-American Human Rights Commission*. 154th period of sessions, 19 March, 2015.

122 This report is being heard by the Dejudicialization Unit of the Prosecution for Children and Adolescents. Case MP 001-2013-56996.

The serious violations that occurred at a safe home led the Defense for Children and Adolescents of PDH to confirm «[...] the inexistence of a plan or plans to address situations of crises, mixed profiles and lack of systematic or psychotherapeutic programs, where a vision where the population living at the homes is criminalised and punished. This causes the safe home to [...] be an inoperable space that fails to restore victims' rights or to respond to the best interest of the child, since, in addition, it places their human rights at risk».¹²³

PDH confirmed that «[...] the home does not have sufficient experienced operations and professional personnel to address the issue and to provide the treatment that boys, girls and adolescents need to receive».¹²⁴ In addition, there is no special treatment for victims needing psychiatric care. In these conditions, institutionalised victims do not receive psychological therapy or education. PDH also confirmed «[...] that the situation is difficult for girls and adolescents at the home, and a number of them escaped from the home in 2013».¹²⁵

This situation in the homes managed by SBS persists, as shown by the ECPT report to the IAHRG that highlights once again that shelters present serious deficiencies like the lack of a psychosocial care model and of specialised care for boys, girls and adolescents who are victims of trafficking. In addition, the home is 100 per cent overpopulated.¹²⁶

All of these circumstances prevent judges from referring boys, girls and adolescents to safe homes managed by SBS.¹²⁷ For that reason, the Committee on the Rights of the Child urged the Guatemalan State to adopt «[...] all necessary measures to address

123 *Ibid.*

124 Guatemala, PDH (2013). *Ruling of 29 October, 2013*. REF. EXP.ORD.GUA.3153-2013/DE.

125 *Ibid.*

126 ECPAT (2015). *Thematic Hearing on Trafficking in Women, Boys and Girls in Guatemala at the Inter-American Human Rights Commission*. 154th period of sessions, 19 March, 2015.

127 Interview with Judge in charge of children and adolescent cases in Chimaltenango, 3 March, 2015.

the recommendations of its earlier observations that have not been sufficiently enforced, including regarding: a) the deficient enforcement of the Comprehensive Protection System, its institutional structure, coordination, planning, data gathering and budget. It [also] recommended offering accessible, universal recovery and social integration services adapted to children».¹²⁸

➤ Homes managed by SVET

There are three of these homes and they started operations only at the end of 2014. The head of SVET¹²⁹ stated that each shelter has a social worker, a nurse, a monitor, a cook, a kitchen assistant, a coordinator and private security. The home can only offer first level care. For that reason, they try to keep victims there for two to three months, to make them stable. Later, alternatives are found for them (a new home for second level care) and SVET monitors this follow-up care. Victims can enter the home only with a Judge order through PGN.

In order to provide some types of care such as education, health and rehabilitation, they have entered into agreements with other institutions such as MINEDUC, MSPAS, and the Executive Secretariat against Addictions and Illegal Drug Trafficking (SECATTID) that provide professional services for SVET shelters.¹³⁰

PDH issued a formal request for victims of trafficking to receive second level assistance, but when this report was drafted, a response had not been received yet from SVET (Guatemala, PDH, 2014: 38). In her report to IAHR, the head of the Secretariat reported that, as of March 2014, the shelters of this institution had provided assistance to 67 persons.

The existence of SVET homes to protect victims of trafficking needs to be reviewed because victim protection and assistance are the responsibility of SBS and MSPAS.¹³¹

➤ Comprehensive support centres for women survivors of violence (CAIMUS)

There are currently seven CAIMUS¹³² that are managed by CSOs through the Vice Ministry in charge of Prevention of the Ministry of the Interior (MINGOB). The Guatemalan Group of Women (GGM) began its work with the first CAIMU in 1991. However, the *Law against Femicide and other Forms of Violence against Women* led to the creation of this type of centre to be managed by organisations that specialise in providing care for female victims.¹³³

CAIMUS focus their attention mainly on victims of violence against women, a problem that requires many services. These centres use a comprehensive care approach that seeks to empower victims, by treating them in a way that can give sense to a life project. Because of the profile of the persons that receive assistance there are women and families in the shelters. This makes it difficult for them to live with victims of trafficking, who have different cultural patterns. For the most part, CAIMUS focus on providing assistance to women who are victims of violence from their partners. «We help women in processes dealing with family issues: alimony, oral trials, increased alimony, executives, divorces, trials of relatives ...».¹³⁴

It should be noted that the personnel of the CAIMUS have also been the victims of threats by the aggressors of the women they serve. There are

128 Committee for the Rights of the Child (2010). *Examination of States parties under article 44 of the Convention. Final observations on Guatemala. CRC/C/GTM/CO/3-4*. 55th period of sessions, 2010, paragraph 12.

129 Interview with the head of SVET, 17 March, 2015.

130 Interview with the head of SVET, 17 March, 2015.

131 Article 4 of the *Law against Sexual Violence, Exploitation and Trafficking in Persons*.

132 Located in Guatemala, Escuintla, Chimaltenango, Salamá, Cobán and Quetzaltenango.

133 Article 16 of the *Law against Femicide and other Forms of Violence against Women*.

134 Interview with the coordinator of CAIMUS, Escuintla, 11 March, 2015.

no security personnel and this makes their personal safety even more delicate. They have faced verbal violence, persecution and threats through notes left at the doorsteps of the shelters.¹³⁵

On the other hand, deficiencies in the justice system and in crime investigation has led many agencies such as PGN, the Prosecution, the Institute for Public Criminal Defense (IDPP) and the Judiciary (OJ) to refer a large number of cases of violence against women to the CAIMUS. This is the case, for example, in the departments of Chimaltenango and Escuintla, where cases are referred directly as a result of the degree of commitment and special knowledge of prosecutors.¹³⁶

The personnel in charge of the CAIMUS recognise that care for victims of trafficking requires special training because «[...] many victims of trafficking suffer from serious addictions: alcohol, tobacco and other drugs. Special places and personnel are required to give them comprehensive treatment since abstinence is difficult. It is necessary to offer girls and boys victims a different approach to life to change their view of life and therefore change their behaviours».¹³⁷

During the last year, work in the CAIMUS has been weakened by a lack of earmarked funds. This has caused delays to pay professionals and operational expenses.

Centres managed by civil society organisations

Some NGOs are providing specialised services for children. *El Refugio de la Niñez* and *la Alianza Guatemala*,¹³⁸ provide shelter to children who are survivors of trafficking. Judges prefer to refer

children to these centres because they have more suitable facilities, specialised programs and personnel trained to provide assistance to survivors of trafficking.

These shelters have inter-disciplinary teams that include social workers, psychologists, lawyers and teachers who provide psychosocial and legal assistance to resolve the issue that took the victim there, taking their diagnosis into account. The assistance approach seeks to ensure that victims participate positively in education activities and workshops offered at the shelter, such as sewing and computer skill workshops.¹³⁹ Teachers make efforts to help victims to go back to school when they have dropped out. To accomplish this purpose, they enrol them in the Education Program for Working Boys, Girls and Adolescents (PENNAT).

Family contact and victim integration is encouraged through various activities and through a school for parents. In this manner, survivors are helped to join a suitable family resource. Notwithstanding this, it is necessary to state that many of the victims have been given up to sexual exploitation by their own parents.

The heads of the shelters recognise that a considerable number of victims have serious behavioural problems due to the traumatic situations that they have endured. They show self-destructive conducts, such as hurting themselves, and there have been some attempted suicides. Many times, boys or girls need psychiatric care.¹⁴⁰

Despite the fact that these centres have developed a methodology of specialising in victims of trafficking, they face limitations as to the number of persons that they can provide assistance to, due to budgetary restrictions. Additionally, their approach focuses on boys, girls and adolescents and therefore they have not developed a system to provide assistance to adult victims.

135 *Ibid.*

136 Interview with Organización Generando, 3 March, 2015; interview with coordinator of CAIMUS, Escuintla, 11 March, 2015.

137 Interview with Giovanna Lemus of the Guatemalan Group of Women (GGM).

138 Of these two centres, only *El Refugio de la Niñez* receives grants from the State through MSPAS.

139 Interview with the lawyer of *El Refugio de la Niñez*.

140 Interview with psychologist of *El Refugio de la Niñez*.

General assessment

There is no state-wide policy to provide assistance to victims of trafficking in persons. The centres for children and adolescents that are managed directly by the State do not have specific work methods nor do they provide comprehensive care. Also, they violate the rights of the victims. SBS does not have centres that specialise in trafficking in persons, which is essential in view of the specific needs for care that victims of trafficking have. In these cases, addictions, psychiatric problems resulting from trauma, and medical care for sexually transmitted infections (STIs) are not minor problems.

While there are alternatives to State-managed centres to provide protection and shelter for boys, girls and adolescents, territorial coverage and installed capacity is limited. It is positive that they have been able to develop specific work methodologies to provide assistance to survivors, which could be replicated nationwide by State institutions.

In the case of adult women, both Guatemalan as well as foreigners, a consolidated care model is not yet in place. Efforts by SVET lack the necessary budget to have national coverage. The State has not developed a comprehensive first and second level system of care that can provide psychological, physical and labour recovery of victims. A model of care is required to not only repair the profound harm caused by sexual exploitation, but which in addition gives victims the possibility to change their environment¹⁴¹ to give sense to their lives and enable them to create projects that will help them avoid falling in the hands of sexual exploitation networks again.

141 In the ruling on Campo Algodonero, the IACHR states that the rights substitution paradigm should be substituted by a transforming approach. Inter-American Human Rights Court (IACHR, 2009). Case Campo Algodonero vs. Mexico, Judgement on Merits of 16 November, 2009.

2.3 Special obligations related to foreign victims

Articles 7 and 8 of the *Protocol on Trafficking in Persons* considers regulations related to victims that have been taken to another country to be exploited, as well as about the issue of repatriation. The migration situation of the victim and the associated issue of repatriation appear as an obstacle to obtain evidence in trafficking cases. In this regard, the *Protocol...* requires that receiving States parties examine «[...] the possibility to adopt legislative measures or other adequate measures to allow the victims of trafficking to remain in their territory, temporarily or permanently, as appropriate, taking into account humanitarian and personal factors»¹⁴². This article must be read together with Article 6 (rights for assistance and protection), because otherwise, human rights violations would occur.

On the other hand, OSCE (2013) has pointed to the need to not criminalise illegal immigration of victims of trafficking because this turns the victim into a criminal, prevents her from exercising her right to access to justice, and ensures impunity for traffickers. For this reason it is deemed appropriate to not immediately deport her and at the same timetake actions for the victim to reside temporarily in the receiving country in dignified and safe conditions, with the necessary elements provided for her to cooperate with the justice system. Regarding the latter, it would be appropriate to give permanent resident status to the victim of trafficking if threats persist (Global Rights, 2005: 32).

From a similar perspective, the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* provide that «[...] victims of human trafficking should not be held in detention centres for immigrants, other detention centres or in shelters for the homeless» (OHCHR, 2010).

142 Article 6 of the Protocol on Trafficking in Persons (paragraphs 7.1 and 7.2 together)

In the Report by the Secretary-General of the United Nations (2014) on human trafficking and their human rights, he states that, after the entry into force of the *Protocol on Trafficking in Persons*, the identification of a person as a victim of trafficking should be sufficient to avoid her immediate deportation, and to provide her the necessary protection and assistance.

The Protocol in question, then, advocates for making three elements compatible: the migration status of the victim, the effective prosecution of traffickers and the rights of victims. The purposes of safeguarding the rights of victims and of prosecution take priority over administrative standards, particularly in order to really accomplish adequate assistance to the victim, with the obligation also to accomplish an effective cooperation among States, with the best interest of the victim as the central consideration.

2.3.1 Institutions in charge of repatriating foreign victims: General immigration service

The *Protocol on Trafficking in Persons* and other international instruments require victims of trafficking not to be repatriated and to provide them ideal and adequate assistance and protection to guarantee their rights.

In the case of Guatemala, it is the responsibility of the Foreign Ministry (MINEX), the Immigration Service, and of the Courts to develop mechanisms for an eventual repatriation of trafficking victims (Guatemala, MINEX, 2011).

MINEX has established an *Inter-Agency Protocol for the Repatriation of Victims of Trafficking of Persons: Boys, Girls, Adolescents and Adults* (2011) with two clear routes and their respective guidelines, both for the repatriation of Guatemalan nationals back to the country as well as the repatriation of foreigners who have been the victims of this social reality in Guatemala to their country of origin in order to ensure that these processes take place in an orderly,

dignified and safe manner, without unjustified delays and in the framework of human rights enforcement and practice. The principles that govern this protocol are confidentiality, special protection, prevention of renewed victimisation, the best interest of the boy or girl, non-discrimination, a right to participate, respect for cultural identity, information, life project,¹⁴³ celerity, underage presumption and recovery of the exercise of their rights.

This protocol on repatriation provides the need to define the initial status of the person, as well as the final status which is expected after completion of the process in order to meet the expected principles. The repatriation process –both from Guatemala to a third country as that of Guatemalans back to Guatemala– involves the participation of Consular offices in accordance with the *Convention on Consular Assistance*.

The *Vienna Convention on Consular Relations* recognises the provision of assistance to citizens from a sending State to defend their rights before the authorities of the receiving State as a priority function of Consular officials when a national of their country has been arrested or in any way detained, or placed in preventive prison. Upon interpreting the *Vienna Convention*, the Commission states that the standard recognising consular communications serves a dual purpose: to recognise the right of States to provide assistance to their nationals through the actions of a Consular official, and in parallel, to recognise the corollary right of the national of the sending State to get access to the Consular official in order to obtain said assistance.

It is beyond doubt that the validity of any detention process by immigration authorities carries an obligation to immediately inform the Consul of the State of origin, who then must defend the rights of his or her citizen.

143 This instrument states that victims will be provided means proportional to their needs to maintain their life project, while looking to eradicate the causes that led to their victimisation as well as the development of their expectations.

In 2014, MINEX recorded the repatriation of twenty victims of trafficking, of which nineteen were Guatemalan (eighteen were repatriated from Mexico and one from El Salvador) and one was a foreigner (repatriated to Honduras).

This must be compared against the 273 women who were deported from Guatemala by Immigration authorities. Upon comparing this situation, a defender of the rights of sex workers stated that «[...]the Multi-Sector Committee would arrive at businesses called bars or pubs and all women “dressed in work clothes” were escorted directly to the Immigration office if they were foreigners.

Women remained in Migration Service shelters between two days to two months, in overcrowded conditions, to then be deported».¹⁴⁴ These events show that, first, the Migration Service conducts victim deportation proceedings without enforcing the repatriation protocol. Secondly, prior to ordering their deportation, foreign victims are detained in the shelter.

Upon asking the officials of the Migration Service about the enforcement of the repatriation protocol, they stated that it is not enforced in the case of foreign women with illegal migration status and who are not the victims of trafficking.¹⁴⁵ If foreign women state that they are the victims of trafficking, they should not be taken to the Migration Service shelter since this is only for women with an irregular migration status. In fact, if the authorities that conducted the initial operation did not find that the person (adult) was the victim of trafficking, but if, during the interview, the shelter detects that she was, immediate notice is sent to the authorities to

have her sent to a protection centre since she has not committed an immigration infraction.¹⁴⁶

Unfortunately, these officials have confirmed that the Attorney-General's Office or Police authorities take too long to take action when a person wishes to state that she was the victim of trafficking. At times, they have taken fifteen days and even months.¹⁴⁷ During that time, according to the psychologist of the Migration Service shelter, victims lose hope and when they are interviewed by the authorities they deny the exploitation. The psychologist also explains that exploited women sometimes deny being victims of trafficking because some of them suffer from the Stockholm Syndrome, for which reason they do not take action against the traffickers. Also, women fail to admit to or report trafficking due to threats from traffickers. Another deterrent is the lack of an adequate system to interview victims as they do not feel confident enough to say what they have been through. The psychologist believes that investigators should conduct these interviews in the company of psychologists to be able to build the victim's trust in order to get their statement.¹⁴⁸ Some attitudes on the part of investigators make the victims mistrustful and that is why they refrain from providing information.¹⁴⁹

In these circumstances, if these persons do not declare themselves victims of trafficking, the personnel at the shelter are forced to process their expulsion. The procedure is swift and simple;¹⁵⁰ information is always requested from the Consular offices of the countries of origin of victims to confirm that the victims are actually nationals from that country and to verify their identity. In addition, these persons are given a temporary passport or

144 Interview with Flor Peña, coordinator of the Organisation of Women for Justice, Education and Recognition (Organización MUJER), 2 March, 2015.

145 Interview with Rolando Mazariegos, Head of the Shelter Division, and José Antonio Zaldaño Hernández, Head of the Operations Division of the Migration Service. Guatemala City, 13 May, 2015.

146 *Ibid.*

147 *Ibid.*

148 Interview with the psychologist of the Migration Shelter, 13 May, 2015.

149 Interview with Rolando Mazariegos, head of the Division of Shelters, and José Antonio Zaldaño Hernández, head of the Division of Operations. Guatemala City, 13 May, 2015.

150 *Ibid.*

a pass. Most of the times, the women are taken to Consular offices. Once their nationality has been confirmed, the migration movements of the person to be deported is verified to determine if orders to forbid her from travelling or other such orders have been issued, including arrest warrants. In some cases, arrest warrants against these persons have been issued and this causes the expulsion process to be suspended and the individual to be sent before the appropriate judicial authorities.¹⁵¹

The head of the Immigration Service shelter explained that, generally, the deportation procedure takes two to three days. These persons are accused of the misdemeanor under Article 15 of the *Immigration Act* that provides that «Tourists or visitors may not take public or private jobs or establish commercial interests in the country». Although the law provides that the a ten-day hearing must begin and the opportunity to present exculpatory evidence over a five days must be provided,¹⁵² this is never done, with the argument that said regulation is enforceable only to process a deportation, but not to process an expulsion.¹⁵³ Expelled foreigners are not given the right to appeal the decision through an administrative proceeding, as provided by Article 116 of the *Immigration Act*.¹⁵⁴

151 *Ibid.*

152 «Article 113. Before the deportation of a foreigner for the infractions listed in the article above, the Migration Service must follow the following procedure:

1. To open a hearing for the interested party for a maximum of 10 days;
2. To receive evidence within five days of proposing it; and,
3. To resolve his/her status within 72 hours of the hearing or of receiving the evidence. All the exculpatory evidence listed in the Civil and Commercial Procedural Code will be admissible ».

153 As the head of the shelter explained, lawyers are not familiar with Migration regulations and that is why they do not file adequate defense and legal recourse. He pointed out that normally they file habeas corpus petitions, but these remedies have been dismissed and that decision confirmed by the Supreme Court of Justice.

154 «Article 116. The enforcement of the Administrative Litigation Act shall apply against decisions in migration matters».

An example of this procedure is the case of a Nicaraguan and a Honduran woman who were found during a search operation conducted in Chimaltenango by the Multi-Sector Commission. These women worked in two bars of that city, the Noa Noa II and the Burbujas de Amor Bar.¹⁵⁵ The operation was conducted on 11 April, 2015¹⁵⁶ and the decision to expel them was issued on 13 April of the same year. The expulsion took place on 14 April.

Obviously, because of the swiftness with which the expulsion procedure took place, the prosecutors in Chimaltenango were unable to interview the two foreign women. The Attorney-General's Office requested information about them only on 29 April, and the response was that they were deported on 14 April, 2015.¹⁵⁷ In view of this, the Attorney-General's Office was unable to confirm whether the two foreign women had been victims of trafficking.

Therefore, the contention is that the right of the victim to not be returned to her country as provided by the principle of participation in the *Repatriation Protocol*... is not enforced since victims are never informed of their rights¹⁵⁸ and they are not provided legal counsel. All this means that victims remain deprived from their freedom as if guilty of a crime, until their expulsion is ordered, which is done without due legal process since a hearing is not scheduled and they are not given the right to submit exculpatory evidence.¹⁵⁹ For that reason, the conclusion is that

155 *Expulsion file, Ruling SCM-DOCM-056-2015*, of 13 April, 2015.

156 *Referral note number 918-2015*. Reference CEV of the Unit against Trafficking in Persons of the Department against Organised Crime of the Criminal Investigation Special Division of the National Police, dated 11 April, 2015.

157 *Note SCM/DOCM/181-2015 ref.Imvr.*, of 7 May, 2015.

158 Victims are not informed of their right to legal counsel. The guarantee of legal counsel is listed in Article 8.2, letter «b», and has been declared an unviolable right by the IACHR (1990). *Consultative opinion OC-11/90 of August 10, 1990. Series A, nbr. 11. Exceptions to the Exhaustion of Internal Recourses (Articles 46.1, 46.2.a and 46.2.b, American Human Rights Convention)*.

159 Article 8.2 of the *American Convention on Human Rights* states that all persons accused have the right to be informed in advance and in detail of the accusation; to have the necessary time and resources for their defense; to present exculpatory evidence and to appeal the

the *Repatriation Protocol* ... is not properly enforced, because most victims of trafficking are deported without legal guarantees or procedures followed, which exposes them to again fall prey to trafficker networks in their countries of origin.¹⁶⁰

Regarding the current condition of Migration Shelter facilities, a field visit confirmed that it offers clean conditions. It has two wings, each one with capacity for one hundred persons (although the Director believes that the actual capacity is 75 persons per wing). The shelter is manned by 21 persons, which includes 14 migration employees, two psychologists and support personnel. The shelter is guarded by two national police agents who work in eight-day shifts.

Access to the shelter can only be gained with an order from the National Police (PNC), the Prosecution, a competent Judge, an authority from the correctional system or a Migration delegate. The shelter is only meant for persons who violate migration laws. To ensure that no human rights violations are perpetrated, it is monitored by the *Pastoral de Movilidad Humana*, the Human Rights Office of the Archbishopric of Guatemala (ODHAG) and the National Commission against Torture.¹⁶¹

2.4 Institutions in charge of investigation, prosecution and reparation

To a large degree, trafficking in persons continues to be a rarely prosecuted and punished crime. Even when Guatemala qualified it in 2005, the

conviction ruling. In the conviction of the Baena Ricardo vs Panama case, the IACHR stated that these guarantees are fully enforceable in every type of proceedings, including administrative proceedings (Baena Ricardo et al vs. Panama, ruling of 2 February, 2001).

160 Interview with María Eugenia Villareal, from ECPAT, Guatemala City, 26 January, 2015.

161 Interview with Rolando Mazariegos, Head of the Shelter Division, and with José Antonio Zaldaño Hernández, Head of the Division of Operations, Guatemala City, 13 May, 2015.

number of persons convicted for this crime with a firm sentence and who are in prison is extremely low.¹⁶² This is due to the fact that investigating this crime requires special methods, as well as a victim assistance and protection system that ensures their cooperation to guarantee successful prosecution (Brendell, C., 2003: 41). Likewise, judges need training to overcome biases and stereotypes that prevent them from understanding the new laws against trafficking in persons.¹⁶³

The obligation to guarantee human rights requires diligent investigation by the State. To that end, it is necessary to have practices, public policies, agencies and actions in place devoted to protecting the life and integrity of citizens (CEJIL, 2011). Thus, this section will analyse State obligations to accomplish efficient investigation and prosecution; institutional policies to effectively protect the human rights of victims of trafficking; practices by State agencies in cases brought to trial; and reparation measures ordered by courts in favour of victims.

2.4.1 The Attorney-General's Office and subsidiary investigation bodies

The Attorney-General's Office is the institution in charge of leading criminal investigation and of prosecuting public crimes. It is organised as an institution which works under the principles of unity and hierarchy, which means that any prosecutor is

162 The Correctional System Director reports 28 firm convictions for the crime of trafficking, which includes every modality.

163 On the problem of patriarchal culture in the justice system, see IACHR (2011). A typical example of the ignorance of key aspects of legislation on trafficking is the judgment against three Jordanian citizens who were acquitted because the Guatemalan victims subjected to exploitation in Jordan had given their consent to be transferred to that country. This reasoning is contrary to the provisions of the crime of trafficking, which state that "[...] in no case will the consent given by the victim or his legal representative be taken into account." Case C-1080-2011-00836 the Eleventh Court of Criminal Sentence, Drug Trafficking and Environmental Crimes.

in charge of the investigation and prosecution of any crime and may represent the institution before any jurisdictional body.

For that reason, the concept of competence is foreign to the Prosecution, that is, there are no limitations to its ability to take over cases, either by reason of the subject matter or the territory. This does not mean that, for purely administrative control and management organisation purposes, cases are not assigned by virtue of territory or subject matter, for reasons of service. Regardless of that, this does not limit the ability of the Attorney-General's Office to participate in any case, when necessary.

The Attorney-General's Office has regional,¹⁶⁴ district or municipal Prosecutors' offices, or municipal or thematic Prosecutors' offices. The latter are the so-called Prosecution Sections,¹⁶⁵ with competence over specific crimes, because of their importance, complexity and because they require a high level of special knowledge.

Since human trafficking is a crime committed mostly by criminal structures, a special unit was created in 2007 under the Prosecution Section against Organised Crime to investigate and prosecute them. This unit had a very weak structure because it included only one director, one prosecutor and six assistant prosecutors who had to hear all the trafficking cases of every modality (labour exploitation, illegal adoptions, sexual exploitation, etc.). To strengthen the unit, in 2012 it was made into a Prosecution Section through a decision by the Council of the Prosecution.¹⁶⁶

The Prosecution Section against human trafficking is formed by three units:¹⁶⁷ the Unit against Labour Exploitation and other Trafficking Modalities, the Unit against the Sale of Persons and Illegal Adoptions and the Unit against Sexual Exploitation. The Comprehensive Care Unit was added to this structure, the latter in charge of providing psychological and social care to victims. In 2014, the Unit to provide Care for Migrants Victims of Possible Crimes, and their Families was created in response to the huge flow of boys and girls to the United States.

While the Prosecution Section against Trafficking in Persons is responsible for prosecuting trafficking throughout the country, district or municipal prosecutors also have the obligation to initiate investigation and prosecute cases in the country,¹⁶⁸ until the case is closed, unless different instructions are issued by the Prosecution Section or the Director of Public Prosecutions. To that end, regional prosecutors are under the obligation to report trafficking cases prosecuted *ex officio* or as a response to a report to the Prosecution Section, to be able to take over the case¹⁶⁹ and systematise information on the case. The Prosecution Section makes the decision on when to take over hearing cases, based on their strategic importance or when, for reasons of security and victim protection, it is not advisable to prosecute a case in a regional prosecution office.

Regarding the institutional capacity to conduct effective prosecutions, it is important to point out that Prosecution Section resources are limited for the size of the problem they face both in terms of funds as in terms of infrastructure and staff, that includes two prosecutors and eight assistant prosecutors.

164 From the territory's point of view, the Prosecution has 22 District Prosecutors Offices and 55 Municipal Prosecutors Offices.

165 Prosecution Sections are described in the *Organic Law of the Prosecution*. Additionally, the Council of the Prosecution has been given authority to create new Prosecution Sections as required.

166 *Resolution 1-2012*, 13 May, 2012, Council of the Prosecution

167 *Regulation for the Organisation and Functions of the Prosecution Section against Trafficking in Persons*. Resolution 101-2012 of 25 September, 2012 of the Attorney General

168 *General Instruction 1-2011*, 2 March, 2011, Article 2.

169 *General Instruction 1-2011*, 2 March, 2011, Articles 3 and 4.

In the area of personnel selection and hiring, the Association for the Advancement of Social Sciences (ASIES, 2013: 50) has expressed its concern because the Attorney-General's Office has not yet produced a job description specifically for prosecutors in charge of organised crime that can guarantee honesty, loyalty, human quality and adequate schooling, as well as the screening process for candidates to these very sensitive positions in the Prosecution.

The current staff of the Unit against Sexual Exploitation of the Prosecution Section against Trafficking in Persons is insufficient to cover its workload; some assistants have an average of 119 or 120¹⁷⁰ cases assigned to them. The analysis of the real size of the problem shows how truly serious it actually is, involving thousands of cases in the country. The conclusion therefore is that there is work overload, further compounded by the fact that the Prosecution Section against Human Trafficking covers the entire country. Likewise, the two prosecutors in charge of the Unit against Sexual Exploitation litigate in every court in the country. This conspires against the quality and efficacy of prosecution since prosecutors need to dedicate too much time to travel from one place to another.

Regarding infrastructure, currently this Prosecution Section lacks adequate office space to do its work. Prosecutors and their assistants are overcrowded: three persons must share the space designed for one.¹⁷¹ Some staff members do not have filing cabinets or desks. In these circumstances, the work of assistant prosecutors becomes very difficult because they must give up their desks and computers for another prosecutor to work.¹⁷² In addition, sharing desks and filing cabinets makes it difficult to preserve the integrity and security of information.

170 Data obtained from SICOMP.

171 Interview with assistants from the Sexual Exploitation Unit of the Prosecution Section against Trafficking in Persons.

172 Not all the assistants have computers, desks and filing cabinets; they must share these work tools.

The deficient infrastructure does not make it possible to have areas specially designed to hear victims and witnesses; overcrowding permits others to overhear their statements, which harms the confidentiality and privacy of the statement and promotes renewed victimisation (OHCHR, 2010; WHO, 2003). It also exposes witnesses to the risk that their information be heard by third parties, including the accused or their counsel. In addition, it is possible that the accused, victims and witnesses, coincide in the same place, which may open the opportunity for intimidation or threats to occur. At present, the Prosecution Section does not have a specific place to take depositions or a Gessel chamber that is directly available to it,¹⁷³ which is absolutely necessary for the victim to feel safe and protected when she will offer her deposition.

An important success in the implementation of the Prosecution Section against human trafficking was the creation of the Comprehensive Care Unit that includes a psychologist and a social worker. Unfortunately, these personnel are insufficient for the needs of the prosecution, because many times they have to see large numbers of persons, who at times are indigenous and speak a different language. There are no waiting rooms to provide dignified conditions to victims while they wait to be called to offer their deposition, which makes them anxious and ultimately weakens their resolve to cooperate in the investigation.¹⁷⁴

173 The installation of Gessel Chambers in several Prosecutions, including its headquarters in Gerona. However, the number of interviews is very high and usually these chambers are used by the Prosecution Section for Women. It is important to say that many of the cases heard by the Prosecution Section against Trafficking in Persons has involved the rescue of 25 to 40 victims, which gives an idea of the needs involved in this area.

174 This has been observed particularly when operations are conducted of structures that exploit large numbers of persons. In a case of girls subjected to exploitation by tortilla vendors, the victims had to wait for eight or more hours at the facilities of the Prosecution before making their deposition.

The Prosecution Section against Trafficking in Persons has a Liaison Unit to do the criminal analysis of trafficking structures. This has permitted better systematisation of information and the development of a strategic prosecution perspective of this crime. This notwithstanding, because of the workload involved, the Liaison Unit has not been able to carry out important tasks such as the systematisation of exploitation centres, the creation of databases of owners and other reference data for the implementation of a global vision of trafficking mechanisms and networks. The task of the Liaison Unit still focuses mainly on tactical and operation analysis, and that leaves little room for strategic analysis.

Most prosecutors of the Prosecution Section against Trafficking in Persons have sound knowledge in terms of the criminal investigation of human trafficking and have taken special courses on the matter, both in the country as well as abroad. However, there is a need to strengthen financial investigation, particularly to track illegal earnings, the flow of capitals and to discover the financial engineering used by traffickers to cover up their commercial operations and to launder their earnings.

Regional prosecution offices (district and municipal) also face limitations in terms of infrastructure and equipment and the need for specialised training is accentuated. The staff of regional prosecution offices is not always fully familiar with the scope of application of the human trafficking offense; several persons interviewed agreed on this.¹⁷⁵ This has a direct bearing on the poor outcomes accomplished by the Attorney-General's Office in cities outside the capital (without prejudice of the fact that there are also problems of legal interpretation by judges that impair criminal prosecution). In these circumstances, the Prosecution Section against Trafficking in Persons carries out important efforts to train the prosecutors in cities outside the capital on the

175 Interview with Sandra Gularte, attorney working against Trafficking in Persons at PDH; interview with the head of SVET.

crime of human trafficking,¹⁷⁶ criminal investigation and every aspect that may guarantee its effective prosecution. Likewise, this prosecution section provides advice to district and municipal attorneys in cases where it is not prosecuting directly.

Regarding the implementation of special methods to investigate human trafficking,¹⁷⁷ the Attorney-General's Office has made strides with the creation of the Special Methods Unit (UME) in December, 2007.¹⁷⁸ This agency included the possibility to employ wiretapping, a technique that is in use since 2009 with important results to dismantle criminal structures. However, the number of lines available is still limited, which prevents the use of this technique in most trafficking cases. Still pending implementation are the other two special methods considered in the *Law against Organised Crime*: undercover agents and controlled deliveries.

Another important aspect to fight criminal organisations is the enforcement of the *Asset Forfeiture Act* by the Prosecution. The Asset Forfeiture Unit was created on 1 July, 2011 under the Prosecution Section against Money Laundering. This unit is in charge of investigating and carrying out asset forfeiture in the country. In the beginning it consisted of two prosecutors and six assistant prosecutors. At present it has grown to six prosecutors and eighteen assistants. During the four years it has been in operation, the Asset Forfeiture Unit has recovered over two hundred million quetzales in money and assets. However, assets or money directly associated to human trafficking have not been forfeited yet.

In conclusion, significant institutional progress is evident at the Prosecution in charge of human

176 Interview with Alexander Colop, Chief of Section against Trafficking in Persons.

177 Pursuant to the *Law against Sexual Violence, Exploitation and Trafficking in Persons*, Article 60, special investigation methods listed in the *Law against Organised Crime* are applicable: undercover agents, controlled deliveries and wiretapping.

178 *Resolution 65-2007*, 18 December, 2007.

trafficking, and this has been recognised by several institutions.¹⁷⁹ However, due to the size and complexity of this crime, serious limitations persist that prevent higher levels of effectiveness. To overcome them it is necessary to design a plan to strengthen the Prosecution Section against Trafficking in Persons, as well as the prosecution offices in cities outside the capital.

2.4.2 National Civil Police

This is a justice administration assistance agency that conducts investigation and criminal prosecution under the functional leadership of the Prosecution.¹⁸⁰ Several institutions have stated that one of the serious problems to effectively prosecute trafficking is weak field investigation.

The National Civil Police (PNC) structure, the agency in charge of investigating crimes is the Deputy Bureau of Criminal Investigation and, under it, the Special Crime Investigation Division (DEIC). Different analyses agree that DEIC faces serious problems of staffing,¹⁸¹ technical capacity and operation limitations, which present serious difficulties to contribute effective investigation for use by the Prosecution.

However, a model of exclusive assignment of investigators to special prosecutors was implemented at DEIC in 2009, in order to accomplish a criminal investigation system stripped of formalities, agile and effective. This model started with the creation of the Special Unit for Crimes against Life in DEIC, which worked with a mirror organisation of the units of the Prosecution

Section on Crimes against Life.¹⁸² This made it possible to improve coordination and ensure effective investigation in this field. The encouraging outcomes obtained by the Special Unit for Crimes against Life of DEIC¹⁸³ justified the creation of similar units in the areas of sexual violence and human trafficking.

Special Units for Crimes against Sexual Violence and Trafficking in Persons were created in 2012 that included 50 members who received special training. Likewise, an inter-agency protocol was drafted by the Ministry of the Interior (MINGOB) and the Prosecution for DEIC units for trafficking and sexual violence to work with a mirror model, assigned directly to the Prosecution Section for Women and the Prosecution Section against Trafficking. As a result, the Unit on Trafficking of DEIC was organised according to the Prosecution Section structure, that is, with three divisions: the Unit against the Sale of Persons and Illegal Adoptions; the Unit against Sexual Exploitation; and the Unit against Labour Exploitation and other Trafficking Modalities.

Unfortunately, personnel selection and hiring procedures at the Unit against Trafficking in DEIC were not as rigorous as those conducted in the Unit for Crimes against Life. The special profile required for police agents working with victims of trafficking to avoid misogynous, sexist and renewed victimisation attitudes, was not taken into account. An investigator of trafficking cases must be trained to feel empathy for victims, learn to protect them and not discriminate against them, as well as to understand the difficulty involved in interacting with persons who have been profoundly affected emotionally and psychologically. Preferably, investigators should be female and with significant knowledge of victim care.

179 PDH (2014) lists a significant number of convictions for the crime of trafficking; in its annual report on the situation of trafficking in Guatemala, the U.S. Department of State (2014) states that substantial efforts have been made in criminal prosecution. See: <http://photos.state.gov/libraries/guatemala/788/pdfs/Tipguate2014.pdf>

180 Article 2 of the *Organic Law of the Prosecution*.

181 Some heads of DEIC have been arrested, among them, Héctor David Castellanos, for the 117 kilos of drugs that went missing in 2009. Former Director Víctor Hugo Soto Diéguez, was convicted to 31 years in prison for extrajudicial execution (Monterroso, J., 2009).

182 *Resolution 12-2009, General Order and Inter-agency Protocol between the Ministry of the Interior and the Prosecution to Coordinate the Investigation of Crimes against Life.*

183 It has been observed that, since 2010, the number of homicide cases positively resolved has increased, while the rate of homicides for every 100,000 inhabitants has gone down: from 46, in 2009, to 31. This is a 32 per cent reduction.

Reliability tests or other adequate screening tests were not conducted during the selection process either. Because of this, some of the selected members do not meet the integrity, capacity and honesty qualities required to work in the investigation of organised crime structures (ASÍES, 2013: 58).

In fact, some members of the units against Trafficking in Persons and against Crimes of Sexual Violence of DEIC have been prosecuted for serious offenses such as abduction.¹⁸⁴

The Unit against Trafficking of DEIC has also been reported of leaking information to sex exploiters in exchange for money.¹⁸⁵ Also, it was reported that the female personnel working at the unit has been used for parties with high-ranking members of the organisation.¹⁸⁶

While there are police agents working in this unit who are honest and committed, they are frustrated and discouraged by the acts of corruption that they see.¹⁸⁷ Also, it has been difficult to conduct successful operations due to information leaks.¹⁸⁸

In other more operational areas of PNC, specifically police precincts, there is much tolerance, acquiescence and cover-up of trafficking. An investigator of the Unit against Trafficking said that during an operation

conducted in Puerto Barrios, the police commissioner arrived when the search was being conducted. The investigator feels that this was a form of intimidation. Several police agents interviewed in cities outside the capital said that they do not trust their colleagues because they leak information about investigation work. They also stated that it is dangerous to conduct investigation work in these conditions.¹⁸⁹

In general, PNC, and, in particular, DEIC, face serious problems to conduct efficient investigation of trafficking. The patriarchal nature of the organisation is evident in the gender structure of the organisation, where women hold subordinated jobs and very few hold positions in the chain of command. Of the 4,397 female agents, 97 percent are in low levels of the hierarchy (agents) and only three women hold high command positions (two Commissioners and one Deputy Director).

The small number of women who work for the institution, added to the smaller number of women in high positions has produced cases of sexual violence against female police students and agents, which has created a hostile climate, not only towards the female personnel of the organisation but towards female victims of sexual violence.¹⁹⁰ In that regard, the Inter-American Commission on Human Rights (IACHR) noted «[...] that when the sexually attacked women seek care, be it from the Police or a health service, they are frequently victimised again [sic]. Interviewers ask them trick questions, enjoy asking about the morbid details and pass sexist and discriminatory moral judgement. They frequently minimise the violence suffered by women. This situation leads women to not report the violence or, having done it, they abandon their action».¹⁹¹

184 Ángel Ricardo Reyes, 22 years of age; Germain Pineda Pérez, 25; Edgar David de León Sandoval, 29; and Nora Elizabeth de León Corado, 22, all of them employees of the Unit against Sexual Crimes of DEIC were arrested on 17 September, 2014, for the crimes of extortion and abduction or kidnapping. The arrest took place after an investigation by the Office of Professional Responsibility (ORP). The case is pending a court ruling.

185 Interview with prosecutors from the Unit against Sexual Exploitation of the Prosecution. A police investigator is accused of collecting money in bars in Chimaltenango, money that he then took to his higher officials at the Unit against Trafficking in Persons.

186 Confidential interview with a member of the PNC who stated that a group of female police agents assigned to the Unit against Trafficking in Persons organised a party for a manager at DEIC.

187 Confidential interview with member of PNC.

188 Interview with Interview with prosecutors from the Unit against Sexual Exploitation of the Prosecution.

189 Interview with police personnel of the Puerto Barrios Precinct.

190 An example of this is the case of the rape of a female prisoner at the Nebaj, Quiché Precinct, who was sexually abused by two police agents in 2008. One of the police agents was sentenced to 20 years for rape and the other one is at large.

191 Meeting of experts called on by IACHR and held on 22 and 23 May, 2011 in Guatemala City.

PDH and the Attorney-General's Office have documented cases where police agents in charge of hearing sexual offenses have abused victims during the course of the investigation. In the delegation of El Naranjo, in Petén, five members received the report of a 14 year-old girl who was raped. After receiving the complaint, they went to the house and, with the excuse of reconstructing the events, forced her to undress to take pictures of her vagina. Later, police agents went to the crime scene and one of the police agents forced her to place herself in the position in which she was raped, asked her to take her clothes off and then introduced a finger in her vagina.¹⁹² In another similar case, police agents from Jalapa raped a woman who was travelling with a member of the Xinca Parliament. The police agents forced her to get off the vehicle and, wearing a glove, introduced their fingers in her vagina; another one hit her and made her unconscious.¹⁹³ These acts of violence create mistrust of the institution and make it even more necessary to have more female agents to approach cases of trafficking and sexual violence.

Female police agents who are victims of sexual harassment and other forms of discrimination in the police institution face the lack of effective mechanisms for internal complaints since the General Inspector's Office and the Professional Responsibility Office have been working to cover up abuses by police agents linked to criminal organisations.¹⁹⁴

Finally, there are problems which are directly related to internal criminal structures in the PNC. Police commands that engage in illegal activities have placed their cronies in key positions of the administrative organisation of the police, particularly those that have a relationship with personnel appointments.¹⁹⁵ Thus, persons who participate in criminal activities have been appointed to head Police Precincts.

192 The agents that conducted this action are prosecuted for rape. Case MP 274-2013 1576 of la LIBERTAD PETEN. INACIF CSBEN-2013-000998-047695.

193 Case MP 001-2014 12288.

194 See *el Periódico*, «Radiografía del Cartel de la Charola», *op. cit.*

195 Interview with former member of PNC.

2.4.3 National forensic science institute (INACIF)

This is an autonomous justice administration assistance agency that conducts technical-scientific assessments for criminal investigation. This is fundamentally important in the criminal investigation of trafficking offenses, because it deals with collecting scientific evidence on the sexual abuse that the victims have suffered, as well as their psychological assessment to determine the harm caused through sexual exploitation. Without a question, INACIF is an important step forward to improve criminal investigation in Guatemala, especially because scientific evidence offers more certainty than testimonial evidence and is not subject to risks such as intimidation, the death of witnesses or false testimony. In addition, expert evidence may be subject to cross examination through the scientific method, which improves the quality of information available for judicial decisions.

However, INACIF currently faces significant limitations. First off, the budget of the agency¹⁹⁶ limits geographic coverage¹⁹⁷ and personnel hiring capacity. While INACIF has forensic medical services available in every department capital, it is not possible to offer services twenty-four hours a day. In addition, it is necessary to extend coverage towards some municipal capitals with high levels of violence. Other services, such as psychological assessment, are extremely concentrated since there is no nationwide coverage (for which reason victims must travel to other cities). In an interview conducted on 9 March, 2015, an assistant prosecutor in Tecún Umán explained the delays that this causes in criminal investigation: «Psychological assessment

196 According to the 2014 *Income and Expense Settlement Report*, the Budget of this agency was Q242 millones, of which 67.43 per cent was executed. See the report in: <http://www.inacif.gob.gt/docs/uiip/InformacionPublicadeOficio-numeral07-04.pdf>.

197 IACHR (2011, paragraph 244) highlighted that the lack of coverage in the country cases many victims to receive assistance in health centres by doctors without special knowledge on forensic medicine and chain of custody, which causes the loss of important elements of evidence.

by INACIF is conducted in Quetzaltenango. Appointments take up to eight months».

Another problem that has become evident is one of inadequate in-service attitudes, particularly during the forensic medical examinations done of victims of sexual violence. In the case of a 14 year-old girl who was sexually abused by two evangelical pastors in Palín, San Marcos, a human rights activist stated: «I liked the attitude of the father: he carried out the procedure and took the girl for a forensic medical exam in Mazatenango. There, he encountered people like the representative of INACIF. The Doctor from INACIF in Mazatenango told him that pastors are honourable people and that he had no business complaining about them. Despite this rebuffal, the father pursued his complaint».¹⁹⁸ While these are isolated events within INACIF, IACHR (2011, paragraph 181) has emphasized that lack of awareness by operators is one of the major obstacles that women encounter when they approach the Justice System. For that reason, it is important to strengthen training to avoid patriarchal and misogynous attitudes in the institution. In some places, organisations that provide assistance to female victims have taken the initiative by developing training courses on gender and the rights of victims. This is the case of the CAIMU in Chimaltenango.¹⁹⁹

For all of these reasons, a policy should be designed to promote gender equality in INACIF, particularly which favour hiring female professionals for the Clinical Medicine Area, in order to guarantee that care for victims of sexual violence include a gender approach with respect for human rights instruments that guarantee the rights of women.

It is equally important to establish a specific guide to conduct the physical examination of victims of trafficking of persons for purposes of sexual exploitation, who, due to the intense

198 Interview with activists working for the rights of women in Coatepeque, 9 March, 2015.

199 Interview with Organización Generando, 3 March, 2015.

violence that they have faced, at times suffer from sexually transmitted diseases and very serious psychological harm. Those findings need to be properly documented and explained so that judges and prosecutors understand the magnitude of the harm²⁰⁰ and make decisions that will repair it comprehensively.

The lack of this methodology may lead to omissions or *lapses* in the production of reports. For example, in a case of two adolescents, 13 and 15 years of age, who were kept locked in and subject to prostitution in a locked house in zone 11, in Guatemala City, the psychologist from INACIF felt that «[...] it is not possible to issue an opinion of whether a person is sexually exploited because it is not a term used in Psychology». And regarding the harm caused the victims, she replied «[...] in this case, a person provides a sexual service that somehow causes harm to the person; what will happen in the future cannot be determined because that will be up to each person».²⁰¹ The ambiguity of these statements led the court to decide that there was no psychological harm caused to the victimised adolescents and to acquit the defendants accused of trafficking.

Finally, it is important to provide care with an inter-cultural approach, because lack of language relevance is an obstacle for access to justice. Training on the matter of gender and inter-culturalism is necessary to avoid renewed victimisation or discrimination. Likewise, and because a large number of victims are children and adolescents, it is necessary to define

200 An example of the lack of understanding of the extent of the damage is in the El Sheik case, where the court, in summarising the medical examiner's statement stated that "[...] the victim had anal [sic] distension". The coroner did not illustrate in his statement what anal distension is and what the implications may be for the future life of the injured teenager; neither did the court or the prosecutors assess this condition in its legal connotation, since this is an incurable physical condition, which should have been qualified as a crime of serious damage under Article 146 of the Criminal Code. Criminal case 43-2011. Judgment dated 23 November, 2011, from the Court of Criminal Sentence, Drug Trafficking and Environmental Crimes in Amatitlan.

201 Opinion presented in trial by a psychologist from INACIF, in case C-43-2013. Tenth Court of Criminal Cases.

care methodologies that take into account the age of the victim and which are friendly to children.

2.4.4 The Judiciary (OJ)

Traditionally, the Justice System has exhibited sexist and discriminatory behaviours that repeat the social idea that the victim causes or is guilty of violence, thus excusing the behaviour of the aggressor and justifying men who attack women, to the detriment of the victim (IACHR, 2011, paragraph 184). In addition, victims face a climate of gender discrimination, which translates into little credibility of their version of the facts, or the honorability of women is questioned or where sexist language is used (IACHR, 2011, paragraph 181). That adds victimisation, which is many times more damaging than the one caused by the offense itself.

In view of this situation, the Judiciary has engaged in important efforts to create a specialised justice system for cases of violence against women, to meet the provisions of *Decree 22-2008*. Upon implementing these courts, the Judiciary recognised that «[...] criminal justice with a gender approach is necessarily a part of the paradigm deconstruction effort, that inescapably requires understanding violence as part of the imbalance of power, where ethnicity, sex, age, social class, gender, religion, sexual orientation, schooling, among other factors, are conditions that perpetuate and promote discrimination» (Guatemala, OJ, 2014: 18).

Based on its 2009-2014 strategic plan, the Judiciary has installed 11 lower courts that specialise in cases of femicide and violence against women, the same number of trial Courts²⁰² and one court of appeals that specialises in this subject matter.²⁰³ In the framework

of specialised justice system, the Judiciary included a victim assistance model called Integrated Assistance System (SAI) that includes the participation of psychologists and social workers. This model is «[...] a response to the needs of persons who report cases of violence or face prosecution, where the main issue is lack of respect for the human rights of women. From the victim and gender approach, support is given to enable government agencies to provide dignified treatment, in addition to obtaining the expected outcome. This is part of the restoration of surviving victims' rights that provides care and gives them the opportunity to participate in the process, a change from the traditional system of justice that focused on the accused». (Guatemala, OJ, 2014: 20).

However, courts that specialise in femicide and in violence against women did not have competence on trafficking offenses in the beginning.²⁰⁴ Not having this competence resulted in those offenses continuing to be tried by regular criminal courts that lacked specialised knowledge on issues of gender. That caused the persistence of patriarchal stereotypes in court rulings, which in turn caused many offenses of rape and trafficking for purposes of sexual exploitation to end in acquittals.

Within that framework, victims of violence against women and trafficking faced an unfavourable climate in courts, which led to a significant number of acquittals, many of them despite abundant inculpatory evidence. This is evident particularly between 2009 and 2013. For that reason, in 2012 the judicial policy decision was to implement specialised jurisdictional bodies with competence on offenses included in the *Law against Sexual Violence, Exploitation and Trafficking in persons*.

202 These Courts operate in Guatemala, Quetzaltenango, Escuintla, Alta Verapaz, Huehuetenango, Chiquimula and Izabal. The creation of more of these specialised courts is underway in Quiché, San Marcos and Sololá (Guatemala, OJ, 2014).

203 Created through *Resolution 42-2012* of the Supreme Court of Justice (CSJ), headquartered in Guatemala.

204 *Resolution 1-2010* de la CSJ —whereby the Courts were created in the departments of Guatemala, Chiquimula and Quetzaltenango— limited the jurisdiction to offenses of femicide, violence against women and economic violence (*Decree 22-2008*). *Resolution 12-2012* of the Supreme Court created criminal trial courts in the departments of Huehuetenango and Alta Verapaz. Finally, *Resolution 44-2013* created these courts in Escuintla and Izabal. (Guatemala, OJ, 2014: 18-19).

During the first three months after its creation, the Second Court²⁰⁵ heard 98 cases and during 2013 it heard over 1,620 cases; from January to July 2014 it heard 701 cases (Guatemala, OJ, 2014: 70).

The Second Femicide Trial Court progressed, in that same period of time, from hearing 6 cases in 2012 to 375 in 2013 and 365 the following year. During that period, 280 conviction and 63 acquittal rulings were made, which is equivalent to 81 per cent convictions (Guatemala, OJ, 2014: 81). This shows how, with training and awareness on the issue of sexual violence and violence against women, Judges have eliminated former patriarchal stereotypes. Additionally, the training process has led to the adoption of measures to reduce renewed victimisation. Judges are trained to receive the statement of victims in a pre-trial stage, especially victims of rape or trafficking; this has prevented the loss of evidence, since formerly, many victims were expelled from the country before they could give their statement.

Assigning jurisdiction over crimes of sexual violence and trafficking to specialised courts has led to better protection of victims and greater guarantee of their rights. This has resulted in a total of 70 per cent conviction rulings in trafficking cases (Guatemala, PDH, 2014: 47).

Unfortunately, sexist and discriminatory attitudes continue in the courts of cities outside the capital that are not specialised. It is common for judges who do not have specialised training not to authorise depositions to be given in advance by victims, including children. This occurred in Kenny's case,²⁰⁶ where the Judge of the First Criminal Court of Malacatán did not authorise the evidentiary

statement to be given in advance, with the argument that the assumptions listed in Article 318 of the *Criminal Procedural Code* were not met. This is a clear violation of the principles of the best interest of the child and to avoid re-victimisation enshrined in the *Convention on the Rights of the Child* and in Article 59 of the *Law against Sexual Violence, Exploitation and Trafficking in Persons*. Discriminatory attitudes and the denial of justice are repeated in the courts of cities outside the capital, and this seriously affects trust by victims in the Justice System.

For all of the above, a priority need is to open courts that specialise in femicide and violence against women in the entire country (with competence over sexual violence and trafficking) to serve victims with a gender approach. Additionally, the number of judges in existing courts needs to be increased because they are overloaded with work, which causes significant delays in the trials. It is also necessary to create specialised courts in the jurisdictions of Mixco and Villa Nueva, to clear the overload of work in metropolitan area courts.

Finally, training and awareness-raising efforts for Judges need to redouble since even if they are not in specialised courts, they must hear these types of offenses and serve victims. The Judiciary has taken positive steps with the establishment of the Secretariat for Women and Gender Analysis through *Resolution 69-2012*, that is in charge of defining and implementing the *Institutional Policy for Gender Equity and the Promotion of Women*, as well as to monitor its enforcement. Other positive steps to adopt the necessary corrective actions to improve the operation of special courts were the creation, through *Resolution 149-2012*, of the Control, Monitoring and Evaluation Unit of Specialised Bodies for Crimes of Femicide, and the creation of the Unit for Children.

205 The full name of this court is Second Multi-personal Court for Crimes of Femicide and Violence against Women, Sexual Violence, Exploitation and Trafficking in Persons of Guatemala.

206 Kenny and four more girls were approached by a woman to go work as waitresses to Tuxtla Gutiérrez, Mexico. Once there, the trafficker raped them and forced them to do sexual work in a bar. Case C-86-2014. First Criminal Court of Malacatán.

3 Context and impact of trafficking in persons for purposes of sexual exploitation

The international framework of action for the enforcement of the *Protocol on Trafficking in Persons* states that «[...] the knowledge and investigation of national, regional and international contexts specific to trafficking in persons is a requirement to develop, implement and evaluate strategies to combat human trafficking and to develop policies based on actual data”(UNODC, 2010: 5). Consequently, to achieve effective outcomes in the fight against this scourge it is necessary to understand the criminal phenomenon of human trafficking in its perverse cycle of exploitation, which includes mechanisms for recruitment, transfer and harboring, and the means employed to coerce victims.

Unfortunately, in Guatemala the lack of data about the true magnitude of this crime seriously compromises the adoption of public policies against trafficking –especially as regards its transnational dimension– and makes it difficult to realistically assess the impact of any intervention plan.²⁰⁷

A quantitative estimate of the number of persons subject to trafficking for sexual exploitation will be made in this Chapter. Additionally, the profile of the victims, the social and economic factors that facilitate the vulnerability of certain groups will be discussed, and the magnitude of the damage caused by this contemporary form of slavery will be analysed. A characterisation of the main routes used

and sexual exploitation centres in existence will also be presented, as well as an estimate of the economic benefit that human trafficking produces for criminal organisations that engage in this activity.

3.1 Quantitative determination of victims of trafficking for purposes of sexual exploitation

The information available in Guatemala on trafficking for sexual exploitation is incomplete and can only be determined on a global basis, mindful that the facts and the official figures represent only a small percentage of cases.

According to estimations by the United Nations Office on Drugs and Crime (UNODC) for every victim who is rescued, thirty more are clandestinely exploited and kept hidden (2012: 54). It also states that civil society organisations (CSOs) have estimated that in Guatemala City alone, there are approximately 15,000 boys, girls and adolescents victims of trafficking for purposes of sexual exploitation (p. 57).

207 Meeting on subject matter experts to validate the quantitative size of trafficking in persons, held in Guatemala City on 15 April, 2015.

Table 3
Cases of trafficking in persons recorded at SICOMP (2002-2014)

Year	Cases of trafficking	Percentage variation
2002	1	
2005	3	200.0%
2006	6	100.0%
2007	17	183.3%
2008	23	35.3%
2009	63	173.9%
2010	457	625.4%
2011	598	30.9%
2012	447	-25.3%
2013	440	-1.6%
2014	604	37.3%
Total	2,659	

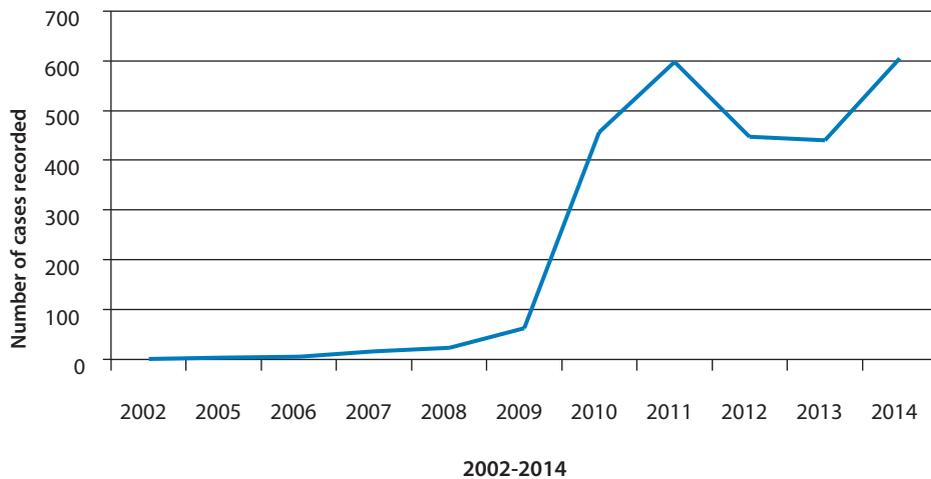
Note: Includes trafficking in person crimes listed in *Decree 14-2005* and in *Decree 09-2009*.

Source: Prepared by authors, with SICOMP data.

As described in Table 3, from 200 to date, The Case Management IT System of the Attorney-General's Office (SICOMP) has officially recorded 2,659 cases of trafficking. Prosecution of this crime increased starting in 2009, with the enactment of the *Law against Sexual Violence, Exploitation and Trafficking in Persons, Decree 9-2009*, after which action filing

increased by 625.4% and annual reports increased from 63 to 457 between 2009 and 2010. Cases filed between 2010 and 2014 are 95.7% of all the trafficking cases reported. In the last five years, the average has been 509 cases per year. The creation of the Prosecution Section that specialises in Trafficking in Persons contributed to these numbers.

Graph 1
Number of cases of trafficking in persons recorded (2002-2014)



Source: Produced by authors with SICOMP data.

Notwithstanding the high numbers, they do not reflect the total number of cases detected by authorities. In fact, often, Government officials do not qualify certain forms of sexual exploitation, especially the sexual exploitation of girls, boys and adolescents and migrants as cases of trafficking, and this causes double victimisation: first by the exploiters, and then by police agents.²⁰⁸ As a result, cases of trafficking are not investigated, be it because the authorities do not report them or because when they are reported they are qualified as offenses of sexual activity in exchange for money or as other offenses, such as the promotion, facilitation or encouragement of prostitution.

The numerous cases of foreigners subject to sexual exploitation in bars or night clubs and then held by the Migration Service in its shelter are not recorded as victims of trafficking either. These cases are considered to be violations of migration laws and are not recorded as a crime of trafficking.²⁰⁹ Here also, collusion between migration authorities and traffickers is evident since foreign women reported as expelled are found a few days later, working in the same brothel from which they were rescued.²¹⁰

The problem of trafficking victim quantification has been recognised by several organisations in the world.²¹¹ International Labour Organization (ILO) expert Lin Lean Lim proposed a deductive method

that estimates that between 0.25 and 1.5 per cent of the population may be engaged in sexual work in financially precarious countries like Guatemala (ILO, 1998). Using this methodology and the population projections made by the National Statistics Institute (INE) for 2015,²¹² the number of persons that engage in sexual trade may be estimated to be approximately 39,500 to 237,100. Of course, this does not mean that every person who engages in sexual work is a victim of trafficking, but it offers the possibility to determine minimum and maximum reference parameters of the population that may be subject to trafficking.

Consequently, making an approximate estimate of the victims of trafficking requires overcoming underreporting of victims by the authorities. Notwithstanding, an inductive method will be used to obtain an estimate, using the parameter that thirty unreported cases exist for every victim detected as proposed by UNODC (2012: 54). For a more accurate calculation it is necessary to analyse the number of aggrieved persons detected by the criminal system, not only for the crime of trafficking but for offenses included in the Chapter on sexual exploitation in the *Criminal Code*,²¹³ that could be qualified as trafficking.²¹⁴ Added to the list should be the victims detected by State authorities outside of the criminal system, those expelled by Migration who were performing sexual activities;²¹⁵ as well

208 In a case that is still being investigated, a 14 year-old girl that was sexually exploited in motels in zone 7 of Guatemala City stated, upon her rescue, that some of her frequent "customers" were police agents.

209 Interview with José Antonio Zaldaño Hernández, head of the Operations Division of the Deputy Director's office of Migration Control, 13 May, 2015.

210 Interview with prosecutors of the Prosecution Section against Trafficking in Persons, 8 September, 2014.

211 See UNODC (2012). *Foro sobre el delito y la sociedad (Forum on crime and society). Número especial: Reunión de datos sobre la delincuencia: indicadores y cuantificadores (Special Edition: collection of data on crime: indicators and quantifiers)*. Volume 7, New York. This document discusses several methods to estimate the number of victims of trafficking.

212 The population estimated by INE for 2015 is 15,806,675 persons. See at: <http://www.ine.gob.gt/index.php/estadisticas/tema-indicadores>

213 In fact, the offenses of commercial sexual exploitation are listed in Articles 191, «Promoting, facilitating or encouraging prostitution»; 192, «Aggravated promotion, facilitation or encouragement of prostitution»; 193, «Remunerated sexual activities with underage persons»; 193 (bis), «Remuneration for the promotion, facilitation or encouragement of prostitution»; 193 (ter), «Production of child pornography»; 194, «Aggravated production of child pornography»; and 195 (c), «Use of tourism for the commercial sexual exploitation of minors».

214 Meeting of subject experts to validate the quantitative dimension of trafficking in persons in Guatemala, held in Guatemala City on 15 April, 2015.

215 The meeting of experts listed above concluded that it can be estimated that around 50 per cent of the

as the victims of trafficking who are repatriated to their countries of origin under the *Specific Foreign Affairs Protocol*, and the active Alba-Keneth alerts,

since these boys and girls have not been found and it could be assumed that they are victims of trafficking.²¹⁶

Table 4.
Victims of the crime of trafficking in persons for the purpose of sexual exploitation detected by State authorities (2010-2014)

Victims of sexual exploitation crimes*	2010	2011	2012	2013	2014	Total	Average	Percentage of trafficking victims; estimate of related crimes**	Suggested population**
Article 191. Promotion, facilitation or encouragement of prostitution	167	96	94	65	48	470	94	75%	71
Article 192. Aggravated promotion, facilitation or encouragement of prostitution	32	40	50	16	17	155	31	75%	23
Article 193. Remunerated sexual activities with minors	335	235	148	121	45	884	177	100%	177
Article 193 (bis). Remuneration for the promotion, facilitation or encouragement of prostitution	36	30	26	24	13	129	26	75%	19
Article 193 (ter). Production of child pornography	54	36	7	6	22	125	25	100%	25
Article 194. Aggravated production of child pornography	-	-	-	1	-	1	0	100%	0

Continue...

expelled women who engaged in prostitution might have been victims of trafficking.

216 The meeting of experts believes that 10 per cent of the active alerts may be associated to trafficking in persons.

Victims of sexual exploitation crimes*	2010	2011	2012	2013	2014	Total	Average	Percentage of trafficking victims; estimate of related crimes**	Suggested population**
Article 195 (quater). The use of tourism activities for the commercial sexual exploitation of underage persons	4	-	2	-	4	10	2	100%	2
Subtotal related crimes	628	437	327	233	149	1,774	355		317
Victims of trafficking in persons*	740	891	762	722	934	4,049	810	100%	810
Persons engaging in prostitution who are expelled***	308	456	684	1,027	1,540	4,015	803	50%	402
Repatriations****	23	50	12	9	20	114	23	100%	23
Active Alba Keneth reports*****	171	171	207	141	165	855	171	10%	17
Total (sum of related crimes, crimes of trafficking and other actions)	1,242	1,568	1,665	1,899	2,659	9,033	1,807		1,568
Underregistration (30 x recorded case)									47,049
Total Population of trafficking victims (estimated)									48,617

Source: Produced by authors with SICOMP information

Notes:

* According to SICOMP information

** The experts who participated in the validation workshop conducted in Guatemala City on 15 April, 2015 suggested that a percentage of the total number of related crimes may be associated to trafficking.

*** Data from the Operations Division of the Migration Service.

**** Data from MINEX.

***** Data from the Alba-Keneth Alert system of PGN.

Based on the above data it can be inferred that annually over the past five years, on average, State authorities have detected a total of 1,568 victims of human trafficking, of which 317 people are victims of sexual exploitation offenses; 810 people are victims of human trafficking; 402 people have been expelled for engaging in prostitution; there have been 23 repatriations from Guatemala to other countries; and there are 17 active Alba-Keneth alerts of missing children and adolescents who may be presumed to be victims of trafficking for purposes of sexual exploitation.

The under-registration ratio of thirty people for each detected victim produces an estimated population of sexual trafficking victims of 48,617 persons. By comparing the results of using the inductive method proposed by UNODC, it is possible to confirm that this figure is slightly above the lower range resulting from the use of the deductive methodology suggested by the ILO, which estimates 39,500 persons engaging in prostitution.²¹⁷ The estimate of victims would be slightly above 0.31 per cent of the Guatemalan population. Of course, to determine the actual number of people subject to sexual exploitation, field studies and access to various state databases are required.

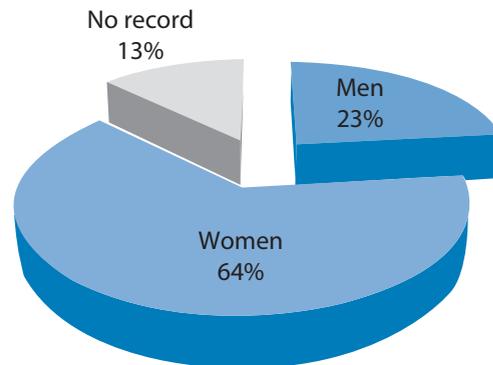
217 The ILO report which proposes this methodology (1998) is based on detailed studies of prostitution and commercial sex work in four countries: Indonesia, Malaysia, Philippines and Thailand. Studies are illustrative about the situation in many countries, since prostitution and its related problems are universal. The calculation methodology links the effects of the economic recession of the mid-1980s with the probability of loss of jobs in industry and services, which generates the induced effect for unemployed people to enter the sex sector.

3.2 Victim profile

3.2.1 Sex and age

The various studies done show that most of the sexually exploited victims are female. According to SICOMP, there were 5,823 human trafficking and sexual exploitation offense victims on record during the period between 2010 and 2014.

Graph 2
Victims of human trafficking by sex
(2010-2014, in percentage)



Source: Produced by authors with data from SICOMP

Graph 2 shows that 3,736 women represent 64 per cent of the victims and 1,352 men subject to sexual exploitation are 23 per cent. There maining 13 per cent do not list the sex of the victim (735).²¹⁸ This pattern agrees with the method proposed by UNODC that reports that female victims are 70 per cent of the entire universe of trafficking victims (2014: 29).

The analysis of victims by age, made from sentences ruled between 2011 and 2013 shows that 57 per cent of the victims are boys, girls and adolescents.

218 The problem of lack of accuracy in data registration has also been recognised by other agencies such as PDH (2014: 25).

Table 5
Ages of victims of trafficking cases that have produced convictions

Age	2011	2012	2013	Total	Percentage
48	0	0	1	1	1%
30-36	0	5	1	6	9%
20-30	1	17	5	23	30%
18-20	1	1	0	2	3%
14-17	15	3	15	33	43%
0-14	1	4	6	11	14%
	18	30	28	76	100

Source: Produced by authors based on court convictions in the cases submitted by the Prosecution Section against Trafficking in Persons between 2011 and 2013.

In a 2011 study to systematise the research done of commercial exploitation of children and adolescents between 2000 and 2010, the Association to End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) determined that 98 per cent of victims of sexual exploitation are in the 15-17 year age range.

In sexual exploitation there is social pressure from customers who seek young victims, especially virgin girls, for whom they pay a higher price. In the case of a trafficker who used a hardware business as a front, customers solicited sex from virgin girls using the password “yellow padlock”. The trafficker called girls that he had recruited from schools.²¹⁹

According to interviews with experts from women’s organisations, there are cases of victims ranging in age from 8 years, as demand for virgin girls causes many victims to be initiated at a very early age. A case is under investigation of a network in a rural region where a virgin girl may have been auctioned by her mother for 3,000 quetzales.

Similarly, most boys (66 per cent) who are sexually exploited are also between the ages of 15-17 years,

although there are also boys eight years of age and less. (ECPAT, 2011).

Several factors explain the preference of operators to recruit boys and girls for sexual exploitation, including that they are more vulnerable and that there is greater demand from customers who prefer virgin girls.²²⁰

The most vulnerable group of girls is between 12 and 17 years of age. A person who provides assistance to victims of trafficking stated: «We are faced with the consequences of having been trafficked from a very young age; it’s a process in itself ... I can tell of the case of a Honduran girl: she did not know her mother; her grandmother gave her up to her godmother; the godmother would have her do the wash, beat her and humiliate her. At age 11 she refused to continue to be exploited through the washing, house cleaning and physical abuse that she was subject to. Because she rebelled, the godmother said: “I will take you to a place where you will learn what abuse is”. She sold her to a woman. She spent five years in a locked house, since the age of 12».²²¹

219 Children were found when a business in zone 1 in Guatemala City was searched. Interview with analyst from the Prosecution Section against Trafficking in Persons, 8 September, 2014.

220 Interview with the Oblate Sisters Congregation, Refugio Casa de la Mujer, 20 February, 2015.

221 *Ibid.*

3.2.2 Nationality

According to data from the Migration Service (Table 6) most women who are expelled from the country are: 33 per cent each Salvadoran and Nicaraguan

and 26 per cent Honduran. Ecuadorian, Dominican and Colombian women also show up regularly but in smaller numbers. Far lower numbers of Costa Rican and Brazilian women as well as Eastern European women have been detected.

Table
Nationality of women expelled by the Migration service (2010-2014)

	2010	2011	2012	2013	2014	Total	Percentage
Salvadoran	80	78	61	86	98	403	34%
Honduran	82	44	54	69	53	302	26%
Nicaraguan	92	52	76	73	113	406	34%
Ecuadorian	9	2	3	2	1	17	1.4%
Colombian	1	0	2	3	0	6	0.5%
Dominican	1	7	2	1	1	12	1.1%
Other	8	5	7	11	4	35	3%
Total	273	188	205	245	270	1,181	100%

Source: Produced by authors with information from the Migration Service.

3.3 Vulnerability factors of trafficking victims

3.3.1 Economic factors

Guatemala has economic and social indicators that are criminogenic for trafficking for sexual exploitation. From the socioeconomic point of view, Guatemala has one of the highest poverty rates in Latin America, which makes the population, especially boys, girls and adolescents, vulnerable to trafficking for sexual exploitation.

The United Nations Development Program (UNDP) states that the Human Development Index of Guatemala (HDI) is 0.574, one of the lowest in the Continent. The country ranks 131 among 187 countries in the world.²²²

In Guatemala, salary ranges show a highly precarious situation for most of the population. Indeed, 92.4 per cent of the population lives on incomes of less than four dollars a day (Q31.00), or \$120 per month (Q930.00).²²³ This is insufficient to meet the minimum food and housing requirement estimated by INE. Table 7 shows the relationship between the basic food basket (BFB), the basic life basket (BLB), according to INE, and the minimum wage.

222 See in: <http://www.desarrollohumano.org.gt/content/idh-en-guatemala>

223 Data from the Inter-American Development Bank (IDB), available at: <http://www.iadb.org/es/investigacion-y-datos/tablas,6882.html?indicator=4>

Table 7
Relationship between the basic food basket, the basic life basket and minimum wage (2011-2014)

Description	2011	2012	2013	2014
Basic food basket(BFB)	Q2,440	Q2,494	Q2,922	Q3,039
Basic life basket(BLB)	Q4,453	Q4,624	Q5,332	Q5,532
Minimum wage	Q1,911	Q2,142	Q2,280	Q2,394
Deficit(minimum wage minus BLB)	-Q2,542	-Q2,482	-Q3,052	-Q3,138
Uncovered percentage of the BLB	57.1%	53.7%	57.2%	56.7%
Deficit (minimum wage minus the BFB)	-Q529	-Q352	-Q642	-Q645
Uncovered percentage of the BFB	21.7%	14.1%	22.0%	21.2%

Source: Produced by authors with data from the *National survey on life conditions 2011*.

Using the cost of the BLB calculated by INE, it becomes clear that the current minimum wage is not sufficient to meet the basic food needs of the population. Additionally, upon comparing the income of the population, it becomes evident that 92.4 per cent are unable to meet the BFB or the BLB. In these circumstances it is not surprising that 47 per cent of the children between 0 and 5 years of age suffer from chronic malnutrition (Guatemala, Ministry of Public Health and Social Welfare, MSPAS, 2014).

This income disparity in Guatemala has caused the social exclusion of broad sectors of the population. According to the *National employment and income survey of 2014* (INE, 2014: 25), only 3.2 per cent of the economically active population (EAP) is an employer or a person who offers formal jobs, and only 22.8 per cent of the employees have Social Security coverage (p. 28). 10.8 per cent of the working population (OP) stated that they are unremunerated workers (p. 25). The combination of these factors causes exclusion from the labour market and the absence of security nets and social protection for most of the population. This economic expulsion is a primary source for many people, especially girls and boys, to fall victims of sexual and economic exploitation.

In some cases, precarious economic conditions drive mothers to sell their daughters for sexual exploitation. An expert on victims of trafficking

assistance said «[...] the mother thinks: “she is the right age to be with this man; he will give her five hundred quetzales for her virginity”. Some girls have been known to say: “Mom, this man will give me a mobile phone for doing this and that”, to which the mother replies: “No, girl, don’t ask only for a mobile phone, ask for more”. This is why we say it is a matter of social paradigms and ignorance; ignorance of what it means for their lives».²²⁴

An example of this is Juanita,²²⁵ a 14 year-old girl who was sold by her mother to a policeman who kept her captive for close to eleven months. Juanita tells us: «I worked at a tortillería at Cerrito del Carmen in zone1; I was paid three hundred quetzales a month and my mother would take the money away from me ...I was fourteen ... one day in January 2011... the policeman showed up and took me to a room against my will ... he took me into the room and said “I want to have sex with you”. I said I did not want to do anything with him ... he threatened me with a gun and ...he said “well, you have to do it and that is it”... because my mother had given me to him and I had to be with him and he said that there

224 Interview with the Oblate Sisters Congregation, Refugio Casa de la Mujer, 20 February, 2015.

225 As we stated in the beginning of this report, the names of the informants or victims are either changed or not included for reasons of confidentiality.

was nothing I could do because my mother sold me for one hundred quetzales».²²⁶

Difficulty to find a job also forces girls and adolescents to submit to trafficking for purposes of sexual exploitation, even when they must tolerate high levels of violence and all kinds of abuse. It is likely that due to dire need, victims initially endure labour exploitation in tortillerías or as waitresses, where they earn very low salaries. As a result of that «[...] they no longer want that work and see prostitution as an alternative. Maybe someone offers them work at a bar for more money and that makes them vulnerable».²²⁷

An example of this is Claudia, a 21 year-old woman who was initiated in prostitution at the age of 12. She relates that she started to work in locked houses where girls and adolescents are exploited: «They were Chinese and yelled at us a lot. They forced us to take drugs. One time I had to inhale cocaine because the customer wanted it. Because I started to cry, the owner came in, threw me in a tub and forced me to inhale cocaine». Despite these difficult life conditions, Claudia was able to study and graduate as an accountant. However, she continues to sell sexual services because the money she gets for sexual services «is much better than what they pay in an office».²²⁸ As the ILO expert, Lin Lean Lim, has said «[...] most women who engage in sexual activities do so because of lack of job opportunities and the low pay offered for low-level jobs» (ILO, 2011: 26).

226 Interview with «Juanita» which is part of Case M008/2011/126440, Prosecution for Women. The policeman was convicted to 63 years in prison.

227 Interview with the Oblate Sisters Congregation, Refugio Casa de la Mujer, 20 February, 2015.

228 Menchú, S. (2011). «Brothel that used minors and was visited by public officials dismantled», in *el Periódico*, 11 August, 2011 [on line], available at: <http://noticias.com.gt/nacionales/20110811-desmantelan-centro-de-prostitucion-de-menores-que-era-frecuentado-por-funcionarios-publicos.html>.

3.3.2 Social factors

Financial problems have a direct influence on social institutions and on the possibility to consolidate life projects, in family, work and professional areas.

However, the most important factor for the existence of trafficking in Guatemala is the patriarchal culture. Sexual violence is a constant in many Guatemalan homes, where many times, the father, step-father or other close relatives rape boys or girls at an early age (Bal, B. y Tillit, L, 2005: 25).

The patriarchal culture is a dynamic social construct «[...] that is clearly unfavorable to women, which occurs on a daily basis between women and men and which is expressed in different domains and places women in a position of subordination» (Gomariz Moraga, E., 1997: 19). This ideological construct proposes that the women and children who live in the home are the property of men (Stern, S., 199: 27 and ss.). According to Bal and Tillit, «[...] In the Guatemalan economic context, where life conditions dictate that the basic priority must be to obtain resources for daily survival, the money contributed by the man to maintain the home gives him absolute power in many Guatemalan homes. This situation of power in the family is linked to cultural patterns where the man gives the orders and the woman and children obey» (2005: 25).

An example of this situation of sexual violence is Claudia, who was forced to abandon her home at the age of 12. Claudia relates: «My mother worked until late. My sister was six years old and I was twelve. We were left alone in the house». That time was used by the step-father to touch Claudia. She complained with her mother, who did not believe her. For months, Claudia endured the touching, until the step-father threatened her one day of abusing her little sister if she would not have sex with him. She accepted to have sex to save her little sister but she was unable to tolerate the situation for long. «I was in the sixth grade and decided to run away from home». A classmate who learned of the drama took her in and put her in contact with men

who hired underage girls for prostitution. «They are good. They give us four hundred quetzales if we take our clothes off. We only need to be there one hour and will not do anything to us», the classmate said to «hook» her. A year after she had left her home she went back but the step-father had already abused her little sister.²²⁹

Sexual violence thus becomes a constant in many homes, even with the tolerance of mothers (UNICEF, 2014: 20). Boys and girls who are sexually abused at home do not report the crime for fear of their aggressors; or, when they do report them, they are not believed. Other times, mothers prefer to allow the abuse to continue in order not to lose the income from their spouse or because they themselves are victims of domestic violence. In that context, sexual abuse and gender violence are reproduced generationally, always against the weakest and most vulnerable.²³⁰

PDH reports that 89 per cent of the girls who have become pregnant under the age of 14 were attacked by a close relative (Guatemala, PDH, 2013: 32). INE has determined that 77.4 per cent of all clinical evaluations for sexual violence are of victims between 0 and 19 years of age (2013: 6). Of these, the percentage of girls between 0 and 10 years of age is 12.9 per cent and those between 10 and 14 are 32.1 per cent. In total, 45 per cent of the victims of sexual violence in Guatemala are under 14 years of age.

Reproductive Health Watch (OSAR) confirms this situation of sexual violence in the home. OSAR has stated that 2,906 10 to 14 year old girls gave birth in 2013.²³¹ INE (2013) estimates that 21 per cent of

the births in Guatemala are from adolescent girls. Likewise, UNICEF²³² states that 150 adolescents give birth every day, of which 10.5 per cent are girls under 14 years of age. This shows the huge risk faced by Guatemalan girls of being sexually abused, particularly in the home,²³³ which promotes their running from home and drives them to the streets, where they become vulnerable to trafficking.

In the patriarchal culture, sexual violence in the home works against boys as well (Bal, B. y Tillit, L, 2005: 25). It is common to find that fathers or step-fathers abuse their boys, even as young as 7 (Guatemala, PDH, 2012).

The combination of sexual violence, discrimination and economic marginalisation many times causes women who have been victims of trafficking, and have become pregnant, to sell their daughters or sons for sexual exploitation, because they themselves have suffered rape and were subjected to sexual exploitation. In the case of Juanita, mentioned above, a 14 year-old girl sold to a policeman by her mother for sexual exploitation, the mother had been raped by her father for several years until he made her pregnant.²³⁴

This creates a full cycle of exploitation and suffering that repeats itself generation after generation. Girls abandon their homes, their studies, they become vulnerable and then they are recruited for sexual exploitation. Then, when they become pregnant and become mothers, they in turn subject their daughters to exploitation. Juanita's mother also gave her third daughter up for sexual exploitation.²³⁵

229 See the Menchú, S. article (2011).

230 UNICEF (2014) notes that «By further investigating the life stories of girls who have experienced physical, sexual or psychological violence it has been found that their mothers were also victims of abuse and therefore they have difficulty managing these situations so they end up ignoring it and accepting what happened as normal.» (p. 20).

231 Article 173 of the *Criminal Code* defines rape as every sexual act with children under 14 years of age, even if there was consent.

232 Interview with Juan Enrique Quiñónez, UNICEF/Guatemala specialist on adolescent development, in *Prensa Libre*, 1 August, 2013.

233 Noticias de Guatemala, 31 January, 2014; Report from the Reproductive Health Watch (2013) [on line], available at: <http://noticias.com.gt/nacionales/20140131-educacion-sexual-necesaria-evitar-abusos.html>

234 Case M008/2011/126440, Prosecution for Women

235 *Ibid.*

Cases of sexual violence occur in the home and relatively few are reported due to the threats and the power of aggressors in the family. There is, therefore, a considerable volume of black figures. The perpetrator usually shows his power, he threatens – like in the case of Juanita, where the aggressor would tell her that to report him would be useless because «he had power in his hands and would kill her and her entire family».²³⁶

Sexual violence is one of the main factors that make boys and girls subject to human trafficking vulnerable and which contribute to the interruption of their life project. However, other forms of family violence are also the cause for expulsion from the home. Victoria, a sexually exploited girl in a bar in Agua Salóbriga, El Progreso, explained that she abandoned her home at the age of 11 because of the verbal violence that she suffered from her mother.²³⁷

Most victims who run away from home are also forced to abandon school. Life is very hard for these girls and boys in brothels, as they are forced to consume alcohol and drugs. Victoria relates: «There were times when I did not want to have sex with customers; I was tired or sick, but the woman forced me and she even beat me if I did not want to be with the men, because I had given sexual services already six or eight times in the room».²³⁸

Moreover, the patriarchal culture also results in fewer opportunities for social development of women. There is discrimination in education, and more emphasis is given to the education of boys, to the detriment of girls. Studies show that girls participate in primary education in a lower proportion than boys²³⁹. Devoid of support from parents and the

state, girls have few opportunities to break the cycle of poverty through school, and are always in a position of social vulnerability that is used to exploit them for work and sex.

For example, in the case of a girl who was sexually exploited in a closed house called Centroerótica, the family asked her to leave school and engage in prostitution to «[...] support her brother's studies and that later they would help her to study».²⁴⁰

Another problem faced by teenage girls is bullying. In many places it was noted that teachers pressured female students to have sex. In Huehuetenango, women's organisations who were interviewed mentioned the case of a school teacher who in 2014 raped a girl in exchange for a better grade, left her locked in the room and when he was denounced he offered the family 10,000 quetzales in exchange for the authorities not to take action. The family accepted under threats. Several cases of teachers in Huehuetenango schools were reported who convince female students to have sex in exchange for better grades.²⁴¹ Thus, sexual violence becomes an obstacle for the education of girls.

PDH (2012) states that in urban areas, average schooling for non-indigenous children is 7.63 years, and for indigenous children it is 4.40; in rural areas, schooling for non-indigenous children is 3.98, and for indigenous children it is 2.83 (p. 161). UNICEF estimates that 657,233 boys and girls do not go to elementary school, which is 26 per cent of the total population between 7 and 14 years of age. Every year, 204,593 girls and boys drop out of school, that is, 12 per cent of those enrolled.²⁴²

236 *Ibid.*

237 Criminal case 0187-2014-00207. Conviction of 16 October, 2014 by the Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of El Progreso.

238 Psychological report PPCEN-2014-893 produced by professional expert I of Forensic Psychology of INACIF, on 6 March, 2014, p. 3. File MP001/2013/164307 of the Prosecution.

239 According to Ministry of Education (MINEDUC) statistics, the school rate of boys in elementary school

is 71 per cent while for girls it is 67 per cent See: <http://estadistica.mineduc.gob.gt/SNIE/eficiencia.html>.

240 Psychological report presented in case 43-2013. Ruling of 29 August, 2013 by the Third Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of Guatemala.

241 Meeting with women's organisations in Huehuetenango, 24 March, 2015.

242 See: http://www.unicef.org/guatemala/spanish/resources_2562.htm.

In conclusion, it can be said that the patriarchal culture causes girls to have fewer opportunities to develop their life project, which makes them more vulnerable to sexual exploitation. This is also true of boys, who are viewed in the family as objects that the father may use when and as he pleases. There are compounding factors such as lack of financial resources in families; gender exclusion (whereby greater importance is given to the education of boys, to the detriment of girls); and bullying. All of this contributes to make girls and adolescents more vulnerable; the fact that they have fewer education or social opportunities to break the cycle of violence drives them to the street, which is taken advantage of by criminals to exploit them sexually.

3.4 Impact on victims and their life project

Trafficking in persons is a traumatic experience for victims; it leaves permanent scars in them which jeopardise their life project and may be long-lasting if adequate help is not given to them.

These scars may be divided into four large groups: scars or harm to their physical, psychological, social and financial health. They all have a general impact on their life project, which makes it very difficult for them to break the circle of exploitation and find other sources of income. That also means that it becomes an inter-generational problem, because the daughters and sons of these victims face the same precarious conditions that make them vulnerable, which perpetuates sexual exploitation in new generations.

3.4.1 Physiological harm

Physiological harm can be classified in three categories: infections with sexually transmitted diseases, including HIV/AIDS; injuries to the reproductive system of women; and men and women sometimes suffer from anal injuries, among them, anal distension.

Important among the sexually transmitted diseases are, because of their seriousness: human papilloma, that has irreversible consequences for health, and AIDS, which is a mortal disease.²⁴³ The prevalence of AIDS among the victims of sexual exploitation is estimated to be eight times higher than in other risk groups. According to the National Epidemiology Centre of the Ministry of Public Health and Social Welfare (MSPAS), in 2012, the population infected with HIV/AIDS was estimated at 29,664 persons,²⁴⁴ of whom 11,557 are women and 18,082 are men.

Sexually transmitted diseases such as syphilis, gonorrhoea, chlamydia, while usually not lethal, may cause serious long-term damage to health if prompt treatment is not provided. In its more advanced stage, syphilis may cause mental disorders, blindness, heart conditions, neurological conditions, and even death.²⁴⁵ Chlamydia can cause sterility, infertility and inflammatory pelvic disease.²⁴⁶

Another physical consequence is drug and alcohol addiction that results from the type of activity because many times, victims are forced from an early age to consume alcohol to «chat» with customers. To “fichar”, that is, to be bought an alcoholic drink by customers is an important source of revenues for brothels. Not accepting an invitation to a drink causes fines, which are discounted from the victim’s earnings and grow their debt with the exploiter. In other cases, they are beaten up if they refuse.²⁴⁷ This pressure therefore induces to alcoholism. During the course of a day of work, victims may have between eight and twenty-four alcoholic beverages (Gutiérrez

243 Dulce is a woman who was recruited at age 13 to work at a bar, where she was sexually exploited; she became addicted to drugs and was infected with HIV. Interview at the Prison of Puerto Barrios, Izabal, 25 February, 2015.

244 See HIV and advanced HIV statistics in: <http://www.osarguatemala.org/userfiles/VIH%202012%20actualizado%20el%2028abril2013%20JG.pdf>.

245 See more information on diseases caused by prostitution in: <https://sites.google.com/site/laprostitucionenmipais/emfermedades-que-trae>

246 File MP001/2013/164307 of the Unit against Sexual Exploitation of the Prosecution Section against Trafficking in Persons.

247 *Ibid.*

Valdizán, 2012). For that reason, rehabilitation from addiction becomes a priority for them, as a step to recover their life project.

Due to the intensity, frequency and violence of the sexual activity that takes place, physical damage to the female reproductive tract may include infertility, or may require surgery or reconstruction of the matrix, uterus, etc.

Abortions are also very frequent. A girl sold by her mother to a police agent to be sexually abused became pregnant. The exploiter kicked her until he caused the abortion. Later, he denied her health care, though she needed curettage and other medical treatment²⁴⁸ but he kept her in captivity and prevented her from going to the hospital for medical care. Exploiters often force their victims to have abortions.

Another serious problem faced by victims of sexual exploitation, particularly men, is anal distension.²⁴⁹ Reconstructive surgery is required in the more serious cases.

3.4.2 Psychological harm

Psychological harm occurs even more seriously than physical harm. The psychological deterioration caused to victims of trafficking is profound and becomes more serious when they do not receive adequate care. Symptoms include emotional crises, low self-esteem, depression and eating and sleeping disorders.²⁵⁰ In serious cases, victims cause injury to themselves.

It is important to point out that sexual exploitation is maintained through fear, and a common element

in this scourge is to keep victims deprived of freedom. Leidy, for example, a woman kept at a house of an organisation of traffickers stated that they «[...] were kept locked, under the watch of an administrator who had orders to beat them and mistreat them verbally». Because they were kept as slaves, they started to write pleas for help on papers which they threw out to the street to get rescued.²⁵¹

In these places where they are confined, victims are constantly threatened with beatings, and many times they receive death threats or threats against their families. Natalia, a Colombian woman who was abducted in Guatemala for nearly two years, was threatened with killing her mother in Colombia if she reported the case to the authorities.²⁵²

Death threats do not only come from exploiters but from customers as well. When customers pay for sexual services –particularly drug traffickers–, they constantly humiliate and molest the person they are exploiting. Natalia reveals that in those outings «Drug dealers said that since they had paid, they had every right to do to us whatever they pleased: from forcing us to take drugs with a gun pointed at our head, to giving ourselves to their bodyguards».²⁵³

Psychological violence is reaffirmed through physical violence and even the death of peers. Beatings of victims by exploiters, administrators and even the security guards of the place are common, like in the case of a woman who was rescued by the Attorney-General's Office in a brothel called «Choppers». The victim stated to the court that one day, the exploiter «[...] was angry, grabbed the girl from the hair because he wanted her to ask for forgiveness; he called the administrator and asked for a belt. First she was beaten with the belt

248 File M008/2011/126440, Prosecution for Women.

249 An adolescent, victim of trafficking, was diagnosed with anal distension. Case 43-2011. Ruling of 23 November, 2012 by the Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of Amatitlán.

250 Interview with Sandra López Palencia, Refugio de la Niñez.

251 Case 2035-2012-94. Ruling of 5 April, 2013 by the Second Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of Villa Nueva.

252 See in: <http://www.semana.com/nacion/articulo/medellin-ciudad-de-guatemala-eje-de-trata-de-personas/257967-3>

253 *Ibid.*

but since the girl would not apologise, he used an electrified wire to give her electric shocks». Then, the exploiter threatened all the women: «You see bitches! The same thing will happen to you if you do not do as I say!».²⁵⁴

This combination of imprisonment, threats and beatings that victims are subject to may be considered a form of torture. In fact, under Inter-American Court of Human Rights (IACHR) jurisprudence torture occurs when a victim is intentionally subject to psychical acts of violence in a context of intense anguish and suffering. Additionally, IACHR contends that these acts are «prepared and inflicted deliberately to obliterate personality and demoralise the victim» (IACHR, 2003, paragraph 94).

Thus, victims who try to escape are given harsher punishment to break their will. Natalia explains that she confronted the administrator, which resulted in several beatings by some of the other victims at the request of the administrator, to the point that they «stabbed her gluteus, scratched her face and threw her from a second floor. In addition, she was sent to do the harshest “rounds” with drug dealers». Desperate with her imprisonment with no possibility to escape, Natalia decided «to take pills to commit suicide».²⁵⁵

A psychologist at the El Refugio Children Association, an organisation specialising in care for child victims states «these girls have been so damaged that they often lose their sense of life.» As a result, suicide attempts are common. It is the consequence of the violence used by the exploiters as a means to subdue the will of the victim, and thus eliminate every possibility of seeking to escape

from their condition of sexual slavery. The aim is for victims to lose hope and other prospects of life so that they will be permanently entangled in the cycle of exploitation. Under these conditions, the psychological effects of trafficking are similar to those suffered by victims of torture.

The most damaged victims suffer such severe depression that can sometimes lead to psychotic conducts or suicide. Natalia said she had a partner who began suffering from epilepsy and was not allowed to return to Colombia because she had no money to pay her debt, which increased with medical expenses. Victoria, a girl aged 11, attempted suicide by swallowing pills, because she could not stand the life and conditions of confinement. There were days that she was forced to have sex with seven or eight men and she could not stand it anymore, but the owner forced her to continue working by beating her.²⁵⁶

All these circumstances cause irreversible psychological damage to the victims, only overcome by psychological treatment. Unfortunately, very few victims have access to psychological support, which has an impact on their life project. Many victims require psychiatric treatment.²⁵⁷

3.4.3 Financial harm

Financial harm should be estimated based on the material and immaterial damage that the operator causes the victim. An international human rights principle is that any damage must be repaired in a comprehensive manner and that the repair should be adequate.

The negative effects of trafficking produce physical and psychological scars that must be repaired in their entirety. Many victims require medical, psychiatric or psychological rehabilitation care

254 Criminal case 2035-2012-94. Ruling of 5 April, 2013 of the Second Court of First Criminal Sentence, Drug Trafficking and Crimes against the Environment of Villa Nueva.

255 Testimony of a victim of exploitation given to the Prosecution of Colombia. Quoted by Restrepo E. (2012). Hereinafter, when the case of Natalia is discussed, the reference is the same source.

256 Case 0187-2014-00207. Ruling of 16 October, 2014 by the Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of El Progreso.

257 Work meeting with Asociación El Refugio de la Niñez.

that can take years. Added to this damage is all the victim's foregone income, who is exposed to days of ten, twelve and even twenty hours working, often without food.

A central element in exploitation is that exploiters make up ways to keep victims from obtaining their earnings. In fact they even force them into debt bondage with them. Natalia explains that «The exploitation scheme was complete. If you went to sleep at 6 a.m. and a service came up one hour later, you had to get up, get organised and go. We could not refuse unless we paid a fine, which increased our debt. They did not only fine us for not meeting an appointment with a customer». The «employer» had designed a number for financial sanctions that are a strategy to increase the debt and extend the amount of time victims are exploited, which makes the business more profitable. Thus, in two years of sexual and economic exploitation, Natalia's debt grew from US\$ 12,000 in August 2009 to US\$ 56,000 in March 2011.

As it will be shown later, the revenues generated directly by one victim of sexual exploitation can range between US\$ 55,100 and US\$ 255,000 per year.

However, these considerations are not included in the reparation that Courts are currently ordering in their rulings. Amounts provided do not include the cost of medical, psychological or psychiatric rehabilitation, or the jeopardy of life projects. Moral harm is not considered either. Actuarial studies are not done to estimate the financial loss sustained by victims. It can thus be said that financial harm is not properly calculated and that victims are not being compensated according to international human rights standards.

3.4.4 Social harm

Exploitation through trafficking creates huge social problems. Usually, victims are unable to escape from the exploitation cycle; they become depressed and

remain in the same level of poverty that drove them to this form of slavery. Victims remain dependent on their exploiters, particularly because of the debts, but also due to drug and alcohol addictions.

Even more serious is the fact that victims usually become pregnant and their children must live in the same environment, deprived from education and opportunities for their betterment. The vulnerability of victims becomes more serious when they have family responsibilities which many times lead them to drive their sons or daughters into prostitution.

The high level of profits produced by trafficking also causes corruption in authorities which makes victims even more vulnerable. Usually, the victims are the ones who are deprived of freedom (be it in migration shelters, when they are foreigners, in State-managed shelters when they are minors). For that reason, sex workers see that rather than arresting traffickers, what is done is to harm the women who do sexual work. «The person in charge of collecting the money is arrested, but they never get to the person who benefits from the extortion collected, the person who promotes and manages the offense. The same happens here, the operators who are in the place are arrested but the perpetrator is never caught».²⁵⁸

3.5 Places where sexual exploitation occurs

3.5.1 Guatemala as a country of origin of victims of trafficking

Guatemala is a country of origin of migrants who fall victims of sexual trafficking because many Guatemalans seek to travel to the countries of the North, particularly the United States. However, significant seasonal migration to Mexico should not be dismissed. At any rate, during their journey to the United States, Guatemalan migrants – like

²⁵⁸ Focus group with organisations that work with sexual diversity and sex workers on 5 February, 2015.

other Central America migrants – are forced to cross Mexico, which makes them vulnerable and facilitates their exploitation in several forms, including sexual exploitation.

Difficult financial conditions make a significant number of persons migrate from Guatemala to the United States. A report from the International Migration Organization (IOM, 2013) estimates that 300 persons leave the country each day in search for better life conditions in the United States. This means that the Guatemalan economic system expels around 109,500 persons every year into migration. This report indicates that 52 per cent of the people migrate to improve their financial conditions, while 37 per cent do so to find employment (because they were unemployed when they migrated) (IOM, 2013: 52). UNICEF states that «Boys, girls and adolescents that are currently migrating do so many times to escape the situations of abuse that they experience at home» (2014: 20).

However, most of these migrants do not reach their destination. The Migration Service reports that in 2014, 45,114 Guatemalans were expelled from Mexico by land, while 51,157 were expelled by air from the United States. This means that 96,271 were repatriated during 2014.

The Secretariat of the Interior of Mexico (SEGOB) estimates that, each year, 150,000 persons arrive in or cross Mexico illegally, while civil society organisations (CSO) estimate that number at 400,000. These migrants are hugely vulnerable, a fact which is confirmed by the National Human Rights Commission of Mexico, that reported that 9,758 migrants were abducted by organised crime in 2011, 15.7 per cent of them women, that is, 1,532 women.²⁵⁹

In this migration process, a considerable number of Guatemalan and Central American women are

trapped in Mexico by trafficking networks and are sexually exploited, particularly in the border area of Chiapas, in cities like Tapachula, Tuxtla Gutiérrez, Huistla, Ciudad Hidalgo, and others.

This is confirmed by UNODC, that states that «[...] the big flow of illegal migrants practically guarantees that some women and girls will be left behind, stranded in a foreign land without resources or options. Traffickers can make money by exploiting their vulnerability. Exploitation will continue while brothels operate openly in these areas and no other alternatives are offered to these women and girls » (2012: 55).

In analysing the Guatemalan girls who migrate to Mexico, Luis Flores, IOM representative in Tapachula, states that «It is estimated that eight out of every ten migrant women from Central America suffer some type of sexual abuse in Mexico, according to the Guatemalan Government (six out of ten according to a study done by the Congress of Mexico). They start the journey aware that they will be abused once, twice or three times».²⁶⁰ This is the price that illegal aliens must pay to traffickers and the administrative personnel of countries of transit and destination (UNICEF, 2014: 26).

Once involved in trafficking, «[...] it proves very difficult for many victims to get out. The owners of brothels may threaten them with violence or reporting if they sense that they are thinking of leaving; particularly if the exploiter started off as a trafficker, he may know where the victim comes from and who her relatives are» (UNODC, 2012: 55).

Many victims who have been subject to trafficking against their will for purposes of sexual exploitation later become recruiters and receive some money to convince other girls in their home towns, where

259 See in: http://www.cndh.org.mx/sites/all/fuentes/documentos/informes/especiales/2011_secmigraentes.pdf.

260 Article by Óscar Martínez, «Las esclavas invisibles» (The invisible slaves) [on line], available at: <http://enelcamino.periodismohumano.com/2010/11/23/las-esclavas-invisibles/>.

they promise what they themselves were promised: to work as waitresses and earn good money.

This is the case of Kenny, a Guatemalan girl who lived in the border town of Malacatán. She was invited by a neighbour to work in Mexico as a waitress with three other girls, ages 14 to 16. The recruiter helped them cross the border illegally through one of the blind spots. They were taken to a bar in Tuxtla Gutiérrez, where the owner, a Mexican national who lived with the sister of the recruiter, forced the girls into prostitution. They were rescued thanks to the parents raised an Alba-Keneth alert, which made the trafficker decide to return the girls to avoid investigations.²⁶¹

This recruitment process produces, according to Luis Flores, «[...] a spiral effect that makes some exploited victims reaching Mexico at age fifteen become recruiters and deceive new victims».²⁶² An accurate estimation of the number of Guatemalan girls subject to trafficking in the South of the Mexican border is not available, but it is well know that this is a

good business when you consider the large number of bars, night clubs and strip clubs that spread from Tapachulato Tuxtla Gutiérrez.²⁶³ According to Luis Rey García Villagrán, Director of the Human DignityCentre, an organisation that rescues trafficking victims in Tapachula, «there are thousands of victims waiting to be rescued in the more than 4,000 joints there are».²⁶⁴

3.5.2 Guatemala as a transit country

Guatemala is a country of transit for Central American migrants, particularly Honduran and Salvadoran, who have to cross the country to reach Mexico and then the United States. In this journey, migrants are subject to all kinds of abuses that can include sexual exploitation.

IOM (2013) has said that the main transit routes used by Central American migrants headed for the United States are basically the same routes of drugs (p. 60).

261 Interview with prosecutors from the Prosecution Section against Trafficking in Persons, 8 September, 2014.

262 In article by Óscar Martínez, *op. cit.*

263 UNODC estimates that close to two hundred Central American women are subjected to sexual exploitation in the state of Chiapas (UNODC, 2012a: 57).

264 In «Tapachula es la capital de la trata de personas» (Tapachula is the capital of human trafficking) [on line], available at: <http://esdiario.com.mx/tapachula-es-la-capital-de-la-trata-de-personas/>

Map 1.
Migration corridor in Guatemala



Source: IOM (2013: 60).

Central American migrants may have entered Mexican or U.S. territory with the aid of “coyotes” or human traffickers, but then they are trapped by criminal networks that use these routes for the purpose of sexual exploitation (Hernández Millian, J. and Sáenz Brekenridge, S., 210: 255). That is why brothels, strip joints and night clubs are located along the major cities on that route and migrants are recruited there to be exploited. Some of

these joints show higher numbers of homicides nationwide, such as the municipalities of La Libertad, in Petén; Morales, in Izabal; or Esquipulas, in Chiquimula. The southwestern border area with Mexico also presents a high number of murders and high concentration of strip clubs and brothels, in Tecún Umán, Malacatán, Coatepeque and the entire corridor of the Pacific and Inter-American highways.

3.5.3 Guatemala as a destination of trafficking in persons

Finally, one cannot set aside the fact that Guatemala is an important destination for international networks of prostitution, where Colombian and Central American women (particularly from Honduras, El Salvador and Nicaragua) are brought specifically to be sexually exploited in Guatemala City and cities outside the capital. Initially, victims are recruited for high and middle-income customers, but as they grow older, they are taken to lower economic level joints in cities outside the capital.

Colombian women are particularly favoured by Guatemalan drug traffickers. Criminal networks bring them and give them up for exploitation by drug traffickers. When the traffickers get bored with them, they sell them to prostitution networks (Solo Duque, 2012).

A joint operation by the Prosecutions of Guatemala and Colombia in 2010 was able to dismantle a network of traffickers that operated in a night club in the capital of the country. One of the victims was able to report in Colombia that she was being kept captive in Guatemala which led to a criminal investigation in that country. As the victims related in that case, most were recruited in Medellín with the promise that they would work as models in Guatemala City. When they arrived in this City, criminal network representatives with contacts with migration authorities at the airport were waiting for them. «Everything was ready there; police agents already knew who we were and they didn't even search us». Contacts with migration authorities allowed the victims to travel abroad even with expired visas, to neighbouring countries like Costa Rica and Honduras.

Once in the hands of the network, the first thing they were forced to do was to give up their passport and ID. From the airport they were taken to a house where there were more women, but it was not the only house that this criminal group had. The victims

described to the Colombian prosecutors that the houses had bars and the roofs were protected with barbed wire.²⁶⁵

In these houses, the women are locked in and unable to move freely, and are kept under strict control of a supervisor. In the case called «Choppers», the Attorney-General's Office rescued three Colombian women who were held captive in Colinas de Monte María, in zone 7 of Villa Nueva. These victims stated that they were physically and verbally abused. There were close to 12 sexually exploited women in each house, all of them from Medellín, Pereira and Cali in Colombia. The victims described how they were transferred from the house to the exploitation centre in minibuses or taxis that worked for the organisation.²⁶⁶

Drug traffickers are the main customers of the sexual services provided by Colombian women. A witness stated that «every time Colombian girls came, they were sent to those drug dealers to approve the new "cattle" as they said» (Solo Duque, 2012).

Trafficking routes where Guatemala is a point of destination include Honduras, Nicaragua and El Salvador and, to a lesser degree, Costa Rica and Panama. In these cases, victims are recruited directly for trafficking. It is different than transit routes, because in the latter, criminals take advantage of the fact that the women are on their way to the United States. For that reason, in the route where Guatemala is the point of destination the networks are structured, and form a market of recruiters and traffickers where significant participation of state authorities is presumed.

In October, 2014, the Honduran police rescued four young women who were abducted by a gang that engaged in the sale of women in Guatemala and arrested two men who were suspected of

265 Victim testimony to the Prosecution of Colombia. Cited by Restrepo E. (2012).

266 Criminal case 2035-2012-94. Ruling of 5 April, 2013, by the Second Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Villa Nueva.

involvement in the crime. The Police Commissioner from Honduras stated that the four adolescents were released in the department of Ocotepeque that borders with Guatemala. The gang abducted the young women in impoverished regions of the country and took them «to the Guatemalan border to sell»,²⁶⁷ that is, to be sexually exploited.

Therefore, it can be said that recruitment of women to be sold in Guatemala occurs in every country of Central America, Colombia and even Brazil and Eastern Europe. Guatemalan traffickers have structured the entry of victims with the likely complicity of migration authorities. In addition, foreign victims are subject to semi-slavery, live in conditions of captivity and violence, and are placed on debt bondage. One of the victims stated that when she came to Guatemala she had a US\$ 12,000 debt with the trafficker. Two years later and after being exploited every day, working between twelve and fourteen hours daily, she was only released when someone paid US\$ 50,000 for her rescue.²⁶⁸

On the other hand, Guatemala is a sexual tourism destination. A hotel in Flores, Petén, was mentioned, that shows an album of underage girls to its guests. Other hotels in Petén «[...] give foreign tourists a catalogue at the front desk, and call the girls, who come to the hotel. There are two ways in which they do this: together with the catalogue, they have the “Secret” application in Facebook where they upload pictures of the girls to discredit and coerce them ».²⁶⁹

In Río Dulce, sail boat owners have been reported to sometimes go to certain restaurants in the area to pick up girls and adolescents who, at times, are taken there by their mothers to be sexually exploited. It is also reported that some marinas engage in this

practice through foreign sail boat owners who live there.²⁷⁰

3.5.4 Internal trafficking routes

Finally, in Guatemala there are also a large number of women, boys and girls who are sexually exploited in the same country. Usually, national victims are used for lower-income customers, particularly in the periphery of the city or in cities outside the capital: in low-income neighbourhoods, cities like Villa Nueva or Mixco, important highway crossing points like Chimaltenango, Amatitlán, Barberena or Sanarate.

Dismantling the network called «La Terminal» showed how traffickers worked. They used young men to woo adolescent girls in different parts of the country. Then, under deception, these men took them to Guatemala City. Thirteen girls, adolescents and women were rescued who were subject to labour and sexual exploitation in bars in zone 4 of Guatemala City. The case came to light after two adolescent girls were able to escape from a bar, approached the authorities and denounced the sexual exploitation. The coordinated work of PNC, PGN, the Attorney-General's Office and other agencies permitted their rescue. Six individuals were convicted.²⁷¹

There are also nationwide means to recruit adolescents and girls for high-end brothels, usually from the Eastern part of the country. This is the case of Dany, who was recruited in Atescatempa, Jutiapa to work at Centroerótica, a high-end closed house located in Colonia Mariscal, zone 11 of Guatemala City.²⁷²

267 See in *La Tribuna* 15 October, 2014, available at: <http://www.latribuna.hn/2014/10/15/desarticulada-banda-de-trata-de-menores/>.

268 Testimony of the victim of exploitation given at the Prosecution of Colombia. Cited by Restrepo E. (2012).

269 Meeting with representatives of women's organisations in the department of Petén, 8 April, 2015.

270 Interview with activist of women's organization under the Network for Assistance to Victims of Izabal (Redizabal), 24 February, 2015.

271 Ruling of 24 April, 2014 of the Second Court for Femicide Crimes.

272 Case 43-2013. Ruling of 29 August, 2013 of the Third Court of Criminal Sentence and Drug Trafficking and Environmental Crimes of the Department of Guatemala.

Most girls are exploited in their towns of origin or nearby places, sold by their mothers or recruited to work as waitresses or cleaning girls and then forced to provide sexual services. This is the case of Victoria, an 11 year-old girl. Her cousin introduced her to Mari, a trafficker, to clean tables at the bar called Centro Cervecero «El Punto», in the village Agua Salóbrega, El Progreso. She was offered a salary of 700 quetzales a month, and if she wanted to chat with the customers, she would get a tip. After a few days, the woman, Mari, said to Victoria that customers wanted to have sex with her. In the beginning she refused, but the woman convinced her with the lure of more money.²⁷³

As it has been said before, trafficking joints coincide with the main highways and roads of Guatemala, particularly the Pacific Highway that runs from Jutiapa to Malacatán. Here, the major points where exploitation takes place are cities like Escuintla, Mazatenango, Retalhuleu, Coatepeque, Tecún Umán and Malacatán. Another important road runs from Jutiapa, through Cuilapa, to Barberena. These and other points, like the highway to the Atlantic, are attractive for sexual exploitation because of the large number of container truck drivers that cross the highway. Here, many joints act both as a diner and as a sexual exploitation centre. Internal immigration flows to urban centres like Chimaltenango, Villa Nueva, Mixco and Amatitlán are also very important. Large areas of sexual exploitation are found in these towns.

273 Case 0187-2014-00207. Ruling of 16 October, 2014 of the Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of El Progreso.

4

Organised crime networks for trafficking in persons for purposes of sexual exploitation

4.1 Criminal structures and the profile of persons involved in trafficking in persons

Sexual exploitation of victims of trafficking is a criminal market and, therefore, their structures are very complex and segmented by the different stages required to carry out the business.

As a business, trafficking for the purpose of sexual exploitation is a market that requires the recruitment of victims (production of victims), their transfer to the places where they will be exploited – which in some cases requires getting them IDs – their transformation (in many cases, victims are subjected to cosmetic surgery), and finally, marketing with customers through exploitation centres or other mechanisms. The participants in the process are, therefore, diverse, and each one has a different role, but they work in coordination to accomplish their exploitation goal.

Participants work as a production line where individuals and criminal groups take part. Generally, it can be said that not one single structure covers the entire process. Rather, individuals and groups participate in different stages and develop relations among them permanently or occasionally. The report of UNODC on organised crime in Central America and the Caribbean (2012) states that «[...] like any business, the relationship with suppliers, transportation agents and buyers may be long-lasting but not exclusive. Each link in the chain is free to form linkages with others and there is no

common source of authority or common use of funds. So long as everyone is happy, these linkages may last long, but like in any commercial supply chain, it is easy to adapt to the loss of one link. Basically, they are economic entities » (p. 26).

Notwithstanding, the final phase of the process –which is the exploitation or marketing of the victim according to economic status– is organised mostly by territorial criminal structures. In the opinion of UNODC, these are the most developed, stratified and most financially sophisticated criminal structures. These criminal structures engage in a large number of criminal activities like drug trafficking, the trafficking of migrants, extortions and, of course, human trafficking. They are positioned in one place and control all criminal activities in a given territory directly or under «concession». The territorial structure «[...] requires execution capacity; in other words, something similar to an army. There is need for a clear hierarchy and a chain of command [...] families may be the head of the group, often with a patriarchal structure, with their children, with blood ties [...]. There is a need for captains, corporals, informants and candidates: concentric circles of authority radiating from the central leadership.» (UNODC, 2012a: 22).

Many times, territorial groups do not carry out sexual exploitation activities themselves but provide protection for traffickers and obtain a tax or fee from street operators, and/or infrequent or «authorised» customers who can exploit sex trafficking victims. Basically, these territorial groups

in Guatemala are: Los Mendoza in Izabal and Petén; la Mara Salvatrucha (MS), in different locations; Los Zetas, in Petén and Alta and Baja Verapaz. In the western part of the country, the two strongest groups are Chamalé (Juan Ortiz), in San Marcos (with partners like Los Oajaca in Suchitepéquez and Los Huistas, in Huehuetenango), as well as smaller drug trafficker groups that cross the country from East to West on the road to Mexico. Information about the articulation of these groups with sexual exploitation, which is outlined below,²⁷⁴ comes from the field investigation done for this report.

Working with private actors are State actors. These have the control of permits and supervision of the operation of the businesses or companies that conduct exploitation.²⁷⁵ Experts on organised crime contend that it is impossible to carry out the sexual exploitation of girls, boys, adolescents, foreigners and the rest of the victims of trafficking without the participation of State authorities and, especially, of police and municipal authorities (Sain, M., 2010). At times, the participation of authorities does not involve only cover-up and tolerance but also direct promotion. Confidential interviews have revealed that some groups of police agents engage directly in the business of trafficking, where they are owners, through fronts, of several sexual exploitation centres, and launder their earnings by investing in transportation and taxi services.

Public corruption also plays an important role to procure forged documents for the victims who clandestinely enter or exit the country,²⁷⁶ or to obtain forged personal identification documents for minors, work permits, passports and more.²⁷⁷ There

is significant participation by migration authorities at different levels, at border check points, airports and state check points.²⁷⁸

The authorities also improperly protect the owners of the businesses –especially of bars, strip clubs and night clubs– by forewarning them of impending searches²⁷⁹ and destroying compromising documents to prevent criminal investigation. For that reason, trafficking networks always include some participation of local, regional and national authorities.

Last –but not least– trafficking networks include the customer. In a certain way, the customer is the main actor in the circle of trafficking, and is ultimately the exploiter. While the customer is not the only exploiter, he is vitally important since, if there were no demand, boys, girls, adolescents and other victims of trafficking would not be recruited and exploited through prostitution. It is necessary to underscore that the trafficking market for purposes of sexual exploitation is mainly organised and promoted to satisfy customers, who are the people that pay for sexual services.

Customers do not respond to certain specific characteristics but rather can be anyone: a relative, a friend, a priest or evangelical pastor, a member of the military,²⁸⁰ law enforcement agents and members of the Justice System. Customers do not all have the same profile, and their behaviour is

274 See Section 5.1.4 on territorial groups.

275 See Section 2.1.2 that further discusses the requirements for trade permits and business supervision.

276 Statement by three Colombian women victims of trafficking. Choppers case, Case 2035-2012-94. Ruling of 5 April, 2013, of the Second Court of Criminal Sentence, and Drug Trafficking and Environmental Crimes of Villa Nueva.

277 Interview with individuals in prison who were convicted of trafficking in persons, in the correctional centre of Puerto Barrios, 25 February, 2015.

278 Interview with María Eugenia Villareal, 26 January, 2015.

279 In the El Conquistador bar case, in Chimaltenango, a place where even 10 and 12 year old girls were forced into prostitution, one of the adolescent victims of trafficking stated that the owner forced them to «have sex with policemen and told them that the service had been paid for». Case 94-2013. Ruling of 18 October, 2013 by the Court of Criminal Sentence, and Drug Trafficking and Environmental Crimes of the department of Chimaltenango.

280 A women's human rights activist from Coatepeque states: «Colomba is considered a red zone, there are many bars with children, violence against women and murders. There is a military deployment there and apparently, several girls 17 and 18 years of age have become pregnant from the soldiers that work there ».

not necessarily pathological.²⁸¹ A customer may be from any economic level and with different degrees of education. In fact, this is the result of patriarchal conditioning that lead to “machista” stereotypes and abuse of women, boys and girls.²⁸² The Yokohama Congress concluded that «[...] they are individuals who unfairly take advantage of an imbalance of power between them and a person under 18 years of age for the purpose of using them sexually, be it to obtain material benefit or for personal pleasure».²⁸³

Customers fall in different categories, depending on their financial and political power. Without question, one of the best structured groups of customers are drug traffickers who demand sexual services often, and frequently request women to «liven up» parties or gatherings. One of these parties organised by Los Zetas in the north of Quiché²⁸⁴ that was attended by several sexually exploited women confirmed that drug traffickers pay large sums of money for sexual services. In addition, these groups use coercion, abduction, and violence against women from different regions to force them to become their «girlfriends» or «lovers».²⁸⁵

As customers, drug traffickers are extremely violent and demanding. It is common that they

pay for outings where they unmercifully abuse the victims, who are treated as merchandise and may be even given to bodyguards or to other drug traffickers. They are forced to take drugs, and if they refuse, their lives are threatened with firearms. Drug traffickers also buy women, as witnessed by a Colombian victim of trafficking: «A girl was sold; she was bought by a man for six thousand dollars; another one was sold for US\$ 20,000. Depending on their work and if they did well, the price goes up».²⁸⁶ When a drug trafficker tires of them, he may give them to a brothel, kick them out on the street or, at times, if they file complaints, kill them.

According to information collected for this report, an important second category of customers are police agents and judicial officials. Policemen, judges and prosecutors receive sexual favours in exchange for not prosecuting, and even in exchange for favorable rulings. In Chimaltenango, one of the victims declared to the court that «the manager of the bar was tipped off about operations to be conducted by the police though a man named Chepe, who worked at a court in Chimaltenango». In addition, many victims singled out policemen as frequent customers of the bar.²⁸⁷

These two groups of customers, drug traffickers and public officials stand out because of their economic and political power and because they have contacts and influence to help businesses prosper. It should also be noted that drug traffickers, as a territorial group, many times have the control of the area, and therefore demand «tax» payments to let small-time traffickers work. Thus, a symbiotic relationship develops between customers and exploiters, where the more powerful customers collect the political

281 Interview with the Oblate Sisters' Congregation, Refugio Casa de la Mujer, 20 February, 2015.

282 *Ibid.*

283 Declaration of the Yokohama Congress, Item 8, 2002. «The Yokohama Global Commitment 2001» [on line], available at: http://www.unfpa.org.py/download/pdf_yokohama.pdf

284 Fourteen persons were arrested on 10 July, 2011, in the so called drug-party in Ixcán, Quiché, to celebrate the anniversary of the creation of Los Zetas armed group. Presumed drug trafficker Walter Overdick also participated in the celebration but was able to escape, though he was later arrested. The arrested Zetas were to be later convicted for illegal association, drug trafficking and illegal possession of fire arms. A video from a computer that was seized during the search and broadcast on TV shows the presence of many women during the party. See: <https://www.youtube.com/watch?v=aO-p5W6ra1g>.

285 Interview with Prosecutor from the Prosecution Section for Women in Tecún Umán, San Marcos. Interview with members of the AMARC women's organisation in Coatepeque, 9 March, 2015.

286 Statement by a victim in the Choppers case. Criminal case 2035-2012-94. Ruling of 5 April, 2013 by the Second Court of Criminal Sentence and Drug Trafficking and Environmental Crimes of Villa Nueva.

287 Testimony of victims and professionals who provide assistance to victims which was admitted by the court as evidence. Criminal case 94-2013. Ruling of 18 October, 2013 Court of Criminal Sentence and Drug Trafficking and Environmental Crimes of Chimaltenango.

and economic protection they provide to traffickers through sexual favours.

Local trafficking networks cover a broad type of modalities: from exploitation done directly by the family of the victim, up to transnational crime organisations. A description will be provided in this Chapter of some of the more frequent local structures.

4.1.1 Sexual exploitation by family members

Exploitation may be perpetrated by close relatives of the victim. An expert on trafficking says: «Sometimes, agencies base our work on the provisions of the *Palermo Protocol*, on written content relating to organised crime... And it is organised crime in the largerscope, but in Guatemala this is not solely an organised crime problem; the trafficker may be the brother, the father, the mother, an uncle, or a teacher».²⁸⁸

The most common occurrence is that parents sell girls into forced marriage. A q'eqchi' peasant from Río Dulce, Izabal, said that the parents of a girl saw that he was a widower and needed a wife, and offered him their daughter²⁸⁹ in exchange for a piece of land. In the rural area of Coatepeque, parents have sold their daughters into marriage; some of them have been «returned» because they did not «behave well».²⁹⁰

Other times, mothers are contacted by recruiters to ask them to sell their daughters, particularly if they are virgin girls. In the South West, at the border with Mexico, 11 or 12 year-old adolescents are sold by their own mothers in exchange for 500

quetzales. But apparently, there is also a common practice where municipal mayors, eldermen or municipal employees offer work to women in exchange for giving up their underage daughters to them for sexual purposes, as reported by women's organisations in different places that were visited to produce this report.

In Río Dulce, Izabal, mothers sell their daughters to sail boat owners. Some marinas manage the process with the participation of foreign sail boat owners who live there.²⁹¹

In all of these cases, the recruitment method involves taking advantage of a situation of vulnerability and obtaining consent for trafficking from persons who has authority over another: parents. Traffickers obtain from parents their authorisation to sexually exploit their daughters in exchange for financial benefits that many times are insignificant.

4.1.2 Individual business persons

In local businesses, the organised crime structure is basic: it is formed by a small business person who manages a beer joint, a bar or a cafeteria.²⁹² Here, traffickers are individual business persons who take advantage of the presence of male customers in places where food and beverage is sold, especially truck drivers, to provide them sexual services. In beer bars or other types of bars, usually victims work as waitresses and as sexual workers.²⁹³

In the case of El Conquistador, a bar in Chimaltenango, the victims were adolescents who had been recruited through false promises of jobs as waitresses. Once in the place, they were forced to provide sex services. However, at times, victims were violently abducted. This is the case of a 16

288 Interview with the Oblate Sisters Congregation, Refugio Casa de la Mujer, 20 February, 2015.

289 Interview with a person prosecuted for trafficking in persons and in prison in «Los Jocotes», the prison in Zacapa, 23 February, 2015.

290 Interview with civil society groups of Coatepeque, 9 March, 2015. These groups say that «Girls are married by force. For example, in one case, the family asked for seven thousand quetzales and he paid two thousand. The girl is sent back if she does not behave».

291 Interview with an activist from the women's organisation assigned to the Network for Assistance to Victims of the Prosecution in Izabal, 24 February, 2015.

292 Interview with journalist, 7 April, 2015.

293 Interview with PDH delegate in Coatepeque, 9 March, 2015.

year-old adolescent who was intercepted in a public street in the underpass of Chimaltenango, and then introduced by force in the vehicle of the trafficker, who drove her to the building which housed the bar, forcing her to wear skimpy clothes and provide sexual services to customers».²⁹⁴

This type of trafficker is not a complex criminal structure. In the case of El Conquistador, the owner kept the victims in the house, under lock. However, the trafficker had workers doing different kinds of chores: a woman in charge of cleaning, a cook, a cashier (who also kept the keys), and a taxi driver to take the victims to medical check-ups at the health centre and buy food and other inputs for the abducted adolescents. The trafficker had the assistance of the local police. According to the victims, the policemen would go to the bar and the owner forced them to have sex with them. The owner threatened them to prevent them from filing complaints since «the policemen were her friends and would not act against her». The cashier was in charge of watching the victims and of keeping them captive. In addition, they had security service; they were not allowed to go out alone; they were always escorted to prevent them from escaping. The taxi driver was the only one in charge of driving and watching them.

4.1.3 Local criminal structures

While parents may act directly to sexually exploit their daughters, usually there is participation of third parties who provide assistance and obtain the largest earnings, like owners of hotels, motels, inns or even empty lots, since they provide the place where the sexual encounters occur.

In Los Amates, Izabal, women's organisations reported that truck drivers spend the night at empty

lots in the parking area of gas stations. The guard of a lot and a woman allow girls and adolescents between 12 and 17 years of age to be forced into prostitution in the truck's cabins. Victims charge 200 quetzales for each sexual encounter and give one hundred to the woman in charge. The guard has a firearm and authorises the use of the lot, provides security and ensures timely payment. The probable participation of members of the police, who likely receive a commission, was mentioned.²⁹⁵ This also occurs in other border points like Tecún Umán, where mothers take their child and adolescent daughters to the rows of trucks waiting to cross the border for sexual exploitation.²⁹⁶

In Guatemala City there are tens of motels or inns in areas close to el Trébol, Parque Colón, Parque Concordia, Cerrito del Carmen, among other places. In cities outside the capital it is common for this type of business to be close to bus terminals and markets, among others.²⁹⁷ Motels provide room service but also security and control. Mothers and fathers go to these places where girls are exploited. Additionally, according to the investigation work done by the Prosecution Section against Trafficking in Persons, the owners or managers of those motels know that these girls are underage. Customers know in advance where they can find victims, which place them in the middle among victims, customers and exploiters. The earnings for the motel are in volume, because many persons go there to abuse girls. They receive an average of 25 to 50 quetzales for each encounter. The business prospers because of the large number of girls and adolescents who have encounters there. In addition, many of them offer alcoholic beverages to customers, and some sell drugs.

294 Criminal case C-94-2013. Ruling of 18 October, 2013 of the Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Chimaltenango. References to this same case, further down, come from this same file.

295 Interview with activist from women's organisation assigned to the Network for Victim Assistance of the Prosecution in Izabal, February 24, 2015.

296 Interview with women's organisations in Coatepeque, March 9, 2015.

297 La Terminal case, ruling by the Second Court for Femicide Crimes; meeting with civil society women's organisations in Huehuetenango, 24 March, 2015.

4.1.4 Territorial groups

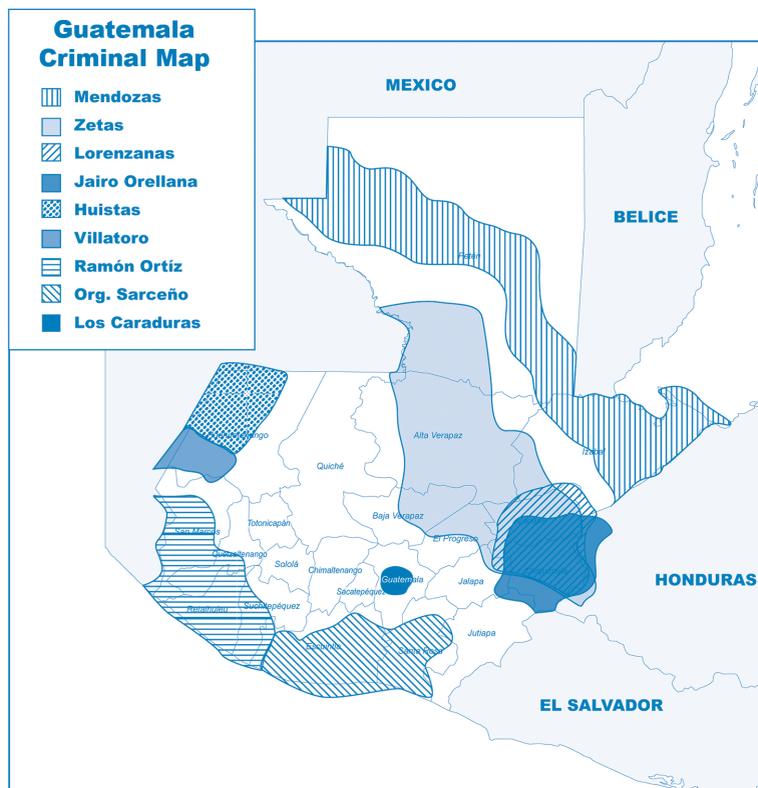
It is believed that some brothels are controlled by territorial groups that obtain benefits directly from the control of the area or from the royalties paid by the owners of local drug cartels. The most important territorial organisations of the country have links to drug trafficking in the country, both nationally as well as internationally. The different organisations with their areas of influence are listed in UNODC (2012a: 23-25) and Insight Crime reports²⁹⁸.

The main characteristic of a territorial organisation is its hierarchical structure, its intense level of

violence and its interest to have control, directly or through concessions, to provide protection for criminal activities in its area of influence.

While some territorial organisations do not engage directly in trafficking in persons, most do consider it an important activity. Among them, the main ones are Los Caradura and MS in Guatemala City; Los Mendoza, in the North West; Los Chamalé (Ramón Ortiz), in the South West; and others, like Los Huistas, in the North West; and Los Zetas, in Alta and Baja Verapaz and in the North of Quiché.

Map 2.
Crime map of Guatemala



Source: Dudley, S. (16 September, 2013).

298 Available at <http://www.insightcrime.org/guatemala-organized-crime-news/guatemala#Criminal%20Groups>

Due to its control of drugs, Los Caradura is considered to be the most important retail drug gang in Guatemala City that has also assumed the control of many brothels according to confidential sources in the PNC. This gang has contacts with criminal groups in PNC that provide protection which has permitted its growth and has made some of the human trafficking businesses of Los Caradura «untouchable».

Los Caradura have some kind of partnership with MS, because they share territories in Guatemala City. Human trafficking activities are presumed to take place in some of the sectors where other clicks of this gang operate. For example, sources with classified information at the Attorney-General's Office report that they acquired brothels in Bárcenas, where some women who tried to escape were murdered and dismembered. Trafficking in persons has not yet become one of the main activities of the group, but, like every territorial organisation, it charges other traffickers to operate in their territory. Likewise, they recruit women by intimidating, abducting and coercing them into prostitution.

In the department of Izabal and in part of Petén, the Mendoza family has built, throughout the years, a power parallel to that of the State and operates as a private army that conducts social control activities like self-defense patrols, control of entry and exit of people, peripheral surveillance and others. The Mendoza structure can be considered to be a symbiotic criminal organisation (Sain, M., 2010).²⁹⁹ It has been said that the Mendoza family has funded some national politicians and local governments since the 1990s. Their funding of municipal mayors, particularly in Morales, would

explain how they have obtained contracts for 74.6 million quetzales.³⁰⁰

According to confidential sources, the prostitution networks managed by the Mendoza family, more than a source of money, are a source of power and political influence used to compensate police agents, justice operators and other local authorities. Violence committed by the bodyguards of the drug traffickers has also led to the recruitment of a significant number of girls and adolescents in schools, to be sold for sexual purposes. According to an activist in Puerto Barrios, «There are clandestine houses visited by 13 and 14 year-old girls. Double cabin pick-up trucks belonging to criminal drug organisations go to those places».³⁰¹ Girls have been dumped in farms and communities of the Honduras border after being raped by drug traffickers. Most victims and their families do not file complaints for fear of reprisal and because there is very little trust in local police and justice authorities.³⁰²

On 20 November, 2014, Haroldo Mendoza Matta and nine members of the criminal structure that he leads were arrested in an operation coordinated by the Special Prosecution against Impunity, the Prosecution, CICIG and the Ministry of the Interior.³⁰³ At the time when this report was drafted, these felons were in custody, accused of many offenses including murders, kidnapping, aggravated theft and illegal association. For reasons of security, the criminal case is heard by a high-risk court in Guatemala City.

In the South West, along the Inter-American highway that runs from Escuintla to Tecún Umán and Malacatán, drug traffickers and human traffickers

299 In this phase, the penetration of organised crime in social, economic, political and government structures dominates and «[...] traditional State mechanisms to enforce the law do not work any more because organised crime has become part of the State; a State within the State» (Sain, M., 2010: 317).

300 See *el Periódico*, 27 December, 2014. «El emporio de Los Mendoza Matta».

301 Interview with members of a women's organisation assigned to the Network of Victim Care of the Prosecution in Izabal, 24 February, 2015.

302 *Ibid.*

303 See in: <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=572&cntnt01showall=&cntnt01returnid=1146>.

have established territorial organisations together with local powers, especially in Mazatenango, Retalhuleu, Coatepeque, Pajapita and Tecún Umán. It is presumed that the Juan Alberto Ortiz López, aka «Chamalé» group³⁰⁴ was at some point in control of local political power and favoured municipal election campaigns in its area of influence. An example of the inter-relationship between drug trafficking and human trafficking for the purpose of sexual exploitation is a criminal structure linked to Chamalé, whose members were arrested in 2013, accused of several murders. Upon reviewing due process at the request of the legal counsel of the defendants, PDH discovered a human trafficking network and identified two minors in Malacatán who had been recruited and taken to a farm from where they were taken to different places for sexual exploitation.³⁰⁵ The case is pending trial.

4.2 Description of the mechanisms used by the key players in human trafficking for sexual exploitation purposes

International human trafficking networks are closely linked to drug trafficking. Guatemala is the centre of sexual exploitation networks of women who are recruited in Nicaragua, El Salvador and Honduras. Outside of Central America, the main route of trafficking in persons to Guatemala is the connection between the latter and Colombia. It is estimated that around 60 Colombian women³⁰⁶ are brought to Guatemala for sexual exploitation every year.

304 Juan Alberto Ortiz López was extradited to the United States in May 2014, accused of cocaine trafficking to that country.

305 Interview with the PDH assistant in Coatepeque, 9 March, 2015.

306 The average number of Colombian women detected in Guatemala by the Migration Service in the last five years is two, which means around 60 hidden victims. In that regard, see Chapter three, supra.

The networks are perfectly well organised in both countries, although they are especially sophisticated in the Central American country. The networks of traffickers between Colombia and Guatemala have been working since 2000 as shown by operation Sin Fronteras, carried out by the Attorney-General's Office of Colombia in 2004.³⁰⁷

Internally, trafficker networks use similar mechanisms though with lower levels of organisation. UNODC (2012a) has stated that the farthest away the victim of exploitation is, the more complex the criminal organisation. For that reason, while local trafficking networks use methods similar to those used by international traffickers, many times they may be simply family groups, persons that do not require many resources or organisation to exploit boys, girls and adolescents, who are the most vulnerable persons.

4.2.1 Recruitment methods

In the case of Colombia, women are recruited by professional networks headquartered in Medellín, from where they operate in cities like Pereira, Bogotá, Cali, Cartagena and Santa Marta.³⁰⁸ Joana, a victim of sexual exploitation, stated that the women in Pereira are «[...] especially vulnerable to recruitment by traffickers because the region does not have many sources of work».³⁰⁹

This situation is reproduced also in international trafficking in Honduras, Nicaragua and El Salvador, where recruitment is done through the deceptive promise of jobs in Mexico or the United States. The victims accept to travel, unaware that they will be handed over to traffickers in Guatemala City. The method of recruitment is basically deception and,

307 Fourteen persons were arrested in this operation in January, 2004.

308 Information from operation Sin Fronteras, of the Colombian prosecution. See El Tiempo, 23 January, 2014.

309 Interview with an investigator from the Criminal Investigation Division of the Prosecution.

later, coercion. Victims are recruited through at least three modalities.

Individual recruiters

A victim from Pereira stated that a woman, Rosa, contacted Viviana, another sex worker and told them that there was work in Uruguay. She said that they would earn good money (US\$ 500 per night), that they would have a gym, a driver, three daily meals, and if they were over weight, they would get operated on.³¹⁰

Cristina, another Colombian victim of sexual exploitation, was able to escape from Guatemala and told of the manner of recruitment through a man who offered to pay for all her travel expenses, passport, airplane ticket, etc. He took her to Guatemala where he handed her to another man who turned out to be the owner of a brothel. The owner said that she owed him US\$ 5,000, and that she must pay for it with work.³¹¹

Joana, a woman from Pereira, stated that her family was given an advance of US\$ 10,000 for her to come to Guatemala. The contact of the trafficker who would bring her to Guatemala also spoke with her. Once in this country, they told her that she must work to pay the debt and that she could not leave the brothel until she had paid.³¹²

Esmeralda, a 15 year-old girl from Managua, Nicaragua,³¹³ was deceived by a woman who bought her clothes and shoes and gave her money to earn her trust. Fifteen days later, the woman told Esmeralda that she would give her US\$ 500 to go to Panama to buy clothes. Esmeralda said that she

could not go because she did not have an ID. Then the recruiter gave her an open soft drink bottle that contained a drug. Esmeralda woke up at the border but rather than the border with Panama, it was the border with Guatemala. There, an immigration officer saw the ID that was forged and belonged to a 30 year-old person so the agent realised the fraud. However, the recruiter spoke up and they were allowed to cross the border. Esmeralda said that she felt drugged, that she was taken to a hotel and then to a night club. There they put her in a room that was like a prison cell, she was dressed and told that she had to dance. Because she refused, they beat her, ran after her, put her in other, dark rooms, and was ordered to obey. That happened for fifteen to thirty days during which she had to take drugs, dance and have sex with customers, before she was able to escape.³¹⁴

Recruiters receive money for every victim they get. In September 2011, the Colombian Attorney-General's Office convicted a woman who engaged in recruiting victims. The sentence was nine years in prison and 725 minimum wages. The woman had recruited at least thirteen victims.³¹⁵

Another Honduran adolescent tells that a woman offered her work as a waitress. «I was shocked when I saw I was not coming as a waitress, but that she had asked money for me. This is when I became acquainted with the business. He [the trafficker] had bought me for 5,000 pesos. When I wanted to leave he said that I had to pay him the 5,000 pesos. I said I did not have money and he said that I should

310 Statement by victim in the Choppers case. Criminal case 2035-2012-94. Ruling of 5 April, 2013 by the Second Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Villa Nueva.

311 Interview with an investigator from the Prosecution's Criminal Investigation Bureau

312 *Ibid.*

313 According to the IOM, Nicaragua is the main supplier in Central America for the trafficking in persons offense.

314 Testimony by Esmeralda, Nicaraguan victim of sexual exploitation in Guatemala. Available at: <http://www.elmundo.es/america/2012/12/01/noticias/1354396973.html>.

315 See in: <http://www.eje21.com.co/risaralda-secciones-59/41247-juez-de-pereira-condena-a-nueve-aos-de-crcel-a-mujer-por-trata-de-personas-y-lavado-de-activos.html>

In the Rodizio Espada case, the Colombian Prosecution was able to dismantle a trafficking network that operated in the route between Medellín and Guatemala and kept women captive in the latter country, under threat of killing their families in Colombia.

find a way to pay because otherwise he would call the police and have me put in custody. I felt trapped because I knew nobody. I wanted to die; I reached the moment when I took pills. They had to pump my stomach. All I wanted was to not continue to live in this world; to have a different life: a home».³¹⁶

Modeling agencies

A second method of recruitment is through modeling agencies that place ads on the radio and other media to attract young women wanting to work in that profession. They also advertise through friends who work for the organisation for the specific purpose of recruiting young women.

Once the person establishes contact with the agencies or traffickers, she is offered work as a model. At times, victims are subjected to cosmetic surgery, all of which increases their debt. Organisations pay an advance to the family of the victim, in amounts that may be US\$ 10,000 to recruit them to work in Central America or Mexico. The organisation also advances the money to pay for transportation and lodging. Once in Guatemala, the victim is told of the debt bondage and that she must work until she pays the debt off.

There are several modelling agencies operating in Latin America and the Caribbean,³¹⁷ with operations in Colombia, Guatemala, México, other countries of Central America and the Dominican Republic. Through deception, they recruit women for exploitation in the countries of destination.

In the Rodizio Espada case there was a connection between modelling agencies in Colombia and one in Guatemala that was dismantled by the Colombian Prosecution. Likewise, Nicaraguan businessman Henry Fariñas was the owner of several modelling agencies in addition to the «Elite» night club chain,

with outlets in several countries of Central America. Fariñas was convicted to 30 years in prison in Nicaragua for facilitating the passage of drugs from Colombia to Mexico, together with two Colombian nationals.³¹⁸ Although he was not convicted for human trafficking, Fariñas managed Club Elite V in Guatemala, where he exploited foreign women sexually.

In the opinion of Lins Tillit, of the Association Alas de Mariposa, it is necessary to educate young women to prevent them from falling victims to these gangsters who hide behind presumed student exchanges or modelling agencies.³¹⁹

Recruitment through ads

Another method of recruitment is through social networks, through the same modelling agencies or through employment agency job offers.

In Retalhuleu, recruitment methods involve the use of a local radio station «La Patrona», through which ads or messages are broadcast to request the participation of young women in different events, particularly beauty contests, where the victims are recruited, particularly when they are underage.³²⁰

The Prosecution Section against Trafficking in Persons has detected how organised groups publish ads in social networks like Facebook, to which anyone can have access. «This situation puts the integrity of young women seeking jobs at risk», said the assistant prosecutor. In the last case detected, a student answered the ad. When she went to her appointment she realised that it was about sexual

316 Interview with victim of trafficking in Tecún Umán, on the border with Mexico.

317 See in: <http://m.s21.com.gt/nacionales/2015/02/02/mafias-obtienen-q30-mil-cada-victima-trata>

318 See in: <http://www.elfaro.net/es/201302/internacionales/11097/El-narcotraficante-Henry-Fari%C3%B1as-busca-anular-condena-de-30-a%C3%B1os.htm>

319 See in: <http://m.s21.com.gt/nacionales/2015/02/02/mafias-obtienen-q30-mil-cada-victima-trata>

320 Interview with members of the AMARC women's organisation, in Coatepeque, March 9, 2015.

services. She was unable to escape, was raped and received death threats.³²¹

Other times, victims are murdered. The head of the CAIMUS in Escuintla states: «Two girls, who came from Puerto San José, two years ago, were from Escuintla and were contacted through the Internet. They were summoned to Pradera; there they were picked up and later showed up dead. Surely they were used for trafficking and then murdered».

Recruitment in private and public schools

Sometimes students themselves establish contact with students who are leaders in private or public schools; there is the case of 13 or 14-year old adolescents who are finishing elementary school and show considerable physical development. «A high school student might establish contact with an elementary school student and tell her how to make friends; once she has made friends with the right girl, she is taken to a place where she is promised to be paid; that is trafficking. For that reason I say that it can be done professionally; these girls may know what they want, how far they want to go. When these young girls say what they were doing and are asked: “Did you know that this is a crime?” they reply: “It is a crime?” To them it is normal, that is why I talk about these events being considered to be normal. To them, there is no harm in it».³²²

4.2.2 Methods of transfer

Victims who are brought from countries in Central America to Guatemala usually travel by land. Victims who come from Venezuela and Colombia travel by air. This always involves border crossings.

At any rate, at border points or at airports, traffickers have Migration officials ready to allow the illegal entry.³²³ While Central American citizens no longer need a visa to enter Guatemala, since they use Form CA-4, they must always go through check points for identification.³²⁴ Still talking about Colombia, the visa requirement to enter Guatemala was eliminated in 2012.

One of the Colombian victims told how the trip took her from Pereira to Bogotá, then to El Salvador, Honduras and Guatemala. «On June 11, 2011, we travelled to Honduras, where we were introduced to a man by the name of Nicolás, who told us that he was there on behalf of Bruno, from Guatemala, to pick us up. Before crossing the border we received forged documents. Then we arrived in a house in Guatemala, where there was a person who said his name was Bruno and told us that we had to put make-up on because we would be working that night».³²⁵

321 See in: <http://m.s21.com.gt/nacionales/2015/02/02/mafias-obtienen-q30-mil-cada-victima-trata>.

322 Interview with the Oblate Sisters Congregation, Refugio Casa de la Mujer, 20 February 2015.

323 Interview with María Eugenia Villareal, Guatemala City, 26 January, 2015.

324 *Agreement CA-4* eliminated migration procedures in order to streamline the movement of persons and goods between Guatemala, El Salvador, Honduras and Nicaragua.

325 Victim statement in the Choppers case. Criminal case 2035-2012-94. Ruling of 5 April, 2013 by the Second Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of Villa Nueva.

Map 3.
Flow of women who are trafficked for sexual exploitation purposes



Source: UNODC (2012a: 55).

Groups obtain illegal documentation to enter the country and have contacts with the immigration authorities; several cases prove at least two examples of that relationship: a) the issuing of false documents, especially passports, identity cards or other personal identification documents; b) that the immigration authorities and police are openly involved in allowing the entry of undocumented persons.

In January 2014, a network of passport forgers was arrested in Guatemala City. It was found that this network issued passports to citizens of China, Cuba, India, Colombia, Russia, Peru, Romania, Jordan, Pakistan, Syria, Nepal and Ghana.³²⁶ Each passport cost 10,000 quetzales. The network was made up of 20 persons, among them the Secretary General of the Migration Trade Union, Migration Service airport delegates and officials from the National Registry of Persons (RENAP). Later, in October of that same year, a person who had 400 forged passports was

arrested. In addition, computers that presumably were used to counterfeit passports were seized.³²⁷

Reception and harbouring methods

The Choppers case showed how a trafficking network operates in Guatemala City. Traffickers have several houses that they rent to keep the women captive. These buildings are true fortresses as a witness described to the Court of Sentence: she found eyebolts where presumably padlocks were used on doors to prevent people from leaving, had bars and new locks. «There were bars only in the front door, but they added new bars to the door, on the balcony window and on the back door to the garden. Everything was locked on the day of the search. The house itself looked like a cage; even the backyard had bars».³²⁸

326 See in: <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=498&cntnt01returnid=67>

327 See in: <http://www.publine.ws/gt/nacionales/denuncia-de-la-embajada-de-estados-unidos-permite-la-incautacion-de-400-pasaportes-falsos/Tetodg---OftsWisTlx2lg/>

328 Statement by the owner of a house that was used to keep victims captive. Criminal case 2035-2012-94. Ruling of 5 April, 2013 by the Second Court of Criminal Sentence, Drug Trafficking and Environmental Crimes of Villa Nueva.

The criminal organisation has several houses where they keep the women in captivity. A guard or person in charge, who works for the exploiter, controls the houses. These safety houses are located in gated communities, in places that are close to the brothels. Traffickers negotiate the lease of the houses as couples in order not to raise the suspicion of the owners. In the Choppers case, the victims were rescued from a house located at Colonia Monte María I, but there were other houses in zone 16 and in zone 11, close to the Mariscal area.

In each house, the structure includes the following persons:

- **Person in charge:** Is the second in command in the criminal organisation and is responsible for the direct control of the victims. It is usually the person who acts violently against them. In an interview in the framework of this investigation, the PDH assistant of Coatepeque stated that the person in charge of security at «La Embajada» night club was convicted for violence against women, for keeping victims captive and for beating them.
- **Security:** Together with the person in charge there may be security personnel who are in charge of preventing the escape of victims. They help the person in charge of keeping the victims captive.
- **Driver:** Usually, victims are transferred to the brothels in vehicles owned by the organisation that are the responsibility of a driver. At times, this role is fulfilled by taxi drivers who work for the organisation and who are also instructed to use violence against the victims if they try to escape.

There are several security structures in the brothels. Frequently, the person in charge travels with the women and stays at the brothel to watch them. But, in addition, security personnel and assistants are added: the cashier or administrator, who keeps the accounts of the business; the bartender and/

or, in other cases, a disk jockey, who conducts surveillance tasks as well.

Usually, the administrator is the spouse or partner of the exploiter. In the Choppers case, a victim stated that «Angel's wife, Ana, managed the business; it was a restaurant where sexual services were provided».³²⁹ In the Centroerótica case, the administrator was also the spouse of the main exploiter.³³⁰

Usually, the waiters of brothels also recruit local victims for sexual exploitation. Dulce explains that «Rony, one of the waiters that worked at the Trébol business, was in charge of recruiting girls; he was paid 750 quetzales for every victim he took into the business».³³¹ In addition, waiters also fulfill surveillance roles and take information to the persons in charge. They are the ones who establish contact with the customers and who keep track of infractions to get «fines» charged to the victims.

Means to control victims

Once the victim is in the hands of the exploiter, the main means to control her is through debt bondage. A girl who was recruited when she was 13 said that «Women are forced to buy dresses and shoes that cost 1,000 to 1,500 quetzales; they create debts for them from the very first day. They are taken to a room to choose clothes and dresses and do not let them out until they pay for everything».³³²

Physical and psychological violence is added to the debt bondage. A Colombian victim of trafficking

329 Criminal case 2035-2012-94. Ruling of 5 April, 2013, by the Second Court of Criminal Sentence, Drug Trafficking and Crimes Against the Environment of Villa Nueva.

330 Criminal case C-43-2013. Ruling of 29 August, 2013, by the Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

331 Interview with Dulce, woman convicted for trafficking in persons who was the victim of sexual exploitation, 25 February, 2015.

332 Interview with woman convicted for trafficking in persons who was the victim of sexual exploitation, 25 February, 2015.

that travelled of her own free will to Guatemala stated that «[...] she was not told that she was going to be kept as a slave. She was not told that she would be beaten and kept captive. They were told that if they were overweight there was a gym and scalpel to operate on them. They were told that they would have a driver to take them around. What they did not tell them is that the driver would be their watchman and that they would not be allowed to go anywhere alone».³³³

Most victims are constantly under threat. They are warned that if they go to the police, their families will pay the consequences. Recruiters know the families' whereabouts.

Usually, exploitation is a complete scheme. Victims are not fed; one of them tells that the man in charge of victims at the Choppers restaurant had orders to beat them, abuse them verbally, they did not get breakfast, only one meal a day, and that is it. «Once he tied her hands. Other times he beat and kicked her. They had a belt that they used to beat the women who did not obey. One of the victims received electric shocks with wires. Victims cannot escape and live in fear».³³⁴

In the case of a night club in Coatepeque, one of the victims escaped and denounced the violence against her and the other victims. The owner of the place was summoned and the case was taken to trial for violence by the man in charge, who kicked and punched them. The individual was convicted for the crime of violence against women.³³⁵

However, cases of acts of violence rarely reach the justice system. Most victims suffer violence without the possibility to escape their captivity. That is why suicide attempts and the death of victims are common.

333 Statement by victim in the Choppers case. Criminal case 2035-2012-94. Ruling of 5 April, 2013, by the Second Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Villa Nueva.

334 *Ibid.*

335 Interview with auxiliary of PDH in Coatepeque, 9 March 2015.

4.3 Sexual exploitation centres in Guatemala

The main place where sexual exploitation occurs is a brothel, where victims of trafficking are generally kept as slaves or in sexual servitude. Of course, there are other business forms, such as intermediation between customers and sexual workers by telephone, or, among other places of exploitation, the rental of rooms in motels or inns where subordination exists for women who offer the services to the owners.

Sexual exploitation centres (whorehouses) can take the form of a brothel, a strip club, a nightclub, a spa, a massage parlor, bars, ceviche diners, cafeterias, other types of diners, beer joints and closed houses (Gutiérrez Valdizán, 2012). They can be in the form of other businesses like hardware stores or padlock sales.³³⁶ Despite that diversity, it is advisable to classify them taking into account the economic status of the customers they serve, because that is the common factor in all of them, regardless of the type of place where the sexual exploitation takes place.

From the point of view of customers socio-economic status, that is, their income level,³³⁷ five major site categories have been defined,³³⁸ regardless of their specific location (see graph 5).

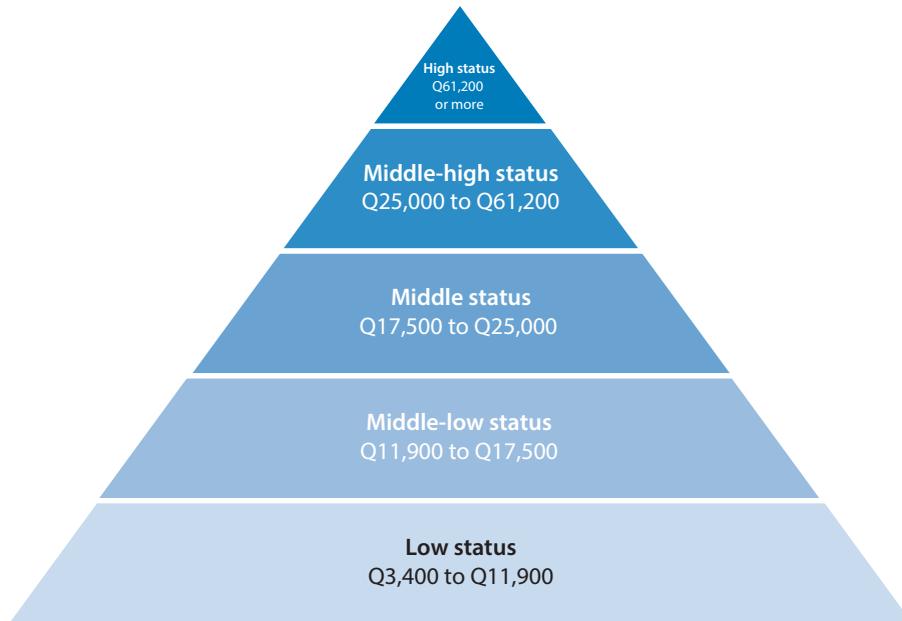
336 Interview with analyst from the Prosecution Section against Trafficking in Persons, 8 September, 2014.

337 A study by the Guatemalan Union of Advertising Agencies (UGAP, 2013) scientifically describes socio-economic levels by dividing them into seven categories: A, B, C1, C2, C3, D1 and D2, classified with the same criterion. This study did not take the marginal class into account, because it includes only persons with permanent purchasing power.

338 UGAPs categories have been grouped as follows:

- High level: categories A and B
- Middle high level: category C1
- Middle level: category C2
- Middle low level: category C3
- Low level: categories D1 and D2

Graph 3.
Economic status levels by monthly income of customers



Source: Produced by authors based on UGAP (2013).

Table 8.
Type of exploitation centre by cost of sexual service

Type of centre	Percentage of the population *	Cost per sexual service**	
		In USD	In quetzales
Type A Centres	1.8%	Over 200	Over 1,600
Type B Centres	5.9%	100to 200	800 to1,600
Type C Centres	11.6%	50 to 100	400 to 800
Type D Centres	17.9%	20 to 50	160 to 400
Type E Centres	62.8%	Under 20	Under 160

Source: Prepared by authors with information from interviews and systematised cases.

Notes:

* Percentages represent the population according to purchasing power based on the classification done by UGAP (2013).

** Cost per service was established based on the systematisation done of cases and interviews with victims.

4.3.1 High income (type A) group:

These are places designed for high economic customers, or «VIP», as they are frequently referred to. According to the testimony of victims, these are often visited by politicians, businessmen, foreigners who can pay prices in dollars, as well as drug traffickers, and at times, Justice System officials.³³⁹ Usually, these centres are in upper-scale neighborhoods (zones 13, 14, 15, and on the highway to El Salvador), as well as in some department capitals. They may be closed houses with exclusive membership only for persons who have been specifically invited to belong. They are also covered up as spas or massage parlours. Some are more exposed, like the strip clubs or night clubs that offer their services openly to the public, with colorful advertisement signs.

1.8 per cent of the estimated population of victims work at these type A centres (UGAP, 2013), which is 875 persons.³⁴⁰ Out of this group, it is estimated that most victims are foreigners (Colombian, Honduran, Nicaraguan, Salvadoran and Costa Rican, Brazilian and Eastern European in a smaller proportion). There are also Guatemalan victims, underage girls, particularly. The information on the nationality of the exploited women suggests that these centres have links with international traffickers and, particularly, with drug traffickers. In fact, to operate they need recruitment and illegal transportation networks from the victims' countries of origin.

This is the case of Spa Prestige³⁴¹ that operates in zone 14, where an operation by the Prosecution Section against Trafficking in Persons located three Salvadoran and one Costa Rican victims as well as a Salvadoran underage girl. Sexual exploitation took

place in that site behind the front of a massage service. Women remained captive and the woman in charge was a Nicaraguan national. The owner of the business is also a foreigner, Costa Rican, and used a Guatemalan as a straw man, making him appear as the owner of the business and responsible to the Tax Authority (SAT). Work hours were from ten a.m. to two a.m. from Monday to Saturday, so the women worked sixteen hours per day.³⁴² Ten to fifteen customers per day visited the site.³⁴³ Since there were five women being exploited there, each of them provided an average of two to three services per day, or twelve to fifteen per week.

Drug traffickers are presumably important customers, who pay for the outings of the women, and this usually involves a full day of service or a «round», in trafficking jargon. These services include trips outside of Guatemala City, at times in private planes, helicopters and luxury cars.³⁴⁴

The cost of a night outing or a «round» of twelve hours with a customer is around USD820.00.³⁴⁵

In these conditions, it is estimated that a type A sexual exploitation victim may generate around Q1.6 million per year.³⁴⁶ Added to this is the income that exploiters obtain from the sale of alcohol and sometimes drugs. Victims state that customers invite them to beer and other drinks, at prices which are two or three times higher than normal; in general, the price of one of these drinks is Q90 on average. These added sales can generate close to 30% more earnings for the exploiter.³⁴⁷

339 Statement by the victim in criminal case C-43-2013. Ruling of 29 August, 2013 of The Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

340 From the total number of victims, estimated at 48,617.

341 Criminal case C-1073-2007-21345 (61-2010) of the Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

342 Statement by the security guard of the site in criminal case C-1073-2007-21345 (61-2010).

343 *Ibid.*

344 Testimony of victim to the Prosecution of Colombia. Cited by Restrepo E. (2012).

345 *Ibid.*

346 This number agrees with the studies done by the International Economic and Administrative Science School of Universidad de La Sabana (en Vélez Rincón, C.I., 2013: paragraph 2).

347 Interview with prosecutors from the Prosecution Section against Trafficking in Persons, 8 September, 2014.

4.3.2 Middle-high income (type B) group:

Type B centres are designed for medium-high consumption customers with incomes between Q25,000.00 and Q61,000.00. Like those of Type A, the customers of this group are independent professionals, politicians, businessmen and drug traffickers. These brothels are located preferably in zones 9, 10, 11 and 14, in the form of strip clubs or night clubs, closed houses or hidden behind spa or massage parlor fronts.

5.9%³⁴⁸ of the total number of victims, close to 2,868 persons are estimated to work in this type of joint. It is estimated that, in the country, there may be around seven hundred Type B sexual exploitation centres, including closed houses; most are in Guatemala City, the capitals of departments or regions where drug traffickers operate. The victim profile is similar to Type A centre victims since many work in Type A centres and are transferred to Type B centres about two years later for customers with lower purchasing power.

These centres showcase the victims in public webpages. According to an underage victim «The webpage had our pictures. It was like a catalogue that showed rates and work hours. The victim was identified with a pseudonym».³⁴⁹ One of the centres published its information in www.centroerotica.com and also published sexual videos of the victims.

Another underage victim who was exploited in the same joint explained that she charged for each service Q500 for half an hour; Q800 for an hour;

and Q1, 600 for two hours.³⁵⁰ The rate goes up for outings. Victims were taken to motels in the city.³⁵¹

Type B joints in cities outside the capital offer the same service. They are found in department capitals and areas close to motels where the victims are taken. Type B joints also operate in border towns and areas where drug traffickers live.

In a case under investigation,³⁵² Wendy was taken from Jutiapa to La Libertad, Petén, under the deceptive offer of a job as a waitress. The victim stated that the administrator charged Q600 and that during the week she remained captive, she had an average of six sexual encounters per day, which went up to eight on Friday and Saturday. There were Salvadoran and Honduran women there also, who charged up to Q800 per service. She noticed that men in new pick-up trucks were the customers, who carried large sums of money in cash and wore gold chains. There was a table in the centre of the room with cocaine that customers were free to use. The cost of a sexual encounter goes up in places like La Libertad, Petén, because of the distance and difficult access.

Virgin girls and underage girls are also auctioned in urban centres of cities outside the capital. In Suchitepéquez, a network that engaged in the sexual exploitation of children offered children between 13 and 17 years of age for sex in that department. The network had a long list of exclusive customers who paid between Q600 and Q2,000³⁵³ for virgin girls.

In Type B centres, a victim provides an average of six sex services per day. At Q800 per day, the victim could produce Q1.1 million per year for the exploiter.

348 Belong to economic segment C1 as classified by UGAP (2013).

349 Victim's statement in criminal case C-43-2013. Ruling of 29 August, 2013, of the Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

350 *Ibid.*

351 *Ibid.*

352 File MP 0025-2014-0145.

353 File on the sexual exploitation of underage persons in Suchitepéquez.

4.3.3 Middle income (type C) group:

Type C centres serve middle-class customers. In Guatemala City they are in middle-class neighbourhoods such as Colonia Jardines de Utatlán, in zone 7; Colonia Mariscal, in zone 11; from 0 to 12 street in zone 9; zone 10, and zone 2. In cities outside the capital, this type of centre is found at the borders, especially in Coatepeque, Tecún Umán, Jutiapa and Chiquimula.

An example of Type C centres is a spa³⁵⁴ located in zone 10. Five Nicaraguan and Salvadoran women were found working there when the search was done. This centre advertised in the Internet with a page on Facebook that showed the pictures of the women in erotic positions and wearing skimpy or seductive clothes. The spa also advertised in the classified ads section the press. The place was discovered through the complaint filed by a young Guatemalan woman who was recruited with deception because she was offered a job at a call centre. Katia showed up to work but realized that it was a sexual exploitation centre disguised as a massage parlour. The administrator forced her to wear a T-Shirt from the Spanish soccer team and that picture was quickly uploaded to Facebook to offer her to customers through the Internet. A customer visited and she refused to have sex with him but was forced under threats by the staff. The customer paid Q500 with a credit card for one half hour. After being raped, Katia fled the place and filed a complaint with the Prosecution. During the hours she spent there, the victim was able to see five young women, two Nicaraguan, two Salvadoran and one Honduran.³⁵⁵

The number of people who are sexually exploited in Type C sites is estimated at 11.6 per cent,³⁵⁶

354 The name of the place is omitted for security reasons. File MP-0025-2015-41, Unit against Sexual Exploitation of the Prosecution Section against Trafficking in Persons.

355 File MP-0025-2015-41 of the Prosecution Section against Trafficking in Persons.

356 Level C2 is estimated at 11.9 per cent of the population with purchasing power according to UGAP methodology UGAP (2013).

which is equivalent to some 5,639 victims. Several ads in the joint offer sexual services for amounts that vary between Q400 and Q800 for one half hour.³⁵⁷ Estimates done by the assistant prosecutor of the Prosecution Sections show that each victim generates earnings of Q30,000 a month³⁵⁸ in these centres. However, since each victim provides six services per day and the average charge per service is Q600, each victim is estimated to produce Q3,600 per day to the exploiter, which is Q86,400 per month or Q1,036,800 per year.

4.3.4 Middle-low income (type D) group:

Type D centres are designed for lower income customers, middle-low class with incomes between Q11,900 and Q17,500 per month. For that reason, more customers visit these places. The customers are mainly bureaucrats, lower level executives in commercial or industrial companies, employees, salesmen, among others.

In Guatemala City, these centres are in areas such as zones 3, 5 and 1, and mostly in the region of El Trébol and zone 12. They operate as closed houses or joints that are open to the public like lower level strip clubs or night clubs. They also take the form of hotels and motels. There is a large number of these in zone 1, in 18 street and 9th Avenue, called «La Tijuanita» (Gutiérrez Valdizán, A., 2012), with women who are recruited from different departments in the country. The women use the rooms in the many motels of that area.

These places are well organised, with an administration structure and a number of persons who provide services as guards, watchpersons, and administrators.

357 Interview with analyst from the Prosecution Section against Trafficking in Persons.

358 Interview with the assistant District Prosecutor from the Prosecution Section against Trafficking in Persons published in Siglo 21, 2 February, 2015.

Type D centres have a high customer turnover. There, a sexual encounter is fifteen minutes on average and the price range is between Q100 and Q300 per service. It is estimated that 17.9 per cent³⁵⁹ of the victims are exploited in Type D centres. This is an estimated population of 8,702 persons. The number of victims that work in these centres varies because many traffickers have other businesses like the sale of food and beer, and they take advantage of their location to sexually exploit underage persons. This means that there may be centres with two or three persons, while the more structured places may have 25 to 40 exploited persons.

At an average of 16 services per day per victim, and an average price of Q200 per sexual encounter, the income for the trafficker for committing this offense could be Q3,200 per day, which becomes Q76,800 per month or Q921,600 per year per victim.

4.3.5 Low-income (type E) group

Type E or low-income centres cause the largest exploitation to victims under extremely harsh work conditions. Because these are very low-income customers, victims are forced to provide a large number of services each day, with serious consequences for their health.

Type E centres are located in Guatemala City in areas such as zone 7, and in areas where there is heavy traffic like crossroads, places like Agua Salóbriga, Sanarate, Yepocapa,³⁶⁰ highway crossroads or the municipal capital of Chimaltenango. This category includes the exploitation of mother and daughter and other forms that do not require structured organisation. However, it is believed that most of these centres have well set-up trafficker networks that obtain huge benefits from this massive market.

359 Income group C3 is estimated at 17.9 per cent of the population with purchasing power (UGAP, 2013).

360 Criminal case 59-2014. Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Escuintla.

These centres operate in cafeterias or other businesses that act as fronts. In Amatitlán, the Attorney-General's Office dismantled a place where underage men and women were sexually exploited and operated behind the front of a cafeteria and beer bar called El Sheik. When the search was done, a 15 year-old boy with the surname Cristal, and a 16 year-old girl were found. Before working at Cafetería El Sheik, Cristal had been exploited in four more centres in Amatitlán that belonged to the same trafficker. The cost of the service was Q60 for «15 minutes of service».³⁶¹

The average cost per service at these centres is estimated at Q75, although sometimes it may cost as little as Q25. In the La Terminal case,³⁶² the victims were kept locked all day long and their workdays were almost 16 hours. They could not go out and their pay was only Q700 per month.

Victoria, an 11 year-old girl who was exploited at a restaurant and beer joint in Agua Salóbriga, Sanarate, had to work twelve hours per day and was forced to provide between six and eight sex services per day under threat. When she did not want to provide a sex service the administrator of the place beat her and also forced her to consume drugs and alcohol. The owner charged Q100 for each sex service.³⁶³

An 11 year-old girl forced into prostitution in motels in zone 7 of Guatemala City charged Q100, of which Q25 went to pay for the room.³⁶⁴ The victim had sex encounters every fifteen minutes, which caused her anal distension. At a nearby exploitation centre with 40 rooms, 24 underage persons were found. Each sex service had a price of Q75 for fifteen minutes.

361 Criminal case 43-2011. Ruling of 23 November, 2011 by the Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Amatitlán.

362 Ruling of 24 April, 2014 by the Second Court of Sentence of Femicide cases.

363 Criminal case 0187-2014-00207. Ruling of 16 October, 2014 by the Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment in El Progreso.

364 File OJ-01188/2014-200202, Second Court for Crimes of Femicide of Guatemala.

One of the workers stated, however, that her customers did not take more than four minutes and she had up to 30 sexual encounters per day.³⁶⁵

There are other centres that charge lower prices including those that offer oral sex. Some of these may cost Q50. In cities outside the capital, in places like Malacatán, Tecún Umán and towns that border with Mexico, a sexual service may cost Q25.³⁶⁶

Based on the percentage of customers in this income bracket according to UGAP (2013), it is estimated that 62.8 per cent of the victims are in this type of centre, a population of 30,531 persons. At 16 services per day and a cost of Q75.00 each, the revenues for the exploiter per victim may be around Q1,200 per day, which is, Q28,800 per month or Q345,600 per year.

4.4 Economic impact of trafficking

To make a macroeconomic estimate of trafficking in persons for the purpose of sexual exploitation, two methodologies were used: deductive and inductive, respectively. Each one stems from a number of criteria that take into account progress in international estimates of trafficking in persons in the economy, done by entities such as the International Monetary Fund (IMF), The Bank of Guatemala (BANGUAT, National Accounts Statistics), or the National Statistics Institute (INE, price indicators), among others.

4.4.1 Application of the deductive method

With the use of the deductive methodology, illegal financial flows (IFF) are expressed as a percentage of the global Gross Domestic Product (GDP). In 1998, the Director-Manager of the IMF, Michael Camdessus, stated, in a speech in Paris that «[...] estimates of the current scale of money laundering go beyond any stretch of the imagination; to talk about 2 per cent to 5 per cent of the global GDP, would probably be a range where there could be consensus».³⁶⁷

If this is applied to the case of Guatemala for the period between 2008 and 2014, and assuming that illegal financial flows are in the higher range proposed by Camdessus in 1998, 5 per cent of the GDP with 2001 prices, the calculations that are presented in Table 9 are obtained.

365 Interview with prosecutors from the Prosecution Section against Trafficking in Persons, 8 September, 2014.

366 Interview with Oblate Sister Congregation, Refugio Casa de la Mujer, 20 February, 2015.

367 Michel Camdessus (10 February, 1998). «Money Laundering: The Importance of International Countermeasures», address at the meeting of the Financial Action Task Force on Money Laundering, Paris, 10 February, 1998, [on line], available at: <http://www.imf.org/external/np/speeches/1998/021098.htm> (traducción libre).

It should be noted that in the calculation done in this exercise, only the money laundering component is included and not the flight of capitals due to dirty money.

Table 9.
Illegal financial flows as a percentage of the GDP: Trafficking in persons for the purpose of sexual exploitation
(in millions of quetzales of 2001 and of each year in the period 2008-2014)

YEAR	GDP				IFF (pk) as a % of GDP	Trafficking in persons for sexual exploitation (as a % of GDP at pk)		Trafficking in persons as a % of GDP at current prices	
	Millions of Quetzales of 2001	Annual rate of variation	Millions of Quetzales of each year	Annual rate of variation	5.0%	14.0%	Percentage of the GDP	14% of the 5%	
					Millions of Quetzales of 2001	Millions of quetzales		Millions of quetzales	Percentage of the GDP
2008	192,894.9	3.3%	295,871.5	13.0%	9,644.7	1,350.3	0.7%	2,268.2	0.6%
2009	193,909.6	0.5%	307,966.6	4.1%	9,695.5	1,357.4	0.7%	2,273.8	0.5%
2010	199,473.8	2.9%	333,093.4	8.2%	9,973.7	1,396.3	0.7%	2,465.2	0.5%
2011	207,776.0	4.2%	371,011.6	11.4%	10,388.8	1,454.4	0.7%	2,727.0	0.5%
2012	213,946.6	3.0%	394,723.0	6.4%	10,697.3	1,497.6	0.7%	2,904.8	0.5%
2013	221,820.0	3.7%	423,106.6	7.2%	11,091.0	1,552.7	0.7%	3,143.8	0.6%
2014	230,599.0	4.0%	454,211.8	7.4%	11,530.0	1,614.2	0.7%	3,364.5	0.6%

Source: Produced by authors with data published by Baker at Camdessus, BANGUAT and INE, with the assumption that 40 per cent of illegal financial flows come from trafficking in persons.

During the period 2008-2014 the GDP, at 2001 prices in Guatemala, grew from Q192.9 billion to Q230.6 billion, with an annual cumulative growth rate of 2.6 per cent. At current prices, the GDP grew from Q295.9 billion in 2008 to Q454.2 billion, with an annual cumulative growth rate of 6.3 per cent.

In order to have estimates based on the percentages proposed by Camdessus, calculations were made where, in the highest percentage of the proposal (5 per cent of global GDP), the amount of the IFF would be, in 2008, Q9.6 billion and, in 2014, Q11.5 billion.

It is believed that of the total flow of illegal funds, 40 per cent comes from trafficking in persons and, of this amount, 35 per cent comes from trafficking in persons for sexual exploitation (14 per cent), which leads to the following estimates:

- At 2001 prices, the IFF amount estimated for trafficking for sexual exploitation purposes grew from Q1.4 billion to Q1.6 billion from 2008 to 2014 (0.7 per cent of GDP at constant prices).
- At current prices, and with the use of inflation rates taken from the Consumer Price Index (CPI, base 2000=100.0), in 2008, the estimated amount of IFF from trafficking for sexual exploitation was Q2.3 billion and, in 2014, the amount went up to Q3.4 billion (0.6 per cent of GDP at current prices).
- During the period of the analysis, the cumulative annual rate of growth is 7.0%.

Table 10.
Trafficking in persons for sexual exploitation purposes: Population and per capita income based on time in service in quetzales

Description	Trafficking in persons as a percentage of the GDP at current prices			
	14% of 2%	14% of 3%	14% of 4%	14% of 5%
Sexually exploited population	48,617	48,617	48,617	48,617
Annual per capita income	51,409.31	77,113.96	102,818.61	69,204.84
Monthly per capita income	4,284.11	6,426.16	8,568.22	5,767.07
Daily per capita income	178.50	267.76	357.01	240.29
Hourly per capita income	22.31	33.47	44.63	30.04
Per service per capita income	11.16	16.73	22.31	30.04
Per service per capita income in US\$	1.39	2.09	2.79	3.75

Source: Produced by authors based on information about the participation of IFF as a percentage of the global GDP; estimations of the percentage of trafficking in persons; estimations done by authors of the percentage of trafficking in persons for sexual exploitation in Guatemala; information about the GDP at constant prices; and information of the CPI reported by INE, base 2000=100.0. These figures are convergent because of the population assumed to be victims of trafficking. Therefore, lower prices per service amount to approximately Q30 per service (USD3.75).

4.4.2 Application of the inductive methodology

The inductive methodology aims to build a total from the aggregated component parts.

To that end, an estimate was first made of the population that is victim of trafficking for purposes of sexual exploitation and other offenses related to commercial sexual exploitation, through the identification of the number of cases recorded by SICOMP, as well as other indicators that were outlined in the beginning of this Chapter. With these criteria, a total average number of victims of trafficking for sexual exploitation was estimated for the period 2010-2014 at 48,617 persons.

The type of service was stratified into five categories whose distribution at the low income level

amounted to 62.8 per cent of the victim population; and in the case of the most exclusive clientele, amounted to 1.8 per cent of the victim population. The victim population was estimated with those percentages for each income group.

Predominant prices in this market were defined based on average price perceptions from Q80 to Q3,300 per service. Likewise, the criterion was used that the lower the price, the larger the number of sex services per hour. This produced an average of 3 services per hour in the lower income group to 0.25 services per hour in the most exclusive sector. The total annual value per type of service was estimated on the basis of these assumptions. Finally, a 50 per cent range was estimated for the additional 10 per cent for related activities according to economic group.³⁶⁸ Table 11 shows the results of the estimation.

³⁶⁸ This estimate refers to collateral non-sexual activities performed by victims such as drug, alcohol and food consumption among others.

Table 11
Trafficking in persons for purposes of sexual exploitation: Inductive method (2014, in quetzales)

Type of service	Percentage distribution	Estimated population	Low price	High price	Medium price	Number of services per hour	Number of services per day	Average daily value	Average monthly value	Average annual value	Annual average value + related activities (50%)
A type centres	1.8%	875	1,600	4,000	2,800	0.25	2	4,900,593.60	98,011,872	1,176,142,464	1,764,213,696
B type centres	5.9%	2,868	500	1,100	800	0.50	4	9,178,889.60	183,577,792	2,202,933,504	3,084,106,905
C type centres	11.6%	5,640	400	800	600	0.75	6	20,302,459.20	406,049,184	4,872,590,208	6,334,367,270
D type centres	17.9%	8,702	100	300	200	1.00	8	13,923,908.80	278,478,176	3,341,738,112	4,010,085,734
E type centres	62.8%	30,531	25	125	75	1.25	10	22,898,607.00	457,972,140	5,495,665,680	6,045,232,248
										17,089,069,968	21,238,005,854
				48,617						Trafficking in persons for sexual exploitation purposes	3,364,531,463
		Exploited minors		15,000						Simple average	12,301,268,658
		Percentage of exploited minors / total		31%							
		Annual average value / Per capita GDP		4.7%							
		Simple average / PC GDP		2.7%						GDP	454,211,800,000

Source: Produced by authors based on estimations of number of trafficking victims for purposes of sexual exploitation, frequency of sexual services and costs.

These calculations result in an annual average value of sexual exploitation through trafficking in persons and other related offenses of Q21.3 billion, equivalent to 4.7 per cent of the GDP at current prices. When this number is compared with the estimation done with the deductive method which was Q3,364.5 billion (0.6 per cent of the GDP), the average value arrived at is Q12.3 billion (2.7 per cent of the GDP).

4.4.3 Exploitation centre profitability

According to estimates produced based on the types described above of the sex exploitation centres according to income level of customers, each centre can obtain significant annual profits ranging between Q345,600 and Q1,612,800 per victim (see Table 12).

Table 12
Annual profitability per victim by type of centre (full capacity assumed)

Type of centre	Annual profitability per victim
Type A	Q1,612,800
Type B	Q1,123,200
Type C	Q1,036,000
Type D	Q921,600
Type E	Q345,600.00

Source: Produced by authors based on interviews and rulings

5

Cases of trafficking for sexual exploitation brought before the justice system

5.1 Status of criminal investigation in cases of trafficking in persons in Guatemala

In the framework of international obligations in the area of human rights protection, the State of Guatemala has the obligation of structuring its State apparatus in such a way that it has the capacity to investigate, pass judgement and punish those responsible for trafficking in persons and to fully repair the victims. This involves several levels of obligations: a) the obligation of due diligence in investigation; b) the need to form multi-disciplinary teams; and c) the creation of effective measures to protect witnesses.

The duty to protect human rights imposes on States the obligation to conduct suitable and effective investigation work through competent bodies that are trained and which have enough resources for their investigation task.

The obligation to investigate must be diligently fulfilled to avoid impunity and prevent this type of offense to be repeated.³⁶⁹ In the light of this obligation by the State, seven fundamental principles make up the obligation of due diligence in investigation (See table 13).

³⁶⁹ Inter-American Court of Human Rights (IACHR), Case Anzualdo vs Peru case, paragraph 179 of the ruling.

Table 13
Governing principles of the obligation of due diligence in investigation

Diligence	The investigation needs to be conducted <i>ex officio</i> and proactively by competent authorities.
Timeliness	It must be conducted immediately, purposefully and in the least amount of time possible.
Competence	It must be carried out by competent professionals with the use of adequate procedures.
Independence	Authorities must be independent and impartial.
Completeness	This imposes the obligation to exhaust all possible means of investigation and to cover all possible perpetrators.
Participation	Guarantees respect for the victim and protection of her rights.
Gender and age approach	Assumes a gender perspective and all investigators are especially trained on the rights of women. ³⁷⁰

Source: Produced by authors based on CEJIL (2011).

5.1.1 Principle of diligence

The State's obligation to show due diligence requires that even when an offense has not been denounced to competent authorities, whenever there are clues of its occurrence, the State must start an impartial, independent and careful investigation immediately and *ex officio* to identify the perpetrators and begin prosecution.³⁷¹ For that reason, following this principle, once the authorities acquire knowledge of the offense, through any means, they must start an effective investigation *ex officio* and without delay through every means available.³⁷²

The Prosecution Section against Trafficking in Persons has made strides in undertaking *ex officio* investigations that do not depend on complaints filed by victims. In that regard, it developed a prosecution plan for 2015 that considers not only cases denounced but also now monitors the media, ads in social networks and other forms

of information available on trafficking. It is also implementing a Cybercrime Unit to detect child pornography that is broadcast through the Internet through special equipment.

Despite that, most cases initiated by the Attorney-General's Office continue to come from victim complaints, red-handed arrests by the police, operations carried by the Multi-sector Commission, or through Alba-Keneth alerts. Naturally, this is affected by shortcomings in advanced and sufficient intelligence-type information that may enable effective investigation. The Prosecution Section does not have enough national or regional information to do a complete and comprehensive assessment of every exploitation area and centre. Several sources have stated that trafficking takes place openly in the neighbourhood of the building of the Attorney-General's Office and no action is taken against it.

In the framework of the design of strategic investigation, it is important for the Prosecution Section on Trafficking to coordinate with the Money Laundering and Asset Forfeiture sections in order to extend the investigation to the economic benefits obtained from human trafficking, cross information regarding suspect transaction reports filed by IVE, and other relevant circumstances. Likewise, it is necessary to include the Prosecution

370 Inter-American Court of Human Rights (IACHR). Campo Algodonero vs. Mexico case. Ruling of 16 November, 2009. Series C, number. 205, paragraph 455.

371 Inter-American Court of Human Rights (IACHR). Bayari vs. Argentina. Ruling of 30 October, 2008, cited by CEJIL (2011: 23).

372 Inter-American Court of Human Rights (IACHR). Algodonero vs. Mexico case. Ruling of 16 November, 2009. Series C, number 205, paragraph 290.

Sections against Drug Trafficking and Organised Crime in the investigation process in view of the existing connection between both offenses and the information that these sections can provide on criminal groups. It is necessary to redouble efforts at systematisation, and to develop the analysis of the context on the places with greater prevalence, by identifying exploitation centres and producing profiles of trafficker networks. At present, the Liaison Unit of the Prosecution Section does not have the capacity to carry out these tasks due to insufficient personnel, which causes its role to focus exclusively on tactical and operational intelligence.³⁷³

In cities outside the capital, the beginning of *ex officio* investigation by district and municipal prosecution offices is almost inexistent. In most of the country, police and fiscal authorities demand that a complaint be filed as a requirement to start the investigation. Likewise, the Special Rapporteur of the United Nations on the sale of children stated in her report that she visited several authorised businesses that provide child prostitution in the back office. According to information received, everyone knows of the true use of those establishments but authorities issue and renew permits regularly³⁷⁴ and fail to carry out criminal investigations.

In Izabal, the authorities of the Security Commission of the Development Council of the department³⁷⁵ stated that they could not perform investigation work because they had no complaints filed. They were told that specific information had been provided during a workshop of the Department-

level network against trafficking in persons³⁷⁶ about places and persons involved in this criminal activity. When the members of the Security Commission were asked why no complaints had been filed with state authorities, a prosecutor explained that people do not file complaints «because trafficking is an offense where everyone makes money»,³⁷⁷ and explained that mothers and even the girls who are exploited obtain financial benefits and therefore are not interested in reporting the crime.³⁷⁸

In Jutiapa, another high trafficking prevalence area because of its proximity to El Salvador, the district attorney explained that the trafficking cases they were hearing were submitted by the Multi-sector Commission after raids done in night clubs. Not one case was investigated *ex officio* by the prosecution.³⁷⁹

Several delegates from PDH stated that they filed complaints for trafficking to district attorneys but that these are not qualified as such by the Attorney-General's Office (PDH, 2014: 47). In the opinion of the PDH delegate in Coatepeque, women's organisations and PDH visualise the problem of trafficking but other agencies do not. They had the first meeting with the authorities to fine-tune criteria on how to interpret the trafficking offense in 2009 and they believed that they were in tune with PGN and the Attorney-General's Office on the issue. However, when the offense was qualified, these agencies said that they are not human trafficking offenses. For example, there was a conflict over whether the conduct by the parents

373 Interview with personnel from the Liaison Unit of the Prosecution Section against Trafficking in Persons.

374 *Report of the Special Rapporteur on the sale of children, child prostitution and the use of children in pornography, Nalat Malla M'jid, about her mission to Guatemala, submitted to the Human Rights Council's XXII period of sessions.* Document A/HRC/22/54/Add.1, 21 January, 2013, paragraph 21.

375 Formed by the Department Government, the National Civil Police (PNC), the Ministry of National Defense (MINDEF), the Judiciary (OJ) and the Prosecution.

376 Formed by government agencies and non-governmental organisations at the initiative of the Secretariat against Sexual Violence, Exploitation and Trafficking in Persons (SVET). Workshop held on 23 February, 2015.

377 Prosecutor for adolescents in conflict with the law in the department of Izabal.

378 In its report on trafficking in persons (2012), PDH states that it believes that there is lack of knowledge about the crime in prosecution offices in cities outside the capital, as well as a lack of understanding of it.

379 Interview with district prosecutor of Jutiapa, Henry López, 16 October, 2014.

who induce their daughters to work in prostitution is trafficking.³⁸⁰

In Jalapa, PDH filed a claim against a mother who exploited her 14 year-old daughter sexually. The case was not even admitted in the Attorney-General's Office official records (PDH, 2014: 47).

In Tecún Umán, the head of the Task Force against Smuggling and Trafficking in Persons explained that operations related to trafficking had not begun because not sufficient intelligence was available to propose a strategy against this offense.³⁸¹ He explained that the Judge who specialises in trafficking was the only person who had compiled information about the major trafficking networks and sites, but he was appointed Director of the Correctional System, and took that information with him. When asked if he met with the municipal or district attorney to design strategies or plans, he said that no meeting was held for that.

In Petén, civil society organisations (CSO) expressed their concern for the high prevalence of the offense of trafficking, especially the exploitation of girls and adolescents, and stated that no investigation on trafficking has started in the last two years.³⁸² When asked, prosecutors stated that the police conduct operations frequently but never find underage victims because information is leaked.³⁸³

It is evident that in cities outside the capital, the principle of diligence is not met and authorities in charge of prosecution wait for a complaint to be filed

to start an investigation.³⁸⁴ This happens despite the fact that trafficking offenses take place in broad daylight. A nun who helps victims of trafficking said «Trafficking is becoming a natural thing that we do not want to see because maybe we cannot take action, so it is better not to see it. Finally, life will ask us "what are we doing for these persons?" because this is a concept: life is human pain».³⁸⁵

One of the main reasons why trafficking cases are not denounced is fear. In Chiquimula, the department coordinator against trafficking in persons stated that it is hard to get complaints because victims are fearful.³⁸⁶ Usually victims are kept captive by their exploiters, in conditions of psychological and physical coercion. Many times, traffickers threaten to kill the families or children of the victims. For example, in Retalhuleu, eight children of sex workers were kept in a bar; to force the victims to work, they could not spend time with their children. Once rescued, it was proven that some of the children had been sexually abused.³⁸⁷

The fear felt by trafficking victims imposes on States the obligation to develop proactive investigation, to adopt special mechanisms in order not to depend on the complaints of victims and to find means of proof other than testimonial evidence (UNODC, 2007: 74). This is recognition of the real difficulties faced by victims of trafficking. For that reason, the duty to be diligent demands the development of effective mechanisms to protect the lives of victims and witnesses.

Based on these premises, the Attorney-General's Office must define a national model of criminal investigation for the crime of trafficking for sexual exploitation purposes based on information (from

380 Interview with José Maldonado, departmental auxiliary of the PDH.

381 Interview with General Lionel Sosa Díaz, head of the Task Force against Smuggling and Trafficking of Persons in Tecún Umán.

382 Meeting with members of the CSO network that work against sexual violence and trafficking in persons in Petén, San Benito, 9 April, 2015.

383 Interview with district attorney and the fiscal agent in charge of the Prosecution for Women in San Benito, Petén.

384 The same can be said regarding the protection of victim boys and girls by PGN and Courts for children cases.

385 Interview with the Congregation of Oblate Sisters, Refugio Casa de la Mujer, 20 February, 2015.

386 Interview with Magdalena Fajardo, advisor on Protection from the Municipality of Esquipulas.

387 Interview with former delegate of PGN in Coatepeque.

open and closed sources) which systematises all the information available in it: from information from police sources to information available in public records on commercial activities, public entertainment and others.³⁸⁸ This information must be complemented with information compiled through field intelligence, focus groups and interviews with victims, perpetrators,³⁸⁹ experts, etc. Once the information is analysed, criminal prosecution priorities need to be defined from a strategic perspective, with work plans aimed at areas with greater prevalence, and by selecting cases with higher degrees of violence and exploitation by criminal organisations. In that framework, the Prosecution Section against Trafficking in Persons must design strategic plans together with district attorneys and distribute cases by territory (local, regional, national or transnational), as well as based on the degree of foreseeable impact.

The lack of comprehensive investigation of trafficking in the country is contrary to the due diligence obligation. The Inter-American Court of Human Rights has said that when certain investigation lines elude the analysis of systematic patterns in which certain types of human rights violations occur, ineffective investigation may occur. The duty of due diligence makes it compulsory to take other cases into account and establish some type of relationship among them. This must be done *ex officio*, without the relatives or victims having to take the initiative.³⁹⁰

388 In addition, the district attorney has available every complaint received in the country because all district attorneys have the obligation to send him the complaints received in their area of influence.

389 Ronald Clarke and John Eck have said (2003), «Every time you analyze a problem or think about possible solutions, try to discover the reasons why crimes are committed, not so much the distant social or psychological causes but the immediate benefits for the perpetrators involved in the offense [...] It is as important to know why as well as how they committed the offense [...] To interview them can help understand how they make decisions» (p. 41).

390 Inter-American Court of Human Rights (IACHR). *Campo Algodonero vs. Mexico* case. Ruling of 16 November, 2009. Series C, number. 205, paragraph 368.

5.1.2 Principle of opportunity

The fact that many cases start with operations by the police, the Multi-sector Commission or because of rescues conducted by the PGN, and not as a result of a proactive investigation, causes that there is no investigation plan that defines clear objectives on information to be obtained. This results in that not all evidence that is important to the investigation is compiled. In addition, when the identity, profile and roles of trafficker networks are not accurately known, there is an opportunity for perpetrators to elude their responsibility.

For that reason, customers, and victims even, are not properly identified and much less interviewed by the Prosecution. In the case of foreign victims, they are frequently criminalised as undocumented aliens and sent to Migration Shelters³⁹¹ and then, most of the time, they are deported before the Attorney-General's Office has interviewed them. When prosecutors seek to interview them, the victims have left. It is necessary to adopt specific measures for foreign women to remain in Guatemala sufficient time to be properly interviewed by competent authorities, and in a context free from coercion.³⁹² This also makes it essential to obtain the immediate authorisation for advance deposition, if possible in a Gessell chamber.³⁹³

On the other hand, reactive investigation usually does not occur with the support of inter-disciplinary teams; specifically, psychologists able to create a safe and trusting environment for victims to feel ready to cooperate with justice. Although victims are usually subject to extreme violence by their

391 This, in violation of Articles 6 and 7 of the *Protocol against Trafficking in Persons*.

392 UNODC (2102b) has stated that the irregular migration situation of foreign women is a condition of vulnerability that traffickers take advantage of to sexually exploit them.

393 In the «Choppers» case, one of the three Colombian victims was unable to give her deposition because she was no longer in the country; her deposition as advanced evidence could not be heard due to technical deficiencies of the recording system.

exploiters, they prefer to remain silent and tend to deny their condition of victims out of fear. Therefore, special techniques to interview victims during the rescue phase are required (WHO, 2003). Up to now, police agents or prosecutors – frequently by male police agents without special training – who address victims directly, conduct most operations; naturally, this causes renewed victimisation. Added to this are improper questions, which makes victims close down and many times deny that they are victims of trafficking; the opportunity to gain their cooperation is then lost. While victims cannot be expected to declare on the very first moment because of the entire emotional trauma that they have experienced, it is necessary to ensure that they are sent to a protection circle that isolates them from the exploiter, and where they feel safe.³⁹⁴ This does not happen yet and, for that reason, this deposition, which is fundamental evidence for the process, is lost.

We see also in some cases that investigation is not requested in a timely fashion, so not all the evidence is obtained at the end of the preparatory procedure. In cases where permission is required to collect information from State or private agencies –especially regarding bank accounts, telephone call lists and others– judges are slow to grant unilateral hearings. This problem is even more serious at the 24/7 Model Court for cases of Violence against Women where, due to the high volume of work, it is difficult to get these hearings and many cases have taken months.³⁹⁵

394 It has been seen, for example, that women victims of trafficking are not considered to be it and are not rescued. When they attend to give their deposition they do so in the company of the trafficker's counsel, usually to state that they are working willingly and that they do not do sexual work. At times, lack of proper support leads victims to deny during the trial that they have been exploited, in contradiction with their own statements (see the Cafetería El Sheik case, which has already been mentioned).

395 Thus, for example, in the case of La Copa de Oro bar, the victim had to wait five months in a safety selter until the date for the deposition was decided by the Court.

Regarding the time employed for investigation, we can state that it takes too long. In the example of cases of trafficking in persons and sexual exploitation heard between 2009 and 2014, it was determined that only 64 per cent of the investigations were completed.³⁹⁶ This includes cases that were dismissed.

Most investigation decisions were cases dismissed. The average time to make this type of decision is three years. Cases that are dismissed require judicial approval. Unfortunately, many dismissals reported are not shown as judicially approved, which would mean that they have not been resolved in a valid manner.³⁹⁷

The long time that a trafficking crime investigation takes discourages victims. In addition, it exposes them to being located by their attackers who can then take reprisals against them. As IACHR has said, when a complaint is filed, the State must conduct serious and impartial investigation but must also define a reasonable time frame to analyse the circumstances in depth.³⁹⁸

Finally, international standards show that investigation work cannot be passive but requires initiative and effectiveness to obtain information. In investigation processes, prosecutors request reports and they simply wait for them, rather than defining deadlines or using their authority to speed up delivery of the information requested. The principle of opportunity demands that a prosecutor work proactively to collect information; it requires commitment by investigation teams as well as planning with clearly defined tasks and time frames. Notwithstanding, it is often the case that relatives

396 According to SICOMP, 3,568 complaints were received and decisions were made that closed cases in 2,302 of them.

397 Article 310 of the *Criminal Procedural Code* requires that cases which would call for a penalty of more than five years in prison and which are dismissed be brought before competent Judge. Dismissal is in order when the deed is not punishable or when it is not possible to prosecute.

398 Inter-American Court of Human Rights (IACHR). *García Prieto and others vs El Salvador*, paragraph 115.

are asked to produce evidence themselves and give the names of witnesses.

The set of deficiencies listed above leads to lack of credibility in investigation. On this, the United Nations Development Program (UNDP) points out that only 13 per cent of the citizens have much confidence in the Justice System (UNDP, 2013: 120). The Inter-American Commission on Human Rights (IACHR, 2011) concluded that formal, complicated and lengthy procedures added to ineffective protection measures, lack of privacy and confidentiality when depositions are given, cause women to abandon their judicial claims and creates mistrust on the part of victims in justice administration.

5.1.3 Principle of competence

The principle of competence demands that investigation be rigorously carried out by competent professionals and through adequate procedures (CEJIL, 2011: 28).

Human trafficking investigation still faces challenges. First, short comings in victim care causes victims to reject it and alienates them from cooperating in the process. It is still necessary to adopt an interview guide for victims of trafficking that includes the ethical principles of the World Health Organization (WHO, 2003).

Secondly, comprehensive methodologies to investigate this type of offense to cover the entire offense have not been developed. It is a common occurrence that related offenses that usually occur with human trafficking are not included in the investigation plan, particularly tax evasion,³⁹⁹ money

laundering and even violence against women.⁴⁰⁰ There is, therefore, limited understanding of the trafficking phenomenon and of the need to investigate other offenses.

The Attorney-General's Office and the Ministry of the Interior (MINGOB) have not yet developed special undercover agent methods and have not implemented certain electronic surveillance techniques to infiltrate criminal structures and obtain sufficient evidence. In this regard, in the *Cafetería el Sheik* case⁴⁰¹ while investigators conducted on site visits to verify the *modus operandi* of the sexual exploitation business, the court did not grant evidentiary value to their statements because the victims emphatically denied having provided sex services in the facilities. If the investigators had filmed the statements and events in the facilities, they would have obtained practically irrefutable evidence.

Regarding the special wiretapping procedure, its use is limited due to the small number of telephone lines available. It has been hugely successful when it has been used like in the case of a network of traffickers that operated in Petén and in other places in the country.⁴⁰² Also in the case of *Centroerótica*,⁴⁰³ wiretapping and social network investigation used led to obtaining photographs published in its website, as well as information from the phone. This reinforces the conviction that it is necessary to use the wiretapping available specifically for the Prosecution Section against Trafficking.

The complexity of the human trafficking offense also requires that every step in caring for victims and

399 In the case of El Túnel bar, the representative of the Tax Administration (SAT) that participated in the search operation conducted by the Multi-sector Commission, confirmed through customer interviews that they are not given invoices. However, no investigation was done of tax fraud or of crimes against the Tax Administration system, and the owners of the business were not prosecuted. Criminal case 1074-2010-00718. Ruling of 14 February,

2012, Sixth Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

400 In some cases, exploiters or their collaborators use extreme physical and psychological violence, beatings, kicking, locking, and isolation. All of these are crimes of violence against women.

401 Criminal case 43-2011. Ruling of 23 November, 2011 by the Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Amatitlán.

402 File under investigation.

403 Criminal case C-43-2013. Ruling of 29 August, 2013 by the Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

all investigation procedures be properly regulated. PDH (2014: 49), as well as several organisations that deal with the rights of children⁴⁰⁴ have pointed out that the Attorney-General's Office does not have an investigation protocol in place for the crime of trafficking to regulate the basic steps to investigate each modality in this crime. That absence of regulations produces errors during investigations, particularly regarding how to address victims or how to use a protection system.

Because of the particularly sensitive nature of this offense, it is necessary for the staff to receive special training and to have the proper profile to deal with victims. It is disturbing that in Tecún Uman, an assistant prosecutor was convicted for sexually harassing victims of trafficking and of sexual offenses.⁴⁰⁵ Likewise, in a trafficking case in Guatemala City, one of the assistants was identified by one of the victims as a frequent customer of the brothel.⁴⁰⁶

Like the police, the Attorney-General's Office needs to adopt strict mechanisms to hire personnel for these tasks to prevent persons with the wrong profiles to work at units against trafficking. It is important to develop affirmative action policies to ensure that investigators and prosecutors are mostly women, in order to avoid renewed victimisation and guarantee greater empathy with victims. PDH (2014: 48) has emphasised the need to promote adequate training for Attorney-General's Office personnel; it has also said that the teams of psychologists and social workers of this organisation require specific training on trafficking.

The principle of competence requires investigators to have sufficient legal authority to carry out effective investigation. Thus, Article 319 of the *Criminal Procedural Code* is considered to hinder

404 Report submitted by the Institute of Social Protection of Minors to the Inter-American Commission on Human Rights (IACHR) in hearing on 26 March, 2015.

405 Interview with prosecutor at Tecún Umán.

406 Interview with investigator who is a member of the Sexual Trafficking Crime Unit.

their work because it does not allow the Attorney-General's Office to request reports or documents directly from individuals without authorisation from a competent Judge. In this regard, it is essential to reinforce the power of prosecutors to conduct more agile and effective investigation work and to limit judicial authorisations to only those which are explicitly required by the Constitution.

Lastly, there is an absence of specific protocols in relation with financial investigation. The Prosecution Section against Trafficking does not have teams of forensic auditors or other financial experts able to provide advice, which has proven to be its Achilles' heel in the investigation of this offense.

5.1.4 Principle of investigator independence and impartiality

Human Right standards require independent and impartial investigation work. The requirement for independence seeks to protect investigators from undue influence from their superiors or from other political entities. This makes it necessary to reinforce the fiscal, judicial and police careers to ensure that appointments are not based on political influence or other improper motives.

Impartiality, on the other hand, requires for the professional to be completely alien to the interests of the parties. It requires the highest levels of ethics and transparency by judicial operators. In other words, they must have integrity and honesty, they must not work for gangs and they must not put their personal interest above those of their responsibility.

In this regard, the principle of independence and impartiality in investigation needs to be examined in depth because none of the agencies in charge of doing investigation have rigorous selection and recruitment procedures to weed out unsuitable personnel in the area of gender violence. In addition, measures are required to reinforce disciplinary control to detect cases of corruption and make adequate and timely decisions to act against the

people who fail to meet ethics and professional excellence standards as required by such a complex offense.

It is absolutely necessary to ensure that the official in charge of investigation be objective, that he act independently and with integrity. Provisions to fight corruption at the Attorney-General's Office need to be taken into account. In that regard, the creation of the Prosecution Section for Internal Affairs is considered to be a significant step forward in the fight against corruption, but that effort needs to be complemented with mechanisms to keep track of the revenues and assets of prosecutors and their relatives or persons close to them. It is necessary to conduct periodic reliability tests to ensure that officials do not consume alcohol or drugs.

5.1.5 Principle of completeness

This principle provides that investigation work must use every possible means and must be aimed at determining the culpability of all possible intellectual and material authors of the crimes, especially when State agents are involved.

Crucial in this principle is to:

- a) Identify all the victims⁴⁰⁷
- b) Identify all possible witnesses and obtain their deposition
- c) Recover and preserve all evidence that may help prosecute the perpetrators
- d) Determine the cause, form, location and every circumstance related to trafficking in persons
- e) Track and quantify the illegal profits produced by sexual exploitation

407 UNODC (2010: 55) states that identifying victims becomes particularly important to ensure that they receive the assistance that they are entitled to, as well as for the effective prosecution of the crime.

- f) Determine the physical, psychological, economic and social damage suffered by victims
- g) Identify all the members of the criminal structure or group who are exploiting people, their roles and duties in the organisation, as well as their level or criminal liability

Upon evaluating the actual status of trafficking case investigations, it becomes clear that they have not achieved the level of depth required by international standards. There are many rulings where Courts have ordered investigation work done to determine the guilt of other individuals, but which have only reached middle or low levels of the criminal organisation.

Thus, for example in the Choppers restaurant case, only the person in charge of watching the victims, and the driver, were prosecuted, but the owner and the administrator were not.⁴⁰⁸ During the trial, several witnesses clearly identified the owner and the administrator as the individuals who had control of the criminal organisation. Unfortunately, they were not included in the investigation and much less in the accusation. In the end, the sentence Court ordered the investigation of three more individuals from the criminal organisation.⁴⁰⁹ Until now, these individuals, who benefitted the most from the sexual exploitation, have not been prosecuted.

In this case, lack of completeness in the investigation also becomes evident in the fact that the man in charge was not accused of the serious violence

408 Criminal case 20135-2012-94. Ruling of 5 April, 2013, of the Second Court of Villa Nueva. The administrator, William Armando Méndez Lemus, was convicted to 8 years in prison for promoting, facilitating or encouraging aggravated prostitution; driver Faicer Noé López Contreras was convicted to 6 years in prison for promoting, facilitating or encouraging prostitution. The court did not convict them for trafficking with the argument that the captivity and exploitation were committed by the persons who organised the sexual exploitation.

409 Criminal case 20135-2012-94. Ruling of 5 April, 2013, by the Second Court of Villa Nueva.

committed against the victims, such as beatings, kicking, insults, tying their hands and beating them with belts, which are crimes of violence against women. The statement by victims that «[...] they took away their chains, rings, mobile phones» was not investigated either, even though this may involve a probable crime of theft.⁴¹⁰

In cities outside the capital, most investigation focuses only on the persons who are arrested when the search operations take place, but important investigation is not done to determine who the (real or assumed) owner of the business is, or who owns the building, or what is the relationship between them, and what the asset laundering financial structure is like. Thus, it is not surprising that most persons in prison for crimes of human trafficking are the lower level workers who are in charge of the joint, or in the best case scenario, the straw men registered as owners.⁴¹¹

In the case of a bar in Jutiapa, the accusation was made only against the manager and the janitor of the business.⁴¹² Despite the fact that during the operation conducted by the Multi-sector Commission, the trade patent showing the information of the owner was obtained, inexplicably, the Attorney-General's Office did not investigate her to determine the degree of her involvement. More serious still, the business reopened a few months later. This is one of the constants in district prosecution cases: after closing down for a short period of time, businesses restart operations, flaunting advertisement.⁴¹³

Investigation is usually superficial, incomplete and does not include trade and banking operations. Fortunately, the situation has changed: now, the

Prosecution Section against Trafficking requests information from SAT, from the Trade Registry and banks to obtain the registration information of the business and its trade operations. It is still necessary to do investigation in asset laundering, the assignment and use of bank accounts, and the flow of illegal earnings.

A good practice was developed in one of the cases under investigation, where the search of a spa was done after analysing the structure of the business. During the search, computers, books and accounts were seized. That made it possible to define all the transactions made with credit cards, which in turn made it possible to locate the customers, who were summoned to declare and provide information to the prosecution about the way that they are charged for sexual services.

These advancements need to be strengthened with protocols that accurately show all the steps and mechanisms involved in the investigation to accomplish the identification of all the members of the criminal structure.

It is disturbing to see some investigation initiated through Multi-Sector Commission operations that not only do not reach the true culprits but even exculpate or attenuate the liability of managers and straw men. In one such case, the administrator was sentenced in summary proceedings for the crime of cover-up because «[...] as a worker or administrator of the business he had full knowledge of the commercial activity that took place there and by failing to denounce it he was covering up for the owner» who is fully identified in the trial. Because of the size of the business and the presence of foreign nationals it is evident that the owner has contacts with international networks to recruit women. But no investigation has been conducted as part of the proceedings to determine the involvement of the owner.⁴¹⁴

410 *Ibid.*

411 In the case of the Prestige *spa*, a taxi driver who was the straw man for the owners was convicted. The court ruled to prosecute the two persons who benefitted from the sexual exploitation. Criminal case C-1073-2007-21345. Ruling of April 1, Third Lower Criminal Court for Drug Trafficking cases and Crimes against the Environment.

412 Interview with Henry López, District Attorney in Jutiapa, 16 October, 2014.

413 Interview with CSO in Huehuetenango, 24 March, 2015.

414 Criminal case 1081-2011-584. Ruling of 14 October, 2013, by the Third Criminal Trial Court for Drug Trafficking and Environmental Crimes of Guatemala.

In this case, the administrator was favoured with a two-year sentence and the conditional suspension of the sentence. While a reduction or exoneration may at times be acceptable, this should part of the strategy to encourage collaboration with justice to obtain information against higher command levels in the structure. But so far, a specific benefits policy has not been developed for informants in the framework of criminal prosecution of trafficking offenses. Rather, cases like the one of this bar show some traits of impunity because no information or statement was obtained from the convicted individual. For that reason, the Prosecution Section against Trafficking in Persons needs to establish a policy to use informant benefits listed in the *Law against Organised Crime* that is clearly aimed at dismantling criminal trafficking structures.

In the same sense, a person who is convicted for managing a bar where underage persons were forced into prostitution said that he simply worked as a manager of the business belonging to a family of exploiters. His employers had several businesses and hotels where they sexually exploited underage persons in the area in zone 1 known as «La Tijuanita». In this case, the investigation did not target the criminal organisation. In fact, his employers paid for his defense counsel. He was convicted to eight years in prison and the payment of a 300,000 quetzales fine.⁴¹⁵

The lack of completeness in investigations has resulted in the lack of conviction of the more senior members of trafficker organisations, who enjoy impunity; it can even be inferred that they exercise influence for their workers to be exempted from responsibility.

5.1.6 Principle of victim participation

Victims have been traditionally expelled from the Justice System as a remnant of former questioning practices, which did not recognise them as subjects

⁴¹⁵ Interview with person convicted for the crime of trafficking in persons.

of rights in criminal proceedings. At present, international human rights standards require that victims be treated with dignity and respect, and as subjects of rights, be provided assistance, protection and reparation; they are now allowed to participate broadly in proceedings.

In that regard, the Inter-American Commission on Human Rights (IACHR) has determined that Article 8 of *American Convention on Human Rights* enshrines the right of access to justice. It is necessary for States to abide by every requirement that serves to protect, to ensure or to assert entitlement to a right, that is, the conditions that must be met to ensure adequate representation or management of the interests or claims of those whose rights are under judicial consideration. This also means eliminating a standard or practice in internal legislation which hinders or blocks access to justice (CEJIL, 2003: 33).

For that reason, investigation and prosecution agencies must regulate the standards and practices to make it easier for persons harmed or offended to file complaints, as well as to file action and to participate in the investigation and in the process.

The assessment of compliance with this principle has confirmed that at present, victims are not told what all their rights and, particularly, the mechanisms through which they can participate in the proceedings to obtain dignified reparation. There are no permanent mechanisms of communication between authorities and victims, which many times causes exploiters to contact them and convince or coerce them into changing their testimony.⁴¹⁶

Likewise, witness protection programs are still not sufficiently strong to serve victims of trafficking. Because of their special circumstances, they require special psychological care and specific security measures. The amount of time required

⁴¹⁶ In the case of El Sheik Cafeteria, the two boys who gave their deposition to the Prosecution stated that they were forced into prostitution by the owners of the place. During the trial, however, they changed their statements.

for a victim of this crime to be able to process what she experienced, and to begin to verbalise her experience may be even months. At present, only NGOs that provide support for children have developed mechanisms to provide first and second level care to victims and thus, be able to get their effective cooperation with justice.⁴¹⁷

The victims who are not in shelters and in the programs of these organisations usually do not receive adequate services and therefore end up desisting from filing action or they retract from previous statements. This obstacle to justice needs to be removed through protection programs especially designed for victims of trafficking, both within the framework of the *Law for the Protection of Witnesses and other Subjects of Proceedings*, as of State agencies obligations to provide assistance, such as SVET shelters and the Social Welfare Secretariat (SBS).

Regarding immediate care for victims during rescue operations or searches, usually, a specialised team of psychologists or social workers is not available to provide assistance to authorities in order to prevent renewed victimisation.

Based on that, further building the current team of the Prosecution Section against Trafficking in Persons is proposed, in order to have a multi-disciplinary team capable of providing support to prosecutors during rescue procedures in brothels. This team needs proper training to ensure that their members are the sole point of contact with victims. In general, victims of trafficking are fearful and uncertain during search operations because they are not given adequate information of their rights and on the objectives of the operation. Particularly foreign victims are simply sent to the Migration Shelter without telling them what their rights are. In those circumstances, victims do not find the proper climate to denounce the exploitation of which they are victims.

417 Interview with personnel of Refugio de la Niñez.

Finally, it is necessary to strengthen procedures to lead the investigation towards dignified reparation, because at this time there are no strategies aimed at compiling evidence on material and immaterial harm suffered by victims and they are not afforded mechanisms to participate in its determination.

5.1.7 Gender and age perspective

Trafficking in persons is, above all, a form of violence that focuses particularly on vulnerable persons, particularly women and children. To carry out his exploitation activity, the trafficker takes advantage of the inequality faced by these groups as well as of their vulnerable social circumstances. Unfortunately, this violence is reinforced by the socio-cultural patterns that prevail in the patriarchal culture of Guatemala. Precisely for that reason, the State needs to implement standards, practices and policies against discrimination and sexism.

In this regard, criminal investigation needs to include all international standards and instruments in the area of human rights, especially the *Convention on the Elimination of all forms of Discrimination against Women*, the *Inter-American Convention to Prevent, Punish and Eradicate Violence against Women*, or the *Convention of Belem do Pará*, as well as standards that protect adolescents, boys and girls, such as the *Convention on the Rights of the Child* and its protocols. These list special duties to avoid renewed victimisation during the investigation and thus ensure the effective protection of the human rights of victims.

At present, criminal investigation in Guatemala is still deficient in the levels of compliance of these standards. As proven in the ruling made in the María Isabel Véliz Franco case, the lack of diligence in the investigation is associated to the absence of protocols to investigate cases of violence against women in general.⁴¹⁸

418 Inter-American Commission on Human Rights (IACHR). Sentence in the case of María Isabel Véliz Franco vs. Guatemala, paragraph 210.

The Guatemalan State was also sentenced through that ruling because officials in charge of the investigation made statements that show the existence of prejudice and stereotypes about the social role of women. In those circumstances, the court ordered the State of Guatemala to carry out programs and courses on international standards related to gender and the rights women for public officials involved in investigating violence against women.

5.2 Procedure to rescue victims of trafficking in persons for sexual exploitation

In cases of trafficking in persons it is essential to have profound theoretical knowledge but it is equally important for the staff of institutions (police agents and prosecutors) to be fully aware of the condition of vulnerability faced by victims and to be free from stereotypes or discriminatory prejudices.

The structure of investigation and criminal prosecution agencies reveals that these objectives have not been met. For that reason, when rescue operations are conducted, especially those by the Multi-sector Commission, multiple violations to the rights of victims occur, including some forms of sexual violence.

But together with the structural problems faced by justice sector agencies, it is necessary to point out that the actions that need to occur during rescue operations are not clearly defined. First of all, there is no planning or a clear knowledge of the role of each one of the officials who participate in it. This creates confusion during the operation, which may lead to the loss of information and evidence. There are no procedures to segregate victims, customers, administrators and workers of the brothel, which enables those administrators to intimidate or coerce victims.

The lack of foresight regarding where victims are to be sent for protection means that they have to

wait for many hours in the place that was raided or in places that are not appropriate to protect their rights. In this regard, PDH has stated that victims receive no information about what is happening, are retained in the place for several hours, to then be transferred to the office of PNC or the Attorney-General's Office to give their deposition. As it has been said before, some are taken to the Migration Shelter. By then, almost twelve hours have gone by since the beginning of the operation. They have not received psychological support to empower them during their deposition and thus avoid renewed victimisation. In addition, victims are often forced to repeat the same story many times.⁴¹⁹

Victims have the fundamental right to receive immediate protection, as well as medical and psychological assistance. This assistance should be provided to them at the moment of the intervention as a way to gain their trust and readiness to cooperate. It is also necessary for the appropriate mechanisms to be in place to cover the needs of the victims when the operation is conducted, particularly safe lodging (as well as to solve the legal residence in Guatemala of foreigners).

Because the State does not have an adequate system to protect victims of trafficking, it is not possible for these needs to be effectively covered. The fact that foreign victims are taken to the Migration Shelter criminalises them and exposes them to new violations of their rights such as deportation. This illegal practice seems to be in place to avoid foreign victims from declaring against traffickers, which is made more serious by the fact that, many times, they are expelled from the country before prosecutors interview them. In the case of Guatemalan nationals, the lack of adequate shelters or other protection mechanisms place them in situations that can be a serious violation of their human rights, as is the case in SBS shelters.

In view of this serious situation, the State needs to adopt three basic measures:

419 PDH, File EXPprev.ord.GUA.404-2015./upm

- First, it needs to approve an action protocol for rescue operations in the case of victims of trafficking aimed at regulating the function of each agency and to guarantee respect of the human rights of victims.
- Secondly, it needs to create inter-disciplinary teams that can provide support to police agents and prosecutors during these operations in order to be able to provide urgent psychological care to victims.
- Thirdly, it needs to create temporary shelters capable of providing protection and care for victims, in order to help them in the process. Sending foreign victims to the Migration Shelter should be forbidden, as required by the *Convention on Trafficking in Persons*.

5.3 Prosecuting individuals accused of human trafficking

There is lack of consistency between the numbers of the Judiciary (OJ) –that reports, in the same period, 390 cases prosecuted (Guatemala, CIDEJ, at PDH, 2014: 46)– and the data provided by the Prosecution. The discrepancy between the number of accusations reported as filed and the number of cases prosecuted makes it impossible to analyse quantitative data of the effectiveness of the Justice System. It is necessary for justice sector agencies to unify their data to design public policies with certainty and reliability.

In view of this, in this section we will do a qualitative analysis of the accusations filed and of the sentences issued based on the cases for which the Prosecution Section against Trafficking in Persons has obtained sentences during 2011, 2012 and 2013.

During the first years after *Decree 9-2009* was enforced, there was greater tendency to use summary proceedings even when trafficking cases

do not allow it. During the preparatory procedure, the legal definition of trafficking was changed to another offense that carried a sentence of less than five years. Usually, the offense was changed to that of promotion or encouragement of prostitution or of its cover-up.⁴²⁰

It is also noteworthy that some sentences passed through summary proceedings did not consider the alleged crime, nor the facts deemed demonstrated. Thus, for example, in case C-1070-2009-1036 of the Tenth Court of Criminal Trial, Drug Trafficking and Crimes against the Environment, the offense described in the sentence reads: «The offenses listed by the representative of the Prosecution», but does not list the content as concerns place, time and mode of the offense in question. Then, in the determination of the facts that the court deemed demonstrated it simply states that «[...] the facts described in the indictment are defined as proven». In other words, the Judge at no time explains what were the facts presented in trial, or the facts that were deemed demonstrated, which prevents proper control of the legality of the sentence. In this sentence, the accused was given a three-year sentence with the benefit of parole for the crime of obtaining monetary compensation for promoting, facilitating or encouraging prostitution. These actions favour impunity because the sentence lacks motivation, both from the point of view of the facts as well as legal motivation and therefore violates the mandate in Article 11 (bis) of the *Criminal Procedural Code*. Collusion among prosecutors, judges and lawyers is thus enabled to make rulings that favour impunity since control of the legality of the decision is prevented.

⁴²⁰ C-01069-2009-01561. Ruling of 3 March, 2011 by the Fourth Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

The administrator of «Caprichos» was convicted to three commutable years and the conditional suspension of the penalty. Although his name is in the file, the owner of the place (that continues to operate under a different name) was not prosecuted.

A notable improvement has been observed in complaints filed in 2012 and 2013. The number of cases in summary proceedings has gone down and accusations are of greater quality both in terms of the description of the facts as well as regarding the evidence submitted. Without a question, this has increased the number of convictions in these years for trafficking in persons, a fact which has been recognised by several institutions (PDH, 2014: 47). This improvement responds not only to better indictments but also to the creation of the Court that Specialises in Trafficking in Persons, in November 2012.

However, unspecialised judges make errors when they enforce the human *trafficking* crime. Thus, in a sentence passed on 18 July, 2013, the Judge stated that «[...] the existence of a criminal structure is necessary to commit human trafficking [...]».⁴²¹ This fact is not found in human trafficking types of crimes, and leads to impunity because it leaves out the cases of individual traffickers.⁴²²

Also, other courts have difficulty understanding the meaning of typical actions. For example, a sentence court said that the crimes that the accused were indicted for were not trafficking «[...] because [the accused] did not participate in hiring the victims, and did not transfer them from Colombia to Guatemala, did not lease the houses to keep them captive, or the place where they provided their service. The two defendants appear on the scene after the victims were trafficked».⁴²³ In this case, the two defendants were in charge of keeping the Colombian victims of exploitation in captivity through the use of physical and psychological

violence. One of them beat them, kicked them and even used belts to hurt them. Once, he tied one of them. He watched them to keep them captive. The other defendant was responsible for transferring the victims every day from their place of captivity to the brothel. So the defendants carried out material actions of trafficking (captivity and transfer) using forbidden means (abduction and use of physical violence). The fact that they occupied lower hierarchical positions in the criminal structure does not exempt them from liability because they carried out all the elements of the type of offense within a functional domain structure which is characteristic of co-authorship as provided in Article 36 (bis) of the *Criminal Code*.

In another similar case (Centroerótica, which was mentioned already) where two adolescents under 18 years of age were sexually exploited, the Court mistakenly qualified it as a crime of *remunerated sexual activities with underage persons*. The court deemed it proven that victims Daniela, 15 years of age, and Jennifer, 17, were promoted by the defendants to provide sexual services, which demonstrates the element of recruitment, as well as the purpose to sexually exploit them. The error in the qualification led to the ruling of a five-year commutable prison sentence.⁴²⁴

This type of interpretation leads to impunity because the Law is enforced incorrectly in favour of certain persons. In the Centroerótica case, it became evident during the trial that not only were adolescents being exploited but there were 30 women who were kept in the «closed house», some of them foreigners, all of them engaging in sexual activities. The court enforced a typical figure that is not consistent with the facts because the offense of remunerated activity is enforced against persons who pay to have sex with minors and not to those who benefit from the exploitation.

421 File C-3003-2008-00916 of the First High Risk Court B of Criminal Sentence, Drug Trafficking and Crimes against the Environment.

422 About this, see UNODC (2010: 31 y ss). Also see Article 204 of the *Criminal Code* that provides that the penalty will be increased when «the offense is committed by two or more persons», which confirms without a doubt that the simple criminal type is committed by one single person.

423 Choppers case. Criminal case 20135-2012-94, Second Court of Sentence of Villa Nueva.

424 Criminal case C-43-2013. Ruling of 29 August, 2013 by the Third Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

In the case of El Túnel bar⁴²⁵ where the Multi-Sector Commission found one Honduran and two Nicaraguan women performing sexual activities for the financial benefit of the owner of the business, the court acquitted the defendant on the grounds that «[...] there was no trafficking[...] because trafficking in persons is an illegal activity through which mostly a woman or a person underage is forced to perform sexual activities without her consent and for which a third party receives financial compensation». The acquittal was ruled because there was consent from the victims, which contradicts Article 202 (ter) of the *Criminal Code* that provides that «the consent given by the victim of trafficking in persons will in no case be taken into account». In addition, the court required violence to be present but this is not a requirement in Guatemalan legislation.⁴²⁶

Finally, it is important to highlight that around 55 rulings of trafficking in persons have been made in the country, which cover every form of exploitation (illegal adoptions, the sale of children, sexual exploitation).

When a guilty verdict has been passed, prison sentences vary but are usually eight years in prison and a 300,000 quetzales fine. For example, in the case of a 13 year-old adolescent who was sexually exploited in the Los Ilegales bar,⁴²⁷ in Alotenango,

425 Criminal case 1074-2010-00718. Ruling of 14 February, 2012 by the Sixth Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Guatemala.

426 UNODC (2010) has stated that «[...] some legislations define trafficking without association to the means (coercion, fraud, deception) on the grounds that some forms of exploitation are coercive for their mere nature. In those cases, the definition includes reference to the actions (recruitment, transportation, harbouring and reception) and the purpose of exploitation. This facilitates prosecution of the offense of trafficking and has proven to be effective in that context » (p. 32). This is the case of Guatemalan legislation that suppressed means and consent precisely to facilitate prosecution in contexts where vulnerability is taken advantage of, which is the case of foreign women.

427 Criminal case 109-2012-2. Ruling of 9 January, 2013 of the First Court of Criminal Sentence, Drug Trafficking and Crimes against the Environment of Sacatepéquez.

the Court of Sacatepéquez passed a sentence of eight years in prison. However, the court did not take into account that it was proven during the trial that the victim could go out only once a month, that is, she was kept captive for more than three days. This circumstance required the penalty to be increased by one third, according to Article 204 del *Criminal Code*. The minimum sentence should have been ten years and eight months.

It should be noted that improved investigation quality is evident in recent years as well as greater collection of evidence elements that have resulted in more guilty verdicts. The participation of joint complainants has made a significant contribution to improve the quality of investigation, particularly because they have used techniques to empower victims, which have resulted in their cooperation with the legal process.

5.4 Dignified reparation

Paragraph 6 of Article 6 of the *United Nations Convention on Transnational Organised Crime*, or the *Palermo Convention*, makes it compulsory for States to ensure that their internal legal provisions include measures to offer victims the possibility to obtain reparation for the harm suffered. In that framework, *Decree 9-2009* provides that one such obligation involves repairing the harm caused to victims of trafficking.

The content of dignified reparation must be interpreted pursuant to the jurisprudence of the Inter-American Court on Human Rights (IACHR) through the principle of conventionality. Upon evaluating the content of reparation, IACHR has stated that the right to it is an *ius cogens* standard because all damages must be repaired according to international Law principles.

In the Campo Algodonero case, IACHR clarified that comprehensive or dignified reparation should no longer be limited exclusively to *restitutio in integrum*, which had been the prevalent doctrine, but that

reparation must provide a transforming effect, in such a way that the impact is not only of restitution but also of correction. «In this sense, restitution to the same structural situation of violence and discrimination is not acceptable».⁴²⁸

Thus, the classic elements of material and immaterial harm that the court has structured as part of the restitution package, as well as measures of satisfaction and non-repetition, measures aimed at identifying and eliminating factors that cause gender discrimination have now been added.⁴²⁹ Therefore, dignified reparation covers a number of measures, not only economic ones but also of the restitution of rights and rehabilitation in every area of the harm caused by the offense, including physical sequelae (diseases caused by sexual exploitation), psychological and social sequelae. In addition, it makes it compulsory to guarantee victims a life project free from violence and sexual exploitation.

The transforming approach that IACHR implements seeks to break by all means the cycle of violence and exploitation of victims of trafficking, who, due to lack of other life options, invariably return to that life of exploitation.

An analysis of reparation rulings made by national courts finds that none of them have used this transforming approach. In fact, before 2012, most sentences failed to demand reparation because it had not been requested by the victim.⁴³⁰

In cases where courts have made rulings requiring reparation measures, the issue of material and immaterial harm has not been clearly conceptualised

and specified. A good practice in terms of comprehensive reparation was the Centroerótica case, where the court decreed the payment of 140,000 quetzales, at a rate of 70,000 quetzales per victim. Since there were two defendants in this case, each one was sentenced to pay 35,000 quetzales per victim.

In general, the request for reparation is weak because there is no actuarial methodology to estimate material damages, which includes indirect damages and lost profits. In terms of lost profits, labour legislation could be used as a parameter, as it defines not only the payment of salaries but also of overtime and other compulsory legal benefits. Due to discrimination, some jurists believe that labour legislation is not applicable because trafficking is an illegal activity, or because it is not considered to be work. However, legal protection requires the enforcement of labour legislation, including the rights enshrined in it; especially, as is frequently the case, when victims have not even been paid the equivalent of minimum wages.

Regarding damages inflicted on the victim, these are not calculated if they are not justified with invoices or other receipts. While it is true that the principle of the burden of evidence is applicable here, lack of these documents does not exonerate the authorities from the obligation to convict the perpetrator when damage has been confirmed. In these cases, IACHR jurisprudence now requires calculation based on equity, by taking the circumstances of the specific case into account.

A criterion used by judges is to limit monetary compensation to the financial capacity of the offender. This criterion is mistaken because comprehensive reparation should use the damage caused to the victim as the only yardstick. The financial capacity of the offender is irrelevant. In addition, offenders frequently hide their illegal assets or earnings. For that reason, comprehensive reparation should not be based on the presumed wealth of the trafficker.

428 Inter-American Court of Human Rights (IACHR). *Campo Algodonero case vs. Mexico*. Ruling of 16 November, 2009. Series C, number. 205, paragraph 450.

429 *Ibid.*

430 Among other rulings, number 109-2012-2 of the court of Sacatepéquez and all the rulings through summary proceedings. This, basically because Article 124 of the *Criminal Procedural Code* that requires a dignified reparation hearing has been enforced in cases after the entry into force of *Decree 7-2011*, in October 2011.

Regarding measures to restore the dignity of the victim and mechanisms to prevent repetition, these are normally not taken into account in reparation considerations.

It is necessary to further analyse the concept of reparation because, at present, its content has not

been properly used by courts. The result has been lack of compliance with the obligation to properly compensate victims, as required by international human rights treaties.

Conclusions and recommendations

Conclusions

The magnitude of the problem

Guatemala is a country of origin, transit and destination of persons who are trafficked for purposes of sexual exploitation. This is the result of the migration route to the North, the presence of organised crime, drug trafficking, poverty and patriarchal cultural patterns that create demand for remunerated sexual services.

The socio-economic conditions of the country foster the trafficking of very high numbers of girls, boys and adolescents between 12 and 17 years of age. These are persons who are vulnerable to sexual exploitation.

The analysis done by this study with a sample of court rulings concludes that 57 per cent of the victims are girls, boys and adolescents; other studies suggest even higher percentages.

The lack of a real estimate of the number of persons who suffer from this scourge, as well as the lack of accurate data on the profile of victims of trafficking for purposes of sexual exploitation (age, gender, ethnic group, income level, etc.) does not permit the development of public policies with adequate elements of information to make decisions.

Regarding the profile of people who engage in sexual trafficking, there is everything from a mother who sells her young daughter – thus replicating many times a cycle of gender violence because she herself was once the victim of sexual violence – to geographically-defined criminal organisations.

As a country of destination, there are structured networks in Guatemala that operate from countries of origin that recruit and transfer victims to Guatemala, where they are harboured and exploited.

Owners of brothels, bars and other businesses that act as fronts for sexual exploitation – where victims are often kept as slaves or in situations of sexual servitude – offer these services to all types of male customers, at times wealthy individuals, but mostly low-income customers, in view of the socio-economic characteristics of the country.

It is estimated that through trafficking in persons and other related activities, sexual exploitation generates approximately 12.3 billion quetzales, which is 2.7 per cent of the GDP.

The legal framework

The characterisation of trafficking in persons and sexual exploitation offenses requires amendments in tune with the *Protocol against Trafficking in Persons of the United Nations Convention on Transnational Organised Crime*.

Current legislation on the criminal liability of legal persons makes it difficult to prosecute individuals who use these legal persons as straw men to commit their offenses. For this reason, the laws need to be revised.

Trafficking in person prevention

The *National Policy against Trafficking in Persons 2014-2024* does not include every strategic action listed in

the *Plan of action Against Trafficking in Persons* of the Organization for Security and Cooperation in Europe (OSCE), or the principles and guidelines on human rights and trafficking in persons recommended by the Office of the High Commissioner for Human Rights (OHCHR).

In particular, the *National Policy against Trafficking in Persons 2014-2024* does not include a line of work to raise awareness on the socio-cultural patterns of a patriarchal society. For that reason, this instrument needs to be reviewed and revised.

Institutional framework in charge of permits and the operation of businesses

In order to conduct their activities with few obstacles, traffickers take advantage of the legal weak system to issue permits, to control and oversee trade companies in general and businesses related to sexual exploitation, in particular.

There are many institutions that participate in the process of creation and operation of companies, which makes it difficult to know clearly the role of each one. This is particularly relevant because of the responsibility that some have to suspend operations or close down companies if they detect sexual exploitation.

There is limited sharing of information among the institutions in charge of authorising the operation of companies and this allows control evasion in the system. Therefore, centres that engage in sexual exploitation are temporarily closed down but reopen with a new name, with the same people in charge, or they are suspended for some time without ulterior consequences.

Victim protection and assistance

Serious problems that violate the rights of victims and many times lead to their renewed victimisation still persist. In view of the magnitude of physical, addiction and psychological damages caused by

sexual exploitation, the State needs to drastically improve comprehensive and special care for victims, particularly for boys, girls and adolescents.

The *Inter-agency Protocol for the Repatriation of Victims of Trafficking* clearly defines the care and referral system to be used to repatriate Guatemalan victims to their country, and of foreign persons to their countries of origin, but the system is not enforced. The rights of most foreign women detected in Guatemala are not respected as provided by the *Palermo Protocol*. Among other things, many times they are kept captive in the Migration Shelter.

The institutional framework of justice

Significant strides have been made in recent years in the justice administration system; among them, progress has been made in a specialised approach of the phenomena of gender violence, trafficking in persons and sexual exploitation. This, through the creation of jurisdictional criminal bodies for femicide cases (that now also hear trafficking in persons cases), as well as through the creation, at the Attorney General's Office, of the Prosecution Section against Trafficking in Persons and special investigation units at the National Civil Police (PNC).

Although the number of guilty verdicts has increased since the entry into force of *Decree 19-2009*, the number continues to be relatively low by comparison with the magnitude of the problem. Among justice operators, lack of knowledge of the qualification of the trafficking in person offense still prevails.

Investigation is not initiated *ex officio* and only the personnel in charge or the straw men in sexual exploitation centres are convicted, that is, the people who are most exposed in the criminal structure, while the more senior members of the structure are left untouched.

Fear and mistrust by victims of sexual exploitation to denounce and continue to participate in proceedings persist because discriminatory practices against

them by justice operators continue. Deficient care and protection are also ingredients that compound this problem.

In criminal proceedings, the victim is summoned several times to give her deposition to several agencies because of lack of coordination among them, which contributes to her renewed victimisation and discourages her active cooperation in the process.

A significant lack of female personnel, particularly in command positions, harms the work of PNC in cases of sexual exploitation, where most victims are women. The study also detected cases of gender violence against female police agents already in the Police Academy.

Reparation

The current approach for dignified and comprehensive reparation for victims of trafficking does not meet international human rights standards. In particular, all the categories of damage required to provide full and comprehensive reparation are not considered.

The investigation work by the Attorney-General's Office to provide comprehensive reparation is insufficient. This includes the aspect of lost profits that should be estimated through expert and actuarial studies.

There is currently a disconnect between criminal law and the laws for the restoration of rights of victims of trafficking for sexual exploitation, which causes the latter not to be included in dignified and comprehensive reparation schemes for victims.

Likewise, in approaching girls, boys, and adolescent victims of trafficking for purposes of sexual exploitation, coordination of criminal law with the process to protect children and adolescents is weak, which hinders the development of a life project for victims, and many times prevents them from breaking the cycle of exploitation.

The State lacks funds to provide reparation for victims of trafficking.

Fight against corruption and internal institutional controls

An aspect that cuts across all the agencies involved in cases of human trafficking for sexual exploitation purposes –from prevention to repression– is their need to strengthen internal controls of public officials in order to detect, prosecute and punish individuals who participate in acts of tolerance, acquiescence or promotion of trafficking. Without that form of complicity by State authorities, trafficking in persons would be impossible. To be able to carry out their illegal activities without much hindrance, all traffickers –whether family members, individuals or more organised structures– somehow benefit from corruption by police, migration and other local authorities (such as hotel or night club supervising agents).

In summary, even though some progress has been accomplished to build the institutional framework of the country, efforts to consolidate effective investigation and prosecution are still in an initial phase and require decisive and coordinated actions to effectively protect the rights of victims of trafficking in persons and the convict offenders.

Recommendations

To the Congress of the Republic

To overcome the difficulties in the interpretation of the trafficking in person criminal type, the recommendation is to amend Article 202 (ter) of the *Criminal Code* to the following wording:

Whomever, in any way promotes, induces, facilitates, funds, collaborates or participates in the recruitment, transportation, transfer, retention, harbouring or reception of one or more persons for purposes of exploitation by resorting to threats or the use of force or other forms of coercion, abduction, fraud, deception,

the abuse of power or of a situation of vulnerability or the acceptance of payments or benefits to obtain the consent of a person with authority over another, shall be punished with prison sentences from eight to sixteen years and a fine equivalent to the benefits obtained from the exploitation.

The consent given by the victim of trafficking in persons to all forms of intentional exploitation described in this Article shall be irrelevant when any of the means listed in this article have been used, or when the victim is underage.

The purpose of trafficking for exploitation shall be understood to mean: the prostitution of another, any other form of sexual exploitation, forced labour or service, any type of labour exploitation, begging, any form of slavery, servitude, the sale of persons, the removal of organs and human tissue, the recruitment of underage persons for organised criminal groups, illegal adoptions, irregular adoption processes, pornography, forced pregnancy or forced or servile marriage.

Likewise, the recommendation is made to repeal from the *Criminal Code* some of the Articles contained in Chapter VI on sexual exploitation offenses: 191 (promotion, facilitation or encouragement of prostitution) since the occurrence of exploitation involves the offense of trafficking; and 193 (sexual activity with underage persons for payment) and 193 (bis) (payment for the promotion, facilitation or encouragement of prostitution), since these conducts involve induction to the human trafficking offense and, therefore, are subsumed under Article 202 (ter).

To avoid the misinterpretation of the degree of participation in the offense, the analysis of related Articles in the *Criminal Code*, as follows, is suggested:

Article 35. Authors and accomplices of offenses and misdemeanors are criminally liable.

Article 36. Authors are the individuals who carry out the crime on their own, jointly or through a third party who is used as an instrument.

Authors are also:

- a) Individuals who directly induce a third party to carry out the offense.
- b) Individuals who cooperate in its execution through an act without which it would not have been carried out.

Article 37. Accomplices are those who are not included in the previous Article and cooperate in the execution of the offense through prior or simultaneous actions.

Regarding the criminal liability of legal persons, the analysis of Article 38 of the *Criminal Code* is recommended to ensure punishment of the persons who have control over shares or over the administration of the means of the offense (straw men), together with the administrators, representatives or partners who are registered as such in public records.

To the Secretariat against Sexual Violence, Exploitation and Human Trafficking (SVET)

SVET needs to review the *Policy against Trafficking in Persons and for the Comprehensive Protection of Victims 2014-2024*, for the purpose of fixing the omission of important strategies that should be included, among them:

- Creation of a centralised system to collect statistical data that permits more certain knowledge of the offense, particularly on the profiles and estimate number of victims. This line of work will help to build public policies and more effective prevention and care measures, because, as it has been pointed out in this and other studies about human trafficking, there are serious shortcomings in the official records of the victims of this offense.
- The development of programs aimed at reducing both the demand for sexual

services of underage persons, as the factors of vulnerability of populations at risk of sexual exploitation, including the need to change patriarchal cultural patterns and the protection of migrants.

- To promote, among competent institutions, the creation of special programs to restore the rights of victims of trafficking for sexual exploitation purposes, to include a psycho-social approach to the problem as well as prevention policies by the State of Guatemala.
- To include control measures of the labour market and of centres where sexual exploitation occurs.
- To include campaigns against sexism and cultural patterns that lead to sexual violence against girls, boys and women.

In the area of direct care through programs, the main role of SVET is to promote their creation and implementation by authorised institutions. Cases involving girls, boys and adolescents are the responsibility of protection programs of the Social Welfare Secretariat of the Presidency (SBS). For adult victims, the responsibility falls on the Ministry of Public Health and Social Welfare (MSPAS).

SVET must promote second level care, that is, support programs –including professional training and easy access to credit– aimed at the social reintegration and development of life projects that allow victims to break the cycle of sexual exploitation. These care projects need to be coordinated with other institutions such as the Ministries of Public Health and Social Welfare, Social Development and Education, or SBS among others. SVET should promote the creation of a reparation fund for victims of trafficking to implement this type of comprehensive program. This fund needs to be created with the money for feited from sexual exploitation activities.

To the institutions in charge of authorising, controlling and supervising companies, particularly businesses related to the sex trade

It is necessary to adapt, implement and strengthen control and sanction mechanisms enforceable against the institutions involved in the company authorisation cycle, particularly those that may facilitate sexual exploitation.

Trade Registry

It is necessary to review and amend the legislation that regulates the Trade Registry in order to have real control of activities conducted by trade companies.

In particular, it is necessary to give the Trade Registry sufficient authority to assess sanctions as well as fines, to do temporary and permanent business close downs when they violate trade obligations, work without legal permits or engage in illegal activities.

It is necessary to modify the way that Company shares are registered to have public control of owners and regulate every aspect of share rights.

The Trade Registry needs to enter into an agreement to be directly linked to the National Registry of persons (RENAP) and to the Tax Authority (SAT) to register individual traders and the owners of trade companies, and avoid legal fraud.

Tax Administration (SAT)

SAT must reinforce its mechanisms to control companies, in order to avoid fake or adulterated registration of companies that may engage in fraud or any other illegal activity.

Control of tax obligations needs to be stricter to prevent companies from benefitting from tax credits if they registered with forged or adulterated paperwork.

SAT protocols and procedures need to be assessed and changed to meet internationally accepted accounting and audit standards, in view of the inadequate control of tax obligations.

General Labour Inspector's Office (IGT)

It is necessary to strengthen IGT to meet labour rights protection requirements and enforce the prohibition of the worst forms of child labour.

Municipalities

Municipalities need to produce stricter municipal-level authorisation regulations or agreements for businesses that operate in their jurisdiction. These instruments need zero tolerance of trafficking activities and, in general, of any activity that promotes offenses.

It is also necessary to strengthen supervision and control of businesses that already operate in their respective jurisdictions in order to decree or coordinate the closing down of businesses that engage in human trafficking.

Bureau of Public Entertainment of the Ministry of Culture and Sports

It is necessary for the Bureau of Public Entertainment to update its anachronistic regulations to authorise establishments that offer night entertainment. It is necessary to amend the *Law of Public Entertainment*.

It is necessary for this legislation to adapt to international human rights treaties. But beyond formal requirements, the Bureau of Public Entertainment must focus on enforcing its regulations and preventing the exploitation of underage persons and foreign women in night clubs.

Guatemalan Tourism Board (INGUAT)

While there is a Code of Ethics drafted by the hotel industry to prevent human trafficking and sexual tourism, this effort needs to be complemented

with other stricter control practices including the effective assessment of sanctions.

INGUAT has no control over motels and other businesses that engage in activities where, through reduced room rental rates, girls, boys and adolescents are exploited and the operation permit has not been cancelled.

It is necessary to strengthen control over government officials that are in charge of supervising hotels and motels, among others, because of the possibility of tolerance or collusion with traffickers, as well as corruption facilitated by these lodging facilities. The creation of a specific unit to provide follow-up on this matter is suggested.

To the Ministry of Public Health and Social Welfare (MSPAS)

Through the extension and renewal of sanitary licenses, this agency needs to adopt effective strategies and mechanisms to have sanitary control of every business to guarantee that no sexual exploitation of boys, girls and adolescents occurs.

MSPAS must guarantee care and treatment of the physical and mental health of victims of sexual exploitation directly or through subsidies to NGOs (like the work currently done with *Fundación Sobrevivientes* and *Refugio de la Niñez*).

To the Multi-Sector Commission for the Control of Distribution and Consumption of Alcoholic Beverages and Violations that are common and Associated to this Activity

The recommendation is to dissolve the Multi-Sector Commission or to deeply reform it to ensure that it can fulfill its prevention functions.

The authorities that participate in search operations should not limit themselves to a merely formal activity, because they must monitor findings of irregular activities.

To the Social Welfare Secretariat (SBS)

This secretariat should create a program specialising in victims of trafficking for sexual exploitation to give them comprehensive and individualised care and to guarantee the restoration of their rights through direct care or subsidised programs. To this end, the care methodology developed by civil society organisations (CSOs) that manage these kinds of initiatives should be used as an example.

It is also necessary to develop and implement procedures, routes, protocols and manuals for the care and treatment of girls, boys and adolescents who are victims of trafficking for sexual exploitation. In the case of foreign children and adolescents, care methods based on international standards should be guaranteed by SBS.

To the Ministry of Social Development (MIDES)

Include victims of trafficking for sexual exploitation, and their families, among its beneficiaries. This needs to be a part of the process of psycho-social recovery that allows the conservation of family.

To Justice System institutions

It is important to provide more intense training on the criminal type of trafficking to justice operators as well as on gender, human rights and victim approaches to the staff of justice sector institutions. When judges, PGN lawyers, prosecutors, experts from the National Forensic Science Institute (INACIF) and police are made aware and are given special education on gender equity, better results are obtained in investigation, prosecution and punishment.

Training programs need to be developed for Judges, prosecutors, INACIF experts and PGN joint complainants on the components of comprehensive reparation for victims. These programs need to be inspired in the transformational reparation doctrine developed by the Inter-American Court on Human Rights (IACHR).

The deposition given by the victim of trafficking in a closed circuit or Gesell chamber should be useful to all the agencies that participate in the proceedings, so that the victim provides her statement only once.

To the Attorney-General's Office (MP)

It is necessary to continue with the training program started by the Prosecution Section against Trafficking in Persons in the various regions of the country because there is still ignorance and confusion about the application and interpretation of the criminal type of trafficking. The training process needs to be made a permanent part of the Institutional Training Unit of the Prosecution.

The recommendation regarding institutional coverage is to extend the comprehensive care model of the Attorney-General's Office to every Prosecution office in the country, to include the specific component on human trafficking, as well as to deploy the Prosecution Section against Trafficking in Persons to areas with greater prevalence of sexual exploitation (in both cases, to areas like country borders, migration routes and regions that are controlled by drug traffickers).

The infrastructure of the Prosecution Section against Trafficking in Persons needs to be updated to have adequate facilities to ensure confidentiality for victims and witnesses.

The Attorney-General's Office must start investigation *ex officio* as well as deepen its investigation work of the owners of exploitation centres or where there is a clue of participation in trafficking in persons by organised criminals, especially in areas controlled by drug traffickers.

The methodology to investigate trafficking in persons needs to include an inter-disciplinary perspective and have specialised personnel, particularly psychologists and social workers in charge of victim care and interviews.

In cases of transnational human trafficking, it is necessary to strengthen international cooperation

and legal assistance mechanisms, particularly with Honduras, El Salvador, Nicaragua, Colombia and Mexico.

Another recommendation is to form a team of forensic auditors at the Prosecution Section against Trafficking in Persons to do the financial investigation and analysis of the crime, in such a way that the prosecution covers economic aspects, including money laundering. At any rate, more joint work by the Prosecution Section against Trafficking in Persons and the Prosecution Section against Money Laundering is needed.

No assets have been forfeited yet in human trafficking cases; to do that, the Attorney-General's Office needs to investigate and quantify the financial gains from sexual exploitation. This way, earnings from human trafficking could be forfeited and those resources allocated to agencies in charge of criminal persecution and prosecution of structures involved in human trafficking for sexual exploitation purposes. If the *Asset Forfeiture Act* is amended, resources obtained from that could also be used for prevention, and to provide care and rehabilitation to victims.

In terms of dignified and comprehensive reparation for victims of human trafficking, the Attorney-General's Office needs to increase the number of evaluations done to be able to technically prove material and immaterial damage during the trial. This needs to be done through actuarial reports.

Producing special instructions that include these elements is recommended for the investigation and prosecution of human trafficking for sexual exploitation purposes.

To the Judiciary (OJ)

Since the quality of the sentences passed by jurisdictional bodies that specialise in violence against women has improved, it is necessary to continue to take these courts to all the departments of the country, and to broaden their competence to hear cases of trafficking in persons.

Courts for cases involving children and adolescents and adolescents in conflict with criminal laws must make more use of the authority they get from the *Law for the Comprehensive Protection of Children and Adolescents* to act *ex officio* and issue a broad catalogue of protection measures, since most of these are not enforced. Also, the Judges in courts for children and adolescents should order the closing of establishments where boys, girls or adolescents are sexually exploited, as a protection measure.

To the National Civil Police (PNC)

As part of the police reform process, PNC needs to undertake a serious effort to reduce the existing gap between men and women in the organisation, and establish control mechanisms to prevent abuses against female police personnel.

It is necessary to strengthen and broaden the territorial coverage of units that specialise in the criminal investigation of human trafficking and sexual violence cases.

It is necessary to develop training processes through the Special Office for Children and Adolescents in PNC and the PNC Academy to raise awareness and implement law enforcement procedures for trafficking in person cases.

To the Office of the Solicitor General (PGN)

Department-level delegations of PGN need to be strengthened to properly address cases of human trafficking for sexual exploitation, with priority on areas where the crime is more prevalent.

The criminal unit and the protection unit of the Office for Children and Adolescents at PGN need to improve coordination and communication mechanisms in order avoid secondary victimisation of victims of trafficking for sexual exploitation (particularly through repeated interviews).

Regarding the coordination role of the Alba Keneth System, which is the responsibility of the PGN, the recommendation is to strengthen agreements with the media to have alerts broadcast for free on TV, radio, written media and social networks. Also, PGN should keep a national record of missing boys, girls and adolescents to be able to identify potential victims of trafficking.

To the Migration Service

This agency needs to meet the provisions of the *Inter-Agency Protocol for the Repatriation of Victims of Human Trafficking*. In particular, it should not detain foreign victims and should guarantee their rights pursuant to the *Palermo Protocol*.

The agency needs to establish controls to prevent officials from using their discretion regarding the exit and entry from and to Guatemala of children and adolescents who are not accompanied by one or both parents.

General recommendations

In order to build the capacity of the institutions listed in this report, it is absolutely necessary to allocate sufficient resources to them, including

trained human resources, financial resources, material resources and infrastructure. This will allow them to properly fulfill their respective mandates to fight human trafficking for purposes of sexual exploitation.

It is necessary to strengthen the internal control of public officials in order to detect, prosecute and punish officials who participate in acts of tolerance, acquiescence or promotion of human trafficking for sexual exploitation.

It is also necessary to build social audit mechanisms of the performance of public officials to guarantee that all the authorities effectively meet their obligations in the area of human trafficking, both to issue business permits as to close down sexual exploitation centres and to prosecute traffickers.

The complaints filed by women's organisations and organisations that provide care for sexual exploitation victims, PDH, victim care referral networks and department-based committees created by SVET, based on their knowledge of the local reality, must be properly handled by the justice administration system.

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Annexes

Annex I

TABLE I
Licences issued to businesses open to the public by type of business, 2009-2014

	2009	2010	2011	2012	2013	2014	
STRIP CLUBS	71	66	16	25	29	30	237
Restaurants with live music	57	57	6	12	19	21	172
Discotheques	31	31	12	12	15	15	116

Source: produced by authors with information from the Directorate of Public Entertainment of the Ministry of Culture and Sports

TABLE
Licences issued to businesses open to the public by department: 2009-2014

Department	Strip Clubs	Restaurants live Music	Discotheques	Total
Guatemala	119	140	47	306
Escuintla	32	4	21	57
Quetzaltenango	19	0	0	19
Suchitepéquez	12	0	5	17
Puerto Barrios	11	3	10	24
Retalhuleu	11	1	1	13
Chiquimula	9	0	0	9
Sacatepéquez	9	14	9	32
Quiché	6	0	6	12
San Marcos	5	1	0	6
Sololá	2	12	13	27
Huehuetenango	1	0	2	3
Zacapa	1	0	1	3
Jutiapa	0	0	1	1

Source: produced by authors with information from the Directorate of Public Entertainment of the Ministry of Culture and Sports.

