

Remedies for Human Trafficking in Venezuela: Critical Analysis of the Legal Framework

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Introduction

With concerns about the lack of protection for victims of trafficking in persons, the United Nations General Assembly (hereinafter “UN General Assembly” or “General Assembly”) adopted the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* (hereinafter “Palermo Protocol” or “the Protocol”) as the first universal instrument that addressed all aspects of trafficking in persons.¹ In that sense, the Palermo Protocol, with its express definition of trafficking in persons,² entered into force on December 25, 2003 as an important unifying baseline for future international and domestic efforts to combat this global issue.

Pursuant to the explicit prohibition of any form of trafficking in persons³ that the State of Venezuela had previously included in its 1999 Constitution, it signed the Protocol on

¹ Preamble of the Palermo Protocol. This Protocol was adopted by Resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations.

² Article 3 of the Palermo Protocol. This article reads:

(a) “Trafficking in persons” shall mean the recruitment, transportation transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

³ Article 54 of the Bolivarian Constitution of Venezuela reads as follows:

No person shall be subjected to slavery or servitude. Traffic of persons, in particular women, children and adolescents, in any form, shall be subject to the penalties prescribes by law.

December 14, 2000 and later ratified it on May 13, 2002.⁴ Venezuela recognized and approved, without any reservations, the Protocol “in its entirety and in order for it to have international effects as far as Venezuela is concerned.”⁵ With these words, under the newly elected government of Hugo Chavez, the State signaled a strong commitment to combat human trafficking in its jurisdiction.

More than a decade later, Venezuela has been identified for the past 3 years as non-compliant with the minimum standards for the elimination of trafficking⁶ and as a “source and destination country for men, women and children subjected to sex trafficking and forced labor.”⁷

The current legal framework in the Bolivarian Republic of Venezuela explicitly covers different forms of trafficking in girls and women, and only cross-border trafficking of males. Remaining insufficient, it leaves other forms of human trafficking to be prosecuted by using other articles of the criminal code.⁸ As such, under a more advanced international framework that recognizes the impact and implications on human trafficking victims’ as

⁴ Dates of signature and ratification found on https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&clang=en. The National Assembly approved the Protocol with the Approval Act No. 64 published in the Official Gazette No. 37.353 of December 27, 2001.

⁵ Sole article of the Approval Act No. 64 published in the Official Gazette No. 37.353 of December 27, 2001.

⁶ US Department of State. *2016 Trafficking in Persons Report*, p. 397; *2015 Trafficking in Persons Report*, p. 361; and *2014 Trafficking in Persons Report*, p. 407.

⁷ Ibid. Note that in the 2014 Report, the US State Department identified Venezuela as a “*source, transit and destination country* [...]” without doing so in the two latter reports.

⁸ United Nations Office on Drugs and Crime. *2016 Global Country Profile, South America*; p.33. Available at: http://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Country_profile_South_America.pdf

victims of human rights violations,⁹ it is important to analyze the government's efforts in combating all forms of human trafficking and its compliance with international standards.

In particular, this paper focuses on the existing gaps in Venezuela's approach to remedies for human trafficking victims which results in a lack of compliance of its national legal framework with international standards on the right to an effective remedy, specifically those set out by the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons (hereinafter "the Principles").¹⁰ Such gaps, implemented in a particular context, together with several legal structural deficiencies, are further exacerbated as a result of the current political and socioeconomic crisis the country is facing. Regrettably, this has resulted in a lack of proper attention focused on policies to prevent, combat or to provide remedy for victims of this global issue, but on immediate and volatile situations.

This paper is divided into four parts. The first chapter provides a brief description of the current political socioeconomic context. The second chapter indicates the applicable international framework. The third chapter provides an overview of the national legal framework as it relates to human trafficking and the remedies available to victims, and further demonstrates, through a chart, its compliance with the Principles. Finally, the last chapter reflects on several conclusions.

⁹ Human Rights Council. *Report of the United Nations High Commissioner for Human Rights: Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons*. A/HRC/26/18 of 2 May 2014, para.1.

¹⁰ Ibid.

I. Country's Context: Political and socioeconomic crisis

With the intention of focusing on the social, economic, and political situation in Venezuela, a brief profile of the country is brought to later link how a particular context can, not only increase the number of persons vulnerable to being trafficked but, further maintain them defenseless. In the author's consideration, the problem arises when alongside a diverse number of different issues arising and gaining strength in the country, this particular one does not call the attention of many politicians, government institutions or civil society groups.

In general, Venezuela is facing serious economic, financial¹¹ and political adversities. High levels of political and civil tension continue with a heavily divided political arena between the political party of the current government (PSUV) and the association of political parties of the opposition (MUD). Currently and after 18 years of the beginning of the Bolivarian Revolution, the difficulties faced by the people living in the territory of Venezuela, not only Venezuelans, are a direct consequence of not only a conflict between political ideologies, but as a result of mismanagement, heavy spending on poorly run government programs, and corruption.

The National Assembly, constituted by a majority of representatives of MUD since the December 2015 elections, issued on January 2016 an Agreement by which "it declared a humanitarian crisis in the health sector of Venezuela, in view of the serious shortage of

¹¹ Bloomberg. *Venezuela's Inflation Nightmare Signals Default May Come Sooner*. July 15, 2015. Available at: <https://www.bloomberg.com/news/articles/2015-07-15/venezuela-s-772-inflation-means-default-may-come-a-lot-sooner>.

medicines, medical supplies and deteriorating infrastructure.”¹² Through this document, the National Assembly urged the Executive to allow the sending of medicines between individuals from other nations to Venezuela, and within the national territory, as a humanitarian measure in the face of the health crisis that the country is experiencing.¹³

On his own, President Nicolas Maduro has declared on multiple occasions, extending from January 2016 to March 2017, a “state of exception and economic emergency”.¹⁴ He has

¹² National Assembly. *Agreement by which declares a humanitarian crisis in the health of Venezuela, in view of the serious shortage of medicines, medical supplies and deteriorating infrastructure*. 26 January 2016. Available at:

http://www.asambleanacional.gob.ve/uploads/actos_legislativos/doc_62f4da5d8cc941f8f49274c29245fe11b8677c37.pdf. (only in Spanish)

¹³ Ibid.

¹⁴ Presidency of the Republic of Venezuela. Decree No. 2.184 published in the Extraordinary Official No. 6.214 of 14 January 2016; Decree No. 2.323 published in the Extraordinary Official Gazette No. 6.227 of 13 May, 2016; Decree No. 2.452 published in the Extraordinary Official Gazette No. 6.256 of 13 September 2016; Decree No. 2.548 published in the Extraordinary Official Gazette No. 6.272 of 13 November 2016; Decree No. 2.667 published in the Official Gazette No. 41.074 of 13 January 2017; and Decree No. 2.742 published in the Official Gazette No. 41.112 of 13 March 2017.

To this regard, according to article 339 of the Constitution, a state of economic exception can only be declared in extraordinary circumstances and with a limited duration.

Article 338 of the Bolivarian Constitution reads as follows:

[...] A state of economic emergency may be declared when extraordinary economic circumstances arise, such as to affect seriously the economic life of the Nation; the duration of this state of emergency shall be 60 days, with the possibility of extension for the same period. (...) The National Assembly has the responsibility of the approval for the extension of the states of exemption. An organic law shall regulate states of exception and determine the measures that may be adopted based on them.

See also articles 337 and 339.

Article 337:

The President of the Republic, at a meeting of the Cabinet of Ministers, shall have the power to decree states of exception. Expressly defined as such are circumstances of a social, economic, political, natural or ecological nature which seriously affect the security of the Nation, institutions and citizens*, in the face of which the powers available to cope with such events are insufficient. In such case, the guarantees contained in this Constitution may be temporarily restricted, with the exception of those relating to the right to life, prohibition of incommunicative detention or torture, the right to due process, the right to information and other intangible human rights.

Article 339:

The Decree declaring a state of exception, which shall provide for regulating the right whose guarantee is restricted, shall be submitted within eight days of promulgation for consideration and approval by the National Assembly, or Delegated Committee and for a ruling by the Constitutional Division of the Supreme Tribunal or Justice on its constitutionality. The Decree must be in compliance with the requirements, principles and guarantees established in the International Pact on Civil and Political rights and the American Convention on Human Rights. [...]

continued to issue extraordinary decrees that provide the Executive branch, the authority to take “appropriate” discretionary measures to effectively address the exceptional situation.¹⁵

On such terms, article 3 of the repeated text of the Decrees states as follows:

*The President of the Republic may issue other measures of social, economic, political and juridical order that he deems appropriate to the circumstances, with the purpose of resolving the extraordinary and exceptional situation that constitutes the object of this Decree.*¹⁶

Alongside these decrees, in 2017 President Maduro requested assistance to the United Nations representatives to deal with Venezuela’s medicine shortages.¹⁷ Recognizing the extent of the problem, his request ought to be considered of great importance, as it changes the state’s previous stance on receiving international donations.¹⁸ In the past years, the government’s refusal was part of a discourse reaffirming the inexistence of a severe situation of scarcity to the international community.¹⁹

¹⁵ Presidency of the Republic of Venezuela. Decree No. 2.184 published in the Extraordinary Official No. 6.214 of 14 January 2016.

¹⁶ Presidency of the Republic of Venezuela. Decree No. 2.548 published in the Extraordinary Official Gazette No. 6.272 of 13 November 2016. See also IACHR. Press release No. 71: IACHR Expresses its Concern Regarding the Declaration of a “State of Exception and Economic Emergency” in Venezuela. June 1, 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/071.asp.

¹⁷ CNN. *Venezuela asks UN for help as medicine shortages grow severe*. March 25, 2017. Available at: <http://www.cnn.com/2017/03/25/americas/venezuela-maduro-un/>. See also: Runrunes. *Maduro solicita ayuda a la ONU en materia de medicamentos*. March 24, 2017. Available in: <http://runrun.es/nacional/302258/maduro-solicita-ayuda-a-la-onu-en-materia-de-medicamentos.html>.

(Only in Spanish)

¹⁸ NY Times. *Concern as Venezuela Refuses to Accept Aid*. September 27, 2016. Available at: https://www.nytimes.com/2016/09/28/world/americas/venezuela-refuses-us-aid.html?_r=0

¹⁹ Amnesty International. Press Release: *Venezuela: Stubborn politics accelerate catastrophic humanitarian crisis*. June 10, 2016. Available at: <https://www.amnesty.org/en/latest/news/2016/06/venezuela-stubborn-politics-accelerate-catastrophic-humanitarian-crisis/>. HRC. *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council Resolution 16/21*. A/HRC/WG.6/26/VEN/1 of 22 August 2016; par. 123.

Against all efforts from the government, several representatives of the international community have still expressed a deep worry. The United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, in his opening statement at the Human Rights Council expressed “acute concerns regarding allegations of repression of opposition voices and civil society groups; arbitrary arrests; excessive use of force against peaceful protests; the erosion of independence of rule of law institutions; and a dramatic decline in enjoyment of economic and social rights, with increasingly widespread hunger and sharply deteriorating health-care.”²⁰

The Inter-American Commission on Human Rights (hereinafter the “IACHR” or the “Commission”) has repeatedly, among other measures, made remarks about the social and political context of Venezuela.²¹ On July 2016, the Commission recognized “the urgent situation of extreme scarcity and shortages of medicine, medical supplies, and food”²² and its “negative impact on conditions to guarantee that Venezuelans can live a life of dignity.”²³

In a situation of **economic warfare and crisis such as the country is currently experiencing**, it is essential to stimulate sustainable economic growth by increasing productivity levels and boosting technological innovation [...]. (Bold added)

²⁰ Human Rights Council. *Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, at the 33rd session of the Human Rights Council*. 13 September 2016. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474#sthash.oAjIHuit.dpuf>.

²¹ In its 2016 Annual Report, the IACHR stated how “*there has been deterioration of the rule of law and democratic institutions. Reports continue of lack of access to justice and an independent and impartial judicial branch, while on the other hand, political polarization has been exacerbated, resulting in open confrontation between the legislative branch and the other State authorities that has affected the balance and separation of powers necessary for a democratic society.*” [IACHR. 2016 Annual Report: Chapter IV Venezuela. April 27, 2017, para. 2.]

²² IACHR. Press Release No. 96: *IACHR Calls on Venezuelan State to Adopt Comprehensive Measures in the Face of Scarcity in Venezuela*. July 22, 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/096.asp

²³ *Ibid.*

In particular, the Commission expressed concern over the violence that has occurred as a result of this background of food and medicine shortages. The IACHR acknowledged how there has been a proliferation of groups of speculators or “bachaqueros,” acts of corruption, clashes between individuals, looting of stores and shopping centers, and violence carried out in the framework of demonstrations and acts of public protest.²⁴ This has signified, in the IACHR’s opinion, an increase in the number of irregular movement across Venezuela’s borders with neighboring countries by people looking to buy food and other staples.²⁵

In correlation, there has been a significant deterioration of national institutions of great importance for a democratic society.²⁶ This deterioration has also been reported by international bodies, especially the IACHR. In 2016, the IACHR and its Special Rapporteur for Freedom of Expression expressed deep concern for the alleged manipulation of the State’s punitive powers by State agents aiming to control, punish or block the free exercise of the rights of association, expression and political participation of Venezuelan opposition, protestors and journalists.²⁷ Months after, the same authorities expressed to their opinion that “all of these concerning measures have taken place against the backdrop of a profound weakening of the separation of powers and an economic, food, and health crisis in the

²⁴ Ibid.

²⁵ Ibid.

²⁶ Venezuela has been ranked with significantly low scores in multiple international reports. It ranked as country 133 out of 133 with a score of 0.28 (in a scale 0 to 1) in the World Justice Project’s Rule of Law Index 2016 (available at: <http://data.worldjusticeproject.org/>); as country 166 out of 176 with a score of 17 (in a scale of 1 to 100) in Transparency International’s Corruption Perceptions Index 2016 (available at: http://www.transparency.org/news/feature/corruption_perceptions_index_2016); and as “not free” country with a score of 30 (in a scale of 1 to 100) in Freedom house’s Freedom in the World 2017 “Populists and Autocrats: The Dual Threat to Global Democracy” (available at: <https://freedomhouse.org/report/freedom-world/freedom-world-2017>).

²⁷ IACHR. Press Release No. 132: *IACHR Expresses Concern Regarding Restrictions in the Exercise of Fundamental Rights in Venezuela*. September 14, 2016. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2016/132.asp

country that continues to affect the rights to health, life, and humane treatment of the general population, with a differentiated impact among individuals or groups in situation of high vulnerability.”²⁸

Furthermore, the IACHR, with respect to the situation of Venezuelan migrants, voiced concern “given the lack of legal, regular, and safe migration channels, many people have had no choice other than to turn to clandestine, irregular migration over perilous land and sea routes.”²⁹ To this regard, it cited figures from the Office of the High Commissioner for Refugees (hereinafter “UNHCR”) that show how the number of Venezuelans seeking recognition of refugee status abroad increased by 2,889 percent.³⁰

Undoubtedly the context calls for immediate and complementing actions that adjust the state’s response and strategy in combatting trafficking in persons. As the situation remains to be stabilized, an increase of human trafficking victims can be expected as the economic and social instability may further reinforce the vulnerability of certain groups.³¹

²⁸ IACHR. Press Release No. 154: *IACHR and Office of the Special Rapporteur for Freedom of Expression Condemn Measures to Shut Down Spaces for Political Participation in Venezuela and Raise Alarm at their Impact on Democracy*. October 25, 2016. Available at:

http://www.oas.org/en/iachr/media_center/PReleases/2016/154.asp; See also: IACHR. Press Release No. R110/16: *Venezuela / Crisis: UN and Inter-American experts raise alarm at deterioration of media freedom*. August 4, 2016. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1036&IID=1>; and IACHR. Press Release No. R16/17: *Office of the Special Rapporteur Condemns Censorship and Intimidation of International Media and Journalists in Venezuela*. February 17, 2016. Available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=1052&IID=1>.

²⁹ IACHR. Press Release No. 6: *IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them*. January 25, 2017. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2017/006.asp.

³⁰ According to figures from the Office of the United Nations High Commissioner for Refugees (UNHCR), there were 505 asylum seekers from Venezuela at year-end 2012; 1,153 in 2013; 4,820 in 2014; and 15,094 at year-end 2015.

³¹ The UN General Assembly has recognized that economic crises are likely to further aggravate the problem of trafficking in persons. [UN General Assembly. Resolution 64/178: *Improving the coordination of efforts against trafficking in persons*. A/RES/64/178 of 26 March 2010.]

In addition, in such circumstances, other obstacles should be expected to arise for human trafficking victims in having an effective access to remedies.³²

It seems appropriate to recall that as a consequence of the human rights-based approach by which states should structure their national strategies to address trafficking in persons, two principles have been recognized.³³ First, that the human rights of trafficked persons must be “at the center of all efforts to combat trafficking and to protect, assist and provide redress to those affected by trafficking; and second, that anti-trafficking measures should not adversely affect the human rights and dignity of the persons concerned.”³⁴

Responses to trafficking tend to continue to focus on approaches that place greater priority on the prosecution and conviction of the suspects than on support for victims/survivors,³⁵ the root causes of and risk factors for trafficking, which are many and interrelated, including poverty, gender inequality and lack of viable employment opportunities, must be effectively addressed and be a specific focus for the State.³⁶

II. International Framework applicable to Venezuela

As a crucial advancement for the time, the UN General Assembly adopted in the year 2000 the United Nations Convention against Transnational Organized Crime³⁷ together with

³² Among others, discrimination from state authorities in the access to effective remedies, lack of capacitation and human resources to carry out proceedings, lack of due process.

³³ Human Rights Council. *Thematic Report of the Special Rapporteur on Trafficking in persons, especially women and children*. A/HRC/26/37 of 1 April 2014, par. 37.

³⁴ *Ibid.*

³⁵ UN General Assembly. *Report of the Secretary General: Trafficking in women and girls*. A/69/224 of 1 August 2014; par. 5.

³⁶ *Op. Cit.* par. 6; See also: General Assembly. *United Nations Global Plan of Action to Combat Trafficking in Persons*. A/RES/64/293 of 12 August 2010. In the preamble, the States recognized that poverty, unemployment, lack of socio-economic opportunities, gender-based violence, discrimination and marginalization are some of the contributing factors that make persons vulnerable to trafficking in persons.

³⁷ The Republic of Venezuela ratified the Convention on 13 May 2002.

the Palermo Protocols. With the Palermo Protocol, it provided the first agreed international definition of trafficking in persons³⁸ and in article 2 determined, among two others, the purpose to “protect and assist the victims of such trafficking, with full respect for their human rights.”³⁹

The Protocol was intended to ensure the application at a national level of unified and harmonized definitions. With article 5, it created an obligation for states to adopt all necessary measures to establish as criminal offences the conducts described in article 3, in all forms of collaboration. In Article 6, it establishes concrete obligations of states with regards to the victims. It provided clarity on the minimum measures that are expected in the assistance and protection of victims of human trafficking.⁴⁰

³⁸ UN General Assembly. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. A/RES/55/25 of 15 November 2000.

³⁹ Op. Cit, article 2.

⁴⁰ Op. Cit, article 6:

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings; (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
 - (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Notably, it addressed many of the remedies that were subsequently detailed by the international human rights community. As a result, Venezuela acquired three main obligations: to include trafficking in persons as a crime in their national legislation; to prevent, investigate and prosecute such crimes; and to take the necessary measures to assist and protect victims of trafficking in persons.

Correlatively, the Republic of Venezuela, signed⁴¹ and ratified⁴² the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.⁴³ In consequence, a distinction was made by international law between the crime of trafficking in persons and smuggling of migrants. Thus, ‘smuggling of migrants’, according to article 3, means illegal entry of a person into the territory of a state.⁴⁴

With regards to specific forms of trafficking in persons, the Republic of Venezuela has ratified two subject-related conventions of the International Labor Organization (hereinafter “ILO”). First, the Convention concerning Forced or Compulsory Labour

⁴¹ The Bolivarian Republic of Venezuela signed on 14 December 2000.

⁴² The Bolivarian Republic of Venezuela ratified the Protocol on 19 April 2000. It made as a sole reservation expressing:

The Bolivarian Republic of Venezuela, in accordance with the provision of article 20 (3) of the Protocol against Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, formulates a reservation with respect to the provision established under paragraph 2 of the said article. Consequently, it does not consider itself obligated to refer to arbitration as a means of settlement of disputes, nor does it recognize the compulsory jurisdiction of the International Court of Justice.

⁴³ The Protocol was adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nation and entered into force by 28 January 2004, in accordance with article 22.

⁴⁴ UN General Assembly. *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*. A/RES/55/25 of 15 November 2000; article 3.

(hereinafter “ILO Convention No. 29), ratified by Venezuela on 20 November 1944;⁴⁵ and second, the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (hereinafter “ILO Convention No. 182”), ratified by Venezuela on 26 Oct 2005.⁴⁶ Regrettably, it has not ratified the Convention concerning Domestic Workers (hereinafter “ILO Convention No. 189”).

Regarding ILO Convention No. 29, notwithstanding the context in which it was enacted, its article 1 reads a pressing obligation on States “to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.”⁴⁷ In a positive manner and with vague terminology, it articulates the meaning of the term “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴⁸

On its own, article 3 of the ILO Convention No. 182, establishes in explicit language the meaning to be understood in the phrase “the worst forms of child labour.” In essence, it comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

⁴⁵ ILO. *Convention concerning Forced or Compulsory Labour No. 29* adopted in Geneva during the 14th ILC session. 28 Jun 1930, entered into force 01 May 1932.

⁴⁶ ILO. *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* entered into force 19 Nov 2000.

⁴⁷ ILO. *Convention concerning Forced or Compulsory Labour No. 29* adopted in Geneva during the 14th ILC session. 28 Jun 1930, entered into force 01 May 1932, article 1.

⁴⁸ Op. Cit, article 2.

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁴⁹

In accordance with the severity of such actions, article 7 encompasses an obligation to take all necessary measures to ensure the effective implementation and enforcement of the Convention.⁵⁰ In addition, it creates the responsibility on the States to take effective and time-bound measures to “(a) prevent the engagement of children in the worst forms of child labour; (b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration; (c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour; (d) identify and reach out to children at special risk; and (e) take account of the special situation of girls.”⁵¹

In May 2014, after a consultation process, the United Nations High Commissioner for Human Rights welcomed the Basic Principles on the Right to an Effective Remedy for Victims

⁴⁹ ILO. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour entered into force 19 Nov 2000, article 3.

⁵⁰ Op. Cit, article 7.

⁵¹ Ibid.

of Trafficking in Persons.⁵² In its Report, he encouraged the Human Rights Council “to consider endorsing the Principles with a view to Member States incorporating the principles into their domestic legal framework so that these can become a living tool for practitioners in their daily antitrafficking work.”⁵³ With their persuasive authority as an expression of international standards, the Principles recognize three broad categories: A) rights and obligations, B) access to the right to a remedy and C) forms of the right to remedy; that encompass eighteen principles.

With an exclusive human rights approach, various international and regional human rights treaties, though they were not intended to provide legal obligations exclusively on human trafficking issues, touch upon different aspects and forms of exploitation. Many of these treaties have been ratified by Venezuela and create legal obligations on the state to respect, provide and fulfill. Notably, to name a few, article 6 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”);⁵⁴ article 11 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;⁵⁵ articles 34, 35, 36 and 39 of the Convention on the Rights

⁵² Human Rights Council. *Report of the United Nations High Commissioner for Human Rights: Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons*. A/HRC/26/18 of 2 May 2014.

⁵³ *Ibid*, par. 48.

⁵⁴ Article 6:

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

⁵⁵ Article 11:

1. No migrant worker or member of his or her family shall be held in slavery or servitude.
2. No migrant worker or member of his or her family shall be required to perform forced or compulsory labour.
3. Paragraph 2 of the present article shall not be held to preclude, in States where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court.
4. For the purpose of the present article the term "forced or compulsory labour" shall not include:

of the Child;⁵⁶ and article 7 (b), (g) and (h) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women "Convention of Belém do Pará."⁵⁷

On the issue on trafficking in persons, the UN General Assembly adopted the UN Global Plan of Action to combat Trafficking.⁵⁸ In general, the member states of the General Assembly recognized to be guided by the need to develop a global plan of action against

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- (a) Any work or service not referred to in paragraph 3 of the present article normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;
 - (b) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (c) Any work or service that forms part of normal civil obligations so far as it is imposed also on citizens of the State concerned.

⁵⁶ Article 34:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36:

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

⁵⁷ Article 7:

The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to:

- b. Apply due diligence to prevent, investigate and impose penalties for violence against women;
- g. Establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparations or other just and effective remedies; and
- h. Adopt such legislative or other measures as may be necessary to give effect to this Convention.

⁵⁸ General Assembly. *United Nations Global Plan of Action to Combat Trafficking in Persons*. A/RES/64/293 of 12 August 2010.

trafficking in persons to further “continue their efforts to combat a national and transnational issue, reaffirmed a strong condemnation of trafficking in persons.”⁵⁹ On the document, the member states reiterated that this crime constitutes a criminal activity violating human dignity and has negative effects on development, peace and security and human rights. In particular, the General Assembly urged all states parties to the United Nations Convention against Transnational Organized Crime and the Palermo Protocol to implement them fully and effectively.⁶⁰

More broadly, the General Assembly adopted an important instrument to help clarify the substantive content of the right to a remedy for human rights violations.⁶¹ In 2005, it presented a key document encompassing central principles applicable to States that committed or were implicated in human rights violations.⁶² The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law⁶³ (hereinafter “UN Guidelines on the Right to a Remedy and Reparation”) identified that

⁵⁹ Op. Cit; par. 1.

⁶⁰ Op. Cit; par. 3.

⁶¹ Acknowledging that the ICCPR and the ICESCR do not explicitly provide for a right of remedy, Anne T. Gallagher argues that the State incurs in an obligation to ensure remedies are made available to victims. In her view, there is an obligation to provide effective remedy even when not specifically articulated in a treaty, either because it is implicit in such treaties which require national implementation to be effective, or because the obligation to provide remedies for such violations is itself a norm of customary international law. [Gallagher, Anne. (2010). *The Right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy*. Bratislava, Slovakia, p. 5.]

⁶² Gallagher, Anne. (2010). *The Right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy*. Bratislava, Slovakia, p. 5.

⁶³ UN General Assembly. Resolution 60/147: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. A/RES/60/147 of 16 December 2005.

reparations are linked to responsibility.⁶⁴ As such, with this document, the states recognized that reparations for victims of human rights violations should be full and effective.⁶⁵

III. National Framework⁶⁶

To date, Venezuela does not have a specialized Anti-Trafficking Law⁶⁷ nor does it have a National Plan and Policy guidelines to combat trafficking in persons in force. Therefore, all matters encompassing human trafficking, its different manifestations, and the right to an effective remedy for the victims of trafficking in persons are spread throughout existing legislation.

For the purposes of the present investigation, an analysis of compliance will be structured with the Constitution, the Criminal Code,⁶⁸ the Criminal Procedural Code,⁶⁹ the Civil Code,⁷⁰ the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence,⁷¹ the Organic Law for the Protection of Children and Adolescents,⁷² the Organic

⁶⁴ Gallagher, Anne. (2010). *The Right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy*. Bratislava, Slovakia, p. 6.

⁶⁵ UN General Assembly. Resolution 60/147: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. A/RES/60/147 of 16 December 2005, article 15.

⁶⁶ All translations of Venezuelan laws in the text or footnotes of the present document are the author's own independent translation.

⁶⁷ A draft anti-trafficking law is still for consideration at the National Assembly since 2010. *Correo del Orinoco. MIJ presenta Proyecto de Ley de trata de personas ante la Asamblea Nacional*. November 3rd, 2010 available at: <http://www.correodelorinoco.gob.ve/mij-presenta-proyecto-ley-trata-personas-ante-asamblea-nacional/>.

⁶⁸ National Assembly. Criminal Code published in the Extraordinary Official Gazette No. 5.768 of 13 May 2005.

⁶⁹ National Assembly. Criminal Procedural Code published in the Extraordinary Official Gazette No. 5.930 of 4 September 2009.

⁷⁰ National Congress. Venezuelan Civil Code published in the Extraordinary Official Gazette No. 2.990 of 26 July 1982.

⁷¹ National Assembly. Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence published in Official Gazette No. 40.548 of 25 November 2014.

⁷² National Assembly. Organic Law for the Protection of Children and Adolescents published in Official Gazette No. 6.185 of 8 June 2015.

Law of Labor and Workers,⁷³ the Law on Immigration and Migration,⁷⁴ and the Organic Law against Organized Crime and Terrorism Financing,⁷⁵ as they mention and encompass the applicable framework.

A. Implementation of the Palermo Protocol

After a year of the Executive branch signing the Protocol, with the intention to comply with its international commitments, the National Assembly approved the Protocol with the Approval Act No. 64 published in the Official Gazette No. 37.353 of December 27, 2001.⁷⁶ Although the text of the Act does not include the result of the voting or commentaries made during the National Assembly's session, the sole article added by the legislative authority stated: "the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, is approved in all its parts and for international effects as far as Venezuela is concerned."⁷⁷ The text of the beforementioned act encompasses the entirety of the Protocol without any additional clarification, including the definition of trafficking in persons.⁷⁸

⁷³ National Assembly. Organic Law of Labor and Workers published in Official Gazette No. 6.076 of 7 may 2012.

⁷⁴ National Assembly. Law on Immigration and Migration published in Official Gazette No. 37. 944 of 24 May 2004.

⁷⁵ National Assembly. Organic Law against Organized Crime and Terrorism Financing published in Official Gazette No. 39.912 of 30 April 2012.

⁷⁶ In accordance with Article 154 of the Bolivarian Constitution. As it reads:

Treaties agreed to by the Republic must be approved by the National Assembly prior to their ratification by the President of the Republic, with the exception of those which seek to perform or perfect pre-existing obligations of the Republic, apply principles expressly recognized by the Republic, perform ordinary acts in international relations or exercise powers expressly vested by law in the National Executive.

⁷⁷ National Assembly. Approval Act No. 64 approving the Protocol with the published in the Official Gazette No. 37.353 of December 27, 2001.

⁷⁸ This definition states as follows:

In accordance with the Bolivarian Constitution, the content of the Protocol, as it has clear human rights implications, has a constitutional rank and prevails over domestic legislation.⁷⁹

B. Definitions of different forms of trafficking in persons established in various laws and criminal punishments

Given the lack of a specialized legislation, the criminalization of different forms of trafficking in persons are found in numerous legal instruments with particular characteristics. With the broadest scope, the Constitution states in its article 54 that any form of trafficking in persons, “in particular women, children and adolescents,” shall be subject to the penalties prescribes by law. In such a way, although the Constitution does not provide a specific content of what it is considered to be human trafficking, it recognizes a general and abstract concept. As it is, it could be concluded that there was a conscious intention of the National Assembly to have an inclusive definition for any future forms of trafficking in persons that could be identified by law or the judiciary.

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

⁷⁹ Article 23 of the Bolivarian Constitution:

Article 23: The treaties, pacts and conventions relating human rights which have been executed and ratified by Venezuela have a constitutional rank, and prevail over internal legislation, insofar as they contain provisions concerning the enjoyment and exercise of such rights that are more favorable than those established by this Constitution and the laws of the Republic, and shall be immediately and directly applied by the courts and other organs of the Public Power.

By its own, the Criminal Code delivers different articles with abstract and general terms commonly used to criminalize related human trafficking activities. As such, article 173 of the abovementioned Code penalizes anyone who “reduces a person to slavery or subjects him to a similar condition.”⁸⁰ Punishing equally those who intervene in the slave trade.⁸¹ Subsequently, provided that domestic legislation does not *per se* criminalize sex work, it does criminalize the inducement of minor to prostitution, with aggravating penalties if certain circumstances arise.⁸² It is not specified, however, if with the inducement to prostitution, the inducer is presumed or if it is necessary for the person to act or maintain a relationship with the victim as a “pimp’ and collect the earnings resulting from the sexual trafficking.

Subsequent instruments that form the legal framework in Venezuela reflect definitions of various forms of trafficking in persons in unrelated laws with different subject matters. This situation demonstrates a duplication of efforts by the legislators and creates a complicated and inconsistent system of application, as prosecutors will have a discretionary selection of the law to be applied. In such terms, with migration as a subject matter, the

⁸⁰ Article 173 of the Criminal Code.

⁸¹ *Ibid.*

⁸² Article 387 of the Criminal Code.

Anyone who, for satisfying the passions of another, would have induced a minor to prostitution or acts of corruption, shall be punished with imprisonment for three to eighteen months. The imprisonment shall be imposed for a period of one to four years if the offense has been committed:

1. In someone under the age of twelve.
2. By means of fraud or deception.
3. By ancestors, relatives in a straight ascending line, by the adoptive father or mother, by the husband, the guardian or other person in charge of the child to care for, instruct, monitor or keep it, even temporarily.

If several circumstances of the different categories mentioned have occurred, the imprisonment will be from two to five years.

Article 387 must be read together with article 388. This last article states: “Any individual who, to satisfy the passions of another, has facilitated or favored the prostitution or corruption of any minor person, in any of the ways or in any of the cases specified in the first part and numerals 1, 2 and 3 Of the preceding article, shall be punished by imprisonment of three to twelve months. In the case of the latter, the imprisonment shall be three to eighteen months.”

specialized Law on Immigration and Migration criminalizes several activities related or linked to international trafficking in persons. Among them, the facilitation of smuggling,⁸³ labor exploitation of migrants,⁸⁴ and illegal traffic of persons.⁸⁵ With an innovative approach for Venezuelan legislation at the time of publication, this last article includes in its text actions and omissions of natural persons acting on their own behalf or those acting in representation of legal entities.

The Organic Law against Organized Crime and the Financing of Terrorism in 2012 explicitly mentions a general banning of trafficking in persons, as it is planned or carried out by any person as **integral part** of an organized crime group.⁸⁶ In its text it provides a specific

⁸³ Article 52 of the Law on Immigration and Migration. Such article reads: “A person who facilitates or allows the illegal entry of foreigners into the territory of the Republic shall be punished with imprisonment from four (4) to eight (8) years.”

⁸⁴ Article 53 of the Law on Immigration and Migration states “With the same punishment of Article 52 of this Law, those who employ foreigners whose stay in the territory of the Republic is illegal, with the purpose of exploiting them as labor in conditions that damage, suppress or restrict the labor rights they had recognized by legal provisions, collective agreements or individual contract.” It becomes concerning that it only describes labor conditions that have a negative impact of their labor rights recognized by domestic law, with no mention of international instruments.

⁸⁵ Article 56 of the Law on Immigration and Migration. Such article should be read together with article 57. Article 56:

Natural persons and representatives of legal entities that, by action or omission, promote or mediate the illegal traffic of persons from transit or to the territory of the country shall be punished with imprisonment of four (4) to eight (8) years.

Article 57:

Those who perform the behaviors described in article 56 of this Law, for profit, or using violence, intimidation, deceit or abuse of a situation of need of the victim, their gender or vulnerable groups, will be punished with penalty of prison from eight (8) to ten (10) years.

⁸⁶ Article 41 of the Organic Law against Organized Crime and the Financing of Terrorism reads:

“Any person who, as an integral part of an organized criminal group, promotes, favors, facilitates or executes by means of recruitment, transportation, transfer, harboring or reception of persons, force, coercion, abduction, deception, abuse of power, situations of vulnerability, concession, reception or other fraudulent means of payment or benefits, to obtain the consent of the victim, directly or through an intermediary, or a person having a authority over the other, for begging, forced labor or services, debt bondage, irregular adoption, slavery or similar practices, removal of organs, any kind of sexual exploitation; such as forced or compulsory prostitution, pornography, sex tourism and servile marriage, even with the consent of the victim, shall be punished or punished with imprisonment from twenty to twenty-five years and the cancellation of compensation for expenses to the victim for recovery and social reintegration.

concept of organized crime group.⁸⁷ This article is undoubtedly a good representation of the definition recorded by the international community, as it includes important elements of the crime and criminalizes several actions.

In addition, in the text of this legal instrument are also included the Illegal immigration and illegal trafficking in persons⁸⁸ and, for the first time, an explicit inclusion of illegal organ trafficking.⁸⁹ As an important feature it is recognized that “the consent of the person does not constitute grounds for excluding the criminal responsibility, [and] neither is the consent granted by the ascendant, spouse, brother, sister, tutor, guardian, responsible for education or custody, person living with the victim, minister of some cult or official, public employee or public servant.”⁹⁰

Although the provisions under this law offer an ample number of scenarios, the need to prove that the aggressor is an “integral” part of an “organized criminal group” might have

If the victim is a child, girl or adolescent will be punished or punished with imprisonment from twenty-five to thirty years.”

⁸⁷ Article 4. (9) of the Organic Law against Organized Crime and the Financing of Terrorism. According to said article, organized crime is to be understood as:

“The act or omission of three or more persons associated for a certain time with the intent to commit the offenses established in this Act and obtain, directly or indirectly, an economic benefit or of any kind for himself or for third parties. Likewise, organized crime is considered to be the activity carried out by a single person acting as an organ of a legal or associative person, with the intention of committing the crimes provided for in this Law.”

⁸⁸ Article 42 of the Organic Law against Organized Crime and the Financing of Terrorism. The mentioned article states:

“Any person who, as an integral part of an organized criminal group promote, induce, favor, constrain, facilitate, finance, collaborate, by act or omission or in any other way participate in the entry or exit of foreigners or illegal trafficking of persons from the territory of the Republic, without compliance with legal requirements, to obtain economic or financial any other benefit for himself or for a third party, shall be punished or punished with Prison from eight to twelve years.”

⁸⁹ Article 43 of the Organic Law against Organized Crime and the Financing of Terrorism. This article reads: “Any person who as an integral part of an organized criminal group to traffic, transplant or dispose of organs, blood, globular concentrate, platelet concentrate, plasma or other derived tissues or anatomical materials from a human being, shall be punished or punished with imprisonment from twenty-five to thirty years.”

⁹⁰ Article 42 of the Organic Law against Organized Crime and the Financing of Terrorism.

a negative implication and serve as an obstacle in the prosecution of cases. Sufficient evidence to prove beyond a reasonable doubt the connection of a person to a particular group may not always be accessible to prosecutors.

With regards to labor regulations, while it does not provide an explicit definition of any form of trafficking in persons, the Organic Law of Labor and Workers constitutes a rich instrument to sanction with small fines circumstantial activities surrounding labour trafficking. It stipulates a general prohibition of child labour, for minors who have not reached the age of fourteen, imposing an obligation on the State, families and society to ensure their integral protection.⁹¹ Additionally it specifies that “work of adolescents over the age of fourteen and up to eighteen years, will be regulated by the constitutional provisions and the Organic Law for the Protection of Children and Adolescents.”⁹²

In its article 130, it sanctions the payment of a salary lower than the minimum wage determined by the National Executive.⁹³ Alongside this infraction, it also sanctions the

⁹¹ Article 32 of the Organic Law of Labor and Workers reads:

“The work of children and adolescents, who have not reached the age of fourteen years, is prohibited, except in the case of artistic and cultural activities and authorized by the competent body for the protection of children and adolescents. The State, families and society will ensure, with absolute priority, their integral protection. The work of adolescents over the age of fourteen and up to eighteen years, will be regulated by the constitutional provisions and the Organic Law for the Protection of Children and Adolescents.”

⁹² Ibid.

⁹³ Article 130 of the Organic Law of Labor and Workers. Said article reads:

“The payment of a salary lower than the minimum wage will be sanctioned in accordance with the provisions established in this Law. The offending employer or the employer will be obligated or obligated, in addition, to pay the workers the difference between the minimum wage and the minimum wage. As well as its effects on benefits, benefits and indemnities, for as long as it has received lower wages than those fixed, in addition to paying the amount equivalent to the interest that would accrue that amount at the active rate determined by the Central Bank of Venezuela, taking as reference the six main banks of the country.”

infraction to the limits of the working day,⁹⁴ the violation of provisions on foreign workers,⁹⁵ and the violation of the opportune payment of wages and holidays.⁹⁶

The 2014 Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence, together with the Organic Law for the Protection of Children and Adolescents, stipulates a closed scope of protection. With very broad terminology, the Law on the Right of Women, considers violence against women as “any sexist act that has or may result in death, physical, sexual, psychological, emotional, labor, economic or property damage or suffering; coercion or arbitrary deprivation of liberty, as well as the threat of such acts, whether occurring in the public or private sphere.”⁹⁷ Deriving as forms of violence against

⁹⁴ Article 525 of the Organic Law of Labor and Workers.

“The employer or employer who violates the rules regarding the maximum length of the working day and night work, or the provisions relating to business days, shall be subject to a fine of not less than the equivalent of thirty tax units, nor greater than the equivalent to sixty tax units.”

⁹⁵ Article 527 of the Organic Law of Labor and Workers.

“The employer or employer who violates the provisions on the percentage of foreign workers or foreign workers shall be imposed a fine not less than the equivalent of thirty tax units, nor more than the equivalent of sixty tax units.”

⁹⁶ Article 533 of the Organic Law of Labor and Workers.

“If the employer or employer pays the worker less than the minimum wage, or does not pay the weekly, biweekly and vacation pay in due time, a fine not less than one hundred and twenty tax units, nor greater than the equivalent of three hundred and sixty tax units.”

⁹⁷ Article 14 of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence.

women, the text includes in its article 15, forced prostitution,⁹⁸ sexual slavery,⁹⁹ smuggling in women, girls and adolescents,¹⁰⁰ and trafficking in women and girls.¹⁰¹

In the same line, the Organic Law for the Protection of Children and Adolescents, does not ascribe any penalties to related criminal activities. On the contrary it limits itself to specify the right to be protected against sexual exploitation and abuse,¹⁰² the prohibition of slavery, servitude and forced labour,¹⁰³ the obligation of the State to protect all children

⁹⁸ Article 15 (8) of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence. Forced prostitution is defined as “the act of forcing a woman to perform one or more acts of a sexual nature by force or by threat of force, or by coercion such as that caused by fear of violence, intimidation, psychological oppression or abuse of power, hoping to obtain or have obtained benefits or pecuniary or other benefits, in exchange for acts of a woman's sexual nature.”

⁹⁹ Article 15. (9) of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence. Sexual Slavery is defined as “the illegitimate deprivation of liberty of the woman, for sale, purchase, loan or barter with the obligation to perform one or more acts of a sexual nature.”

¹⁰⁰ Article 15. (18) of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence. Smuggling in women, girls and adolescents are “all acts involving [the] recruitment or transportation within or between borders, using deceit, coercion or force, for the purpose of obtaining a financial or other illicit material benefit.

¹⁰¹ Article 15. (19) of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence. Trafficking in women and girls is conceptualize as “the recruitment, transportation, transfer, or reception of women and girls, using the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a situation of vulnerability or the granting or receipt of payments or benefits to obtain the consent of a person having authority over women or girls for the purpose of exploitation such as prostitution, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

¹⁰² Article 33 of the Organic Law for the Protection of Children and Adolescents. The right to be protected against all forms of sexual exploitation and abuse entails that “the State must guarantee permanent and free programs of assistance and comprehensive care for children and adolescents who have been victims of sexual abuse or exploitation.”

¹⁰³ Article 38 of the Organic Law for the Protection of Children and Adolescents. It leaves an abstract scope to all forms of slavery, servitude and forced labor.

against illegal transfer,¹⁰⁴ and the right to be protected at work.¹⁰⁵ Lastly, the abovementioned law regulates domestic work by adolescents.¹⁰⁶

Interestingly, the Organic Law for the Protection of Children and Adolescents, the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence, and the Organic Law of Labor and Workers, were written or were amended under the past or current government, in recognition of these groups as vulnerable groups in need of respective measures of protection from the State. It is noteworthy that each of these laws created tribunals with special subject-matter jurisdiction.¹⁰⁷ Under such circumstances, as it could have been foreseen, conflicts between courts have emerged.

In a specific case, due to a conflict in subject-matter jurisdiction between the tribunals created by the Organic Law against Organized Crime and Terrorism Financing, and by the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence, the Constitutional Chamber of the Supreme Court of Justice declared of public order and with binding force that “the special judges for the crimes of violence against women will also know of the crime of trafficking in persons, typified in article 41 of the Organic Law Against

¹⁰⁴ Article 40 of the Organic Law for the Protection of Children and Adolescents.

¹⁰⁵ Article 94 of the Organic Law for the Protection of Children and Adolescents. In this article, the right to protection at work means that “all child and adolescent workers have the right to be protected or protected by the State, families and society, especially against economic exploitation and the performance of any work that may hinder their education, be dangerous or harmful to Their health or for their integral development. The State, through the Ministry of People's Power with competence in the protection of children and adolescents, will prioritize the inspection of compliance with minimum age standards, work permits and work supervision. And adolescents.”

¹⁰⁶ Article 113 of the Organic Law for the Protection of Children and Adolescents. In terms of Domestic work, it is determined that “working adolescents who provide services in domestic work must enjoy a rest of not less than two hours during their working day, without prejudice to the period of continuous rest provided for in labor legislation.”

¹⁰⁷ Article 67 Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence and article 174 of the Organic Law for the Protection of Children and Adolescents.

Organized Crime and Terrorism Financing when the passive subjects of the crime are women, girls, boys and adolescents, plural or concurring both sexes.”¹⁰⁸ On the other hand, “when the victims of the offense are only adult males (excluding male children and adolescents), judges and magistrates with competence in ordinary criminal matters will be aware of the crime of trafficking of persons.”¹⁰⁹

Although the abovementioned specialized laws do not reflect a right to an effective remedy for victims, and while there is no standing National Strategic Plan against the crime of Human Trafficking, the National Council of Human Rights, an institution composed by authorities from the Executive branch, issued the “National Human Rights Plan 2016-2019 Socialist Democracy: The Highest attainable happiness.”¹¹⁰ While it does not mention any strategy or guideline in regards to human trafficking, it includes an express intent to “advance in the sanction and promulgation of laws regarding: 1.2. Reparation and rehabilitation of victims of human rights violations.”¹¹¹

This idea serves as one part of the second strategic line of the last and Fifth Axis of the National Plan. The Strategic line, in itself, aspires to adapt the internal normative framework to the provisions on human rights contained in the Constitution of the Bolivarian Republic of Venezuela. While, in general, the Axis focuses on the deepening of the human

¹⁰⁸ Supreme Court of Justice. Constitutional Chamber Decision No. 1378 of October 17, 2014. Available in: www.historico.tsj.gob.ve/decisiones_scon_octubre_170150-1378-171014-2014-14-0845. (only in Spanish).

¹⁰⁹ Ibid.

¹¹⁰ National Council of Human Rights. National Human Rights Plan 2016-2019 Socialist Democracy: The Highest attainable happiness. Available at: http://www.defensoria.gob.ve/images/banners/promocionales/plan_Nacional_Derechos_Humanos.pdf (only in Spanish).

¹¹¹ Ibid.

rights approach in the legislation, politics and action of the Venezuelan State.¹¹² It proposes to strengthen the approach of human rights in the internal normative framework and the public policies developed by the Venezuelan State, based on the transforming force of the Constitution of the Bolivarian Republic of Venezuela.¹¹³

The express intent of the Executive to advance in the sanction and promulgation of laws regarding reparation and rehabilitation of victims of human rights violations is to be considered of great importance. It is, from the materials analyzed, the first time this specific language has been used by the state. From it, specific demands could emerge from victims' groups and civil society to obtain legal positive framework, from the State, that elaborates on "reparations" and "rehabilitation" in harmony to the meaning in the international human rights framework of those words and in accordance to the state's international obligations.

C. Legal Remedies provided by in the National Legislation

According to the Palermo Protocol, in its article 6(3) and 6(6), the State shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons; and ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

In the same way, the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo has stressed that states are indeed required to provide

¹¹² Ibid.

¹¹³ Ibid.

immediate assistance and support to victims of trafficking within their jurisdiction and to protect them from further harm.¹¹⁴

In a representative way, article 30 of the Constitution recognizes the obligation of the State not only to make full reparations to the victims of human rights violations for which it may be held responsible, and to the legal successors to such victims, including payment of damages; but to protect the victims of ordinary crimes and endeavor to make the guilty parties provide reparations for the inflicted damages.¹¹⁵ Although there is no available public official information or data that demonstrates the utilization of these mechanisms specifically by human trafficking victims, the author considers of vital importance its analysis.

1. Criminal Framework for Remedies

Through article 4 of the Criminal Code, Venezuela has asserted jurisdiction over foreign nationals in specific circumstances. Foreign nationals or citizens who commit a crime in a foreign country against the security of the Republic or against any of its nationals or in the national territory are subject to prosecution in Venezuela and will be punished in accordance with the law. Notwithstanding, in the first two cases the respondent is required to have come to the geographical space of the Republic and that action is taken by the

¹¹⁴ Human Rights Council. Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo: Stocktaking exercise on the work of the mandate on its tenth anniversary. A/HRC/26/37/ Add.2 of 27 March 2014, para 49.

¹¹⁵ Article 30 of the Constitution specifies that:

“The State has the obligation to make full reparations to the victims of human rights violations for which it may be held responsible, and to the legal successors to such victims, including payment of damages. The State shall adopt the necessary legislative measures and measures of other nature to implement the reparations and damage compensation provided for under this article. The State shall protect the victims of ordinary crimes and endeavor to make the guilty parties provide reparations for the inflicted damages.”

aggrieved party, or by a representative of the Public Prosecutor's Office in cases of treason or crime against the security of Venezuela.¹¹⁶

In accordance with the Criminal Procedural Code, it is one of the victim's right to exercise civil actions in order to claim civil liability that originated from the punishable act.¹¹⁷ The protection and reparation of the harm caused to the victim of the crime are objectives of the criminal process.¹¹⁸ The Public Prosecutor's Office is obliged to ensure these interests at all stages; judges have to guarantee the validity of their rights during the process; and the police and other auxiliary bodies should in accordance with their affected condition, facilitate their participation in the procedures in which it must intervene.¹¹⁹

Under the criminal framework, any person criminally responsible for any offense is also civilly liable.¹²⁰ As such, civil responsibility includes restitution and compensation for the damage caused.¹²¹ The restitution shall be made of the same thing, whenever possible, with payment of any impairments under the regulation of the Court.¹²² If restitution is not possible, the loss will be repaid by paying the value of it. The repair will be done by assessing the extent of the damage according to the regulation of the court.¹²³ Notably, under Venezuelan legislation the obligation to retribute, repair the damage or indemnify, is transmitted to the heirs of the person responsible, but up to the amount of the inheritance,

¹¹⁶ Article 4 of the Criminal Code.

¹¹⁷ Article 120 of the Criminal Procedural Code.

¹¹⁸ Article 118 of the Criminal Procedural Code.

¹¹⁹ Ibid.

¹²⁰ Article 113 of the Criminal Code.

¹²¹ Article 120 of the Criminal Code.

¹²² Article 121 of the Criminal Code.

¹²³ Ibid.

provided that the accept under inventory benefit.¹²⁴ The action to request the restitution, reparation or compensation is also transmitted to the heirs of the injured person.¹²⁵

The civil action for damages before a criminal court can only be filed by the victim or the direct family members¹²⁶ after the final judgment of conviction¹²⁷ and before the presiding judge.¹²⁸ Persons who are not in socioeconomic conditions to undertake the costs of a trial, as may be the case for human trafficking victims, may delegate to the Public Ministry the exercise of civil action.¹²⁹ Similarly, an action arising from the obligation of the State to compensate victims of human rights violations attributable to it, may be delegated to the Ombudsman's Office, when said action has not been delegated to the Public Prosecutor's Office. Nonetheless, the Prosecutor's Office has specified that "because it is an exception of the exercise of the civil claim, the Prosecutor will undertake the action when it has been dully proved before the competent authority the socioeconomic condition of the victim."¹³⁰ The fulfillment of this requisite could very well take time, and the burden of proof of their condition is completely on the shoulders of the victim.

The Criminal Procedural Code establishes the procedure to the civil claim before a criminal judge.¹³¹ In general, once the claim is declared admissible, the Judge shall order the compensation for damages by a decision that shall contain an order to repair the damages,

¹²⁴ Article 123 of the Criminal Code.

¹²⁵ Ibid.

¹²⁶ Article 49 of the Criminal Procedural Code.

¹²⁷ Article 51 of the Criminal Procedural Code.

¹²⁸ Ibid.

¹²⁹ Article 53 of the Criminal Procedural Code

¹³⁰ National Prosecutor's Office. *2009 Report on the development of standards and doctrine*. Memorandum No. DCJ-8-707-2009 of August 20, 2009.

¹³¹ Article 422-431 of the Criminal Procedural Code.

with its concrete and detailed description, the class and extent of the repair or amount of compensation, the order to seize sufficient assets to respond for the award and costs, or any other precautionary measure.¹³² Although concern may arise with regards to the effectiveness of a post-trial order to seize, perhaps inexistent assets, it is of more concern that this award ordered by the judge can be contested by the convict.

In such case, the judge will have to summon a conciliatory hearing to discuss the amount of the award.¹³³ If the victim is unable or unwilling to face her/his aggressor, the claim will be dismissed without prejudice to its exercise in the civil jurisdiction.¹³⁴ The order can only be valid as a final judgment and enforced if the convict does not show for the hearing. If an agreement cannot be reached the judge will summon for a hearing where both parties shall present evidence.¹³⁵

From the reiterated articles above, it is evident that the intention of the legislator was to remedy the loss of a good with an identifiable value to the owner as a result of a crime. This mechanism does not seem to be appropriate to crimes in which the right injured was other than the ownership or property rights of an individual. With human trafficking victims in mind, while article 120 of the Criminal Procedural Code recognizes any victim's right to exercise civil actions in order to claim civil liability, the criminal framework is constituted as a lengthy procedure that requires the active participation of the victims without any guarantee to prevent revictimization.

¹³² Article 426 of the Criminal Procedural Code.

¹³³ Article 428 of the Criminal Procedural Code.

¹³⁴ Article 429 of the Criminal Procedural Code.

¹³⁵ Article 430 of the Criminal Procedural Code.

From the existing framework, the criminal judge does not have any special considerations to deliberate when, at his own discretion, it orders an award. No specific article stipulates the need for the authority to consider the gender, age, personal emotional trauma, or specific situation or vulnerability of the victim. With a lack of a victim-centered approach, there is no explicit mention of the possibility to access or to be awarded with means for rehabilitation and recovery¹³⁶ or with a non-financial form of reparation.

2. Civil Remedies

Under civil jurisdiction, the legal framework to establish civil liability for wrongful acts rests in article 1.185 of the Civil Code. This article expresses how “anyone who intentionally or through negligence or recklessness has caused a damage to another, is obliged to repair it.” Furthermore, in article 1.196, it is conceived that the obligation to provide reparation extends “to all material or moral damages caused by the wrongful act.” Thus, the Judge may, in particular, “grant compensation to the victim in case of injury, bodily harm to his honor, to his reputation, or to those of his family, to his freedom, as well as in the case of violation of his address or a secret.”¹³⁷ Similar to the criminal procedure, the Judge may also grant compensation to relatives, or spouses, as reparation of the pain suffered in case of death of the victim.¹³⁸

¹³⁶ UN General Assembly. Resolution 60/147: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. A/RES/60/147 of 16 December 2005, para. 13 and 14.

¹³⁷ Article 1.196 of the Civil Code.

¹³⁸ *Ibid.*

As an ordinary claim for damages, it will follow the ordinary procedure established in the Civil Procedural Code.¹³⁹ Although no major requirements are imposed to bring a claim before a civil judge,¹⁴⁰ the plaintiff still has to provide information in terms of (1) the purpose of the claim, which must be precisely determined, indicating its situation and boundaries; (2) the necessary data, titles and explanations in the case of incorporating rights or objects; (3) a statement of the facts and the grounds of law on which the claim is based, with the relevant conclusions; (4) the instruments on which the claim is based; and as a claim for compensation, the specification of these and their causes.¹⁴¹ It must be considered that while a conviction of the defendant is not needed, the fact that there is an ongoing criminal procedural would fall into what are considered “previous issues” under article 346 (8) of the Civil Procedural Code. In accordance to its article 355, the process will be suspended until the pending term or condition is fulfilled¹⁴² which in cases of civil liability for a criminal act means until there is a final ruling in the criminal procedure.

When applicable, article 178 determines that the Courts shall grant the benefit of legal aid to those who do not have sufficient means, either to litigate, or to assert in a non-contentious manner some right. The aforesaid benefit will only be granted to manage personal rights, without the need of prior declaration, if the person receives an income that does not exceed three times the mandatory minimum wage set by the National Executive.¹⁴³

¹³⁹ Article 338 of the Civil Procedural Code.

¹⁴⁰ Article 340 of the Civil Procedural Code.

¹⁴¹ Article 340 of the Civil Procedural Code.

¹⁴² Article 355 of the Civil Procedural Code.

¹⁴³ Article 338 of the Civil Procedural Code.

Similarly to the criminal framework, this mechanism does not give appropriate guidance to judges to adjust restitution or compensation orders to the effects of criminal activities, such as trafficking in persons, in the victims' lives. When analyzing the effectiveness of the two available structures, as of today, no official reliable data exists describing the actual use of this framework, nor describing the length of the criminal or/and civil procedure. Notwithstanding, for over two decades, different NGOs, scholars and international organizations have expressed concern over a "crisis in the judicial system" of Venezuela¹⁴⁴ which would give rise to question if the State is providing adequate, effective and prompt remedies to victims.

D. Analysis of compliance with UN Principles on the Right to Effective Remedy

Taking into consideration the current status of the legal framework in Venezuela, this section intends to demonstrate, through a chart, the level of compliance with the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons (A/HRC/26/18).

U.N. Principles	Venezuelan Legislation
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¹⁴⁴ Human Rights Watch. *Report: Rigging the Rule of Law, Judicial Independence Under Siege in Venezuela*. June 16, 2004. Available at: <https://www.hrw.org/report/2004/06/16/rigging-rule-law/judicial-independence-under-siege-venezuela>; Josko de Guéron, Eva. (1996). *La Crisis del Sistema Judicial y los Procedimientos (Alternativos) para la Resolución de Conflictos*. Analítica, July 1996. Available at: <http://servicio.bc.uc.edu.ve/derecho/revista/56/56-3.pdf>; and IACHR. *2016 Annual Report: Chapter IV Venezuela*. Washington, D.C. April 27, 2016. Available at <http://www.oas.org/en/iachr/docs/annual/2016/docs/InformeAnual2016cap4B.Venezuela-en.pdf> p. 621. (See also Chapter IV of every IACHR Annual Report from 2009-2015 available at: <http://www.oas.org/en/iachr/reports/annual.asp>).

I. Rights and obligations	<p>1. There is no express recognition of the right to an effective remedy for victims of trafficking in persons as human rights victims. Article 30 of the Constitution recognizes the state's obligation to make full reparations to the victims of human rights violations for which it may be held responsible, and to the legal successors to such victims, including payment of damages. Article 118 of the Criminal Procedural recognizes the reparation of the victims as one of the objectives of the process. Article 41 of the Organic Law against Organized Crime and Terrorism Financing states the cancellation of compensation for expenses to the victim for recovery and social reintegration.</p> <p>2. There is no express recognition of the right to effective remedy to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Article 13 of the Law on Migration recognizes that foreigners who are in the territory of the Republic, will have the same rights as persons with citizenship, with no more limitations than those established in the Constitution and other legislation. Article 4(3) of the Law of Reform of the Organic Law on the Right of Women to a Life Free of Violence Women expresses that victims of gender violence are entitled to social services of care, emergency, protection, support and welcome and comprehensive recovery.</p> <p>3. This is only recognized by Article 30 of the Constitution.</p> <p>4. Article 19 of the Constitution recognizes that the State shall guarantee to every individual, in accordance with the progressive principle and without discrimination of any kind, no renounceable, indivisible and interdependent enjoyment and exercise of human rights. Respect for and the guaranteeing of these rights is obligatory for the organs of Public Power, in accordance with the Constitution, the human rights treaties signed and ratified by the Republic and any laws developing the same.</p> <p>5. There is no provision that expresses the remedy reflects a victim-centered and human rights approach that empowers victim.</p> <p>6. There is no official information since 2008 on Bilateral or Multilateral cooperation. Only a mention on the 2015 Report of the Ombudsman, of his participation in the First Ibero-American Summit of the Ombudsman (FIO) on Human Rights, Migrants and Trafficking in Persons, in the City of Bogotá, Colombia.</p>
II. Access to the right to remedy	<p>7. Access to remedy</p> <p>a) A legally enforceable right to have access to remedies is stipulated in terms of article 30 of the Constitution and article 120 of the Criminal Procedural Code. No correlation is made in the law on Migration to human trafficking victims.</p> <p>b) No provision that states that victims should be promptly and accurately identified, including through adequate procedures and appropriate training for State officials and cooperation between relevant authorities and non-governmental organizations.</p> <p>c) Article 120 (5) of the Criminal Procedural Code reflects the victim's right to be informed of acts resulting from the criminal procedure. Article 167 of the same norm establishes Spanish as the official language, but recognizes that any person that does not speak Spanish will be assisted by an interpreter.</p>

	<p>d) No provision that states that victims should be provided with a reflection and recovery period, whether as identified or presumed victims, with access to such services as housing and psychological, medical, social, legal, employment, professional and material assistance.</p> <p>e) Article 53 of the Criminal Procedural Code and Article 178 of the Civil Procedural Code establishes the benefit of legal aid. Article 36 of the Law on the Right of Women establishes the right of the victim to request from the judge a lawyer who will defend and represent her during judicial proceedings. No other provisions stipulate the right to have the assistance necessary to access to remedies.</p> <p>f) No provision that states that victims will not be detained, charged or prosecuted for the activities that are a direct consequence of their situation as victims.</p> <p>g) No provision expresses the right to remain lawfully in the country in which the remedy is being sought for the duration of proceedings.</p> <p>h) There is no norm that expresses the right of equal access to the right to remedy, with a gender-sensitive approach.</p> <p>i) Article 120 (5) of the Criminal Procedural Code reflects the victim’s right to be informed of acts resulting from the criminal procedure. Notwithstanding, article 425 of the same instrument establishes that the judge, when evaluating the admissibility of the claim, must examine if the applicant is a legitimized person to do so. It does not explain requisites to be a legitimate applicant.</p> <p>j) Article 304 and 326 of the Criminal Procedural Code establishes that all acts of the investigation and the names and personal information of the victim and witnesses are classified.</p>
<p>III. Forms of the Right to remedy</p>	<p>A. Restitution</p> <p>8. Article 122 of the Criminal Code articulates that restitution must be made of the same thing, whenever possible, with the payment of the deterioration or impairment to the regulation of the Court. Article 1.196 of the Civil Code¹⁴⁵ determines the obligation to repair extends to all damages caused by the illegal act. These norms can be considered to imply broadly the obligation to restore the victim to the original situation.</p> <p>9. No explicit provision expresses that restitution includes, as appropriate: a) Restoration of liberty; (b) Enjoyment of human rights and family life, including reunification and contact with family members; (c) Safe and voluntary repatriation to one’s place of residence; (d) Temporary or permanent residence status, refugee status or third-country resettlement; (e) Recognition of the victim’s legal identity and citizenship; (f) Restoration of the victim’s employment; (g) Assistance and support to facilitate social integration or reintegration of repatriated victims; or/and (h) Return of property, such as identity and travel documents and other personal belongings.</p> <p>B. Compensation</p>

¹⁴⁵ Article 1,196 of the Civil Code establishes “the obligation of reparation extends to all material or moral damages caused by the illegal act. The Judge may, in particular, grant compensation to the victim in the event of bodily injury, damage to his honor, reputation or that of his family, to his personal liberty, as well as in the case of violation of his domicile or of a secret concerning the injured party. The Judge may also grant compensation to relatives, relatives, or spouses, as compensation for the pain suffered in the event of death of the victim.”

	<p>10. Article 120 of the Criminal Code communicates that civil liability include restitution, reparation of the damage caused, and compensation for damages.</p> <p>11. Aside from article 1.196 of the Civil Code, no other provision states that compensation includes: (a) Damages for physical or mental harm; (b) Damages for lost opportunities, including employment, education and social benefits; (c) Reimbursement of costs of necessary transportation, temporary child care, temporary housing or the movement of the victim to a place of temporary safe residence; (d) Payment for material damages and loss of earnings; (e) Moral or non-material damages resulting from moral, physical or psychological injury, emotional distress, pain or suffering; (f) Reimbursement of legal fees and other costs or expenses incurred; (g) Reimbursement of costs incurred for legal or medical expert assistance; (h) Reimbursement for any other costs or losses incurred by the victim as a direct result of being trafficked and as reasonably assessed by the relevant body or bodies.</p> <p>12. No other provision from the abovementioned state the obligation to ensure that laws, mechanisms and procedures are in place to enable victims of trafficking in persons to have access to compensation</p> <p>C. Rehabilitation and recovery</p> <p>13. Articles 120 to 124 of the Law for the protection of children and adolescents express the obligation of the State to establish programs and projects for the integral protection of children and adolescents, including one for rehabilitation and prevention to help child victims of abuse, exploitation, discrimination, cruelty, neglect or oppression; have special needs such as disabled and gifted; are consumers of alcoholic, narcotic or psychotropic substances; and/or suffer from infectious-contagious diseases. Article 4 of the Law on the Right of Women to a Life Free of Violence articulates how all women, irrespective of their nationality, ethnic origin, religion or any other personal or legal or social condition or circumstance, shall have the necessary mechanisms to give effect to the rights recognized in this Law. In particular, women victim of gender violence will have priority in access to housing, land, credit and technical assistance in government plans.</p> <p>14. No provision declares that the state shall ensure that the access of victims of trafficking in persons to rehabilitation and recovery measures is not dependent on their capacity or willingness to cooperate in legal proceedings.</p> <p>D. Satisfaction</p> <p>15. Article 1.196 of the Civil Code determines the obligation to repair extends to all damages caused by the illegal act. No other provision articulates the obligation to provide satisfaction as a non-financial form of reparation designed to compensate moral damage or damage to the dignity or reputation of the victims of trafficking in persons.</p> <p>16. No existing provision states what the measures of satisfaction shall include.</p> <p>E. Guarantees of non-repetition</p> <p>17. No provision states any reference to any measure of guarantees of non-repetition.</p>
	<p>18. a) Article 8 of the Law for the protection of children and adolescents articulates the Superior Interest of the Child as a principle of interpretation.¹⁴⁶</p>

¹⁴⁶ Article 8 establishes: “the Superior Interest of the child and adolescent is a principle of interpretation and application of this Law, which is mandatory in all decisions concerning children and adolescents. This

IV. Right to remedy for child victims of trafficking	<p>b) Article 67 of the previously mentioned law states the right to freedom of expression¹⁴⁷ of all children and adolescents, and article 69 states the right to access information.¹⁴⁸</p> <p>c) No provision or available information articulates the obligation to ensure that procedures for obtaining access to and enforcing remedies are effective, child-sensitive and readily accessible to children and their representatives.</p> <p>d) Although there is no explicit mention of children victims of human trafficking Articles 120 to 124 of the Law for the protection of children and adolescents express the obligation of the State to establish programs and projects for the integral protection of children and adolescents, including one for rehabilitation and prevention to help child victims.</p> <p>e) Article 124 (f) states the obligation of the state to create an appropriate program to meet the training needs of people who care for children and adolescents.</p>
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As a result of this comparative analysis, it is imperative to consider how the lack of a specialized norm on trafficking in persons can generate a vacuum of protection for victims. With the analyzed laws, it becomes clear that the existing framework is insufficient to provide a right to access adequate remedies that are proportionate to the gravity of harm suffered as well as accessible, affordable, timely and effective.¹⁴⁹ As it is, the inadequate legislation in Venezuela is a major obstacle in the prevention and combat of trafficking in persons.¹⁵⁰

principle is aimed at ensuring the integral development of children and adolescents, as well as the full and effective enjoyment of their rights and guarantees.”

¹⁴⁷ Article 67 states: “All children and adolescents have the right to freely express their opinions and to disseminate ideas, images and information of all kinds, without prior censorship, either orally, in writing, in an artistic form or by any other means of their choice, with no more limits than those established by law for the protection of their rights, the rights of others and public order.”

¹⁴⁸ Article 68 determines that: “all children and adolescents have the right to receive, seek and use all information that is in accordance with their development and to freely select the means and information to receive, with no more limitations than those established by law derived from the legal powers that correspond to their father, mother, representatives or responsible.”

¹⁴⁹ Human Rights Council. *Report of the United Nations High Commissioner for Human Rights: Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons*. A/HRC/26/18 of 2 May 2014, paras. 9 and 17. See also: Gallagher, Anne. (2010). *The Right to an effective remedy for victims of trafficking in persons: A survey of International Law and Policy*. Bratislava, Slovakia, p. 9.

¹⁵⁰ Guideline 4: Ensuring an adequate legal framework

In correlation, the absence of a national plan on human trafficking and the fact that the National Plan on Human Rights does not mention the right to effective remedies for victims of human rights violations, move further back the necessary work to combat trafficking in persons. With a National plan and guidelines, systematic anti-trafficking work can be achieved, including: developing/amending laws; effectively investigating and prosecuting trafficking; victim identification and support; and data collection and research.

IV. Conclusions

The international community has recognized that trafficked persons, as victims of human rights violations, have the right to adequate and appropriate remedies, which goes beyond the right to the possibility of obtaining compensation.¹⁵¹ In substance, victims of human rights violations must be provided with adequate reparations for the harms suffered.¹⁵²

As stated in the Principles on the Right to Effective Remedy for Victims of Trafficking in Person, states “shall provide and/or facilitate access to remedies as required by binding international law, including anti-trafficking instruments and international human rights

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation. [Office of the High Commissioner for Human Rights.

Recommended Principles and Guidelines on Human Rights and Human Trafficking. E/2002/68/Add. 1]

¹⁵¹ General Assembly. *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo.* A/HRC/17/35 of 13 April 2011, para. 16.

¹⁵² Human Rights Council. *Report of the United Nations High Commissioner for Human Rights: Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons.* A/HRC/26/18 of 2 May 2014,

law.”¹⁵³ In such terms, the state should provide in each individual case, “assistance and support aimed at restitution, rehabilitation, compensation and satisfaction and guarantees of non-repetition.”¹⁵⁴ In general, Venezuelan legislation is aimed at awarding to victims of illegal acts measure of restitution as a remedy, and when not possible, compensation. It does not make specific reference to the access to an effective and adequate remedy as a human rights victim, and least of all as a human trafficking victim.

Taking into consideration that at the time that they exit the situation victims will also likely have no money, no accommodation, unclear immigration status, and may be suffering of variety of physical and mental health problems,¹⁵⁵ other non-financial legal remedies should be integrated and consolidated in the legislation.¹⁵⁶

In the particular factual context of Venezuela, the procedural component of the right to remedy¹⁵⁷ as critical pre-conditions in realizing the substantive right to reparations for trafficked persons,¹⁵⁸ is not being realized. As weak governments are less equipped to

¹⁵³ Human Rights Council. *Report of the United Nations High Commissioner for Human Rights: Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons*. A/HRC/26/18 of 2 May 2014, para. 3.

¹⁵⁴ Office of the High Commissioner for Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. E/2002/68/Add. 1

¹⁵⁵ Focus on Labour Exploitation. *Guide to legal remedies for victims of trafficking for labour exploitation*. United Kingdom. November 2014, p. 3.

¹⁵⁶ Focus on Labour Exploitation. *Guide to legal remedies for victims of trafficking for labour exploitation*. United Kingdom. November 2014, p.7.

¹⁵⁷ “The procedural obligations may be conceived as the range of measures needed to guarantee access to an effective remedy including access to information, legal assistance and regularization of residency status, which contribute to the realization by trafficked persons of the substantive components of the right to an effective remedy. “[General Assembly. *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*. A/HRC/17/35 of 13 April 2011, para. 19].

The Substantive components of the right to remedy include that “trafficked persons should be provided with adequate reparations for the harms suffered, which may include restitution, compensation, recovery, satisfaction and guarantees of non-repetition.”

¹⁵⁸ General Assembly. *Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo*. A/HRC/17/35 of 13 April 2011, para. 42.

respond to crisis¹⁵⁹ and while the erosion of the rule of law, the high levels of corruption and impunity of officials, and the enhanced reliance on negative coping mechanisms continue, an effective right to remedy compatible with international standards cannot be provided to victims of trafficking in persons. The structural deficiencies of the system represent even more obstacles for victims in their access to remedies.

To improve, the erroneous assumption that trafficking in persons is not a direct consequence of the crisis has to be erased.¹⁶⁰ In reality, counter-trafficking efforts should be given as much priority as any other crisis response to ensure the comprehensive protection of vulnerable individuals, as the absence of protection and lack of immediate solutions increase exposure to trafficking.¹⁶¹

An important element to consider is that Venezuela serves as a source, transit and destination country.¹⁶² Although no official data is released, it is known through general media that trafficking victims from Peru, Colombia, Ecuador and Cuba, have been found within the Venezuelan territory. In such circumstances, the political discourse of high state authorities could affect the identification of victims and the protection of refugees. An example of this was seen when President Maduro and Colombian authorities were in

¹⁵⁹ IOM. *Addressing Human Trafficking and Exploitation in times of crisis*. Geneva, Switzerland. December 2015, p.32.

¹⁶⁰ IOM. *Addressing Human Trafficking and Exploitation in times of crisis*. Geneva, Switzerland. December 2015, p.3-4.

¹⁶¹ Ibid.

¹⁶² UNDOC. *Global Report on Trafficking in Persons 2016*. United Nations publications Sales No. E.16.IV.6. Country Profile South America, pp. 34-36. Available at: http://www.unodc.org/documents/data-and-analysis/glotip/Glotip16_Country_profile_South_America.pdf; US Department of State. *2016 Trafficking in Persons Report*, p. 397; *2015 Trafficking in Persons Report*, p. 361; and *2014 Trafficking in Persons Report*, p. 407.

disagreement.¹⁶³ During that period, mass deportations of Colombians, some of them refugees since 1980's, occurred as a politically moved practice.¹⁶⁴ To present day, as the food and health crisis worsens, authorities continue to restrict access to basic goods to Venezuelan nationals.¹⁶⁵ In general, they face a lack of access to food and basic commodities, and national stigma that can only reaffirm their vulnerability.

With regards to the previously analyzed laws, the author remarks several insufficiencies on each of their texts. In particular, the Criminal Procedural Code appears to increase the number of obstacles for human trafficking victims. In its texts it does not provide guidance for a criminal judge to decide on a civil matter, to which it is not used to. In addition, it specifies on a separate process to obtain legal aid, which is subjected to the capacity of proving socioeconomic vulnerability.

The law on the Right of Women to a Life Free of Violence enhances the concept of violence against women as to include different forms of trafficking in persons. Although the author does not intend to say that gender based violence is not present in trafficking in persons, to render them in such a way could give rise to issues with male victims of trafficking, and also equate the remedies available for victims of, for example, domestic

¹⁶³ New York Times. *Colombians Flee Venezuela's Crackdown on Immigrants*. August 27, 2015. Available at: https://www.nytimes.com/2015/08/28/world/americas/colombians-flee-venezuelas-crackdown-on-immigrants.html?_r=0.

¹⁶⁴ The Guardian. *Venezuela departs almost 800 Colombians in border-region crackdown*. August 24, 2015. Available at: <https://www.theguardian.com/world/2015/aug/24/venezuela-colombia-deportation-border-crackdown>; IACHR. Press Release No. 100/2015: *IACHR Expresses Concern over Arbitrary Deportation of Colombians from Venezuela*. August 25, 2015. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2015/100.asp.

¹⁶⁵ HRW. *Venezuela's Humanitarian Crisis: Severe Medical and Food Shortages, Inadequate and Repressive Government Response*. October 24, 2016. Available at: <https://www.hrw.org/report/2016/10/24/venezuelas-humanitarian-crisis/severe-medical-and-food-shortages-inadequate-and>.

violence, to those necessary for victims of trafficking in persons. This could further complicate not only the capacitation of those who provide medical, psychological, or any type of assistance, but also create constraints in budgetary planning.¹⁶⁶

As previously mentioned, the organized crime law fails to prohibit trafficking by any individual not affiliated with an organized criminal group and fails to prohibit activities that could affect men. In turn, prosecutors would employ other statutes to prosecute such individuals.

On its own, the Labor law does not criminalize any form of human trafficking. Nonetheless it sets the minimum employment age at 14 years and prescribes that children younger than 14 may work only if granted special permission by the National Institute for Minors or the Ministry of Labor. Such permission may not be granted to minors under the age for work in hazardous occupations that risk their life or health or could damage their intellectual or moral development. Children ages 14 to 18 may not work without permission of their legal guardians or in occupations expressly prohibited by the law, and they may work

¹⁶⁶ CEDAW noted the adoption of the Act on Women's Right to a Life Free from Violence in 2014. Nonetheless it expressed deep concern, that "violence against women and girls is widespread and on the rise."

It further considered about:

- (a) The lack of information regarding the forms, prevalence and root causes of violence against women and the absence of a system for collecting disaggregated data;
- (b) The insufficient implementation of the Act;
- (c) The lack of effective access to justice for all women victims of violence throughout the territory of the State party, as a result of the insufficient structures and inadequate functioning of the justice system, in particular considering the low number of cases prosecuted, and the fact that specialized courts have been established in only 16 states;
- (d) The insufficient number of shelters available for victims, with only six shelters having been established thus far, while the Act requires one in each state.

[CEDAW. *Concluding observations on the combined seventh and eighth periodic reports of the Bolivarian Republic of Venezuela*. CEDAW/C/VEN/CO/7-8 of 14 November 2014, para. 18.]

no more than six hours per day or 30 hours per week. Minors under 18 may not work outside the normal workday.

Lastly, a critic must be made on the lack of official data. In accordance to statements made by the UN General Assembly on the importance of comparable disaggregated data,¹⁶⁷ the complete absence of information generates further difficulties to assess the overall law enforcement efforts against human trafficking. It makes it increasingly difficult to share information and approach the problem in a more systematic way. Currently, there is no research or reporting information from any of the national authorities,¹⁶⁸ and no public information on bilateral agreements between Venezuela and other states exists. As a result, public policies are deficiently focused on prevention and no work has initiated on protection or remedies for victims of human trafficking.¹⁶⁹

¹⁶⁷ UN General Assembly. Resolution 64/178: *Improving the coordination of efforts against trafficking in persons*. A/RES/64/178 of 26 March 2010.

¹⁶⁸ The General Directorate for Crime Prevention of the Ministry of Popular Power for Internal Relations and Justice; the National Office Against Organized Crime and Terrorism Financing; the Special Ombudsman with National Competence on Women's Rights; the National Institute of Women; the National Commission for Children and Adolescents; and General Prosecutor of the Republic.

¹⁶⁹ Research and the availability and exchange of data are essential for the development and implementation of better legislation and policies as well as other targeted measures, including services for victims/survivors. [UN General Assembly. Resolution 64/178: *Improving the coordination of efforts against trafficking in persons*. A/RES/64/178 of 26 March 2010.]