

# Human Trafficking in Panama

## *A Country Analysis*

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## **Human Trafficking in Panama – A Country Analysis**

## I. Introduction

Panama is a “source, transit, and destination country for men, women, and children subjected to sex trafficking and forced labor.”<sup>1</sup> Though Panama has engaged in efforts to combat human trafficking within the country, the U.S. State Department currently maintains Panama as having a Tier 2 ranking.<sup>2</sup> A Tier 2 ranking indicates that the government of Panama does not fully comply with the Trafficking in Victims Protection Act (“TVPA”), but is making significant efforts to do so.<sup>3</sup> Panama has consistently shifted between maintaining a Tier 2 ranking and a Tier 2 Watch List ranking.

Though human trafficking throughout Central America is a significant issue, Panama faces unique challenges due to its geographic location and porous borders. On the southeastern end of the country lies the gateway to South America, an enormous border region known as the Darien Gap.<sup>4</sup> The Darien Gap ranges from 60 to 100 miles and is mostly swampland with no traversable land crossing.<sup>5</sup> Complicating matters, the Darien Gap has become a haven for “narcotraffickers,” drug runners working for cartels to transport narcotics from South America into Central America, with the final destination often being the United States.<sup>6</sup> This creates a challenge as these drug smugglers have an incentive to create and maintain clandestine routes through the

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<sup>1</sup> U.S. Department of State, *2015 Trafficking in Persons Report*, page 273 (accessed at: <http://www.state.gov/documents/organization/245365.pdf>).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 47.

<sup>4</sup> Carolyn McCarthy, *Silent Darien: The Gap in the Worlds Longest Road*, BBC News (Aug. 14th, 2014) (accessed at: <http://www.bbc.com/news/magazine-28756378>).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

wilderness.<sup>7</sup> It is also home to the 57th front of the Fuerzas Armadas Revolucionarias de Colombia (“FARC”), who locals and Panamanian authorities say take a cut from establishing human-smuggling routes.<sup>8</sup> On the western side, Panama shares a border with Costa Rica. The relative affluence of nearby Costa Rica entices traffickers and their victims from Panama’s agrarian and relatively less wealthy western region.<sup>9</sup>

Within the country itself, Panamanian authorities also face significant challenges. Panama’s economy is dominated by its strong services sector which is home to over 100 headquarters of multinational companies.<sup>10</sup> Further complicating matters, Panama has higher income inequality than Latin America generally, with thirty-seven percent of the population living below the poverty line.<sup>11</sup> This service-based focus combined with substantial inequality in income has led to the development of a thriving market for domestic servitude.<sup>12</sup> According to a 2006 report by the U.S. Department of State Bureau of Democracy, Human Rights, and Labor, there has been evidence that rural children are trafficked internally to work as domestic servants.<sup>13</sup>

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<sup>7</sup> *Id.*

<sup>8</sup> Sara Schaefer Munoz, *Global Migrants Brave Panama’s Vipers, Bats, Bandits to Reach U.S.*, *The Wall Street Journal* (May 2015).

<sup>9</sup> United Nations Office on Drugs and Crime, *Trafficking of Women and Girls Within Central America*, page 53 (accessed at: [https://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA\\_CACaribb\\_trafficking\\_womengirls\\_within\\_CAmerica.pdf](https://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_trafficking_womengirls_within_CAmerica.pdf)).

<sup>10</sup> The Heritage Foundation, *2016 Index of Economic Freedom: Panama* (2016) (accessed at: <http://www.heritage.org/index/country/panama>).

<sup>11</sup> The World Bank, *Panama Poverty Assessment: Priorities and Strategies for Poverty Reduction* (June 1998) (accessed at: <http://go.worldbank.org/G48WWJ8YB0>).

<sup>12</sup> *Supra*, note 9.

<sup>13</sup> U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *2005 Country Reports on Human Rights Practices* (March, 2006) (accessed at: <http://www.state.gov/j/drl/rls/hrrpt/2005/61736.htm>)

The focus of this paper will consist of an analysis of Panama's legislation as compared to the Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons promulgated by the United Nations under A/HRC/26/18. The paper begins with a discussion of Panama's legislative framework surrounding human trafficking; in particular, the passage of Law 79 in 2011. It is then divided into five sections exploring the legislative framework as it applies to criminal statutes, administrative requirements developed to support victims of human trafficking, civil remedies available for victim's of human trafficking, remedies specifically designed for children and individuals with disabilities, and the funding scheme developed to support these efforts. Finally, this paper attempts to gauge the results of Panama's legislative framework and address the issues surrounding its full implementation. A table follows the discussion which directly compares Panamanian law with the Basic Principles.

## **II. Panamanian Legislation – Law 79**

Any discussion of the Panamanian legal framework must begin with a discussion of Law 79. On August 18th, 2004, Panama ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereinafter the "Palermo Protocol") with no accompanying reservations or declarations.<sup>14</sup> In November of 2011, largely in an effort to implement the Palermo Protocol's provisions, the Panamanian legislature passed Law 79, entitled "About Trafficking in Persons and Related

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<sup>14</sup> United Nations Treaty Collection, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Nov. 2000) (accessed at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en)).

Activities.”<sup>15</sup> Law 79 is a complete overhaul of Panama’s formerly fragmented legislation surrounding human trafficking. Law 79 was clearly designed with the United Nations principles in mind, as it maps on to the concepts quite well.

Article 1 lays out the general objectives of the law, stating that Law 79 is designed for the prevention of the victimization and re-victimization, and protection and assistance to, victims and potential victims of trafficking.<sup>16</sup> Additionally, the law states that its purpose is to strengthen Panamanian governmental policies to prevent human trafficking. Articles 2 and 3 elaborate on these positions, generally laying out the goals of the law as designed to assist, protect, and repair victims of human trafficking and related activities.<sup>17</sup> Article 3 also explains that the law seeks to establish mechanisms to create and facilitate national and international cooperation in combating human trafficking.<sup>18</sup>

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<sup>15</sup> Law 79: About Trafficking in Persons and Related Activities (Nov. 2011) (“Sobre trata de personas y actividades conexas.”) (*accessed at:* <http://www.organojudicial.gob.pa/cendoj/wp-content/blogs.dir/cendoj/79-2011.pdf>).

<sup>16</sup> Law 79: About Trafficking in Persons and Related Activities, Article 1, Page 1 (Nov. 2011). (“Esta Ley tiene como objetivo adoptar medidas para la prevención de la victimización y revictimización y la protección y asistencia a las víctimas y posibles víctimas de trata de personas, panameñas o extranjeras en territorio nacional o trasladadas al territorio nacional y panameñas en el exterior, garantizándoles el respeto a los derechos humanos, así como para la penalización de la trata de personas y actividades conexas y el fortalecimiento de las políticas y acciones de seguridad del Estado frente a estos hechos punibles.”)

<sup>17</sup> Law 79: About Trafficking in Persons and Related Activities, Article 2, Page 1 (Nov. 2011). (“La presente Ley se aplica para la prevención, investigación y penalización de todas las formas de trata de personas y actividades conexas, nacional o transnacional, esté o no relacionada con el crimen organizado, y para la atención y protección de las personas víctimas de estos delitos.”)

<sup>18</sup> Law 79: About Trafficking in Persons and Related Activities, Article 3, Page 1 (Nov. 2011). (“Los fines de esta Ley son:

1. Prevenir y combatir la trata de personas y actividades conexas, prestando especial atención a las mujeres y a las personas menores de edad.
2. Promover políticas públicas para la prevención de la trata de personas y actividades conexas.
3. Proponer la normativa necesaria para la efectiva sanción de la trata de personas y las

One of the most significant aspects of Law 79 is Article 12 which authorizes the creation of a Comisión Nacional contra la Trata de Personas (“National Commission Against Human Trafficking”).<sup>19</sup> Under Article 14, the National Commission is assigned with carrying out the following fourteen functions:<sup>20</sup>

- 1) Design the National Policy against Trafficking in Persons, promote the adoption of necessary measures and integrate public institutions with the prevention, care and repression of human trafficking.
- 2) Propose, manage, promote, coordinate and supervise the development, execution, and implementation of the National Plan to combat Trafficking in Persons.
- 3) Recommend the signing and ratification of agreements, conventions, and treaties and other steps required to strengthen international cooperation against trafficking in persons.
- 4) Verify compliance with international agreements and conventions regarding human rights related to human trafficking that the Republic of Panama has signed.
- 5) Participate in meetings with international organizations related to human trafficking and designate representatives to attend said meetings.
- 6) Provide technical assistance to public and private organizations to develop programs, projects, or any other activities for the prevention, attention, and protections of victims of human trafficking, in coordination with the governing institutions involved.
- 7) Promote professionalism, awareness, and training of the staff in the private and public functions of organizations related to the National Plan against Human Trafficking.
- 8) Establish mechanisms to identify potential victims of human trafficking and vulnerable situations.
- 9) Collaborate with the Integrated System of Criminal Statistics in the development of the statistical reports on human trafficking.

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actividades conexas.

4. Desarrollar un marco específico y complementario de protección, asistencia y reparación a las víctimas de trata de personas y las actividades conexas, respetando plenamente sus derechos humanos.

5. Establecer los mecanismos para impulsar y facilitar la cooperación nacional e internacional en el tema de trata de personas y actividades conexas.”)

<sup>19</sup> Law 79: About Trafficking in Persons and Related Activities, Article 12, Page 4 (Nov. 2011). (“Se crea la Comisión Nacional contra la Trata de Personas, en adelante la Comisión Nacional, como un organismo técnico-administrativo, con personería jurídica, adscrita al Ministerio de Seguridad Pública.”)

<sup>20</sup> *Id.*



- 10) Conduct campaigns for the prevention of trafficking and related crimes and promote measures for the attention and protection of victims of these crimes.
- 11) Enter into cooperative agreements with public and private organizations for the care of victims of human trafficking.
- 12) Acquire goods and contracts required to function.
- 13) Manage the assets and resources.
- 14) Exercise any other functions provided for in this Act and its regulations.<sup>21</sup>

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<sup>21</sup> Law 79: About Trafficking in Persons and Related Activities, Article 14, Pages 4-5 (Nov. 2011). (“1. Diseñar la Política Nacional contra la Trata de Personas, promover su aprobación y adoptar las medidas necesarias para la gestión integrada de las instituciones públicas relacionadas con la prevención, atención y represión del delito de trata de personas.

2. Proponer, dirigir, impulsar, divulgar, coordinar y supervisar la elaboración, seguimiento, ejecución y actualización del Plan Nacional contra la Trata de Personas.
3. Recomendar la suscripción y ratificación de acuerdos, convenios o tratados y otras gestiones que se requieran para fortalecer la cooperación internacional contra la trata de personas.
4. Verificar el cumplimiento de los acuerdos y convenios internacionales que la República de Panamá haya suscrito en materia de derechos humanos relacionados con la trata de personas.
5. Participar en las reuniones de los organismos internacionales relacionados con la trata de personas y actividades conexas y designar a los representantes en dichas reuniones.
6. Brindar asistencia técnica a organismos públicos y privados que desarrollen programas, proyectos o cualquier otro tipo de actividades de prevención, atención y protección a las víctimas de la trata de personas, previa coordinación con las instituciones rectoras involucradas al efecto.
7. Impulsar la profesionalización, la sensibilización y la capacitación de su personal, así como de los funcionarios públicos y privados de los organismos relacionados con el Plan Nacional contra la Trata de Personas.
8. Establecer mecanismos para la identificación de posibles víctimas de la trata de personas y situaciones de vulnerabilidad.
9. Colaborar con el Sistema Integrado de Estadística Criminal en la elaboración de los informes estadísticos sobre trata de personas.
10. Dirigir las campañas de prevención del delito de trata de personas y delitos conexos y promover medidas para la atención y protección a las víctimas de este delito.
11. Celebrar acuerdos de cooperación con organismos públicos o privados nacionales para la atención de las víctimas del delito de trata de personas.
12. Adquirir bienes y contraer obligaciones necesarias para su funcionamiento.
13. Administrar sus bienes y recursos.
14. Ejercer cualquiera otra función prevista en esta Ley y en su reglamento.”)

Another aspect of Law 79 is that the law amended the Panamanian Penal Code to include additional sections criminalizing the practice of human trafficking. Prior to the passage of the law, Panama addressed human trafficking through its penal code under Title XV, Crimes Against Humanity, Chapter 1, Crimes Against International law of Human Rights, Article 442. Article 442 held:

Anyone who leads or is part of an international organization dedicated to trafficking in persons will be sanctioned with imprisonment of 10 to 15 years.

The same sanction will be imposed on anyone who participates in any way in the trafficking in persons, with the consent of these persons, avoiding or evading illegally in any way the immigration controls established in the continental territory of the Republic.<sup>22</sup>

The Article above was noticeably lacking in effect and conformity with international standards of human trafficking. According to Article 3 of the Palermo Protocol,

”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  
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<sup>22</sup> Penal Code of the Republic of Panama, Article 442, Pg 79 (2010) (*accessed at:* [https://www.unodc.org/res/cld/document/pan/2010/codigo\\_penal\\_-\\_texto\\_unico\\_2010\\_html/Texto\\_Unico\\_Codigo\\_Penal\\_2010.pdf](https://www.unodc.org/res/cld/document/pan/2010/codigo_penal_-_texto_unico_2010_html/Texto_Unico_Codigo_Penal_2010.pdf)) (“Quien dirja o forme parte de una organizacion de caracter internacional dedicada a traficar con personas sera sancionado con prision de diez a quince anos.

La misma sancion se impondra a quien intervenga de cualquier forma en el trafico de personas, con el consentimiento de estas, evitando o evadiendo fraudulentamente, de alguna manera, los controles de migracion establecidos en el territorio continental de la Republica.”)

<sup>23</sup> United Nations Human Rights Office of the High Commissioner, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Nov. 2000) (*accessed at:* <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>).

Article 442 did not define human trafficking to the extent required by the Palermo Protocol, leaving significant gaps in the law's coverage. Law 79 eliminated Article 442 and replaced it with Articles 456(A)-(E). As discussed below, these articles were a vital shift in fully criminalizing human trafficking throughout Panama as well as offering victims adequate remedies.

### **III. Formal Framework for Human Trafficking Remedies**

The Basic Principles lay out an extensive framework for how state's should structure their remedies for human trafficking. Though the Principles are not binding in and of themselves, Panama has effectively structured the remedies for human trafficking in a way that corresponds with the basic principles through criminal remedies, administrative remedies, and civil remedies.

#### **A. Criminal Remedies**

On the Criminal side, Panama offers access to remedies for victims of human trafficking by criminalizing the practice of human trafficking under Article 456(A) of the Penal Code. Under Article 456(A):

Any person who promotes, directs, organizes, finances, advertises, invites or manages any means or individual communication or otherwise facilitates any person entering the country or movement within the national territory of one person of either sex, to perform one or more acts of prostitution or subject them to exploitation, sexual or labor servitude, slavery or practices analagous to slavery, labor or services involving forced labor, marriage slavery, begging, unlawful removal of organs or irregular adoption, will be sentenced to prison for fifteen to twenty years.<sup>24</sup>

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<sup>24</sup> Penal Code of the Republic of Panama, Article 456(A), Pg. 318 (2015) (*accessed at:* <http://www.ministeriopublico.gob.pa/minpub/Portals/0/Pdfs/Prensa/CODIGO%20PENAL%20-%20AJUSTADO.pdf>) (“Quien promueva, dirija, organice, financie, publicite, invite o gestione por cualquier medio de comunicación individual o de masas o de cualquiera otra forma facilite la entrada o salida del país o el desplazamiento dentro del

This statute is fairly comprehensive in designing penalties for those directly engaged in human trafficking. Additionally, Article 456(A) maintains a series of clauses which increase the penalty to twenty to thirty years in certain circumstances. Those additional penalties are considered if (1) The victim is a minor or is in a position of vulnerability or disability or otherwise unable to consent; (2) The victim is used for acts of exhibitionism through photographic means, films or lewd recordings; (3) The offense is executed by deception, coercion, violence, threat, fraud, theft or withholding of passports, immigration documents or personal identification; (4) The offense is committed by a close relative, guardian, or caretaker in charge of guarding, raising, education or instruction of the victim; or (5) The offense is committed by a public servant.<sup>25</sup> Article 456(A), alongside the additional clauses,

Law 79 went further, however, amending the Penal Code to include penalties for a number of activities surrounding the practice of human trafficking. Article 456(B) authorizes a penalty of six to eight years for individuals that help to furnish or fund the human trafficking.<sup>26</sup> Also under 456(B), individuals that own public commercial

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territorio nacional de una persona de cualquier sexo, para realizar uno o varios actos de prostitución o someterlas a explotación, servidumbre sexual o laboral, esclavitud o prácticas análogas a la esclavitud, trabajos o servicios forzados, matrimonio servil, mendicidad, extracción ilícita de órganos o adopción irregular, sera sancionado con prisión de quince a veinte años.”)

<sup>25</sup> *Id.* (“La sanción será de veinte a treinta años de prisión, cuando: 1. La víctima sea una persona menor de edad o se encuentre en una situación de vulnerabilidad o discapacidad o incapaz de consentir. 2. La víctima sea utilizada en actos de exhibicionismo a través de medios fotográficos, filmadoras o grabaciones obscenas 3. El hecho sea ejecutado por medio de engaño, coacción, violencia, amenaza, fraude, sustracción o retención de pasaportes, documentos migratorios o de identificación personal. 4. El hecho sea cometido por pariente cercano, tutor o quien tenga a su cargo la guarda, crianza, educación o instrucción de la víctima. 5. El hecho sea cometido por un servidor público.”)

<sup>26</sup> Penal Code of the Republic of Panama, Article 456(B), Pg. 318 (2015) (“Quien, a

establishments that permit the use of their facilities for human trafficking face prison sentences from eight to twelve years. Article 456(C) authorizes penalties for the transportation or storage of organs.<sup>27</sup> Article 456(D) creates penalties for any person that forces another to work under the guise of fraud or deception, including additional penalties if that person is a minor.<sup>28</sup> Finally, Article 456(E) establishes that the consent of the victim in any of the above circumstances does not negate the offense in any way.<sup>29</sup>

## **B. Administrative Remedies**

Administratively, Law 79 develops a coherent process for victims of human trafficking to be processed through the legal system while maintaining a fundamental respect for their status as victims. This process begins with the requirement under Article 44 that any public servant with reason to believe that an individual may be a victim of human trafficking report that victim to the police immediately.<sup>30</sup> The victim will then be

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sabiendas, destine un bien mueble o inmueble a la comisión del delito descrito en el artículo anterior, será sancionado con prisión de seis a ocho años. Cuando el dueño, arrendador, poseedor o administrador de un establecimiento o local comercial destinado al público, lo use o permita que sea utilizado, para la comisión de dicho delito, se le impondrá la pena de ocho a doce años de prisión.”)

<sup>27</sup> Penal Code of the Republic of Panama, Article 456(C), Pg. 319 (2015) (“Quien posea, transporte, almacene, reciba, entregue, ofrezca, venda, compre o traspase de cualquier manera, en forma ilícita, órganos, tejidos o fluidos humanos será sancionado con prisión de diez a doce años.”)

<sup>28</sup> Penal Code of the Republic of Panama, Article 456(D), Pg. 319 (2015) (“Quien someta o mantenga a personas de cualquier sexo para realizar trabajos o servicios bajo fuerza, engaño, coacción o amenaza será sancionado con prisión de seis a diez años. La pena de prisión de diez a quince años si la víctima es una persona menor de edad o se encuentra en una situación de vulnerabilidad o discapacidad.”)

<sup>29</sup> Penal Code of the Republic of Panama, Article 456(E), Pg. 319 (2015) (“El consentimiento dado por la víctima en los delitos establecidos en este Capítulo no exime de la responsabilidad penal.”)

<sup>30</sup> Law 79: About Trafficking in Persons and Related Activities, Article 44, Pg. 13 (Nov. 2011) (“Cuando un servidor público por razón de sus funciones o cualquiera persona tenga motivos razonables para creer que una persona es víctima de trata de personas comunicará el hecho inmediatamente a la Policía Nacional y procurará brindarle a la

forwarded by the police to a specialized unit called the Technical Unit for the Identification and Attention of Victims.<sup>31</sup> Under Article 45, within twenty-four hours of receiving the victim, the unit must make a preliminary determination as to whether the identified individual is likely a human trafficking victim.<sup>32</sup> Article 46 then holds that the identified victim should have their identity ascertained and any family contacted.<sup>33</sup> It is important to note that Article 46 states that the victim will not be prejudiced if their identity cannot be ascertained.

After the preliminary report is conducted under Article 45 and the individual has been determined to be a victim of human trafficking, Article 47 requires that the individual be permitted to stay in the country for a period of at least ninety days for physical and emotional recovery.<sup>34</sup> This period of time is essential to maintain compliance with the

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víctima las medidas de atención inmediata a las que hace referencia esta Ley. La Policía Nacional dispondrá, en la brevedad de lo posible, el traslado de la víctima a la Unidad Técnica de Identificación y Atención de Víctimas de la Comisión Nacional.”)

<sup>31</sup> *Id.*

<sup>32</sup> Law 79: About Trafficking in Persons and Related Activities, Article 45, Pg. 13 (Nov. 2011) (“Para la identificación de la persona víctima de trata, la Unidad Técnica de Identificación y Atención de Víctimas emitirá un informe preliminar sobre la determinación de que una persona es víctima probable de trata de personas en un plazo de veinticuatro horas, contado a partir del momento en que realizó la entrevista de la persona afectada.”)

<sup>33</sup> Law 79: About Trafficking in Persons and Related Activities, Article 46, Pg. 14 (Nov. 2011) (“El Servicio Nacional de Migración del Ministerio de Seguridad Pública, el Ministerio de Relaciones Exteriores y la Unidad de Identificación y Atención de Víctimas realizarán todas las gestiones necesarias para determinar la identidad de la víctima extranjera y sus dependientes cuando no se cuente con la documentación que acredite su identidad. En el caso de víctimas nacionales, se requerirá a la Dirección del Registro Civil del Tribunal Electoral la identificación de la víctima. La ausencia de documentos de identificación de identidad no impedirá que la víctima y sus dependientes tengan acceso a las medidas de atención inmediata establecidas en esta Ley.”)

<sup>34</sup> Law 79: About Trafficking in Persons and Related Activities, Article 47, Pg. 14 (Nov. 2011) (“El Servicio Nacional de Migración, en atención al informe preliminar que rinda la Comisión Nacional contra la Trata de Personas dentro del proceso de identificación, otorgará a la víctima de trata de personas un permiso de permanencia temporal por un

basic principles, as principle 7(d) mandates a similar reflection and recovery period. During this time period, the National Commission Against Trafficking in Persons will conduct a full review, separate from the preliminary identification, to determine if the individual is indeed a victim of human trafficking. After the full report, if the victim is truly a victim of human trafficking, the individual will be granted a temporary stay permit under Article 48, similar to the U.S. T-Visa, which authorizes a stay of at least six months, complying with principle 7(d) and 7(g).<sup>35</sup> This permit may be extended if circumstances so require.

Panama maintains additional protections for victims of human trafficking that apply throughout the process. One of the most significant of these provisions is Article 37 of Law 79 which states that the victim of human trafficking shall not be detained, accused, or processed for having entered the country illegally, or as a result of any illegal activity associated with the human trafficking.<sup>36</sup> This provision brings Panamanian law in line with UN Basic Principle principle 7(f) by removing the possibility that the victim will be treated as a criminal for their involvement in the human trafficking. On a related note,

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periodo no menor de noventa días para su recuperación física y emocional y para que decida sobre su intervención en el proceso penal en el que figura como víctima, si aún no ha tomado esa decisión.”)

<sup>35</sup> Law 79: About Trafficking in Persons and Related Activities, Article 48, Pg. 14 (Nov. 2011) (“Cumplido el plazo señalado en el artículo anterior y conforme al informe de identificación plena que rinda la Comisión Nacional en el proceso de identificación que determine a una persona como víctima de trata de personas, el Servicio Nacional de Migración otorgará a la víctima un permiso de permanencia temporal por un periodo no menor de seis meses, con posibilidad de prórroga por el mismo periodo, independientemente de si esta colabora o no con el proceso.”)

<sup>36</sup> Law 79: About Trafficking in Persons and Related Activities, Article 37, Pg. 11 (Nov. 2011) (“La víctima de la trata de personas no será detenida, acusada ni procesada por haber entrado o residir de manera irregular en el territorio nacional ni por haber participado en actividades ilícitas en la medida en que esa participación sea consecuencia directa de su situación de víctima.”)

Article 35 states that the overall condition of the victim will be entirely independent of the process against those responsible for the commission of the crime.<sup>37</sup> Additionally, Article 41 includes a provision that ensures that all of the protections authorized throughout the process will be extended to the victim whether or not they choose to collaborate with the investigation, complying with principle 7(i).<sup>38</sup> Articles 35, 37, and 41, paired with Article 456(E) of the Penal Code (stating that the consent of the victim will not negate any human trafficking offense), effectively promote compliance with the Palermo Protocol as the combined provisions take the blame off of the victim and place it squarely on the shoulders of the perpetrators where it belongs.<sup>39</sup>

While the government engages in administrative deliberations, Law 79 also creates a set of administrative rights that must be adhered to at all times throughout the process. These rights are listed in Article 36 of Law 79.<sup>40</sup> Article 36 is a fairly robust section designed to lay out the “inalienable and indivisible” rights that any victim of human

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<sup>37</sup> Law 79: About Trafficking in Persons and Related Activities, Article 35, Pg. 11 (Nov. 2011) (“La condición de víctima es independiente de que se haya abierto proceso contra las personas responsables de la comisión del delito.”)

<sup>38</sup> Law 79: About Trafficking in Persons and Related Activities, Article 41, Pg. 12 (Nov. 2011) (“Se considerará primordial la protección de la vida, la integridad física, la libertad y la seguridad de las personas víctimas del delito de trata de personas, los testigos del delito y las personas dependientes o relacionadas con la víctima, sin distinción de raza, sexo, edad, religión, orientación sexual o política, nacionalidad, posición económica o condición social o migratoria. Esta protección será brindada antes, durante y después del proceso sin que medie obligación de la víctima para colaborar con la investigación como requisito para que se le otorgue. Cuando la víctima sea una persona menor de edad, deberá tomarse en cuenta el interés superior de esta, el respeto a sus derechos y la protección adecuada. En los procesos de trata de personas con fines de explotación sexual, el juez podrá ordenar que el juicio se desarrolle a puertas cerradas al público.”)

<sup>39</sup> See Palermo Protocol, Art. 2, Statement of Purpose.

<sup>40</sup> Law 79: About Trafficking in Persons and Related Activities, Article 36, Pg. 11 (Nov. 2011)



trafficking is entitled from the state regardless of the circumstances.<sup>41</sup> These rights are detailed below:

- 1) The protection of their physical and emotional integrity.
- 2) The protection of their identity and privacy, with respect for their personality.
- 3) To receive clear and comprehensible information regarding their rights to assistance, in a language and medium that they can understand based on their age, education level, or disability.
- 4) To be informed of their rights to contact diplomatic representatives and the consulate of the state of their nationality.
- 5) To receive clear and comprehensible information regarding their legal and migratory situation, in a language and medium they can comprehend according to their age, education level, or disability, and to have access to free legal representation and assistance.
- 6) To receive appropriate, accessible, and safe accommodation, and to have their basic health, clothing, and hygienic needs covered.
- 7) To receive medical and psychological assistance, including therapy and medication.
- 8) To receive migratory protection, including the right to remain in the national territory in accordance with the provisions of this act.
- 9) The right to voluntary and secure repatriation to their country of origin or to the country where they are domiciled.
- 10) A respect for all procedural safeguards.<sup>42</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* (“La víctima de la trata de personas tendrá los siguientes derechos irrenunciables e indivisibles:

1. A la protección de su integridad física y emocional.
2. A la protección de su identidad y privacidad, así como al respeto de su personalidad.
3. A recibir información clara y comprensible sobre los derechos que le asistan, en un idioma o medio que comprenda acorde a su edad, grado de madurez o discapacidad.
4. A ser informada de su derecho de ponerse en contacto con representantes diplomáticos y consulares del Estado de su nacionalidad.
5. A recibir información clara y comprensible sobre su situación legal y migratoria, en un idioma o medio que comprenda acorde a su edad, grado de madurez o discapacidad, y a tener acceso a servicios de asistencia y representación legal gratuita.
6. A recibir alojamiento apropiado, accesible y seguro, así como cobertura de sus necesidades básicas de alimentación, vestimenta e higiene.
7. A recibir asistencia médica y psicológica, incluyendo terapias y medicamentos.
8. A la protección migratoria, incluyendo el derecho a permanecer en el territorio nacional de conformidad con lo previsto en esta Ley.
9. A la repatriación voluntaria y segura a su país de origen o al país donde estuviera su domicilio.
10. Al respeto a todas las garantías procesales.

In addition, in the case of a minor or a disabled victim, victims have the right to have their special needs recognized and the state will work to procure their reintegration into their nuclear family when it is secure to do so. A minor in Panama is considered to be any person under the age of eighteen.<sup>43</sup>

There are several additional articles within Law 79 that are worth mentioning in this section. Articles 39 and 40 of Law 79 both deal with privacy issues. Article 39 requires that any information regarding the victim, including information related to dependents and family members of the victims, remain entirely confidential throughout the judicial and administrative processes and is used exclusively for the investigation and processing.<sup>44</sup> Article 40 elaborates on Article 39, stating that any information that the National Commission Against Human Trafficking gains related to human trafficking is kept strictly confidential.<sup>45</sup> Additionally, Article 40 states that the information must be

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En el caso de víctimas menores de edad o con discapacidad, además de los derechos enunciados en este artículo, se garantizará que los procedimientos reconozcan sus necesidades especiales resultantes de su condición y se procurará su reintegración al núcleo familiar cuando esto sea seguro.”).

<sup>43</sup> Penal Code of the Republic of Panama, Article 179, Pg. 134 (2015) (“Quien corrompa o promueva la corrupción de una persona menor de dieciocho años haciéndola participar o presenciar comportamientos de naturaleza sexual que afecten su desarrollo sicosocial será sancionado con prisión de cinco a siete años.”)

<sup>44</sup> Law 79: About Trafficking in Persons and Related Activities, Article 39, Pg. 12 (Nov. 2011) (“Toda la información y actividad administrativa o judicial relacionada con el ámbito de protección de las personas víctimas del delito de trata de personas, sus dependientes y personas relacionadas con ella y los testigos del delito será de carácter confidencial. Su utilización estará reservada exclusivamente para los fines de la investigación o del proceso respectivo.”)

<sup>45</sup> Law 79: About Trafficking in Persons and Related Activities, Article 40, Pg. 12 (Nov. 2011) (“Para el cumplimiento de la disposición anterior, la Comisión Nacional contra la Trata de Personas deberá mantener en estricta confidencialidad la información de las investigaciones relacionadas con la trata de personas y velará por asegurar el respeto del derecho de intimidad de las víctimas.

Esta obligación se extiende a todas las instancias judiciales y administrativas, tanto públicas como privadas, que tomen contacto con dicha información.”)

used only in ways that fully respects the rights of the victims, and that all of the obligations extend to any judicial or administrative agencies which come into contact with the information, whether public or private.<sup>46</sup>

As the chart at the end of this paper shows, these administrative rights represent a significant step toward formally bringing Panamanian law on human trafficking in line with the UN Basic Principles.

### C. Civil Remedies

In addition to the above-mentioned remedies, Law 79 contains several provisions directly aimed at restitution for the victim from the perpetrator through Article 38.

Article 38 authorizes indemnification for the victim for seven significant costs associated with human trafficking:

- 1) The costs for medical or psychological treatment;
- 2) The costs for physical and occupational therapy and rehabilitation;
- 3) The costs for the transport, temporary housing, and minimal necessary care;
- 4) Lost income;
- 5) The pain and suffering associated with the event;
- 6) Any other loss suffered by the victim;
- 7) Lawyer fees.<sup>47</sup>

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<sup>46</sup> *Id.*

<sup>47</sup> Law 79: About Trafficking in Persons and Related Activities, Article 38, Pg. 12 (Nov. 2011) (“En los casos de condena por los delitos de trata de personas, el tribunal ordenará que se indemnice a la víctima por:

1. Los costos del tratamiento médico o psicológico.
2. Los costos de la terapia y rehabilitación física y ocupacional.
3. Los costos del transporte, de la vivienda provisional y del cuidado de menores que sean necesarios.
4. Los ingresos perdidos o lucro cesante.
5. La perturbación emocional, el dolor y el sufrimiento.
6. Cualquiera otra pérdida sufrida por la víctima.
7. Los honorarios de los abogados.

Para el pago de esta indemnización se aplicará, con prelación, el producto de los bienes decomisados y se ordenará que el pago se haga en el menor tiempo posible.

The costs are authorized by the statute to be paid from the profits of the perpetrator of the human trafficking crime, in the least amount of time possible. Additionally, Article 38 of Law 79 authorizes the return of the victim to their country of origin or any other jurisdiction and states that the return of the victim will not prejudice their ability to receive the indemnification.

#### **D. Remedies for Child Victims and Victims with Disabilities**

Law 79 has a robust structure specifically designed for child victims of human trafficking under Article 50.<sup>48</sup> Article 50, Section 3 requires that professional assistance be given to children for accommodation, education, and care. In cases where the child is not accompanied by a responsible adult, Section 4 requires that the government make diligent efforts to identify the nationality, identity, and locale of the family when it is safe for the child.<sup>49</sup> Section 5 of the same requires that the government appoint children a

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El retorno de la víctima a su país de origen o cualquiera otra ausencia de ella de la jurisdicción nacional no perjudicará su derecho a recibir indemnización.”)

<sup>48</sup> Law 79: About Trafficking in Persons and Related Activities, Article 50, Pg. 14 (Nov. 2011) (“En adición a las medidas establecidas en la ley, cuando la víctima sea una persona menor de edad, se aplicarán las siguientes medidas especiales:

1. Atención y cuidado especial, sobre todo cuando se trate de lactantes.
2. En caso de que la edad de la víctima sea incierta y existan razones para presumir que se trata de un menor de edad, se tendrá como tal hasta que se realice la verificación correspondiente.
3. Asistencia proporcionada por profesionales capacitados para tal efecto y en atención a las necesidades especiales de la víctima, fundamentalmente en lo que respecta a alojamiento, educación y cuidados.
4. En caso de no estar acompañada de un adulto responsable, se gestionarán todas las diligencias necesarias para establecer su nacionalidad e identidad y la localización de su familia cuando sea seguro o ello redunde en el interés del menor.
5. Cuando no se cuente con representación legal adecuada, la víctima quedará bajo la representación legal de la Secretaría Nacional de Niñez, Adolescencia y Familia. Las medidas de asistencia, protección e incidencias del proceso serán informadas a la víctima en un idioma y lenguaje que sea le sea comprensible.”)

<sup>49</sup> *Id.* at 15.

legal representative.<sup>50</sup> Article 53 authorizes the National Secretary for Children, Youth, and Family to provide care and assistance to the children and take into account the rights and specific needs of the children.<sup>51</sup>

Additionally, Article 52 outlines special provisions for victims that have a disability.<sup>52</sup> These special considerations include providing specialized equipment or technical aid if necessary and ensuring that the disabled individuals have access to personalized care and the justice they deserve. In sum, the provisions are designed to

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<sup>50</sup> *Id.*

<sup>51</sup> Law 79: About Trafficking in Persons and Related Activities, Article 53, Pg. 16 (Nov. 2011) (“Cuando la víctima sea menor de edad, la Secretaría Nacional de Niñez, Adolescencia y Familia será la entidad encargada de suministrar la atención y asistencia requeridas, para lo cual tendrá en cuenta los derechos y necesidades específicas del menor de edad víctima de trata.

Si se trata de víctimas mujeres mayores de edad, la asistencia corresponderá al Instituto Nacional de la Mujer. Si la víctima es persona mayor de edad con discapacidad, corresponderá a la Secretaría Nacional de Discapacidad.”)

<sup>52</sup> Law 79: About Trafficking in Persons and Related Activities, Article 52, Pg. 15 (Nov. 2011) (“En adición a las medidas establecidas en la ley, se aplicarán las siguientes medidas especiales a las víctimas de trata de personas con discapacidad:

1. Respeto de su integridad física y mental en igualdad de condiciones con las demás personas.
2. Respeto de su identidad, dignidad, autonomía individual y libertad en la toma de decisiones propias e independientes.
3. Respeto a la evolución de sus facultades y capacidades.
4. Atención y cuidado especial en razón del tipo de discapacidad, incluida la provisión de ayuda técnica o equipo auxiliar.
5. Acceso, en igualdad de condiciones, al entorno físico, al transporte, a la información y a las comunicaciones y a los servicios e instalaciones previstos en esta Ley para personas víctimas de trata de personas.
6. Protección prioritaria a la víctima en situaciones de riesgo.
7. Facilidad de movilidad personal en la forma y en el momento que lo soliciten.
8. Servicio de apoyo personalizado acorde con su condición.
9. Acceso a la justicia mediante los medios adecuados a su condición de discapacidad que faciliten sus actuaciones como interviniente directo e indirecto, incluida la declaración como testigos en los procedimientos judiciales.”)

give the victim aid in a manner that respects the particular circumstances the individual is facing.

### **E. Funding**

Funding for the provisions of Law 79 is authorized through Article 30 and Articles 56-59.<sup>53</sup> Article 30 lays out how the National Commission will be financed.<sup>54</sup>

Among the various forms of financing include an undetermined amount of money to be

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<sup>53</sup> Law 79: About Trafficking in Persons and Related Activities, Article 30, 56, 57, 58, 59 Pgs. 9, 16-17 (Nov. 2011). (Article 30: “Para el cumplimiento de sus fines, la Comisión Nacional contará con los siguientes recursos: 1. Las partidas que se asignen en el Presupuesto General del Estado al Ministerio de Seguridad Pública para este fin. 2. Las contribuciones y subvenciones de otras instituciones, de personas naturales o jurídicas, nacionales o extranjeras, públicas o privadas, de organismos internacionales y organizaciones no gubernamentales, así como las establecidas por leyes especiales. 3. El producto de la venta o administración de los bienes aprehendidos provisionalmente a las personas naturales o jurídicas procesadas por la comisión de delito de trata de personas y actividades conexas. 4. El producto de la venta o administración de los bienes, instrumentos, dineros o valores que hayan sido comisados judicialmente a las personas naturales o jurídicas condenadas por la comisión de delito de trata de personas y actividades conexas. 5. Las donaciones que reciba de otras instituciones, personas naturales o jurídicas, nacionales o extranjeras, públicas o privadas o de organismos internacionales y organizaciones no gubernamentales. 6. Los demás que obtenga a cualquier título.”); (Article 56: “La Comisión Nacional deberá reservar, por lo menos, el 25% de los fondos que reciba anualmente, según lo establecido en el artículo 30, y de los que reciba en concepto de donaciones provenientes de la cooperación nacional e internacional y de los que obtenga a cualquier título, para constituir el Fondo para la Asistencia de Víctimas de Trata de Personas.”); (Article 57: Las sumas de dinero que correspondan al Fondo se depositarán en el Banco Nacional de Panamá, en una cuenta separada de los recursos de la Comisión Nacional, autorizada por el Ministerio de Economía y Finanzas, identificada como Fondo Especial para Víctimas de Trata de Personas de la Comisión Nacional contra la Trata de Personas.”); (Article 58: “Los recursos del Fondo serán destinados exclusivamente a la atención integral y reintegración social de las víctimas de trata de personas y actividades conexas, conforme a las recomendaciones de los especialistas de la Comisión Nacional sobre medidas aplicables en cada uno de los casos en particular.”); (Article 59: Los recursos del Fondo serán inembargables para todos los efectos legales y no podrán tener un uso diferente al previsto en el artículo anterior.”).

<sup>54</sup> Law 79: About Trafficking in Persons and Related Activities, Article 30, Pg. 9 (Nov. 2011).

allocated by the state budget, contributions from state institutions, the proceeds from the sale of seized goods and property, and donations from national and international organizations.<sup>55</sup> Article 56 requires that the National Commission reserve at least 25% of the funds it receives from the aforementioned methods annually to form a Fund for the Assistance of Victims of Trafficking. This fund effectively brings Panamanian law in line with Principle 12(c) of the Basic Principles. Article 57 determines where the funds will be deposited, while Articles 58 and 59 define where the funding can be allocated in a general manner.

#### **IV. Results**

Unfortunately, though Law 79 entered into force on January 1st, 2012, formally bringing the Panamanian legal system into line with the UN Basic Principles, the practical reality on the ground highlights the significant challenges that remain. According to the Trafficking in Persons Report, though Law 79 does not require movement in order for one to be considered a human trafficking victim, all of the cases involving human trafficking since the law's passage have involved movement.<sup>56</sup> Though Panama identified twenty-five victims of human trafficking in 2014 – fourteen men, seven women, three boys, and one girl – the majority of the victims received no protective services.<sup>57</sup> Of the twenty-five victims identified, ten were referred to a public institution providing social workers and psychological services. From there, two received temporary shelter in a government facility for women, one was placed in a

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<sup>55</sup> *Id.* at 9-10.

<sup>56</sup> U.S. Department of State, *2015 Trafficking in Persons Report*, page 273 (accessed at: <http://www.state.gov/documents/organization/245365.pdf>).

<sup>57</sup> *Id.*

government shelter for children, and two were referred to an NGO.<sup>58</sup> Though Article 56 of Law 79 authorized the creation of a victim assistance fund, no money has been allocated.<sup>59</sup> Finally, the National Commission Against Trafficking in Persons, created by Article 12 of Law 79 and mentioned earlier in this paper, did not begin meeting regularly until the second half of 2015. As of the most recent U.S. report, the National Commission had reported “few notable outcomes.”<sup>60</sup>

One other significant issue with the implementation of Law 79 is the fact that the Panamanian judiciary had never been required to consider compensation for the victims of human trafficking prior to the passage of this law.<sup>61</sup> This has created difficulties in the implementation of these reforms as judicial officials have been unsure of which set of statutes to apply. This issue has plagued the Panamanian system each time they have attempted to reform their human trafficking legislation. A notable example of this issue, though involving the law prior to the passage of Law 79, took place in the case of *S.P.A.F. v. I.G.G.*<sup>62</sup> In the case, two colombian women were hired to work as stylists in Panama, with their transportation and accomodation facilitated by the defendant. After arriving in Panama, however, the defendant required that the women work in his club and

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Alexis Munoz, *Trafficking in Persons: Situation in the Republic of Panama*, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders: Participant’s Papers (Sep. 2012) (*accessed at*: [http://www.unafei.or.jp/english/pdf/RS\\_No89/No89\\_PA\\_Alexis.pdf](http://www.unafei.or.jp/english/pdf/RS_No89/No89_PA_Alexis.pdf)).

<sup>62</sup> *S.P.A.F. v. I.G.G.*, Corte Suprema de Justicia, Panama (May, 2010) (*accessed at*: [https://www.unodc.org/res/cld/case-law/pan/2010/s\\_p\\_a\\_f\\_v\\_i\\_g\\_g\\_html/Sentencia\\_-\\_S.P.A.F.\\_v.I.G.G.pdf](https://www.unodc.org/res/cld/case-law/pan/2010/s_p_a_f_v_i_g_g_html/Sentencia_-_S.P.A.F._v.I.G.G.pdf)); (*see also* [https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/pan/2010/s.p.a.f.\\_v.\\_i.g.g.html?lng=en&tmpl=htms](https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/pan/2010/s.p.a.f._v._i.g.g.html?lng=en&tmpl=htms))



accept any offer to pay for sex for a specified price. The work was required of the women as a means to repay the defendant for the transportation and housing.<sup>63</sup>

In the lower court, the defendants were both found to be guilty of sex trafficking. The defendants appealed the case, however, and the appellate court acquitted them of all charges. The appellate court found that, though there may have been sexual displays within the club, there was no direct evidence of prostitution. Additionally, the judges were concerned that there was no proof of deception or coercion by the defendants, there was no proof that the victims could not return to their country of origin, and there was a lack of evidence to show that the defendant's had confiscated the plaintiff's plane tickets.<sup>64</sup> The dissenting judge found fault with the appellate courts analysis.<sup>65</sup> He argued that the other judges had based their decisions on a version of the law passed in 1984 which had held that only intercourse could qualify as sexual activity for sex trafficking. This was as opposed to basing the decision off of the most recent version of the sex trafficking law at the time, passed in 2004, which added other sexual displays to the list of possible offenses.<sup>66</sup> The case was not taken into further review, however, and the defendants were acquitted.

Though Panama is clearly struggling with implementing and maintaining compliance with Law 79, the country has been making a laudatory effort at engaging in awareness campaigns. In November of 2014, Panama joined the Blue Heart Campaign

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

against Human Trafficking.<sup>67</sup> The Blue Heart Campaign is a major campaign developed by the United Nations Office on Drugs and Crime described as “[a]n awareness raising initiative to fight human trafficking and its impact on society.”<sup>68</sup> Under Executive Decree No. 421, in response to the passage of law 79, Panama also declared September to be the month to fight human trafficking and related crimes.<sup>69</sup> Each year, the Panamanian government funds an awareness campaign over radio and television, culminating in a walk to promote awareness on the International Day against Human Trafficking.<sup>70</sup>

## V. Conclusions

Under Law 79, Panama has a robust legal framework in place to combat human trafficking. The legislation comports well with the Basic Principles set forward by the United Nations and offers victims a chance at compensation, restitution, and dignity; in effect, to make them whole again after atrocious wrongs have been committed against them. Unfortunately, Panama continues to struggle with this issue. The practical implementation of the formal legal framework has been ineffective. Though there have been awareness campaigns, they do not appear to be enough. Panama needs to make a concerted effort to educate the judiciary about Law 79 and require that the legislature consistently allocate funding to the victim assistance fund. Panama has made a significant statement to the international community through its ratification of the

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<sup>67</sup> United Nations Office on Drugs and Crime, *Panama Joins Blue Heart Campaign against Human Trafficking* (accessed at: <https://www.unodc.org/unodc/en/frontpage/2014/November/panama-joins-blue-heart-campaign-against-human-trafficking.html>).

<sup>68</sup> United Nations Office on Drugs and Crime, *Blue Heart Campaign – About the Blue Heart Campaign* (accessed at: <http://www.unodc.org/blueheart/en/about-us.html>).

<sup>69</sup> International Organization for Migration, *Panama Against Trafficking*, 9/28/14 (accessed at: <http://costarica.iom.int/en/news/181/>).

<sup>70</sup> *Id.*

Palermo Protocol and its passage of Law 79 – Panama now needs to turn that statement into action.

<p><b>OHCHR Principles</b></p>	<p><b>Basic Principles on the Right to an Effective Remedy for Victims of Trafficking in Persons - Panama Law</b></p>
<p><b>I. Rights and Obligations</b></p>	<p><b>I Rights and Obligations</b></p> <p>1-6 Victims of trafficking in persons, as victims of human rights violations, have the right to an effective remedy for any harm committed against them. This right is provided without prejudice or discrimination, whether or not the state the has caused the harm, encompasses both procedural and substantive rights, complies with international anti-trafficking law, and otherwise respects the dignity of human trafficking victims. These guarantees are facilitated through Law 79, and fully detailed in the following sections:</p>
<p><b>II. Access to the Right to a Remedy</b></p>	<p><b>II Access to the Right to a Remedy</b></p> <p>7 As laid out below, Panama is legally responsible for harm and otherwise has an obligation to provide and/or facilitate access to remedies under international law, procedural rights and preconditions for remedies are as follows:</p> <ul style="list-style-type: none"> <li>a) Access to the right to a remedy in Panama is governed by a series of different Articles both within Chapter XV of the penal code and through Law 79. Article 456-A sets forward the criminal penalties for any individual engaging in trafficking. Law 79, Article 38 authorizes civil damages and a right to sue the perpetrator for any costs associated with the trafficking as mentioned further below. Additionally, Article 36, section 9, authorizes repatriation and security to their country of origin.</li> <li>b) Law 79, Article 12 created a national commission charged with various responsibilities. Among these is the identification of victims of human trafficking. However, according to the US State Department, this commission remains ineffective, with the majority of the identification of victims is done by immigration officials. Additionally, Article 45 states that the Identification and Attention of Victims Technical Unit should file a preliminary determination and report if they suspect someone is a victim of human trafficking within 24 hours of the time they conduct an interview with the person. This report should be forwarded to the public prosecutor.</li> <li>c) Law 79, Article 36 lays out any victim’s rights. Among these rights are the right to receive information about their rights in a language they can understand. Additionally, Article 43 authorizes translation services for victims immediately after the offense has occurred.</li> </ul>

	<ul style="list-style-type: none"><li><b>d)</b> There is no mention of a recovery or reflection period within either Law 79 or the Penal Code. However, under Law 79, Article 47, the government does offer something comparable to a T-Visa allowing stay in the country for up to 90 days for emotional and physical recuperation, with article 48 offering the possibility of an extended stay.</li><li><b>e)</b> Law 79, Article 36 includes emotional and physical assistance in any victim's rights. Additionally, Article 36 also authorizes the state to provide access to free legal aid.</li><li><b>f)</b> Law 79, Article 37 states that the victims shall not be detained, accused, or assumed to have participated in illegal activities in entering the country as a result of their situation as a victim.</li><li><b>g)</b> Law 79, Article 47 explains that the victim may remain in the country for at least ninety days, but up to as much time as is necessary to determine the offense. Article 48 states that after the period mentioned in 47 has expired and after the victim has been identified as a trafficking victim, they may receive a temporary stay permit for a period of not less than six months, with the possibility of an extension. It is unclear whether they may be prejudiced based on any claim they may have to the right to remain on a more permanent basis as a remedy in itself.</li><li><b>h)</b> Law 79, Article 8 states that the form of any proceedings must respect the specific requirements of age or sex of the victim. Articles 39 and 40 require the confidentiality of all information gained in any investigation. Article 41 states that protection of the victim is paramount without any regard for race, sex, age, religion, sexual orientation, or political, national, or economic or social position. Additionally, Article 41 states that the victims cooperation with the investigation cannot be a requirement for the government to provide effective aid. Article 42 specifically states that the government must avoid any acts which could cause the victim to feel as if they have been re-victimized.</li><li><b>i)</b> As mentioned above, Law 79, Article 41 states that cooperation with the investigation is not a requirement for aid.</li><li><b>j)</b> Law 79, Article 39 specifically requires the government to maintain the confidentiality of any family members or any witnesses and the protection of their rights. This includes specific protection from intimidation of the victim(s). The act does not specifically state before, during, and after the investigation, however, it is implied. This right extends to any administrative or judicial agencies in contact with the information.</li></ul>
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<p><b>III. Forms of the Right to Remedy</b></p>	<p><b>III Forms of the Right to Remedy</b></p> <p><b>A Restitution</b></p> <p>8 Law 79 addresses all forms of restitution for victims of human trafficking. Though the act does not specifically reference restoring the victim to their original situation, the remedies articulated should have a similar effect if effectively enforced. Additionally, Article 42 requires that the government avoid any actions that could expose the victim to re-victimization.</p> <p>9 Restitution includes, as appropriate:</p> <ul style="list-style-type: none"> <li>a) Law 79, Article 37 is very significant in terms of what rights a victim of human trafficking has. The article ensures that any victim of trafficking will not be detained, charged, or prosecuted for having entered or living illegally in the country or for their involvement in unlawful activities that are related to the human trafficking. Additionally, Article 43, section 1, holds that individuals that are victims of trafficking shall not be held in prisons, but held in specialized facilities for their physical and psychological care. There are no other mentions of release from detention within the act.</li> <li>b) The act generally maintains a focus on the enjoyment of human rights. Reunification is contemplated by Article 36, section 9, which offers secure repatriation to the victims domicile or country of origin.</li> <li>c) As stated above, Article 36, section 9, offer safe and voluntary repatriation to one's place of residence.</li> <li>d) Article 36, section 8, guarantees migratory protection to return to their place of origin; if this cannot be done safely, Article 47 explains that the victim may remain in the country for at least ninety days, but up to as much time as is necessary to determine the offense. Article 48 states that after the period mentioned in Article 47 has expired and after the victim has been identified as a trafficking victim, they may receive a temporary stay permit for a period of not less than six months, with the possibility of an extension.</li> <li>e) Article 36, section 2, requires the protection of the victim's identity.</li> <li>f) Law 79 does not guarantee restoration of the victim's employment, however, Article 38, Section 4, allows the victim to recover any lost wages from the perpetrator of the trafficking.</li> <li>g) Panamanian law does not offer direct assistance to facilitate the social integration or reintegration of repatriated victims.</li> <li>h) Panamanian law does not offer the direct receipt of identity and travel documents.</li> </ul> <p><b>B Compensation</b></p> <p>10 Law 79, Article 38, lays out a series of different forms of compensation that a victim of human trafficking may receive from the individual charged with the trafficking. If no individual is charged, the victim appears to be entitled to basic necessities under Article 36, section, 6, as well as medical and psychological, and translation and legal aid, under sections 7 and 5 respectively.</p>
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	<p>11 Forms of compensation:</p> <ul style="list-style-type: none"> <li>a) Law 79, Article 38, Section 1 authorizes damages for medical and physical harm. Section 2 authorizes costs for therapy. Section 5 authorizes costs for emotional harm. Section 6 authorizes costs for any other harm suffered by the victim.</li> <li>b) Section 4 of Article 38 authorizes costs for lost wages, however, there are no other damages based on opportunity costs.</li> <li>c) Section 3 of Article 38 authorizes payment of the costs of transportation, temporary housing, and temporary childcare.</li> <li>d) Section 4 of Article 38 authorizes payment of lost wages.</li> <li>e) Law 79, Article 38, Section 1 authorizes damages for medical and physical harm. Section 2 authorizes costs for therapy. Section 5 authorizes costs for emotional harm. Section 6 authorizes costs for any other harm suffered by the victim.</li> <li>f) Article 38, Section 7 authorizes payment of the costs of lawyers from the one who committed the acts. There does not appear to be reimbursement to the victim for their participation in the criminal investigation.</li> <li>g) Article 38, Section 7 authorizes payment of the costs of lawyers from the one who committed the acts. Article 38, Section 1 authorizes damages for medical and physical harm. Section 2 authorizes costs for therapy. Section 5 authorizes costs for emotional harm. Section 6 authorizes costs for any other harm suffered by the victim. Additionally, Article 36, section 1 guarantees protection of victim's physical and emotional integrity.</li> <li>h) Article 38, Section 6 offers compensation for "any other harm suffered by the victim."</li> </ul> <p>12 Access to compensation:</p> <ul style="list-style-type: none"> <li>a) Law 79, Article 38 authorizes damages which are determined by the court after trial. Article 456-A of the Penal Code makes human trafficking an offense.</li> <li>b) As mentioned above, Article 38 lays out what a victim may receive from the perpetrator.</li> <li>c) Law 79, Article 56 authorizes the creation of a victim assistance fund through the reservation of at least 25% of all funds allocated to human trafficking through the state and other organizations. The sources of these funds are outlined in Article 30 of law 79, including the proceeds from confiscation of funds from human traffickers under Sections 3 and 4 of Article 30. However, according to the state department, Panama has consistently failed to allocate funding to the fund. I could not find any information</li> <li>d) As stated above, Sections 3 and 4 of Article 30 authorize the state to freeze and confiscate the instruments and proceeds of trafficking to support trafficking victims.</li> <li>e) Article 987 of the Judicial code defines a judgment and their enforceability. Panama will enforce foreign judgments on the basis of reciprocity.</li> </ul>
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	<p><b>C Rehabilitation and Recovery</b></p> <p>13 As mentioned above, Article 36 lays out the victims rights in terms of what the state owes the victim. In Panama, this the protection of their physical and emotional integrity, medical and psychological assistance, and information about their rights, including legal and translation services..</p> <p>14 Article 41 of Law 79 guarantees that any reparations or compensation will not be affected whatsoever by the victims cooperation with the investigation.</p> <p><b>D Satisfaction</b></p> <p>15 Generally, Law 79 is designed to provide reparations to compensate for moral or other damages to the victim as much as possible.</p> <p>16 Satisfaction includes:</p> <ul style="list-style-type: none"> <li>a) The Panamanian Penal Code under 456-A has strict penalties for engaging in human trafficking which would help to cease continued violation. However, beyond the civil and criminal penalties, there are no additional measures to encourage a cessation of continuing violations.</li> <li>b) Though Law 79 places a significant emphasis on maintaining confidentiality for the victims and their families through Article’s 39, 40, and 41, there is no mention of public vindication of the victim.</li> <li>c) There is no mention of a public declaration from the court in Law 79. However, in the comments to the general “Penalties” section under chapter three of the Panama Penal Code, it is stated that there is a fundamental assumption surrounding the imposition of any criminal sanction that there must be a judicial declaration of the existence of an injury or endangerment of a legally protected right.</li> <li>d) The Panamanian Penal Code contemplates the use of a public apology for crimes such as inciting crime under Article 398, however, there is no explicit mention of public apologies in human trafficking situations.</li> <li>e) Human trafficking is a crime under article 456-A, carrying with it a punishment of 15 to 20 years, or, if the human trafficking involves a minor, 20 to 30 years. Additionally, Article 179 of the Panama Penal Code makes it a crime to corrupt a minor for sexual gain. Article 179-189 lay out penalties for various forms of sexual corruption or exploitation of minors.</li> </ul> <p><b>E Guarantees of Non-repetition</b></p> <p>17 Law 79 provides a relatively weak system for ensuring non-repetition, though the criminal sanctions are strict under Article 456-A of the penal code.</p> <ul style="list-style-type: none"> <li>a) Article 456-A of the penal code makes human trafficking a criminal violation. Additionally, Article 44 of Law 79 requests that any public servant with any reason to believe that an individual may be a victim of human trafficking report the victim immediately. This is accompanied by a full report to be conducted under Article 45 by a specialized unit.</li> <li>b) Article 36, section 8, guarantees migratory protection to return to their place of origin; if this cannot be done safely, Article 47 explains that</li> </ul>
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	<p>the victim may remain in the country for at least ninety days, but up to as much time as is necessary to determine the offense. Article 48 states that after the period mentioned in Article 47 has expired and after the victim has been identified as a trafficking victim, they may receive a temporary stay permit for a period of not less than six months, with the possibility of an extension. There are no other direct provisions in Panamanian law regarding re-trafficking of victims. However, article 3 of law 79 lays out the goals of the legislation, including to sanction those responsible, as well as to protect, assist, and provide reparations for human trafficking victims.</p> <ul style="list-style-type: none"> <li>c) Article 12 of Law 79 authorizes the creation of a special commission to fight human trafficking and prepare regular reports. In addition, this commission is charged with bringing together professionals to create technical teams under Article 27-29. Article 14, section 7 sets out the development of professional training as a key focus of the Commission.</li> <li>d) Other than the general provisions within the Penal Code, there are no additional provisions to ensure an independent judiciary for human trafficking.</li> <li>e) There are no modifications to legal, social and cultural practices in Panama law to sustain or promote tolerance to trafficking in persons.</li> <li>f) Panama does not maintain any additional provisions for fighting poverty, gender inequality and discrimination within their human trafficking laws.</li> <li>g) Article 14, section 6 of Law 79 encourages the development of both private and public programs to fight human trafficking.</li> <li>h) There are no particular statutes aimed at protecting legal, medical, health-care and other related professionals who assist victims of trafficking in persons.</li> </ul>
<p><b>IV. Right to Remedy for Child Victims of Trafficking</b></p>	<p><b>IV Right to Remedy for Child Victims of Trafficking</b></p> <p>18 Law 79 provides a relatively weak system for ensuring non-repetition, though the criminal sanctions are strict under Article 456-A of the penal code.</p> <ul style="list-style-type: none"> <li>a) Law 79 maintains additional standards that should be considered whenever a child is involved under Article 36 as well as additional protections under Article 50. Article 456-A of the Penal Code has harsher penalties for human trafficking if the victim is a child. Finally, Articles 179-191 of the Penal Code list various penalties for different form of corruption of children, including penalties for any form of sexual exploitation:</li> <li>b) Article 36 of Law 79 lays out the rights of victims of human trafficking. These are modified by a clause at the end that states that when the victim is a minor, the victim is entitled to additional rights that recognize their special needs and the authorities will seek to reintegrate the victim into the family nucleus when safely possible. Article 50 lays out additional rights for the child when they a minor including special attention to their situation.</li> </ul>

	<ul style="list-style-type: none"><li>c) The general rights afforded human trafficking victims are negated when the victim is a child. Under Article 36, the victim is still entitled to accessible information about their rights and remedies. Additionally, as mentioned above, when a child is a minor, reintegration into the family will be an important consideration.</li><li>d) Article 50, Section 3 of Law 79 requires that professional assistance be given to children for accommodation, education, and care. Section 5 of the same requires that the government appoint children a legal representative.</li><li>e) Article 50 is designed to take into full account the Child's age under Section 1, additionally, Section 3 authorizes professional assistance for accommodation, education, and care.</li><li>f) Though special education is not directly mentioned in Law 79, Article 14, Section 7 directs the government to focus on professional development in all aspects of the law.</li></ul>
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