

# The Mexican Legal Remedies for Trafficking in Persons Victims and its compliance with International Standards

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## **The Mexican Legal Remedies for Trafficking in Persons Victims and its compliance with International Standards**

### **I. Introduction**

In the last sixteen years, the international community has made significant efforts to create diverse international instruments to fight transnational organized crime through international cooperation. The first international treaty to accomplish this purpose was the United Nations Convention against Transnational Organized Crime<sup>1</sup>, here after Palermo Convention, which was adopted by the General Assembly in 2000 and came into force in 2003<sup>2</sup>.

Additionally, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>3</sup>, here after Palermo Protocol, is one of the three protocols that supplemented the Palermo Convention through the regulation of a specific manifestation of organized crime: human trafficking. In that sense, the Palermo Protocol was the first international instrument that established a definition for trafficking in persons with the purpose to unify the different national approaches towards these crimes and therefore facilitate international cooperation in the prevention and prosecution of trafficking in persons

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<sup>1</sup>Full text of Palermo Convention is available at <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

<sup>2</sup>United Nations Office on Drugs and Crime webpage available at <https://www.unodc.org/unodc/treaties/CTOC/>

<sup>3</sup> Supra Note 1. Full text of Palermo Protocol.

offenses, as well as regulated the national measures that State Parties have to implement to ensure assistance and protection for victims of human trafficking.<sup>4</sup>

Furthermore, in May 2014 the Office of the United Nations High Commissioner for Human Rights issued resolution A/HRC/26/18<sup>5</sup> as an effort to compile the basic principles national legislations should follow to provide effective legal remedies for victims of trafficking in persons.

In this paper I will evaluate whether the Mexican legislation on Human Trafficking complies with the international obligations it acquired in the Palermo Protocol and with the United Nations principles on the right to effective remedy for the victims of trafficking in persons.

To do so I will first indicate the international treaties on Human Trafficking that Mexico has ratified and describe the main categories of the principles recognized in the United Nations A/HRC/26/18 resolution. Next, I will provide an overview of the Mexican federal framework on human trafficking, including the implementation of Palermo Protocol, the Mexican federal definition of trafficking in persons crime, the National Program to Combat Human Trafficking and the national legal remedies available for victims of trafficking in persons. Then, I will demonstrate through a chart whether the Mexican legislation complies with the principles on the right to effective remedy for victims of human trafficking as established in the A/HRC/26/18 resolution. Finally, I will provide some information

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<sup>4</sup> Supra Note 2.

<sup>5</sup>United Nations Resolution available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Pages/ListReports.aspx>

regarding trafficking in persons criminal convictions to show the shortcomings of the enforcement and implementation of the Mexican legislation.

I will conclude by assessing that although the Mexican federal legislation generally complies with the international obligations acquired in Palermo Convention and the principles on the right to effective remedy for victims of trafficking in persons compiled in the United Nations A/HRC/26/18 resolution; Mexico's real challenge is the enforcement and implementation of its legislation.

## II. International Framework on Human Trafficking

In December 2000, Mexico signed the Palermo Convention<sup>6</sup> and the Palermo Protocol<sup>7</sup> and ratified both international instruments in March 2003. As a result, Mexico acquired three main obligations: to include trafficking in persons as a crime in their national legislations; to prevent, investigate and prosecute trafficking in persons crimes and to take the necessary measures to assist and protect victims of trafficking in persons<sup>8</sup>.

Furthermore, in May 2014 the United Nations High Commissioner for Human Rights, in cooperation with the Special Rapporteur on trafficking in persons, especially women and children, issued the A/HRC/26/18 resolution that contains the basic principles on the right to an effective remedy for trafficked persons.

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<sup>6</sup> United Nations Treaty Collection webpage available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)

<sup>7</sup> United Nations Treaty Collection webpage available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

<sup>8</sup> Obligations are stated in articles 5, 6 and 7 of the Palermo Protocol.

The United Nations Basic Principles on the right to an effective remedy for trafficked persons recognizes eighteen principles that are divided in three broad categories: A) rights and obligations, B) access to the right to a remedy and C) forms of the right to remedy. Moreover category C) is subdivided in five subcategories: a) restitution, b) compensation, c) rehabilitation and recovery, d) satisfaction and e) guarantee of non-repetition.

It is important to note that the A/HRC/26/18 resolution is not binding on Mexico. Nonetheless, the resolution has a strong persuasive authority because it embodies the general international agreement regarding the right to effective remedy for victims of trafficking in persons. As a result, these set of principles should be taken into account by all States as an international ideal standard.

### **III. Mexican Federal Framework on Human Trafficking**

In this section I will provide an overview of the Mexican federal framework on Human Trafficking. First, I will describe how the Mexican Federal Congress implemented the Palermo Protocol in the Mexican legislation. Next, I will refer to the definition of trafficking in persons established in the Mexican federal legislation and compare it with the trafficking in persons definition of the Palermo Protocol. Then, I describe the main goals and projections of the National Program to Combat Human Trafficking. Finally, I will explain the three legal remedies established in Mexican federal laws through which trafficking in persons victims can seek for reparations.

#### **A. Implementation of Palermo Protocol in the Mexican Legislation**

To comply with the obligations Mexico acquired by ratifying the Palermo Convention and the Palermo Protocol, in 2007 the Mexican Federal Congress reformed the “*Código Penal Federal*” (Federal Criminal Statute) to include human trafficking as a federal crime. In the same year, the Federal Congress issued a special federal law “*Ley para Prevenir y Sanacionar la Trata de Personas*” (Law for the Prevention and Punishment of Human Trafficking) that implemented the main aspects of Palermo Protocol.<sup>9</sup> On the local level, all the States included in their legislation the crime of trafficking in persons and twenty five out of thirty one States issued a special local law to regulate human trafficking.<sup>10</sup>

However the ineffectiveness of this federal law, the necessity to broaden the federal powers to investigate trafficking in persons crimes and the necessity to implement additional mechanisms to coordinate the executive, legislative and judicial efforts to combat human trafficking motivated a constitutional reform that allowed the Federal Congress to issue a General Law on Human Trafficking<sup>11</sup>. In 2012, the Federal Congress issued the “*Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de Estos Delitos*”<sup>12</sup> (General Law for the Prevention, Punishment and Eradication of the Trafficking in Persons crimes and for the Protection and

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<sup>9</sup> National Human Rights Commission report on Trafficking in Persons in Mexico issued in 2013 (Diagnóstico Sobre la Situación de la Trata de Personas en México emitido por la Comisión Nacional de Derechos Humanos), p. 19, available in Spanish at <http://200.33.14.34:1033/archivos/pdfs/diagnosticoTrataPersonas.pdf>

<sup>10</sup> Id. At p. 20

<sup>11</sup> Id.

<sup>12</sup> Text of the General Law for the Prevention, Punishment and Eradication of the Trafficking in Persons crimes and for the Protection and Assistance to the Victims of such Crimes (General Law on Human Trafficking) is available in Spanish at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGPSEDMTP.pdf>

Assistance to the Victims of such Crimes), here after General Law on Human Trafficking, which substituted the former special federal law.<sup>13</sup>

Additionally, in 2013 the “*Reglamento de la Ley General para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia de las Víctimas de Estos Delitos*” (Regulation to the General Law for the Prevention, Punishment and Eradication of the Trafficking in Persons crimes and for the Protection and Assistance to the Victims of such Crimes) was issued as an internal regulation of the General Law on Human Trafficking for the purpose of establishing the mechanisms to coordinate the Federal Government in the prevention, attention, investigation, prosecution, eradication and punishment of trafficking in persons crimes.<sup>14</sup>

## **B. Mexican Federal Definition of Trafficking in Persons**

The General Law on Human Trafficking in article 10 defines trafficking in persons as:

*The conduct of one or many people to recruit, hook, transport, transfer, retain, give, receive or harbour one or many people for the purpose of exploitation will be imposed a sanction from 5 to 15 years of prison and fine.*

*Exploitation of a person shall be understood as: I. Slavery, according with article 11; II. Servitude, according with article 12; III. The prostitution of others or any other form of sexual exploitation, according with articles 13 to 20; IV. Labor Exploitation, according with article 21; V. Forced Labor, according with article 22; VI. Forced Begging, according with article 24; VI. The use of children to commit illicit activities, according with article 25; VIII.*

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<sup>13</sup>Supra Note 9, p. 20-21

<sup>14</sup>Id. At p. 21



*Illegal Adoption, according with article 27; IX Forced Marriage, according to article 29; X. Organ, tissue and cell trafficking, according with article 30; XI. Illicit biomedical experimentation on human beings, according with article 3.*

In contrast with the trafficking in persons definition established on article 3 of the Palermo Protocol<sup>15</sup> that clearly establishes the act, means and purpose of the crime; the Mexican definition only defines the act (conduct or behavior) and the purpose (exploitation) and only later in the description of each form of exploitation, and not in every form, it establishes the means (coercion) that such form of exploitation requires to be considered trafficking in persons.

In addition, article 40 of the General Law on Human Trafficking establishes that the consent of the victim, no matter its age and in any of the form of exploitation described, will be irrelevant for the actualization of a trafficking in persons crime. Conversely, the Palermo Protocol establishes that the consent of the victim is only irrelevant where any of the means (fraud, force or coercion) where used and when the victim is a child.

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<sup>15</sup> Article 3 of Palermo Protocol: For the purposes of this Protocol: (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; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) "Child" shall mean any person under eighteen years of age.

Moreover, the General Law on Human Trafficking incorporates additional forms of exploitation than the minimal five forms of exploitation included in the international instrument, which are: 1) the exploitation of the prostitution of others or other forms of sexual exploitations, 2) forced labor or services, 3) slavery or practices similar to slavery, 4) servitude and 5) removal of organs.

### **C) National Program to Combat Human Trafficking**

In April 30, 2014 the Ministry of the Interior, through the *Comisión Intersecretarial para Prevenir, Combatir y Sancionar los Delitos en Materia de Trata de Personas* (Intersecretary Commission to Prevent, Combat and Punish Trafficking in Persons Crimes) published the “*Programa Nacional para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de Estos Delitos 2014 – 2018*”<sup>16</sup> (National Program to Prevent, Punish and Eradicate Trafficking in Persons Crimes and for the Protection and Assistance of its Victims 2014-2018), here after National Program to Combat Human Trafficking.

The National Program to Combat Human Trafficking establishes 4 main goals, 16 strategies to achieve those goals and 79 action plans that will lead to the accomplishment of the projected objectives. Additionally, each goal is paired with a specific indicator that will facilitate the evaluation of the progress made towards their individual achievement. Finally, the National Program to Combat Human Trafficking establishes which governmental office

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<sup>16</sup> Text of the National Program to Prevent, Punish and Eradicate Trafficking in Persons Crimes and for the Protection and Assistance of its Victims 2014-2018 (Programa Nacional para Prevenir, Sancionar y Erradicar los Delitos en Materia de Trata de Personas y para la Protección y Asistencia a las Víctimas de Estos Delitos 2014–2018) is available in Spanish at [http://www.dof.gob.mx/nota\\_detalle\\_popup.php?codigo=5343079](http://www.dof.gob.mx/nota_detalle_popup.php?codigo=5343079)

of the Federal Executive branch will be responsible for the execution of each action plan to eventually reach the proposed goals by 2018.<sup>17</sup>

In the following chart I will identify the 4 goals, their respective indicators and the projected achievements in each area for 2018.

	<b>Goal</b>	<b>Indicator</b>	<b>Projection</b>
1	Prevent trafficking in persons crimes and promote the visibility of trafficking in persons crimes.	Percentage of trained governmental officers in trafficking in persons.	From 2010 to 2013 only .7% of the governmental officers of the Federal Executive branch were trained in trafficking in persons. The goal is to increase that number to 6% by 2018.
2	Provide integral attention, protection and assistance to trafficking in persons victims	Percentage of States that have a local protocol for the assistance of trafficking in persons victims.	Only 2 States have their local protocol for the assistance of trafficking in persons victims. The goal is that 100% of the States will have their respective local protocol by 2018.
3	Promote the effective investigation and prosecution of the trafficking in persons crimes.	Percentage of criminal actions initiated for trafficking in persons crimes	In 2013 of the 65 criminal investigations of trafficking in persons, only in 9% of them the Prosecutor initiated criminal action. The goal is to achieve that 23% of the investigations end with the initiation of criminal action.
4	Promote transparency and access to information regarding trafficking in persons data.	Progress made in the design and implementation of a computerized system to compile the data related to trafficking in persons crimes.	There is no data base of information and statistics regarding trafficking in persons. The goal is to create a complete data base through the completion of 9 stages <sup>18</sup> by 2018.

<sup>17</sup>This information was taken from the Ministry of the Interior (Secretaría de Gobernación) webpage and is available in Spanish at <http://www.gobernacion.gob.mx/programassectorgobernacion/PNPSEDMTPyPAV>

<sup>18</sup> The 9 stages are: 1. Analysis of the task, 2. Design, 3. Development, 4. Security, 5. Implementation, 6. Elaboration of cooperation agreements, 7. Training, 8. Integration of the Information and 9. Analysis and Diagnosis.

Although the goals are well established and attainable, I would like to offer two recommendations to strengthen the aforementioned projections. The first one is on the first goal which only focuses on training for federal governmental officers. I believe that local governmental officers should also be included in the National Program to Combat Trafficking since their preparation is equally crucial for the prosecution of trafficking in persons crimes and for the protection and assistance of its victims. The second is related to the third goal, which measures success of the prosecution of trafficking in persons crimes with the percentage of investigations that the Prosecutor decides to initiate criminal action. I am concerned that the proposed method of measuring success might only pressure the Prosecutor to comply with the expected numbers and to arbitrarily initiate criminal actions for trafficking in persons crimes without the sufficient amount of evidence. Therefore I consider that another way to measure the success of the prosecution of trafficking in persons crimes should be implemented.

**D) Legal remedies provided by the Mexican Federal Legislation for Victims of Trafficking in Persons to seek reparations.**

According to article 6, sections 3, 5 and 6 of the Palermo Protocol, each State Party has the obligation to i) consider implementing measures to provide physical, psychological and social recovery for victims of trafficking in persons, ii) endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory and iii) shall ensure that its domestic legal system contains measures to offer victims of trafficking in persons the possibility of obtaining compensation for the damaged suffered.

In the Mexican legislation there are three options for the victims of trafficking in persons to secure reparations: a) criminal reparation, b) administrative reparation and c) civil damages.

**a) Criminal Reparation**

The Mexican Constitution<sup>19</sup> establishes in article 20, section C, subsection IV, that in a criminal procedure, the General Prosecutor (*Ministerio Público*) is obliged to seek the reparation for the damaged done to the victims. Independently, the victims have the right to petition such reparation directly to the Judge that is hearing their case. Furthermore, whenever judges find a defendant guilty of a trafficking in persons crime, they cannot absolve the perpetrator from the respective reparation for the victims.

Accordingly, article 7, section IV, of the General Law on Human Trafficking states that when a person is convicted of a trafficking in persons crime, the respective resolution must include reparations for the victim that will be calculated by the Judge. In addition, from article 48 to article 52 the General Law on Human Trafficking regulates the reparations that will be awarded for the victims of trafficking in persons crimes.

Article 48 of the General Law on Human Trafficking states that when a person is convicted for any of the trafficking in persons crimes, in every case the Judge shall make an order requiring that defendant to pay the respective reparation to the victim.

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<sup>19</sup> Text of the Mexican Constitution is available in Spanish at <http://www.diputados.gob.mx/LeyesBiblio/htm/1.ht>

Also, article 48 establishes that the reparation has to be effective, proportional to the damage done to the victim and taking into account how the crime affected the victims life project. In that sense, the article provides the minimal standards that the Judges have to take into account to calculate the reparation they will order according with the evidence provided.

Essentially, the article states that the amount of the restitution at least has to comprehend the following: the restitution of the object illegally obtained through the crime; physical, material, psychological and moral damages; the opportunities of job, education and social benefits that the victim would have had if the crime had not happened; the victim's unpaid wages taking into account the profits she/he generated or if that information is not available according to Mexico City's minimal wage; the legal and judicial costs, the cost of transportation of the victim to her/his place of origin; the costs of alimentation, provisional housing and clothes necessary during the investigation; the physical and psychological rehabilitation of the victim; the declaration to restore the victims dignity and reputation and if the crime was committed by an authority, a public apology that contains the acknowledgement of the facts and acceptance of responsibility.

Moreover, article 52 states that if the reparation is not totally or partially covered by the defendant, the Federation, Mexico City or the States, respectively, will pay the reparation with the economic resources of their corresponding reparation funds. Afterwards, the authority who paid the reparation will be able to sue the defendant in order to recover those economic resources.

Finally, article 50 states that the victims of trafficking in persons that are awarded reparation through the criminal process can additionally seek damages through a civil process in terms of civil responsibility.

However, according with the National Commission on Human Rights, regardless of the constitutional and legal provisions, the Criminal Judges do not normally comply with their obligation to order reparation for victims of trafficking in persons crimes and when they do the amount awarded has not been proportionate to the damages suffered by the victim and to the copious profits made by the traffickers.<sup>20</sup>

#### **b) Administrative Reparation**

In addition to the General Law on Human Trafficking, on January 2013 the Federal Congress issued the “*Ley General de Víctimas*”<sup>21</sup> (General Law for Victims). The purpose of this law is to protect, assist and provide integral reparation for victims, which includes measures of restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition.

The General Law for Victims defines direct victim as any person that has suffered an economic, physical, emotional or mental damage as a consequence of a crime or of the violation of a human right recognized in the Mexican constitution or in any of the international treaties Mexico has ratified.

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<sup>20</sup>Supra Note 9, p. 157-158

<sup>21</sup> Text of the General Law for Victims (*Ley General de Víctimas*) is available in Spanish at <http://www.diputados.gob.mx/LeyesBiblio/pdf/LGV.pdf>

According to article 110 of the General Law for Victims, the recognition of the status of ‘victim’ can be made by a criminal judge, constitutional judge, international jurisdictional human rights institutions that Mexico is part of and the Executive Commission for the Assistance of Victims.

In that sense, according with articles 130 and 144 of the General Law for Victims, once victims of trafficking in persons get the recognition of being ‘victims’ in terms of the General Law for Victims, the victim will be able to file a petition before the Executive Commission for the Assistance of Victims requesting an integral reparation for the harm suffered and eventually will be able to have subsidiary access to the resources of the Assistance and Complete Reparation Fund.

Furthermore, article 149 of the General Law for Victims states that petition for reparation will be awarded when: a) there is a criminal resolution in which the victim was awarded reparations, b) the victim was not given the whole amount ordered, c) the victim has not received the integral reparation for the harmed suffered by another mechanism, c) the victim files the petition before the Executive Commission for the Assistance of Victims.

Nevertheless, article 152 establishes that the Executive Commission for the Assistance of Victims will determine and quantify the reparation for the victims in the cases were the national or international judicial authorities were negligent in doing so.

However, to avoid double recovery, the resources will be awarded to the victim as complementary to additional resources awarded to the victim through other mechanisms.



Additionally, the law establishes a maximum amount<sup>22</sup> for the resources that can be awarded as restitution.<sup>23</sup> The Executive Commission for the Assistance of Victims will determine the amount of the resources of the fund that will be assigned to provide assistance, attention and/or compensation to each victim.<sup>24</sup> Finally, the Federation will subrogate in the rights of the victims to recover the amount given to the victim as compensation from the resources of the Assistance and Complete Reparation Fund.<sup>25</sup>

In sum, although victims of trafficking in persons crimes are allowed to seek reparation through the criminal and civil procedures in addition to the administrative mechanism, the latter is created as a way to complement when the other two mechanism were not enough to cover a complete reparation or when the criminal and civil judicial mechanisms did not order reparations for the victim.

### **c) Civil Damages**

Trafficking in persons victims are able to seek material and moral damages through a civil trial against their perpetrators. According to article 1910 of the Mexican Federal Civil legislation<sup>26</sup>, the person who acting illicitly causes harm to another person is obliged to repair the harm done.

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<sup>22</sup> Article 67 of the General Law for Victims establishes that the maximum amount of restitution is five hundred times the monthly minimal wage of Mexico City which amounts to approximately \$1,095,600 million pesos, which is around \$62,250 dollars.

<sup>23</sup> Id. Article 132 of the General Law for Victims

<sup>24</sup> Id. Article 139 of the General Law for Victims

<sup>25</sup> Id. Article 141 of the General Law for Victims

<sup>26</sup> Text of the Federal Civil legislation (Código Civil Federal) is available in Spanish at [http://www.diputados.gob.mx/LeyesBiblio/pdf/2\\_241213.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/2_241213.pdf)

In addition, article 1915 establishes that the victim can choose if the reparation will consist in restoring the original situation before the event, if that is possible, or by paying (material) damages. Furthermore, article 1916 establishes that when a crime produces moral damages, the person responsible will have the obligation to repair the harm done by paying a monetary compensation, in addition to the material damages. Finally, according to article 1934 the victim will have two years after the harm is done to file a civil law suit to seek for both material and moral damages through the civil responsibility mechanism.

In that sense, victims of trafficking in persons independently of the criminal or administrative reparation they might have been awarded can file a civil claim to secure a compensation for the material and moral damages they suffered.

**IV. Analysis of Compliance with the United Nations Principles on the Right to Effective Remedy for victims of Trafficking in Persons**

In the following chart I will demonstrate how the General Law on Human Trafficking complies with most of the principles compiled in the United Nations A/HRC/26/18 resolution. To do so, I will follow the exact order proposed in the resolution, indicating the article or articles where each principle is embodied. Also, I will identify in bold and underlining those principles that are not represented in the referred legislation.

U.N. Principles	General Law on Human Trafficking
<b>I. Rights and Obligations</b>	<p>The General Law on Human Trafficking generally complies with all the principles set on this first section for the following reasons:</p> <ol style="list-style-type: none"> <li><b>1.</b> One of the main purposes of the statute established in article 2, section VI, is to provide victims of ‘trafficking in persons crimes’ (<i>delito de trata de personas</i>) with a complete, adequate, prompt, effective and proportional reparation for the harm suffered.</li> <li><b>2.</b> The right to a remedy includes measures of restitution, compensation, rehabilitation and guarantees of non-repetition according with article 3, section VII. Additionally,</li> </ol>

	<p>according with article 75 the authorities have the obligation to assist non-citizens regardless of their immigration status.</p> <ol style="list-style-type: none"> <li>3. Article 52 establishes that when the reparation cannot be totally or partially covered by the defendant, the Federation, Mexico City and the States, depending on the jurisdiction, will cover the reparation with the resources of their respective Fund for the Protection and Assistance for the Victims of Trafficking in Persons crimes (<i>Fondo de Protección y Asistencia a las Víctimas de los Delitos en Materia de Trata de Personas</i>). In addition, if a governmental authority or official within its functions is responsible for a trafficking in persons crime, according to article 82, the State will be responsible to provide the victims the respective remedy.</li> <li>4. All the criminal resolutions in which the defendant is convicted for a trafficking in persons crime has to include the reparation for the victim, which will be calculated by the Judge, in accordance with article 7, section IV. In that sense, by establishing all convictions will result in orders of reparations the legislation prevents discrimination.</li> <li>5. <b>Although there is no provision that sates the remedy reflects a victim-centered and human rights approach that empowers victims, I consider that this approach is implicit in the General Law on Human Trafficking itself.</b></li> <li>6. Article 5 establishes in what cases the Federation is responsible for the investigation, prosecution and punishment of the trafficking in persons crimes, and states that on all the other cases the jurisdiction will rely on the States. Additionally, article 6 establishes that the Federation, States, Municipalities and Mexico City are obliged to coordinate to prevent trafficking in persons crimes. Finally, article 52 establishes that when the reparation cannot be totally or partially covered by the defendant, the Federation, Mexico City and the States, depending on the jurisdiction, will cover the reparation with the resources of their respective Fund for the Protection and Assistance for the Victims of Trafficking in Persons crimes.</li> </ol>
<p><b>II. Access to the right to a remedy</b></p>	<p>The General Law on Human Trafficking generally complies with all the principles set on this first section for the following reasons:</p> <ol style="list-style-type: none"> <li>7. Access to remedies:       <ol style="list-style-type: none"> <li>a) Trafficking in persons victims in Mexico have a legally enforceable right to have access to remedies through criminal, administrative and civil proceedings established in the General Law on Human Trafficking, the General Law for Victims and the Federal Civil Statute. <b><u>However, the Mexican Legislation does not contemplate a labor proceeding for that purpose.</u></b> Additionally, according to article 3, section VI, the victims of trafficking in person will not be returned to their origin countries when their life, liberty, integrity and security are endangered.</li> <li>b) Article 62, section I, establishes that the competent authorities to assist victims shall establish the adequate mechanisms to identify both victims and possible victims of trafficking in persons crimes. Moreover, in order to provide a better attention for the trafficking in persons victims, according to article 70 training will be provided for police, justice, health and social service agents.</li> <li>c) Article 62, section II, establishes that the competent authorities responsible to assist victims of trafficking in persons shall provide them, in a language and form they understand, information regarding their rights.</li> <li>d) According to article 65 the protection of victims shall include housing, health care, education, training and job opportunities until the victim fully recuperates. Also, the victims will be provided with physical, psychological and social</li> </ol> </li> </ol>

	<p>attention. Additionally, measures will be taken to safeguard the victim’s physical and mental integrity, freedom, dignity human rights and the legal remedies for the harm suffered. <b><u>However, it is not clear if this protection will be also provided to presumed victims.</u></b></p> <p>e) <b><u>The law does not explicitly state that the victims will have access to the legal remedies regardless of their immigration status.</u></b> Yet, there are many provisions that strongly suggest that this situation will not be an obstacle. <b>Although there is no clear provision regarding free legal aid,</b> section II of article 62 establishes that the authorities responsible to assist trafficking in persons victims shall create protection and assistance programs before, during and after the judicial proceedings, and provide legal assistance through all stages of the criminal, civil and administrative proceedings. In that respect article 67, section IV establishes that victims will have the right to ask for expert assistance that will inform victims of the status of their proceedings, as well as about the benefits that they are entitled to. Additionally, section V of article 48 states that the reparation will include the legal expenses until the conclusion of the legal proceedings.</p> <p>f) <b><u>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.</u></b></p> <p>g) The non-citizen victims have the right to remain in the country until the conclusion of the criminal proceeding, according to article 76. Additionally, article 78 establishes that the State will provide humanitarian visas for the non-citizen victims of trafficking in persons crimes during the criminal proceeding. In some cases such visas can include a license to work and could also become permanent residents.</p> <p>h) Sections II and IV of article 3 establish the principles of gender equality and consideration to girls and boy, respectively.</p> <p>i) According with section XI of article 66 to cooperate with the investigation and provide evidence in the criminal proceeding is the victim’s right (<b>not an obligation that conditions access to remedies</b>).</p> <p>j) The authorities will adopt the measures to protect and assist the victims, as well as their families and witnesses according to article 62.</p>
	<p>A. Regarding restitution the General Law on Human Trafficking complies with the following principles:</p> <p>8. Articles 66, section I, and 82 state that the victim’s rights will be restituted. Additionally, article 48, section I establishes that the reparation shall at least include, among others, the restitution of the objects illegally obtained through the crime. However there is nothing explicit about restituting the victim to the original situation before the trafficking, save for article 1915 of the Federal Civil legislation.</p> <p>9. The General Law on Human Trafficking includes the following restitutive measures:</p> <p>a) <b>No specific mention of restoration of liberty.</b></p> <p>b) Article 72 establishes that authorities will take into account humanitarian factors, especially the reunification with the family in a secure space.</p> <p>c) Article 76 establishes that the reparation of victims will always be voluntary and in accordance with the Migration Law and the victim reparation protocols.</p> <p>d) Article 75 establishes that the authorities will take measures that will allow foreign victims to stay in Mexico until their fully recovery or to obtain</p>

**III. Forms of  
the right to  
remedy**

- permanent residence. Additionally, article 78 states that non-citizen victims, as well as their parents and/or children, will be provided with a humanitarian visa that will let them to stay in Mexico during the criminal proceeding. Moreover, those visas can eventually become permanent resident permits.
- e) **No specific mention about recognition of victim's legal identity or citizenship.**
  - f) **No specific mention about restoration of victim's employment.** Section VIII of article 89 states that the Ministry of Labor will provide training and offer job opportunities to ensure rehabilitation and resocialization for victims.
  - g) **No specific provision on assistance for social integration of repatriated victims.**
  - h) The return of property may be included in section I of article 48 that establishes that reparation will include the restitution of objects or things illegally obtained through the crime.
- B. The General Law on Human Trafficking includes the following compensation measures:
- 10. Article 48 establishes that the reparation has to be effective, proportional to the damage done to the victim and taking into account how the crime affected the victims life project. In that sense article 49 establishes that the criminal Judge will determine the amount that the defendant will be ordered to pay according with the damages that have to be repaired and the evidence available for that effect.
  - 11. The reparation awarded to the victim includes:
    - a) Damages for physical or mental harm established in section II of article 48.
    - b) Damages for lost opportunities, including employment, education and social benefits according to section III of article 48.
    - c) Reimbursement of transportation and temporary housing is established in section VII of article 48.
    - d) Payment for material damages is established in section II of article 48 and loss of earnings, including lost earning potential is included in section III of the same article.
    - e) Moral damages are established in section II of article 48.
    - f) Legal fees and expenses incurred in legal proceedings is established in section V of article 48.
    - g) Costs incurred for legal or expert assistance is established in section V of article 48 and the rehabilitation and medical treatment for the victim is established in the second paragraph of section II of article 48.
    - h) **The reimbursement of any other costs is not provided in article 48.**
  - 12. States shall ensure that laws are in place to enable victims of trafficking in persons to have access to compensation, including:
    - a) The victims can sue the offenders to seek compensation for civil damages through Federal Civil legislation. **However they cannot seek labor compensation since the Federal Labor Law (*Ley Federal del Trabajo*) does not provide any legal mechanism to do so.** Additionally, victims can seek compensation through an administrative proceeding.
    - b) The criminal judges are obliged to award reparations, including compensation in the same resolutions in which the trafficking in persons offenders are convicted.
    - c) Article 81 establishes that the Federal and local executive power will establish a fund for the protection and assistance for victims of trafficking in persons.

	<p>Additionally, article 52 states that when the reparation awarded cannot be fully or partially covered by the defendant, the reparation will be paid by the respective funds.</p> <ul style="list-style-type: none"><li>d) Article 81, section II, states that the funds for the protection and assistance for victims of trafficking in persons will be constituted with the profits obtained from the sale of the confiscated assets in trafficking in persons criminal proceedings.</li><li>e) <b><u>The General Law on Human Trafficking has no specific provision about enforcing reparation judgements.</u></b> However, article 37 of the Federal Law for the Enforcement of Criminal Punishments<sup>27</sup> (<i>Ley Federal de Ejecución de Sanciones Penales</i>) establishes the mechanism to enforce the reparation ordered in a criminal resolution.</li></ul> <p>C. With respect rehabilitation and recovery:</p> <ul style="list-style-type: none"><li>13. Section II of article 51 established that the authorities are obliged to provide victims with medical and psychological treatment for the victim's recovery. Article 62 establishes that the authorities' responsible look after the trafficking in persons victims shall adopt measures to assist and protect them. Article 65 establishes that such protection will include, according with section I: housing, medical care, education, training and job opportunities until the victim's fully recovery and resocialization.</li><li>14. <b><u>There is no specific provision that ensures that the access of victims to rehabilitation and recovery measures are not dependent on their capacity or willingness to cooperate in the legal proceedings.</u></b></li></ul> <p>D. With respect to satisfaction:</p> <ul style="list-style-type: none"><li>15. The General Law on Human Trafficking provides some provisions regarding non-financial forms of reparation:</li><li>16. The provisions that establish satisfaction are:<ul style="list-style-type: none"><li>a) <b><u>No special provision aimed to the cessation of continuing violence.</u></b></li><li>b) Section VII of article 3 establishes that the right to reparation includes the right to truth that will allow to know what really happened, however there are no further provisions on that respect.</li><li>c) Section VII of article 48 establishes that the reparation will include, among other things, a declaration that reestablishes the victim's dignity and reputation through the means that the victim decides.</li><li>d) Section VIII of article 48 establishes that when the crime is committed by a governmental authority or agent, the restitution shall include a public apology including the acknowledgement of the facts and the acceptance of responsibility.</li><li>e) <b><u>There is no specific provision regarding judicial and administrative sanctions against persons liable for violations.</u></b></li></ul></li></ul> <p>E. With respect to guarantees of non-repetition:</p> <ul style="list-style-type: none"><li>17. In section VII of article 3 the General Law on Human Trafficking establishes that the right to reparation for the harm suffered includes guarantees of non-repetition.</li></ul>
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<sup>27</sup> Text of the Federal the Federal Law for the Enforcement of Criminal Punishments (Ley Federal de Ejecución de Sanciones Penales) is available in Spanish at <http://www.ordenjuridico.gob.mx/Publicaciones/CDs2006/CDRefEdo/pdf/RP3.pdf>

	<ul style="list-style-type: none"> <li>a) Article 2, section I, establishes that the one of the purposes of the General Law on Human Trafficking is to establish the jurisdiction and the coordination between federal and state government to prevent, investigate, prosecute and sanction trafficking in persons crimes, <b><u>yet there is no specific provision on ensuring its effectiveness.</u></b></li> <li>b) Although there is no specific provision regarding taking all measures for preventing the victim of trafficking in persons from re-trafficking, the voluntary return to the place of origin as well as the temporary or permanent residence of the victim in Mexico is established on articles 76 and 78 respectively.</li> <li>c) Article 70 states that will be provided for police, justice, health and social service agents, <b>however the training is provided so that they will be able to provide a better service to the victims in accordance with their special needs and not for prevention purposes. <u>Additionally, the immigration authorities are not included for the training.</u></b></li> <li>d) <b><u>There is no provision regarding the strengthening of the judiciary.</u></b></li> <li>e) <b>Although there is no specific provision about legal, social and cultural practices that causes and sustain, promote or tolerate trafficking,</b> article 88, section V, establishes that the Commission to Prevent, Combat and Punish the Trafficking in Persons Crimes will design campaigns of prevention and education, as well as local programs that will help prevent trafficking in persons crimes.</li> <li>f) <b>Although there is not a specific provision that addresses the root causes of trafficking,</b> article 116, section V, section a), establishes that the federal and local authorities shall design mechanisms to coordinate with the security authorities to make studies regarding the structural causes, distribution, statistics, historical tendencies, behavioral patterns, places of origin, places of transit, modus operandi, among other, that allow perfect the investigation for the prevention of the trafficking in persons crime.</li> <li>g) <b>Although there is no provision regarding the promotion of codes of conduct for public and private actors,</b> article 116, section IV, establishes that the federal and local authorities shall promote and strengthen the efforts of the private organizations that provide assistance to victims, possible victims and witnesses of trafficking in persons crimes and in its prevention.</li> <li>h) <b><u>There is no provision regarding the protection of the human rights defenders who assist victims of trafficking in persons in this law.</u></b></li> </ul>
<p><b>IV. Right to Remedy for Child Victims of Trafficking</b></p>	<p><b>18.</b> Regarding the measures taken by the State to provide and facilitate access to remedies for child victims of trafficking:</p> <ul style="list-style-type: none"> <li>a) Section IV of article 3 establishes that the General on Law on Human Trafficking shall interpret, apply and execute this Law taking into account the best interest of the child, guaranteeing their rights and providing them protection. <b><u>The rest is not provided specifically in the law.</u></b></li> <li>b) There is only regulation about given proper information regarding the legal proceedings to the victims taking into account their age on article 62, section II and about the reunification with the family on article 72. <b><u>The rest is not provided specifically in the Law.</u></b></li> <li>c) <b><u>There are no provisions regarding child-sensitive remedies and legal guardian’s appointments.</u></b></li> </ul>

	<p>d) <b><u>There is no specific provision regarding the obligation of authorities to provide appropriate physical, psychological, legal and education for child victims of trafficking in persons. I believe they are taken into account as any other victim, in that sense, authorities are obliged to provide all those measures to them.</u></b> However article 89 establishes that the Nacional System for the Development of the Family will be in charge of the protection and assistance before, during and after the proceedings of any child victim of trafficking in persons, taking into account their special needs.</p> <p>e) <b><u>There is no specific provision regarding adequate training on the specific needs, rights and vulnerabilities of child victims for the persons working with them.</u></b></p>
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As a result of this comparative analysis, I consider that the most important shortcomings of the General Law on Human Trafficking are the lack of provisions that ensure victims of trafficking in persons that they will not be prosecuted for activities committed as direct consequence of their own situation as victims, lack of specific provision that ensures access to remedies regardless of the capacity or willingness of the victims to cooperate in the legal proceedings and lack of a specialized approach towards child victims of trafficking in persons that takes into account their specific needs.

## V. Trafficking in Persons Criminal Convictions

The Mexican legislation generally fulfills the international standards to prevent and prosecute trafficking in persons crimes, as well as to provide diverse mechanisms to assist and protect victims of human trafficking. However, there is still much work to be done in practice.

The National Human Rights Commission reported that from 2009 to 2013 there had only been 3 federal<sup>28</sup> and 90 local<sup>29</sup> criminal convictions of trafficking in persons. For its part, the

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<sup>28</sup> Supra Note 9, p. 103

<sup>29</sup> Id. At p. 104



Trafficking in Persons Report 2015 states that Mexican authorities reported that in 2014 there were 3 federal and 108 local convictions of trafficking in persons<sup>30</sup>.

Although Mexican judicial resolutions are not available to the general public without specific information of each case, the United Nations Office on Drugs and Crimes webpage on Human Trafficking Case Law Database<sup>31</sup> summarizes the general facts of 2 of the Mexican federal criminal convictions of trafficking in persons.

The first case is identified as “Tapachula Globberitos Case”. Nine Guatemalan children requested assistance from the Special Prosecutor for Crimes against Immigrants in Tapachula, Chiapas since they considered they were being exploited. The children claimed that they sold balloons in the streets for the perpetrator in exchange for a place to sleep and food, plus \$1000 pesos (\$55 dollars) in the first month, and \$1500 pesos (\$83 dollars) from the second month on. However, the defendant changed the conditions of their arrangement and forced the children to work without payment until December, when he would pay the lost wages of the work done. The Mexican immigration authorities made this facts know to the Guatemalan consulate in Tapachula, Chiapas that on behalf of the children required the payment from the defendant. After his refusal to pay, the Guatemalan consulate denounced the situation to the General Attorney of Chiapas that eventually decided that the case was competence of the Federation. The Special Prosecutor’s Office for Violence against Women and Trafficking in Persons (*Fiscalía Especial para los Delitos de Violencia contra las*

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<sup>30</sup> Trafficking in Persons Report, July 15, p. 245 available at <http://www.state.gov/documents/organization/245365.pdf>

<sup>31</sup> The United Nations Office on Drugs and Crimes webpage on Human Trafficking Case Law Database is available at <https://www.unodc.org/cld/v3/htms/cldb/index.html?lng=en>

*Mujeres y Trata de Personas FEVIMTRA*<sup>32</sup>) conducted the criminal investigation against the defendant. In February 2009, the Special Prosecutor decided they had enough evidence and initiated criminal action against the defendant for the crime of trafficking in persons. The victims were admitted into care centers for victims of human trafficking. In April 2010, the first instance Judge convicted the defendant and charged him with human trafficking in the form of receiving one or more children through deception with the purpose of subjecting them to forced labor. The Judge sentenced the defendant to 9 years or prison and ordered a fine of \$37,125 pesos (\$2,062 dollars).<sup>33</sup>

The summary of the second case states that in December 2009 a Colombian 67 year old woman, accompanied by an official of the Colombian consulate in Mexico, requested the assistance of the Special Prosecutor's Office for Violence against Women and Trafficking in Persons (*FEVIMTRA*). The woman claimed that she had been recruited through deception in Colombia by a religious organization. The organization convinced her to travel to Mexico, where she would receive some training before embarking on a boat where she would attain mental and spiritual help and a weekly payment of 50 dollars. After the victim arrived, in November 2009 she was stripped of her passport and visa and was forced to work. As a result of the investigation done by the Special Prosecutor, in October 2010 a criminal proceeding was initiated against 4 defendants (3 women and 1 men) for the crime of trafficking in persons through deception for the purpose of forced labor. Only 1 of the defendants was arrested and

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<sup>32</sup> Special Prosecutor's Office for Violence against Women and Trafficking in Persons (Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas FEVIMTRA) webpage is available at <http://www.pgr.gob.mx/Fiscalias/fevimtra/Paginas/default.aspx>

<sup>33</sup> The summary of the "Tapachula Globberitos Case" is available at [https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mex/2010/tapachula\\_globberitos\\_case.html?lng=en&tmpl=htms](https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mex/2010/tapachula_globberitos_case.html?lng=en&tmpl=htms). It is important to note that the webpage has some minor inconsistencies in some details of the facts throughout the summary and with its translation from Spanish to English.

the other 3 are at large. In May 2011 the Prosecutor requested the Judge to convict the arrested defendant to 12 years imprisonment and to consider reparations in favor of the victim. The first instance Judge issued a conviction against the arrested defendant imposing a 6 year imprisonment and fine of approximately \$36,500 pesos (\$2,027 dollars). There is no mention whatsoever in the summary whether the Judge ordered reparations for the victim.<sup>34</sup>

Additionally, the National Human Rights Commission noted that local judges only ordered reparations in at best half of the cases were they convicted defendants of trafficking in persons crimes.<sup>35</sup> Moreover, the amount of the reparations awarded to victims in criminal cases varied enormously from State to State, the lowest amount reported being \$1,500 pesos (\$83 dollars) in Puebla and the highest \$170,000 pesos (\$9,445 dollars) in Mexico City.<sup>36</sup> However, given the fact that judicial resolutions are not available to the general public without specific information of each case, it is not possible to assess the legitimacy of these variations.

In reality, the scarce number of federal trafficking in persons convictions show the inefficacy of the Mexican authorities to enforce and implement the General Law on Human Trafficking. In that sense, although the Mexican federal legislation provides legal remedies for victims of trafficking in persons, including measures of restitution, compensation, rehabilitation and guarantees of non-repetition; as long as human trafficking cases are not prosecuted and convicted, its victims will not be able to attain such rights. Additionally, Judges continuously fail to order criminal reparation for trafficking in persons victims or do

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<sup>34</sup> The summary of the case is available at [https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mex/2011/penalcriminal\\_case\\_no.\\_1752010\\_.html?lng=en&tmpl=htms](https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/mex/2011/penalcriminal_case_no._1752010_.html?lng=en&tmpl=htms)

<sup>35</sup> Supra Note 9, p. 106-107

<sup>36</sup> Id. At p. 107

so in a disproportionate matter to the harm done, leaving victims without the legally instituted protections.

## **VI. Conclusion**

In sum, Mexico's legislation formally complies with its international obligations derived from Palermo Protocol. Mexico has a National Program to Combat Human Trafficking and its federal legislations provide victims of trafficking in persons a criminal, administrative and civil mechanism to seek reparations. Additionally, the General Law on Human Trafficking complies with most of the principles recommended in the A/HRC/26/18 resolution. However, Mexico's real challenge is the enforcement, implementation and effectiveness of its legislation.