

**HUMAN RIGHTS CENTER
INTERNATIONAL HUMAN RIGHTS LAW CLINIC**

UNIVERSITY OF CALIFORNIA, BERKELEY

***Safety after Slavery
Protecting Victims of Human Trafficking***

**Working Group Meeting
April 22 – 24, 2004**

**TRANSNATIONAL FRAMEWORKS FOR PROSECUTING
TRAFFICKERS AND PROTECTING SURVIVORS**

I. Introduction

Each year, thousands of men, women, and children enter the United States and become captives of modern day slaveholders. Toiling in factories, private homes, brothels, farms, restaurants, or other workplaces, these victims come seeking a better life but find themselves forced to work against their will in deplorable conditions. They receive little or no pay and their “employers” use threats or physical violence to prevent them from leaving. Both trafficking and smuggling involve migration, but are otherwise distinct crimes. Smuggling is a victimless crime whereby migrants cross borders without legal authorization. In contrast human traffickers use force, fraud, or coercion to compel victims to travel to locations where they are forced to labor against their will.

Prosecution of human traffickers in the United States poses new challenges for both U.S. and Mexican law enforcement and social and legal service providers assisting survivors of this illicit trade. The trafficking of Mexican nationals into the United States brings into focus the transnational dimension of victim and witness protection. Survivors may be liberated in the United States, yet fear that their traffickers may evade justice by fleeing to Mexico and/or retaliate against them by harming their family members who remain back home. Survivors’ concern for their safety and that of their family members may inhibit their social reintegration if survivors escape captivity are afraid to live openly because they still owe a “debt” to their traffickers. Fear for their safety may also hinder their cooperation with law enforcement to punish those who enslaved them.

Transnational trafficking requires a transnational solution. In an effort to promote coordination between service providers and law enforcement on both sides of the border to protect Mexican nationals trafficked into the United States, the Working Group will examine:

- the nature of the problems faced by Mexican forced labor survivors;
- the design of a potential transnational model for protection of survivors;
- and a research agenda to inform further policy development and implementation in this area.

The U.S. Trafficking Victims Protection Act (Trafficking Act) provides immigration and other federal public benefits to trafficking survivors that cooperate with law enforcement in the prosecution of perpetrators. This legal framework requires heightened coordination and integration between law enforcement and service providers. Indeed, an effective response may require new relationships and protocols for public-private cooperation.

Traditionally, human rights advocates and service providers have called upon law enforcement to investigate and punish violators. Advocates may provide information regarding abuses, but otherwise play a minimal role in criminal prosecutions. In contrast, service providers are critical to trafficking prosecutions by offering the psychological, emotional, and material support survivors need in order to participate in criminal proceedings.

Both law enforcement and service providers have an interest in ensuring that trafficking survivors are protected from harm. Law enforcement officials must attend to the security needs of survivors to engender their trust and cooperation to secure evidence for the legal case against traffickers. Safety and protection are integral to the mandates of social and legal service providers who assist trafficking survivors. Yet the legal constraints placed on law enforcement and service providers means that their efforts are not always coordinated. This lack of integration becomes acute in the context of transborder protection of trafficking survivors and their families.

For example, once trafficking victims manage to escape from their captors or are rescued, they face the difficult task of deciding whether to cooperate with law enforcement in a criminal case. Some survivors may not wish to testify, either because they fear reprisals by their traffickers, are psychologically unprepared to do so, or do not consider prosecution of their trafficker a high priority. In instances in which survivors choose not to cooperate, service providers must work outside the framework of the Trafficking Act to address their clients' safety needs without access to federal anti-trafficking benefits and the assistance of law enforcement.

Ensuring the safety of trafficking survivors and their families living in Mexico poses additional challenges. Perpetrators or their associates often threaten family members of survivors who cooperate with law enforcement, as well as those who return home or have chosen not to become involved in the legal action. Unable to find work, many survivors may be lured or forced back into the trafficking trade. Assistance to and protection of trafficking survivors and witnesses in Mexico currently is minimal and there is an urgent need to improve protective measures.

Mexican and U.S. service providers and government officials must find ways of strengthening protections for trafficking survivors and their families. To contribute to this process, Working Group participants will engage in a dialogue about the respective roles of and relationships between U.S.-based and Mexican NGOs and U.S. and Mexican law enforcement.

In preparation for the meeting of the Working Group, this paper provides background information on three areas:

- (1) The legal framework for transborder prosecutions of Mexican traffickers;
- (2) Protections available in the United States and Mexico to victims and witnesses of crimes, including trafficking; and
- (3) Selected international models for protection of trafficking survivors.

II. US-Mexico Transborder Prosecutions

Mexican traffickers have fled to Mexico to evade justice in the United States. Presently two mechanisms are available to U.S. law enforcement to initiate prosecution of such criminals: (1) extradition of the accused to the United States or (2) submission of a request to the Mexican government to prosecute the accused in Mexican courts pursuant to Article 4 of the Mexican Federal Penal Code.

A. Extradition

Generally, U.S. prosecutors prefer extradition to an Article 4 proceeding because they would rather have the accused offender prosecuted in the jurisdiction in which the offenses occurred. The extradition treaty between the United States and Mexico regulates the extradition process between the two states.¹ A Mexican national is eligible for extradition to the United States if: (1) the criminal act or behavior was intentional,² (2) the conduct violates a law in both jurisdictions;³ and (3) punishment for the offense is greater than one year.⁴ However, there are several exceptions to extradition. The agreement bars extradition of a defendant previously tried for the same offense in another jurisdiction.⁵ Also, the treaty prevents extradition for crimes that are subject to the death penalty in the requesting state but not similarly sanctioned in the state in which the fugitive is located.⁶

A state is not obligated to extradite their national, but may do so at its discretion.⁷ However, Mexican authorities have become more receptive to extradition requests since a 2002 ruling by the Mexican Supreme Court liberalized extradition of Mexican nationals.⁸ According to an official in the Mexican Attorney General's office, the United States has submitted 228 extradition requests since President Vicente Fox assumed office, of which 192 have been granted. To date, 136 fugitives have been extradited to the United States.⁹ Thus extradition is a potential, but not exclusive, means of bringing Mexican traffickers to justice.

B. Article 4

Prosecution of traffickers under Article 4 of the Mexican Federal Penal Code is an alternative to extradition to the United States. Article 4 permits Mexican authorities to prosecute a fugitive in a Mexican tribunal if the accused is a Mexican national or is an individual who victimized a Mexican national.¹⁰ For

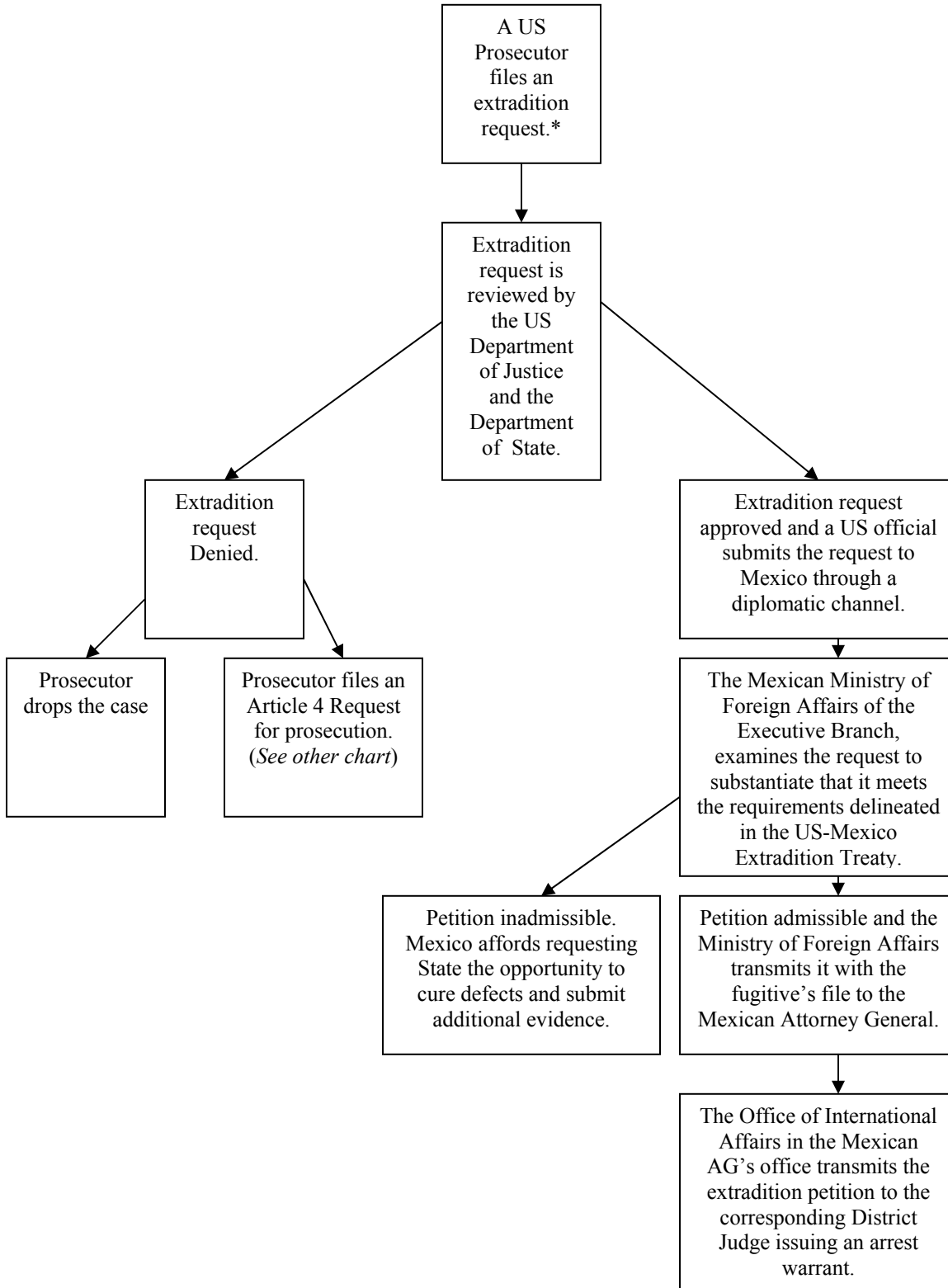
the purposes of both Article 4 prosecutions and extradition requests, an individual with dual U.S./Mexican citizenship is considered a Mexican national.¹¹ Similar to extradition, individuals may not be prosecuted under Article 4 if they already have been tried for the offense in the United States. Prosecution may proceed only if the alleged conduct is criminalized under Mexican federal law.¹² A similar provision to prosecute U.S. citizens in the U.S. for crimes they commit abroad does not exist.¹³

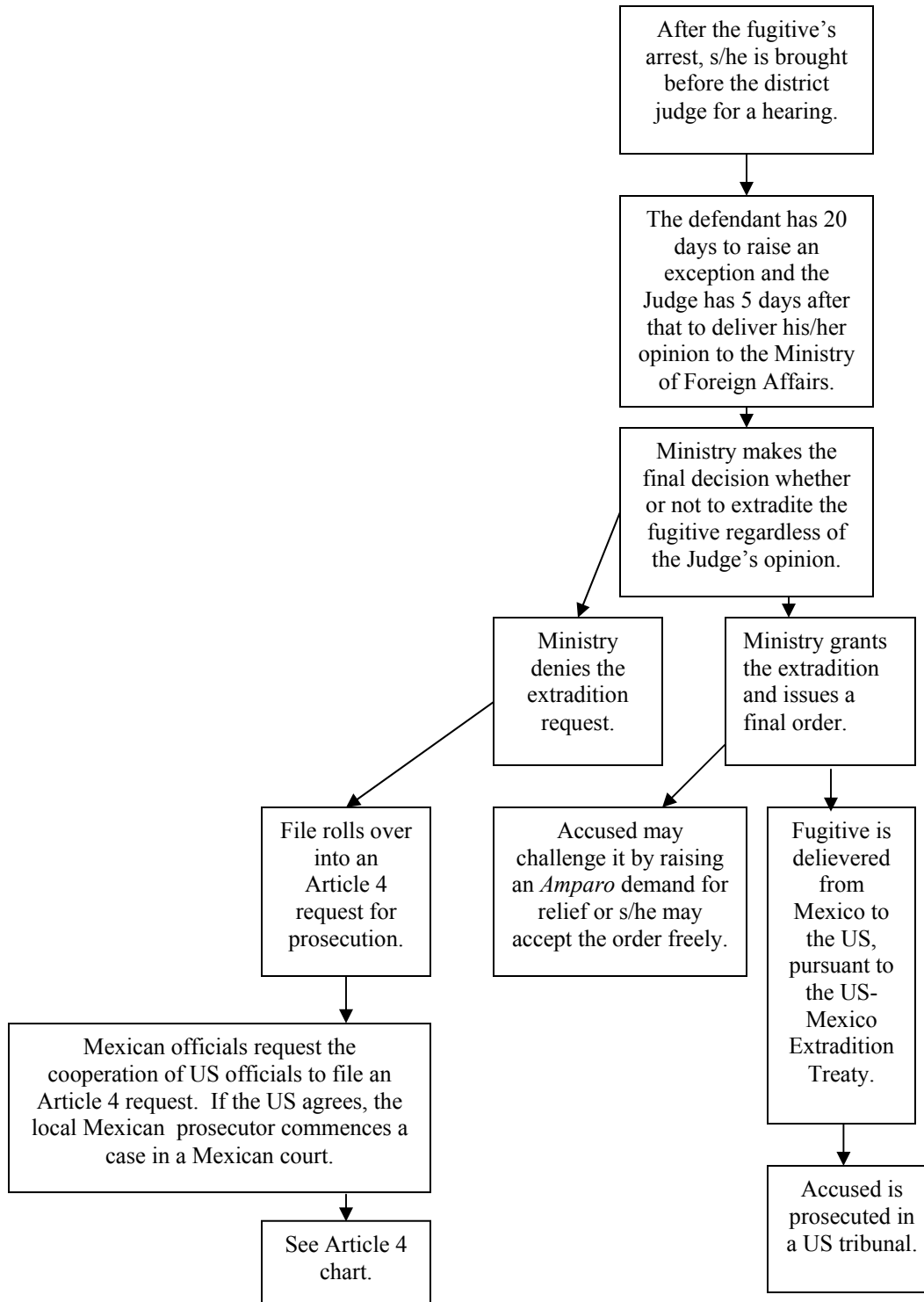
Until recently, Article 4 prosecutions were not common.¹⁴ To address the problem of Mexican nationals committing crimes in California and fleeing across the border, the California Department of Justice has established a specialized unit within the California Bureau of Investigation to assist California law enforcement agencies to file Article 4 cases.¹⁵ This unit – the Foreign Prosecutions Unit – files approximately 15 Article 4 requests a year and has become a model that law enforcement agencies across the country have sought to emulate.¹⁶

C. Extradition and Article 4 Request Procedures

U.S. requests for extradition must be submitted through federal authorities. The Department of Justice must approve the request, which the Department of State tenders to the Mexican government.¹⁷ Mexican judges will issue an arrest warrant if the evidence presented meets the legal standards established under Mexican federal law.¹⁸ Once the defendant is in custody, a Mexican judge determines whether to grant extradition. However, the executive branch of the Mexican government retains the authority to comply with the request. If Mexican authorities deny extradition, prosecution in Mexican courts may ensue. For example, if the Mexican government refuses to extradite because the accused is charged with first-degree murder (punishable by death in the United States but not in Mexico), the Mexican Attorney General contacts U.S. law enforcement officials to pursue the case pursuant to Article 4.¹⁹ If U.S. law enforcement chooses not to pursue the case, Mexican authorities will close the matter.²⁰

Procedural Aspects of Extradition





* Extradition request should include: Text of legal provisions describing the Statement of the facts; essential elements of the offense; text of legal provisions describing the time; limit on the prosecution of the execution of the punishment of the offense; personal information of the person sought; (Identification and his location), Article 1, Extradition Treaty Between the United States of America and the United Mexican States, May 4, 1978, 1978 U.S.T. LEXIS 317.

Zagaris, Bruce and Julia Padierna Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers-150 Years and Beyond the Rio Grande's Winding Courses*, 12 Am. U.J. Int'l L. & Pol'y 519 , 546 (1997).

In practice, prior to filing a request, U.S. law enforcement officials will informally discuss the case with their Mexican counterparts to determine the likelihood that an extradition request will be granted. In instances in which extradition is unlikely, U.S. officials may simultaneously file a request for extradition and a request for Article 4 prosecution.

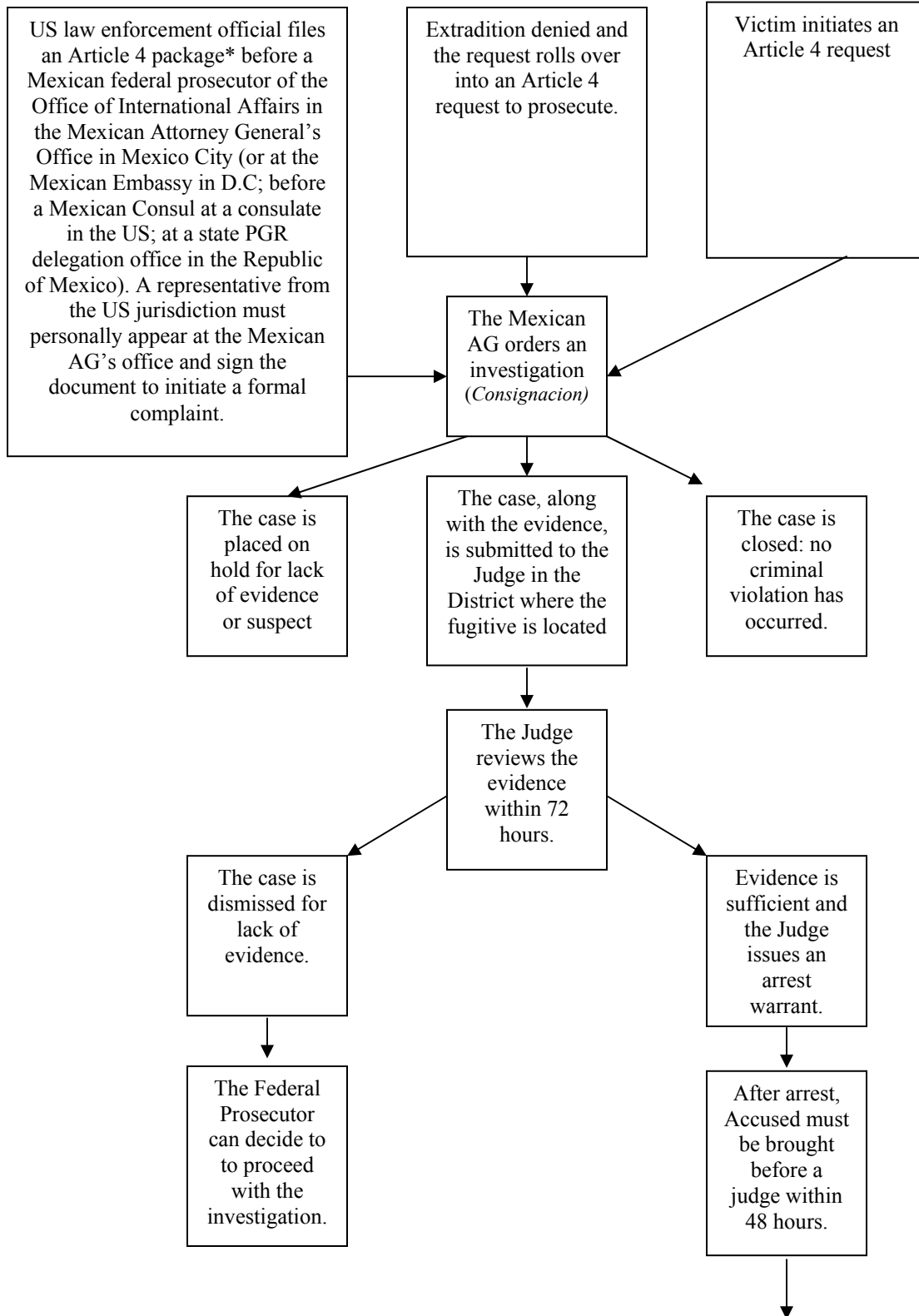
Political factors often influence the decision to seek prosecution in the United States or Mexico. Some prosecutors want crimes that were committed on U.S. territory to be prosecuted *only* in the United States. Therefore, prosecutors may file extraditions requests to put political pressure on Mexican authorities to grant extradition.²¹ For example, in a case of murder of a police officer, prosecutors view this type of crime as an attack on the U.S. judicial system and customarily will refuse to file an Article 4 request.²² According to a representative in the Office of the Federal Mexican Attorney General, most extradition requests for these types of “high priority and heinous crimes” are granted.²³ However, Article 4 procedures are favored in cases that are not politically sensitive, in part because this procedure is less costly than extradition.²⁴

Prosecution in Mexico under Article 4 may lead to greater sentences for wrongdoers than if they were convicted by U.S. courts. Mexican tribunals sentence defendants for crimes committed abroad according to Mexican domestic standards.²⁵ The judge determines the defendant’s culpability as well as sentence. Unlike in the United States where the penalty imposed depends on a number of factors including cumulative sentencing, the complexity of the trial, and the parole report,²⁶ in Mexico, the judge may impose separate sentences for each offense.²⁷ Therefore, a lesser-included offense under U.S. law may be treated as a separate offense in Mexico which could lead to a harsher sentence for the offender.²⁸

Finally, unlike an extradition request (which is a federal-to-federal process), state law enforcement or victims themselves may initiate an Article 4 request directly to Mexican federal law enforcement officials.²⁹

Procedural Aspects of Article 4 Requests

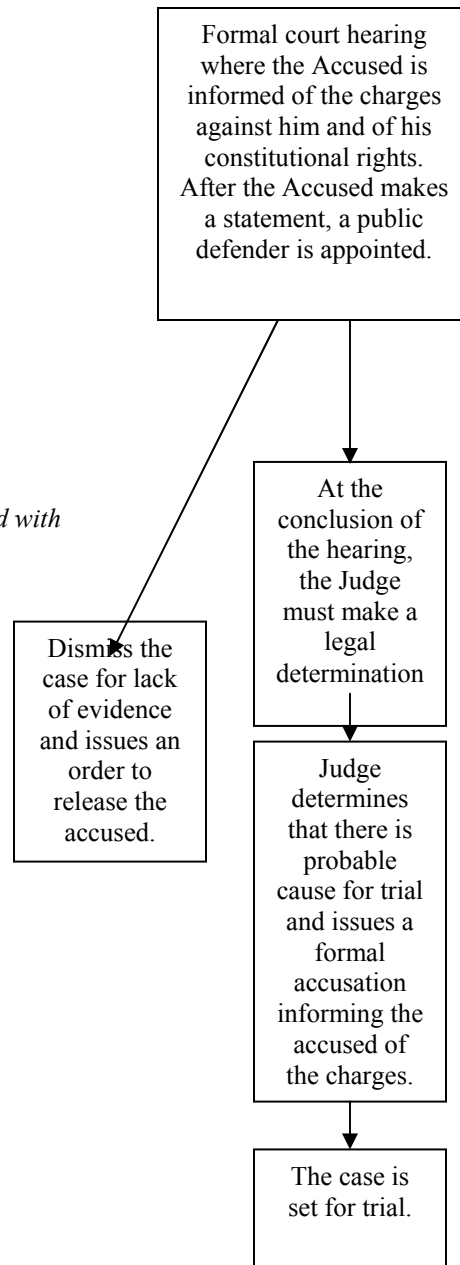
Initiating the criminal prosecution in Mexico:



* An Article 4 package must include:

- *Authenticated copies of all statutes upon which the charges are based.*
- *Warrant of arrest*
- *Affidavit authenticating case file contents*
- *Documentation as to suspect's identity, location, and citizenship:*
- *Complete physical description of the suspect including, photographs and fingerprints, if possible;*
- *Address in Mexico where the suspect is believed to reside;*
- *Copies of the suspect's Mexican birth certificate, or other documents substantiating Mexican citizenship, if possible*
- *All police, technical, and evidence reports associated with the case*

The file must be translated into Spanish.



International Prosecutions Unit of the Office of the Attorney General of Texas, *Criminal Prosecutions Under Article 4 of the Mexican Federal Penal Code*, available at http://www.oag.state.tx.us/AG_Publications/pdfs/article4_manual.pdf, (last visited February 24, 2004) at 7.

Arellano, Raquel, *Article 4 of the Federal District Criminal Code of Mexico: An Alternative to Extradition*, 1988 *Ariz. J. Int'l & Comp. L.* 182, 186 (1988).

D. Role of the Survivors in the Prosecution Process

Under Mexican law, survivors may request the government to initiate a criminal investigation against their traffickers. In theory, Mexican nationals trafficked into the United States may request prosecution under Article 4 through the Mexican consulate. However, in practice private individuals are seldom able to produce the evidence necessary to launch an Article 4 proceeding and requests generally come through U.S. law enforcement.³⁰

Criminal trials in Mexico are governed by the civil law principles and differ substantially from prosecutions in the United States. For example, Mexican criminal trials are adjudicated by a judge without a jury. Generally, written evidence is submitted, live witnesses do not appear in open court, and the judge, not the attorneys, controls the questioning. Survivors and witnesses may find the inquisitorial proceeding more comfortable than the adversarial process.³¹

Extradition may be preferable to Article 4 prosecutions to survivors and law enforcement since it allows for trial where the crime was committed. However, Article 4 prosecutions present advantages to survivors. A criminal trial in the civil law jurisdiction like Mexico means that proceedings are shorter and survivors and witnesses generally are not subject to cross-examination or scrutinizing juries. Moreover, sentences from a Mexican tribunal may be greater, thus satisfying survivors' goals for punishment.

III. Victim and Witness Protections in the US and Mexico

A. U.S. Protections for Trafficking Survivors

We turn now to the protections available to trafficking survivors and their family members who are participating in the federal prosecution of human traffickers in the United States. Trafficking survivors who choose not to cooperate with U.S. law enforcement, or otherwise are ineligible for the federal benefits to trafficking survivors must rely on state or private assistance. We do not review protections available only through states and service providers to these categories of survivors. Nevertheless, alternatives and adjuncts to U.S. federal protections constitute an important dimension to crafting a transnational regime to ensure the safety of Mexican trafficking survivors.

1. Victims of a Federal Crime

Victims of trafficking in the United States are entitled to the same protections afforded any other victim of a federal crime, regardless of the individual's immigration status.³² These protections take the form of "rights"³³ or "services."³⁴ Victims' rights include the right to be treated with fairness and with respect for one's dignity and privacy,³⁵ and the right to be "reasonably" protected from the accused offender.³⁶ Victim services include information about medical and other social services,³⁷ as well as information about restitution and other forms of available relief.³⁸ The *Attorney General Guidelines for*

Victim and Witness Assistance (hereinafter *Guidelines*)³⁹ govern the procedures for federal compliance with the rights of victims.

Federal law enforcement officials exercise wide discretion in fulfilling their mandate to provide reasonable protection to survivors.⁴⁰ The *Guidelines* also acknowledge a “wide range of security measures” that victims and law enforcement officials may take to lessen the risk of harassment and intimidation. These measures encompass simple steps, such as changing the victim’s telephone number, and more involved interventions, such as assisting the victim in the application for a temporary restraining order or protective order⁴¹ or enrolling in the Federal Witness Security Program.⁴² These programs are outlined below.

2. The Witness Security Program (WitSec)⁴³

The U.S. Attorney General may relocate victims, their relatives, and associates if the victim is an essential witness in an official proceeding against an individual involved in certain enumerated crimes⁴⁴ -- which arguably include trafficking -- and a crime of violence directed against the witness is likely to occur.⁴⁵ This is an extreme form of protection and requires an extensive process to evaluate candidates for admission to the program. Once accepted into the Witness Security Program, the witness and his or her family typically will receive new identities.⁴⁶ Other services may include housing, medical care, job training, employment, and subsistence funding for basic living expenses until self-sufficiency is achieved.⁴⁷ Witnesses also are eligible for 24-hour protection during high threat situations, such as pre-trial conferences, trial testimonies, and other court appearances.⁴⁸

3. The Emergency Witness Assistance Program (EWAP)

Established in February 1997, the Emergency Witness Assistance Program (EWAP) responds to the need of federal law enforcement to offer witnesses and survivors protection quickly and directly.⁴⁹ EWAP offers immediate, emergency “financial and other assistance to witnesses or potential witnesses to enable them to feel more secure about their circumstances and their cooperation with the Government.”⁵⁰ The program does not provide physical protection.⁵¹ At the discretion of the federal prosecutor, EWAP benefits are available to any witness or potential witness who fears repercussions as a result of cooperating with the government.⁵² These benefits generally are limited to one month or \$4,000,⁵³ and may be used to help witnesses relocate; fund emergency telephone services, child or senior care; and miscellaneous expenses, including window security and locks.⁵⁴

For victims of trafficking and their family members, the WitSec and EWAP protections are available if they are physically present in the United States. As discussed below, the Trafficking Victims Protection Act of 2000 provides new avenues for bringing family members of trafficking survivors to the United States in recognition of the dangers presented to them and their families when a survivor cooperates in the prosecution, and in

recognition of the lack of available protections for family members in a survivor's country of origin.

4. The Trafficking Victims Protection Act of 2000⁵⁵ and Protections from Removal

The Trafficking Act mandates protections for victims of “severe forms of trafficking”⁵⁶ if a survivor's safety is at risk, including danger of recapture by the trafficker. Federal officials also may protect family members “whom traffickers have chosen to target or whom traffickers are likely to target”⁵⁷ from intimidation and threats of reprisals from traffickers and their associates.⁵⁸ Protection of family members generally takes the form of reunification with the survivor in the United States.

The Trafficking Act permits a trafficking survivor to remain in the United States. Since traffickers frequently exploit a victim's lack of legal status to keep a victim in captivity, immigration benefits are a critical to reducing the vulnerability of survivors. The opportunity to remain in the United States under the Trafficking Act is available through “continued presence” or a T visa. Continued presence is a status sought at the discretion of the Attorney General, which allows survivors who are cooperating with law enforcement to remain in the country during a criminal proceeding.⁵⁹ The T visa is a victim-initiated application and is designed for those victims and their family members who wish to remain in the United States long term.⁶⁰ To qualify for the T visa, the applicant must submit evidence that she is a victim of a severe form of trafficking who is cooperating in the federal investigation and/or prosecution of the trafficker.⁶¹ Applicants normally fulfill this requirement by submitting a Law Enforcement Agency (LEA) endorsement of cooperation or demonstrating that good faith attempts were made to obtain the endorsement.⁶²

5. Relevant Agencies⁶³

Within the United States, the U.S. Attorneys' Offices and their Victim-Witness Coordinators (VWCs), under the auspices of the Department of Justice, are the primary sources of information, protection, and services to survivors of trafficking and their family members. Federal prosecutors and VWCs can request the U.S. Marshals Service to admit a survivor and family into the Witness Security Program or to provide other physical protection assistance.⁶⁴ Victim-Witness Coordinators may also be the survivor's first link to other community-based services.⁶⁵ The U.S. Marshals Service is the only identified agency that has the mandate and the resources to provide physical protection to survivors in the United States.

The U.S. government may not act directly to protect survivors outside the country, however it has assisted victims who seek to return home by liaising with foreign governments and NGOs to ensure that the survivor is protected from being re-trafficked once on home soil.⁶⁶ In addition the federal government funds integration and rehabilitation programs for survivors in countries that are a source of trafficking.⁶⁷

B. Mexican Protections for Victims of Trafficking and their Families

1. Victims of a Federal Crime

In 1996, Mexico adopted the *Ley Federal Contra la Delincuencia Organizada* (LFDO, the Federal Organized Crime Act). The statute establishes a new legal framework for the investigation, prosecution, and punishment of organized crime.⁶⁸ The law also creates unprecedented protections for crime victims and witnesses.⁶⁹ The law guarantees specific protective measures⁷⁰ and establishes the Attorney General's Office (PGR) as the agency responsible for the provision of adequate assistance and protection to persons involved in the prosecution of the enumerated crimes.⁷¹

2. Witness Protection Programs

To implement its witness and victim protection mandate, the Mexican Attorney General (PGR) created the *Unidad Especializada contra la Delincuencia Organizada* (Specialized Unit against Organized Crime).⁷² The specialized unit is responsible for "safeguarding the integrity and security of persons collaborating or participating in the investigation and prosecution of organized crime and its members."⁷³ Protection can take the form of bodyguards, surveillance, witness protection, legal measures, or the withholding of identity. Protections may begin once an individual gives a formal statement to a special agent and may continue after the criminal trial.⁷⁴ These measures can extend beyond the victim-witness to cover relatives, spouses, and others linked to the individual.⁷⁵ Finally, additional support for the victim-witness may include economic, medical, educational, employment, and housing assistance.⁷⁶

Although the LFDO recognizes the criminal nature of human *smuggling*, it does not explicitly contemplate *trafficking* as a proscribed enumerated federal crime.⁷⁷ However, Alejandro Ramos Flores, Mexican Assistant Deputy Attorney General of Legal and International Affairs, has proposed the expansion of the LFDO to include the crime of trafficking.⁷⁸ His proposal also includes an amplification of the victim-witness protections codified in the LFDO.⁷⁹ Comparable to the U.S. Witness Security Program, the program would provide a level of protection prior to formal entrance into the program.⁸⁰ It appears that this program would take place under the authority of the LFDO, thereby limiting its scope of protection to victims of trafficking where the perpetrators meet the statutory definition of agents of organized crime. This proposal, geared toward bringing Mexico in compliance with recently established international standards (known as the Palermo Convention and Protocols), is taking place within the context of overall structural, constitutional and legal reform in Mexico.⁸¹

3. Relevant Agencies

Within the Federal Attorney General's Office, three of the twelve deputy assistant attorney generals are dedicated in some way to the protection of victims.⁸² Under the Assistant Deputy Attorney for Human Rights, the General Office of Attention to Victims of Crime is mandated to facilitate victim access to the criminal justice system, to

necessary medical and psychological services, as well as to the appropriate governmental or private institutions that assist in protection and/or recuperation.

Desarrollo Integral de la Familia (DIF, or the Integral Development of the Family) is the primary federal social welfare agency. This agency primarily focuses on prevention and services in the areas of migrant minors repatriated to Mexico, sexual exploitation, and domestic violence.⁸³ However, the agency's mandate – *Ley Sobre el Sistema Nacional de Asistencia Social* (Law Governing the National System of Social Assistance)⁸⁴ – includes assistance to victims of crime. DIF agencies also maintain communication with the offices of the PGR with respect to victims of crime.⁸⁵

While Mexican NGOs serve and advocate on behalf of Mexican and other migrants traveling to the United States or within Mexico, they have only recently begun to examine the issue of human trafficking. Organizations like Sin Fronteras and CEFPRODHAC (el Centro de Estudios Fronterizos y de Promocion de los Derechos Humanos, A.C., the Center for Border Studies and the Promotion of Human Rights, A.C.) work with migrants in Mexico and are well-situated to become more involved in identifying and serving trafficking survivors.

Recently, the U.S. government has funded programs to increase the capacity of Mexican NGOs to address the needs of trafficking survivors. In fiscal year 2002, the US Office to Monitor and Combat Trafficking in Persons awarded two grants to Mexico as a part of the U.S. government's International Anti-Trafficking Program.⁸⁶ Funds from the Department of State, the Department of Labor, and the U.S. Agency for International Development were provided for: (1) a prevention program entitled "International Visitor Exchange Program on Trafficking of Women and Children;"⁸⁷ and (2) a protection and prevention program entitled "Support for the Prevention and Elimination of Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC victims in Mexico."⁸⁸ In the coming years, additional U.S. funding may be forthcoming to strengthen the response of the Mexican civil sector to trafficking.

IV. International and European Frameworks for Protection of Trafficking Survivors

U.S. and Mexican mechanisms for victim-witness protection provide a platform upon which governmental and non-governmental actors can build. The challenge for each government and NGO community is to expand the domestic platforms to include a transnational framework capable of delivering comprehensive protection for trafficking survivors on both sides of the border. The final portion of this paper presents the international and legal platform that has spawned programs in Europe to address the safety needs of trafficking survivors. Coupled with selected country-specific examples, the final section provides a point of departure for the Working Group's discussion regarding the goals for U.S.-Mexico cooperation in this area.

International bodies and European governments have developed normative and programmatic initiatives to combat human trafficking. Yet governmental and

nongovernmental organizations agree that there is an urgent need to strengthen mechanisms to protect trafficking survivors and witnesses. This section provides a brief overview of the primary international agreements relevant to the issue of survivor and witness protections, empirical studies regarding the extent of the problem, and noteworthy initiatives which may serve as models for US-Mexico survivor and witness protection schemes.

A. Normative International and European Legal Frameworks

Protections for victim-witnesses and their families have been incorporated into recent international anti-trafficking agreements. The Palermo Convention (the U.N. Convention Against Transnational Organized Crime) includes specific provisions regarding protection of witnesses applicable to trafficking.⁸⁹ The Convention states that each party shall take “appropriate measures within its means to provide effective protections from potential retaliation or intimidation of witnesses in criminal proceedings...and, as appropriate, for their relatives or persons close to them.”⁹⁰ These measures include physical protections such as relocation and anonymity.⁹¹ In addition, signatory states agree to provide assistance and protection with a particular emphasis on “cases of threat of retaliation or intimidation.”⁹²

The U.N. has developed a legal framework to address the specific problem of human trafficking in its Palermo Protocol (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children), an optional supplement to the Convention.⁹³ The Palermo Protocol calls on a signatory state to provide physical protection to trafficking survivors while they are within its jurisdiction.⁹⁴

The European Union’s Framework Decision on combating Trafficking in Human Beings and the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, both adopted in 2002, set forth European understandings of the duties of member states to combat human trafficking. However, the agreements establish general norms applicable to protective measures and do not include specific standards for state obligations in this regard.⁹⁵

In 2003, the Organization for Security and Cooperation in Europe’s (OSCE) fifty-five participating states adopted an Action Plan to Combat Trafficking in Human Beings.⁹⁶ Under the plan, OSCE states agreed upon a range of recommendations for anti-trafficking measures, including protection for “victims or witnesses who testify in criminal proceedings, as well as their relatives, from potential retaliation or intimidation.”⁹⁷

These documents have been criticized for their use of discretionary language rather than absolute standards. Advocacy groups claim that the Palermo Protocol, for example, lacks strong protections for victims and “the few protections and assistance provision contained in the Protocol are discretionary.”⁹⁸ Similar criticisms have been levied against European attempts to solidify the rights of victim-witnesses on the grounds that systematic gaps remain in the legal protections schemes.

Trafficking survivors in Europe who have cooperated with law enforcement have suffered at the hands of their former traffickers. Reprisals are most likely to occur in the county of origin because the destination country prosecuting the trafficker is unable to protect witnesses outside its borders.⁹⁹ An International Organization for Migration (IOM) report on trafficking in Europe found there to be significant danger for witnesses in several European countries and in the Ukraine.¹⁰⁰

Researchers have found that existing witness protection programs in some European countries do not meet the needs of trafficking survivors. This is because traditional witness protection programs often rest on the assumption that those under their protection will blend in with their surroundings. Yet, trafficking survivors rarely speak the language in the destination country and are not equipped to live on their own.¹⁰¹

In addition to the need for protections during trial, trafficking survivors continue to need protection after repatriation. The London-based Anti-Slavery Society has reported that trafficked Nigerian women have been subject to intimidation and murder upon their return home.¹⁰² Not surprisingly, the lack of safety has been identified as the “principle obstacle to securing convictions” because trafficking survivors fear that they “will face some kind of retribution from traffickers or their associates should they give evidence against them.”¹⁰³ International Labor Organization experts conclude the lack of “adequate victim and witness protection programs results in reduced effectiveness of investigation, prosecution and court proceedings.”¹⁰⁴ Where Western European countries have boosted protections to survivors, the result has been greater cooperation from former captives and more effective prosecutions of traffickers.¹⁰⁵

Nevertheless, international experts agree that lack of “specific protection measures for victims” hampers anti-trafficking initiatives.¹⁰⁶ This weakness is particularly notable in the area of transnational cooperation. An IOM report on Eastern Europe and Central Asia identified the “weakest component” of national policies as being “the lack of bilateral cooperation to facilitate the prosecution of traffickers and the assistance to victims of destination countries.”¹⁰⁷

B. Protection Models

Despite the transnational nature of trafficking, protection models, for the most part, have been instituted at the national level. Examples of these initiatives include:

Hungary: In 2001, Hungary adopted a Witness Protection Programme Act which provides a range of safety measures applicable to trafficking victims including: general personal protection, rapid assistance in case of danger, and a change of identity through documentation and relocation.¹⁰⁸ This program includes survivors and witnesses, their next of kin, and persons close to the endangered person. Protections apply during proceedings and after a case closes.¹⁰⁹

Germany: The city of Essen appointed a head of witness protection services to address the needs of trafficking victims, including language barriers, “fear of the traffickers as

well as of the police officers or fear to be expelled.”¹¹⁰ Specialized police officers are responsible for the investigation and survivors are provided counseling and support regarding security.¹¹¹

Moldova: Though the South Eastern Europe Task Force, a regionalized OSCE initiative, Moldova has instituted an emergency hotline for trafficking victims.¹¹² Under this Task Force, individual states have developed more specific measures.

ICC: The statute for the International Criminal Court (“ICC”) in The Hague contains strong regulations for the protection of its victim-witnesses. The Court will confront transnational challenges to witness protection similar to those states confront when prosecuting traffickers. States and NGOs may gain guidance for their own anti-trafficking work as the Court implements its witness protection mandate.¹¹³

This memorandum was prepared by Noura Erakat, Andrea Fitanides and Kathleen Glynn, interns with the International Human Rights Law Clinic, Boalt Hall School of Law.

ENDNOTES

¹ Article 1, Extradition Treaty Between the United States of America and the United Mexican States, May 4, 1978, 1978 U.S.T. LEXIS 317 [Hereinafter “Treaty”].

² Article 2 (1), Treaty *supra* note 1.

³ Article 2 (1), *supra* note 1.

⁴ Article 2 (1), *supra* note 1.

⁵ Article 6, *supra* note 1. This is a bar to double jeopardy and is also known as the principle of *non bis in idem*. See also Zagaris, Bruce and Julia Padierna Peralta, *Mexico-United States Extradition and Alternatives: From Fugitive Slaves to Drug Traffickers-150 Years and Beyond the Rio Grande’s Winding Courses*, 12 Am. U.J. Int’l L. & Pol’y 519 , 540 (1997). However, if an offender has not served the complete sentence, she or he can still be extradited to a Requesting Party. This is known as “deferred” or “delayed” surrender. See also Article 7, *supra* note 1. Other exceptions to extradition include a bar on cases of a political nature or military crimes, Article 5(1), as well as instances in which the statute of limitations for the offense – as set forth in either jurisdiction – expires.

⁶ Article 8, *supra* note 1. Because the Mexican Constitution severely restricts the imposition of death penalty, this provision generally operates to bar extradition of Mexican nationals to face serious charges in the United States. Mexico may agree to extradition of death-eligible penalties if the U.S. assures Mexico that it will not seek nor enforce the death penalty in the particular case.

⁷ Article 9(1), *supra* note 1, provides: "Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party, shall if not prevented by the laws of that Party, have the power to deliver them up if, in its discretion, it be deemed proper to do so."

⁸ Telephone Interview by Noura Erakat with Alberto Gonzalez, Special Assistant to the Attorney General, Office of the California Attorney General (March 8, 2004). Gonzalez based this on a conversation with PGR (Office of Mexican Federal Attorney General’s Office) officials. See also Telephone Interview by Noura Erakat with Ernest Duran, Special Agent of the Foreign Prosecutions Unit of the California Bureau of Investigation of the California Department of Justice (March 8, 2004).

⁹ Telephone Interview by Noura Erakat with Enrique Zepeda, Attaché of the PGR to the Mexican Consulate in Los Angeles, California (March 8, 2004).

¹⁰ Warner, David P., *Bringing White-Collar Criminals to Justice—Fugitive Apprehension and Return and Obtaining Evidence Abroad*. 11 U.S.-Mex. L.J. 171, 178 (2003).

¹¹ Interview, Zepeda, *supra* note 9. This standard applies because Mexican nationals cannot renounce their nationality and therefore are entitled to the privileges provided to all citizens.

¹² Warner, *supra* note 10, at 178.

¹³ *Id.*

¹⁴ Interview, Duran, *supra* note 8. Until the 1970s, a formal process for filing Article 4 cases with the Mexican Federal Attorney General’s office did not exist.

¹⁵ Duran, Ernest J., *Article IV Prosecutions [using Mexican Law]*, The FBI Law Enforcement Bulletin. (June 2002) available at http://www.findarticles.com/cf_dls/m2194/6_71/89079419/p4/article.jhtml?term=. (last visited February 16, 2004).

¹⁶ *Id.* See also E-mail correspondence from Rosa Berg, Statistical Analyst at the Foreign Prosecutions Unit of the California Bureau of Investigations of the California Department of Justice, to Noura Erakat, International Human Rights Legal Clinical student at Boalt (March 19, 2004) (on file with author). From 1981-2003, 267 Article 4 cases have been filed in Mexico. Of those 81 convictions have been obtained, 79 are serving sentences, 10 cases have been dismissed, and 7 have been acquitted.

¹⁷ International Prosecutions Unit of the Office of the Attorney General of Texas, *Criminal Prosecutions Under Article 4 of the Mexican Federal Penal Code*, available at http://www.oag.state.tx.us/AG_Publications/pdfs/article4_manual.pdf (last visited February 24, 2004) [Hereinafter “IPI”]. See also Zagaris and Peralta, *supra* note 5 at 543. Within the Mexican government the request is reviewed sequentially by the Office of Judicial Affairs in the Mexican Ministry of Foreign Affairs, the Office of International Affairs (OIA) of the Attorney General’s office, and then by the district judge who will be responsible for issuing an arrest warrant.

¹⁸ Zagaris and Peralta, *supra* note 5 at 544. Mexico’s Federal Penal Code of Criminal Procedures sets two evidentiary standards that must be met before a suspect is arrested or prosecuted. “Evidence must be sufficient to demonstrate all the elements of the crime and the existence of facts showing the ‘probable responsibility,’ the equivalent of probable cause in United States extradition jurisprudence, that the suspect committed the crime charged in the extradition request.” See also Article 3, *supra* note 1. See also Warner, *supra* note 10 at 180. U.S. officials trying to obtain evidence abroad are aided by the US-Mexico Mutual Legal Assistance Treaty (MLAT). The MLAT, signed into effect in 1987, “places an affirmative obligation on parties to cooperate with each other to deal with the prevention, investigation, and prosecution of crimes, absent the invocation of one or more of several very narrow exceptions.”

¹⁹ Telephone Interview by Noura Erakat with Enrique Zepeda, Attaché of the PGR (Office of the Federal Mexican Attorney General) to the Mexican Consulate in Los Angeles, California (April 7, 2004). To file an extradition request to Mexico, the necessary evidentiary standard is *probable cause*. Whereas, to file an Article 4 request for prosecution, a requesting Party must submit evidence to satisfy a much higher standard of *beyond a reasonable doubt*. Therefore, if a requesting Party has not already met that standard in its extradition request, Mexican officials will request additional evidence to meet this higher standard.

²⁰ Interview, Zepeda, *supra* note 9. See also Interview, Duran, *supra* note 8. See also Interview, Gonzalez, *supra* note 8.

²¹ Interview, Zepeda, *supra* note 9. (This policy is consistent with principles of international law that require states to extradite or prosecute violators of gross human rights violations).

²² Interview, Duran, *supra* note 8.

²³ Interview, Zepeda, *supra* note 9.

²⁴ Telephone Interview, Kari McDonald, Program Assistant 2, Criminal Justice Division, Colorado Attorney General’s Office (March 8, 2004).

²⁵ IPI, *supra* note 17. For example, an offender faces 20-50 years in prison for capital murder (Title 19, Chapter II, Article 320), 2-15 years for aggravated robbery (Title 22, Chapter I, Article 372), 8-14 years for aggravated sexual assault (Title 15, Chapter I, Article 256), and 6-40 years for aggravated kidnappings (Title 21, Chapter I, Article 366). These are federal sentences in Mexican law. The U.S. equivalent varies by the state that seeks Article 4 prosecution or, alternatively, by federal standards for federal crimes.

²⁶ Model Penal Code (MPC) § 305.1, Article 305, American Law Institute (1962). Parole refers to the reduction of a criminal sentence for good behavior and faithful performance of all duties. Prisoners sentenced for an indefinite term of more than one year are eligible for parole.

²⁷ Mexican Penal Code, Title 2, Chapter II, Article 25, *Terms of Imprisonment* (1999). Prison terms are not to exceed 60 years.

²⁸ IPI, *supra* note 17. *See also* Interview, Zepeda, *supra* note 9.

²⁹ Interview, Gonzalez, *supra* note 8.

³⁰ Interview, Zepeda, *supra* note 9. Mexico's evidentiary standards require the fugitive's address in Mexico, birth certificate (to prove Mexican citizenship), as well as other documents to file an Article 4 request. Mexican officials may seek assistance from the U.S. government to gather the necessary information in the United States. However, U.S. law enforcement officials are better able to provide the required information at the outset and thus most Article 4 requests come from the U.S. government rather than private individuals.

³¹ IPI, *supra* note 17. However, survivors may be called to court to testify. Mexican defense attorneys may challenge as hearsay the evidence contained in the US police reports and submit requests to the judge to cross-examine the survivor-witness. *See also* Interview, Duran, *supra* note 8. The negative impact of live testimony may be mitigated for survivors in the United States who testify vis-à-vis teleconference rather than appear in court in Mexico.

³² *2000 Attorney General Guidelines for Victim and Witness Assistance*, Article 1, General Considerations, Commentary, available at <http://www.ojp.usdoj.gov/ovc/publications>; see also Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (codified at 28 C.F.R. pt. 1100).

³³ 42 U.S.C. § 10606 (2004)(complete listing of Victims' rights); *see also* *2000 Attorney General Guidelines for Victim and Witness Assistance*, Article 1, General Considerations.

³⁴ 42 U.S.C. § 10607 (2004)(complete listing of Services to Victims); *see also* *2000 Attorney General Guidelines for Victim and Witness Assistance*, Article 1, General Considerations.

³⁵ *Supra* note 33, at § 10606 (b)(1).

³⁶ *Id.* at § 10606 (b)(2).

³⁷ *Supra* note 34 at § 10607 (c)(1)(A).

³⁸ *Id.* at § 10607 (c)(1)(B). The federal government is obligated by law to ensure victims' rights. This mandate is embedded in various statutory enactments such as the Victim and Witness Protection Act of 1982, the Crime Control Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997. During the prosecution stage of the process, the United States' Attorneys' Offices, through their Victim-Witness Coordinators (VWCs), are responsible for compliance with these mandates. United States Attorneys Manual, Title 3, EOUSA Resource Manual, Section 3-7.000, Law Enforcement Coordinating Committee/Victim-Witness Programs; 3-7.100, History and Overview, available at <http://www.usdoj.gov> (last visited April 8, 2004).

³⁹ *The Attorney General Guidelines for Victim and Witness Assistance* were mandated by Congress as a part of the Victim and Witness Protection Act of 1982. Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248, October 14, 1982, codified at 18 USC § 1512, *et seq.*

⁴⁰ Under the Guidelines, Department of Justice employees are expected to "use their sound judgment and discretion in deciding how best to accord victims and witnesses the rights and services required under Federal law and these *AG Guidelines*." *Guidelines*, Article 1, General Considerations, D. Reliance on the Sound Judgment of DOJ Officers and Employees, available at <http://www.ojp.usdoj.gov/ovc/publications/> (last visited April 8, 2004); *see also* *Ochran v. United States*, 117 F.3d 495, 501 (11th Circuit, 1997)

(suggesting a balancing test based in policy as the appropriate method for determining how to protect a victim that has been threatened by a suspected offender: “[T]he AUSA would be expected to balance the victim’s need for protection in light of the severity and credibility of the threat, the allocation of limited government resources, and the government’s dealings with the suspected offender”). The court also held that the failure to inform the victim of available remedies against intimidation and harassment does give rise to a cause of action under the FTCA, although the AUSA’s decision on how to provide protection and whether to inform other components of the DOJ do not, 117 F. 3d at 506.

⁴¹ 18 U.S.C. §§ 1512-1515 (2004). Under 18 U.S.C. § 1514, an attorney for the government may apply for a temporary restraining order or a protective order prohibiting harassment of a victim or witness in a Federal criminal case. *Guidelines*, Article IV, Services to Victims and Witnesses, A. Investigation Stage, b. Protection from Harassment/Intimidation, Commentary, *available at* <http://www.ojp.usdoj.gov/ovc/publications/> (last visited April 8, 2004).

⁴² *Guidelines*, Article IV, Services to Victims and Witnesses, A. Investigation Stage, b. Protection from Harassment/Intimidation, Commentary, *available at* <http://www.ojp.usdoj.gov/ovc/publications/> (last visited April 8, 2004).

⁴³ The Witness Security Program was established by the Witness Security Reform Act of 1984, Part F, Chapter XII of the Comprehensive Crime Control Act of 1984, Pub.L.No. 98-473. United States Attorneys’ Manual (USAM), Title 9, Criminal Resource Manual, Section 9-21.000, Witness Security, *available at* <http://www.usdoj.gov> (last visited April 8, 2004). Please note that this program is typically a last resort for victim-witnesses as it is expensive to implement and often emotionally difficult for the victim and family.

⁴⁴ USAM at chapter 9-21.020, Scope and chapter 9-21.200, Eligibility for Witness Security Program. Available at <http://www.usdoj.gov> (last visited April 8, 2004). Trafficking most likely falls under the qualifying crime category of “any other serious Federal felony for which a witness may provide testimony that may subject the witness to retaliation by violence or threats of violence.”

⁴⁵ USAM at chapter 9-21.020, Scope, and chapter 9-21.200, Eligibility for Witness Security Program, *available at* <http://www.usdoj.gov> (last visited April 8, 2004).

⁴⁶ United States Marshals Service Fact Sheets, *available at* <http://www.usdoj.gov/marshals>

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Crystal Gaines, *The Emergency Witness Assistance Program*, United States Attorneys’ USA Bulletin, VICTIMS RIGHTS, Vol. 47, No. 1, January 1999, at 20. USA Bulletins are available through the National Advocacy Center, (803) 544-5100.

⁵⁰ *Id.* at 23.

⁵¹ *Id.*; see also United States Attorneys Manual, Title 3, EOUSA Resource Manual, 3-7.000 Law Enforcement Coordinating Committee/Victim-Witness; 3-7.340, Emergency Victim and Witness Programs, *available at* <http://www.usdoj.gov> (last visited April 8, 2004).

⁵² *Supra* note 49, at 21. This qualifying criterion is significant because a victim does not need to have been actually threatened, and the victim can be a *potential* witness.

⁵³ *Id.* at 21-22.

⁵⁴ *Id.* at 21-23. Although a witness’s family is not directly eligible for EWAP assistance, family members living in the same household may benefit indirectly from the services provided to the witness if the USAO,

in its discretion, “determines that such indirect assistance is reasonably necessary to further the goals and purposes of the EWAP and the prosecution.” *Id.* at 21.

⁵⁵ Trafficking Victims Protections Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466, October 28, 2000.

⁵⁶ The Act defines “severe forms of trafficking in persons” as: “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not yet attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 103 (8), 114 Stat. 1466, October 28, 2000.

⁵⁷ Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (codified at Trafficking in Persons, 28 C.F.R., § 1100.25).

⁵⁸ 22 U.S.C. § 7105 (c)(1)(C)(i) (2004). “Federal law enforcement personnel, immigration officials, and DOS officials should work with victims of severe forms of trafficking in persons to determine whether a member of the victim’s family is likely to be threatened, intimidated, or harmed. Federal law enforcement personnel, immigration officials, and DOS officials have discretion to determine whom they can reasonably protect from such reprisals, given such parameters, for instance, as the inability of the United States to provide protection in foreign countries.” Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (codified at Trafficking in Persons, 28 C.F.R., § 1100).

⁵⁹ 22 U.S.C. § 7105 (c)(3) (2004). For regulations on “continued presence,” a status that is temporary and requires the alien to depart the US once her presence for purposes of the criminal investigation or prosecution is no longer required, *see* Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (codified at Trafficking in Persons, 28 C.F.R. § 1100.35). If the United States Customs and Immigration Service (USCIS) determines that the “continued presence” of a victim is appropriate, they will grant authorization to remain in the United States through one of several mechanisms currently available under the law. These mechanisms include parole, voluntary departure, the stay of a final order of deportation, deferred action, or any other authorized form of relief, including applicable nonimmigrant visas such as the T visa mentioned above. Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (codified at Trafficking in Persons, 28 C.F.R. § 1100.35).

⁶⁰ New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4784 (January 31, 2002) (codified at 8 C.F.R. pts. 103, 212, 214, 274a, 299). To qualify for the T visa, the victim must: (1) be a victim of a “severe form of trafficking in persons;” (2) be physically present within the US; (3) comply with reasonable requests for assistance from law enforcement in the investigation and prosecution, if the victim is 15 years of age or older; (4) be likely to suffer extreme hardship involving unusual and severe harm upon removal; and (5) be otherwise admissible or obtain a waiver.

⁶¹ New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4784 (January 31, 2002) (codified at 8 C.F.R. § 214.11(f)). Applicants may satisfy this requirement by submitting an LEA endorsement, by demonstrating that the Service has arranged for the victim’s continued presence under 28 C.F.R. § 1100.35, or by submitting sufficient credible secondary evidence.

⁶² New Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for “T” Nonimmigrant Status, 67 Fed. Reg. 4784 (January 31, 2002) (codified at 8 C.F.R. § 214.11(f)(3)). “The statement or evidence should demonstrate that good faith attempts were made to obtain the LEA endorsement, including what efforts the applicant undertook to accomplish these attempts.”

⁶³ NGOs should consult the brochure, “Trafficking in Persons: A Guide for Non-Governmental Organizations,” produced by the Department of Justice, Civil Rights Division, Trafficking in Persons and Worker Exploitation task Force, *available at* <http://www.ojp.usdoj.gov/ovc> (last visited April 8, 2001).

⁶⁴ The AUSAs and VWCs may also request the “continued presence” of a victim and her family for the duration of the prosecution. Through the services of EWAP, victims and their family members may also be eligible for funds to provide for their physical protection. *Supra* note 49, at 21-23. Although a witness’s family is not directly eligible for EWAP assistance, family members living in the same household may benefit indirectly from the services provided to the witness if the USAO, in its discretion, “determines that such indirect assistance is reasonably necessary to further the goals and purposes of the EWAP and the prosecution.” *Id.* at 21.

⁶⁵ The US government has encouraged expansion of NGO service providers to meet the needs of trafficking survivors. Through a federal agency, the Office for Victims of Crime, the government offers grants to NGOs and not-for-profit organizations to develop, expand, or strengthen service programs to victims and their families. These services include those necessary for life and safety, such as crisis counseling and intervention programs, short-term shelter or housing assistance, and mental health services. *See* <http://www.ojp.usdoj.gov/ovc> (last visited April 8, 2004) for a complete list of programs funded through the OVC.

⁶⁶ 19 No. 5 International Enforcement Law Reporter 177 (2003).

⁶⁷ Federal agencies fund NGOs in sending countries that provide services to integrate trafficking survivors into home communities as a part of the regulatory implementation of the TVPA. Protection and Assistance for Victims of Trafficking, 66 Fed. Reg. 38514 (July 24, 2001) (“...the forms of protection and assistance identified in the TVPA include the establishment and implementation of programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking in persons.”); *see also* USAID report, “Trafficking in Persons: USAID’s Response,” March 2004, *available at* <http://www.usaid.gov> (last visited April 8, 2004). USAID has one project along the US-Mexico Border, supporting Casa de la Mujer, a shelter that provides rehabilitation support, counseling, medical care and vocational education.

⁶⁸ LFDO, Chapter 1, Article 1, *available at* <http://www.diputados.gob.mx/leyinfo/> (last visited April 8, 2004).

⁶⁹ LFDO, published in the Diario Oficial de la Federacion (DOF) on November 7, 1996, as amended, *available at* <http://www.cddhcu.gob.mx> under the “Leyes Federales” section (last visited February 16, 2004). This law required several amendments to the Mexican Constitution to facilitate its passage. Rodrigo Labardini, *Mexico’s Federal Organized Crime Act*, 11 United States-Mexico Journal 133, 139-140 (2003). Victims’ rights are also enshrined in the Mexican constitution, although there is no automatic right to physical protection. Constitution Politica de los Estados Unidos Mexicanos, Article 20 (B), *available at* <http://www.cddhcu.gob.mx> (last visited April 8, 2004) (victims’ rights include the right to information about the prosecution, the right to medical and psychological attention, the right to compensation, and the right to personal security if the applicable law provides, such as in the case of the LFDO.)

⁷⁰ LFDO, Chapter 6, Article 34 provides: “De la Protección de las personas: La Procuraduría General de la República prestará apoyo y protección suficientes a jueces, testigos, victimas y demás personas, cuando por su intervención en un procedimiento penal sobre delitos a que se refiere esta Ley, asi se requiera.” (“Protection of Persons: The Attorney General of the Republic shall provide sufficient assistance and protection to judges, witnesses, victims, and other persons, when through their participation in a criminal prosecution regarding the crimes proscribed in this law, it is required.”)

⁷¹ LFDO, Article 34. *See also*, Comunicado de la PGR, Ponencia del Lic. Alejandro Ramos Flores, “La Convencion de Palermo y el Marco Juridico Nacional,” 21 febrero 2004, *available at* <http://www.pgr.gob.mx> (last visited April 8, 2004).

⁷² Rodrigo Labardini, *Mexico's Federal Organized Crime Act*, 11 United States-Mexico Journal 133, 139 (2003). For an explanation of the work of the Subprocuraduria de Investigacion Especializada en Delincuencia Organizada (SIEDO, the Assistant Attorney General for the Special Investigation of Organized Crime), see www.pgr.gob.mx (last visited April 8, 2004).

⁷³ Rodrigo Labardini, *Mexico's Federal Organized Crime Act*, 11 United States-Mexico Journal 133, 142 (2003).

⁷⁴ *Id.* at 139.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Supra* note 68.

⁷⁸ Comunicado de la PGR, Ponencia del Lic. Alejandro Ramos Flores, "La Convencion de Palermo y el Marco Juridico Nacional," 21 febrero 2004, available at <http://www.pgr.gob.mx> (April 8, 2004). The proposed crime of trafficking would incorporate Article 205, paragraph 2 of the Federal Penal Code which requires that the conduct be carried out by violence, coercion, or abuse of public authority unless the victim is a minor.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ In March 2004, Mexican President Vicente Fox introduced a number of reforms to the Mexican Congress. The *Iniciativa de Reforma Constitucional* and *Iniciativa de Reforma Legal* are available at <http://presidencia.gob.mx> (last visited April 8, 2004) under the heading *Presentación de la Iniciativa de Reforma al Sistema de Seguridad Pública y Justicia Penal*, March 29, 2004.

⁸² The Deputy Assistant Attorney General assigned to the Investigation of Organized Crime coordinates the Special Investigative Unit on the Trafficking of Minors, the Undocumented, and Organs. A second Deputy Assistant Attorney General is assigned to the Investigation of Federal Crimes. Finally, the Deputy Assistant Attorney General of Human Rights coordinates two units. See <http://www.pgr.gob.mx>, under "organigrama." One unit focuses special attention to the prevention of crime and services to the community. The second provides attention to crime victims. Under the Subprocuraduria de Derechos Humanos, Atencion a victimas y servicios a la comunidad, the unit of Direccion General de Atencion a Victimas del Delito is the primary point of inquiry for this memo's analysis.

⁸³ Telephone Interview with Monserrat Maussan Flota, Subdireccion General de Atención a Población Vulnerable (March 12, 2004). For an explanation of DIF programs, see *Programa Institucional Annual 2003 (Institutional Annual Program 2003)*, available at <http://www.dif.gob.mx> (last visited March 12, 2004).

⁸⁴ *Ley Sobre el Sistema Nacional de Asistencia Social*, Article 4 (IX), available at <http://www.dif.gob.mx> (last visited March 12, 2004).

⁸⁵ *Supra* note 83.

⁸⁶ *U.S. Government's International Anti-Trafficking Programs*, available at <http://www.state.gov> (last visited April 8, 2004).

⁸⁷ This program brings current or potential leaders in government, politics, the media, and education to the US to meet and confer with their professional counterparts. Programs typically last three weeks during which participants gain an overview of programs to prevent trafficking of women and children in DC and throughout the country.

⁸⁸ This is a model project focused on prevention and provision of services, not protection. It is a 32-month long project in Guadalajara, Acapulco and Tijuana addressing the educational and health-related needs of child-victims of commercial sexual exploitation.

⁸⁹ United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex I, 55 U.N. GAOR Supp. (No. 49) at 44, Art. 24, U.N. Doc. A/45/49 (Vol. I) (2000).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at Art. 25.

⁹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime G.A., Res, 55/25, U.N. GAOR, Annex II, Supp. No. 49 at 60, U.N. Doc. A/45/49 (Vol. 1) (2001).

⁹⁴ The UN Trafficking Protocol includes other measures to increase the safety of survivors including Article 6 which requires, to the extent possible under domestic laws, that states protect the privacy and identity of victims through making proceedings confidential. *Id.*

⁹⁵ For example, the Framework Decision states that all forms of trafficking are illegal and establishes that member states have a duty to comply with anti-trafficking laws to this end 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings, Official Journal L 203, 01/08/2002 P. 0001 – 000. Similarly, the Brussels Declaration addresses victim witness protections but fails to establish comprehensive standards for their well-being Section 14, Brussels Declaration on Preventing and Combating Trafficking in Human Beings (2002), *available at* http://europa.eu.int/comm/justice_home/news/information_dossiers/conference_trafficking/documents/declaration_1709.pdf (last visited Feb. 14, 2004).

⁹⁶ Organization for Security and Cooperation in Europe, *OSCE adopts Action Plan to combat human trafficking*, (2003), OSCE, PC.DEC/557 Sect. 4 (2003), *available at* http://www.osce.org/news/generate.pf.php3?news_id=3447 (last visited Feb. 20, 2004).

⁹⁷ The Action Plan's recommendations on protection of victims and witnesses in the criminal justice system requires that states take appropriate measures, including legislative ones, to prevent retaliation against victims and their loved ones, sensitize law enforcement and other appropriate officials to their responsibility for ensuring the safety and immediate well-being of victims, and facilitate the victim's participation the prosecution by offering witness relocation. *Id.*

⁹⁸ Human Rights Caucus, *The UN Human Rights Protocol: Lost Opportunity to Protect the Rights of Trafficked Persons* (2002), *available at* <http://www.stop-traffic.org/news.html> (last visited April 8, 2004).

⁹⁹ ELAINE PEARSON, HUMAN TRAFFIC, HUMAN RIGHTS: REDEFINING VICTIM PROTECTIONS 47 (Anti-Slavery International 2002) [based on research conducted by Anti-Slavery International over a two-year period in ten countries consisting of: the Netherlands, Belgium, the United Kingdoms, the United States, Italy, Nigeria, Thailand, Columbia, Ukraine, and Poland]. Another international NGO has found that “[t]he decision to press charges may have major consequences for the persons concerned, both in relation to their safety, in the light of the risk of retaliation against the person or her/his family (especially in cases of organized crime), and in relation to their future prospects.” Global Alliance Against Trafficking in Women

et. al., *Human Rights Standards for the Treatment of Trafficked Persons* (1999), available at http://www.hrlawgroup.org/resources/content/IHRLG Traffickin_tsStandards.pdf (last visited March 12, 2004).

¹⁰⁰ The results of the case studies, which consisted of Albania, Austria, Belgium, Czech Republic, Germany, Hungary, Italy, the Netherlands, Spain and Ukraine, revealed that many trafficked persons “fear from them [the traffickers] or from corrupt officials in the country of origin, including fear for their and their family’s physical safety both in the country of destination and origin.” Joanna Apap, *Protection Schemes for Victims of Trafficking; in selected EU Member Countries, Candidate and Third Countries*, International Organization for Migration, IOM Research Report (2003), available at http://www.iom.int/DOCUMENTS/PUBLICATION/EN/Protection_Schemes.pdf (last visited March 15, 2004).

¹⁰¹ Pearson, *supra* note 99, at 47-48.

¹⁰² Elaine Pearson, *The Need for Effective Witness Protection in the Prosecution of Traffickers* (2001), available at <http://www.antislavery.org/archive/other/witnessprotection.pdf> (last visited March 15, 2004).

¹⁰³ Ryszard Piotrowicz, *European Initiatives in the Protection of Victims of Trafficking Who Give Evidence Against Their Traffickers*, IJRL 2002.14(263) (2002).

¹⁰⁴ Helga Konrad, *Task force on Trafficking in Human Beings*, ILO Symposium: Combating Trafficking in Human Beings- Learning from the European Experience (2003), available at http://www.ilo.org/public/english/region/asro/tokyo/pdf/2003tr_konrad.pdf (last visited March 10, 2004). Similarly, the European Law Enforcement Organization (“EUROPOL”) found that the effects of threats against victims of sexual exploitation by their exploiters makes it “very difficult for law enforcement officers to gain the trust of the exploited victims and to persuade them to testify as witnesses.” *Trafficking of Human Beings for Sexual Exploitation: a European Union Perspective* (2002), available at http://www.europol.eu.int/index.asp?page=publ_traffickingofhumanbeings (last visited March 12, 2004).

¹⁰⁵ Konrad, *supra* note 104.

¹⁰⁶ Apap, *supra* note 100, at 91.

¹⁰⁷ IOM, *Analysis of Institutional and Legal Frameworks and Overview of Cooperation Patterns in the Field of Counter-Trafficking in Eastern Europe and Central Asia*, Research Report at 1 (2003).

¹⁰⁸ Apap, *supra* note 100, at 58-59.

¹⁰⁹ *Id.*

¹¹⁰ Christine Becker, *European Forum on the Prevention of Organized Crime Workshop “Prevention of Trafficking in Human Beings,” The German Example: Local Cooperation in the City of Essen*, (2003), available at http://europa.eu.int/comm/justice_home/fsj/crime/forum/docs/300603_minutes.pdf (last visited April 8, 2004).

¹¹¹ *Id.*

¹¹² OSCE, *Guidelines for National Plans of Action to Combat Trafficking in Human Beings* (2001), available at http://www.osce.org/attf/attf_guides.pdf (last visited March 12, 2004).

¹¹³ Article 68 of the Rome Statute provides that the “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” Rome Statute, U.N. Doc. A/CONF.183/9 Art. 68, Sect. 1 (1998). Judges are given a broad requirement to consider the needs of victim-witnesses in making orders. *Id.* at Art. 43(6). The ICC also has a Victims and

Witnesses Unit, under the direction of the Registry creating the Unit, which is to provide protection, counseling, and other appropriate and necessary assistance for witnesses. The unit staff are required to have training in dealing with trauma, including trauma associated with sexual violence. The security measures implemented by International Criminal Tribunal for the Former Yugoslavia (“ICTY”) and the International Criminal Tribunals for Rwanda (“ICTR”) have been criticized. *See, e.g.*, William Walker, *Making Rapists Pay: Lessons from the Bosnian Civil War*, 12 St. John’s J.L. Comm. 449, 457 (1997); *See also*, Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in the Hague*, Human Rights Center, University of California, Berkeley 65 (May 2003) (for discussion of the fears and concerns that witnesses face when testifying before a tribunal).