

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 – April 24, 2004

I. Introduction

UC Berkeley’s Human Rights Center and International Human Rights Law Clinic convened an invited working group of government officials, representatives of nongovernmental organizations, academics from Mexico and the United States, as well as Mexican trafficking survivors to address the urgent and critical need to improve protection and support for Mexican forced labor survivors. This report summarizes the objectives of the meeting, our findings, and recommendations.

II. Working Group Objectives

The participants considered how law enforcement and social and legal service agencies can work together to improve protection and support for Mexican trafficking victims. The primary focused on four questions:

- A. What is the nature and scope of trafficking into the U.S. from Mexico?
- B. How can we better support and protect survivors of human trafficking?
- C. How can we improve transnational cooperation between NGOs and government on both sides of the border?
- D. What further research is needed?

III. Background

Each year, thousands of men, women, and children enter the United States and become captives of modern day slaveholders. As Mexico is the largest source of migration to the United States, Mexican nationals comprise substantial numbers of trafficking victims. 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.

Once trafficking victims manage to escape or are rescued, they face the difficult task of returning home or, if criminal charges are brought against their former employers in the United States, of deciding whether to testify against them in court. A forthcoming study on forced labor in the United States prepared by the Human Rights Center and Free the Slaves, documents the need for increased protection and support for trafficking victims and their families in home countries. Traffickers or their associates threaten family members of survivors who cooperate with law enforcement. And those who return home without assistance also are at risk. Unable to find work, they may be lured or forced back into the trafficking trade. The study finds that threats to family members are a serious problem that inhibits reintegration and rehabilitation of survivors and prevents them from cooperating with law enforcement.

Against this backdrop, the Working Group discussed specific U.S. prosecutions involving Mexican nationals; what were the strengths and weaknesses of the U.S. anti-trafficking model; and how protection for survivors could be enhanced. Members of the Mexican government and Mexican NGOs presented cases of human trafficking in Mexico; what were the strengths and weaknesses of the Mexican approach; and how protection for survivors and returnees could be strengthened. Participants considered a regional victim protection model used in Europe that involved regional cooperation between state governments and NGOs. The meeting concluded with a discussion that summarized the key policy concerns and recommendations on how the United States and Mexican governments, and NGOs can collaborate to address these policy concerns.

III. Policy Concerns & Recommendations

A. Protection for Family Members

Traffickers may be powerful and influential people in local Mexican communities. Family members may themselves be traffickers or be complicit in the trafficking. Therefore, traffickers quickly may know who to threaten or intimidate (family members, witnesses, other trafficked persons) long before government authorities are aware and able to put in place protective measures. Family members are particularly at risk during “critical periods” of reprisal, namely during and shortly after arrest of suspected trafficker, during hearings/trial, and during sentencing. It is important that protective measures be implemented during these times. Not only are protective measures needed for family members during these critical periods, but long-term protective measures are also needed. Two survivors who were part of the Working Group stated that although much time may have elapsed since the criminal proceeding and the trafficker may even be imprisoned, the fear of reprisal remains high among survivors and their families. Children may be particularly vulnerable to trafficking and therefore require additional protective measures.

Because of threats of reprisals, trafficking persons may be hesitant to testify against the trafficker, thus resulting in impunity. Families of trafficked persons may suffer harm, mental/emotional distress, intimidation, physical injury or death. Families of trafficked persons in Mexico are at risk of losing their homes, other property or income that may have been used as collateral to help finance transport-related fees and expenses. Despite the fact that the trafficking incident may be illegal and prosecuted in the United States, the resulting debt in Mexico may still be valid and the traffickers may still be able to collect on the debt, thus holding the families of trafficked persons in a financial stranglehold.

Recommendations:

- Information be provided to families of trafficked persons quickly and continually by establishing communication channels with family members in Mexico. This may be facilitated by ensuring NGO access to trafficked persons immediately (within 24 hours of case being discovered) and by securing a means of confidential communication between all parties (NGO, trafficked persons, their families, law enforcement & prosecutors).
- A “danger” assessment be developed to assess the level of danger to trafficked persons, their families and to NGOs by investigating who are the traffickers and what are their connections.
- More comprehensive identity and witness protection measures for trafficked persons and their families should be developed, particularly during the critical periods of reprisal.
- A mechanism be established to cancel the trafficking debt in Mexico.

B. Protection for Returnees

Those who choose to return to Mexico require protection and support to re-integrate safely into communities and to avoid becoming re-trafficked. Trafficked persons suffer psychological and physical trauma and may be in need of psychological treatment and health care. It is unclear what happens to trafficked persons who return to Mexico – where do they live, how are they treated, what challenges do they face and are they able to access necessary services?

Recommendations:

- NGOs and governments develop better lines of communication and more dialogue to develop a transnational collaborative to assist returnees (based on La Strada model in Eastern Europe).
- More research be conducted to better understand what happens to returnees, what challenges they face upon re-integration, how are they received back in their communities and what services and assistance they need.
- Greater funding be allocated to develop a full range of services for returnees, including psycho-social, health and legal assistance, and particularly for long-term psychological care.
- Transnational measures to track and confiscate assets of traffickers be developed so that these assets can be re-distributed to returnees (and to trafficked persons who remain in the US) as a form of compensation and to service providers.

C. Protection/Support for Survivors in the United States

Trafficking survivors who remain in the United States are also in need of on-going protection and supportive services as they adjust to life in new surroundings. These may include social/cultural orientation; housing assistance; psychological and health treatment; legal assistance; and, employment training and education. Trafficked persons live a life of continual upheaval and unpredictability; they are forced to change their addresses and telephone numbers. Survivors must be continually vigilant in order to evade being identified by traffickers. In addition, trafficked persons must live for significant periods, sometimes for years, estranged from their families in Mexico, resulting in loneliness, stress and disruption in normal family/personal relations.

Recommendations:

- The courage and strength of trafficked persons be recognized in order to gain their trust and to understand the emotional impact of trafficking.
- Family reunification be expedited. This may require transnational work to resolve child custody issues in Mexico.
- Trafficked persons be informed of their rights at Mexican Consulate, if it is deemed safe to do so. Additional protections may be required to ensure that access is safe as traffickers may be posted outside the

consulate during work hours and that some traffickers may have connections within some embassies.

- Trafficked persons be educated on the benefits and potential consequences of cooperating with an investigation/prosecution of the trafficker, so that they can make fully informed decisions.

D. Protection Against Disclosure of Identifying Information

Although media reports of human trafficking can be helpful in educating the public and policy makers, media inquiries and reports can also be harmful to trafficked persons and their families by revealing identifying information such as names and the locale and identities of trafficked persons. Such exposure places trafficked persons and their families at risk for reprisals by traffickers and their affiliates.

Recommendations:

- Safe and discrete investigations be conducted in both the United States and Mexico where confidential communications can be secured.
- Measures be taken to prevent disclosure of identities and locales of trafficked persons and their families, including by the media. Such measures may include the development of media training on confidentiality.

E. Corruption/Lack of Training Among Law Enforcement at the Federal vs. Local Levels

Trafficked persons who were part of the Working Group expressed a distrust of Mexican local law enforcement and stated that they would be hesitant to report trafficking cases to local law enforcement because they feared being treated as criminal suspects, and not as victims of a crime. As a result cases of trafficking are not reported because the trafficked persons fail to see any benefit in doing so. This results in impunity.

Recommendations:

- Corruption be addressed at all levels of government and a mechanism for direct communication with federal Mexican authorities be developed.
- A U.S. – Mexico rapid response system be developed (that would include both NGOs & IGOs) to ensure that trafficking cases are

properly investigated and witnesses and victims afforded adequate protections.

- Trainings regarding trafficking be developed for members of local law enforcement.

F. Strengthening and Supporting NGOs

Mexican NGOs acknowledged that Mexican civil society needs strengthening to develop its capacity to address trafficking, which is a new issue. One difficulty for NGOs trying to address the issue of trafficking is that there is not an adequate legal framework within Mexico to prosecute traffickers. Some trafficking cases may be brought under immigration laws and others under anti-slavery statutes. However, some forms of trafficking may evade prosecution under both types of law. NGOs also cited the lack of communication and information sharing between NGOs and governmental agencies and the lack of transparency in governmental decision-making and action as inhibiting their work. NGOs expressed that they do not have access to federal authorities and thus cannot find out information about trafficked persons, and they have no governmental channel through which to express concerns. Mexican NGOs stated that they were not sufficiently supported by the government through public funding and resources. It was also noted that the NGO community is dispersed and thus unable to address trafficking through a coordinated response where limited resources could be shared.

Recommendations:

- The Mexican government should develop a comprehensive anti-trafficking statute, prosecute more trafficking cases (like the Cadena case) and provide for victim restitution.
- Financial support for education, training and program development, including leadership development, and peer education be increased in order to strengthen and expand the capacities of NGOs.
- Mexican government agencies and NGOs develop better lines of communication and work to develop collaborative relationships in order to address trafficking.
- The Mexican government should provide NGOs with better access to documents and to information about trafficked persons.

G. The gap between law & practice

Working Group participants noted that despite the laws on the books to prosecute trafficking and to protect trafficked persons in the U.S. and Mexico, a lack of awareness of these laws exist that results in these laws not being vigorously implemented nor interpreted broadly. A lack of awareness exists among the general population, among local law enforcement and to some degree among federal authorities.

Recommendations:

- Research be encouraged and funded to examine the gap between law and practice - how do cases proceed through the criminal justice system; what obstacles exist; how can the system be improved; what is the nature of organized crime; and, what types of trafficking exist.
- International protocols against trafficking should be ratified by Mexico and these international prohibitions must be translated to the national and local levels through the passage of domestic laws/regulations. Domestic laws must be accompanied by comprehensive training and education at the federal and local levels.
- Transnational training and education be instituted in order for both U.S. and Mexican law enforcement to understand the laws, procedures and governmental infrastructure on both sides of the border and how these relate to the investigation and prosecution of human trafficking.