

THE ROLE OF THE ATTORNEY GENERAL IN COUNTERING THE TRAFFICKING OF PEOPLE AND MIGRANTS AS A TRANSIT ROUTE DUE TO THE GEOGRAPHICAL POSITION OF PANAMA

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I. THE COMMITMENT OF THE ATTORNEY GENERAL'S OFFICE TO BATTLE TRANSNATIONAL ORGANIZED CRIME IN PANAMA

The Isthmus of Panama is a historic link between North and South America. It has been a strategic international commercial location due to its terrestrial and maritime accessibility, which place this Central American nation as a transit point for different markets, some of them being illicit markets served by organized crime groups. The Attorney General's Office, hand in hand with its auxiliaries, carries out daily operations throughout the country, the purpose of which is to dismantle groups dedicated to illicit drug trafficking, the illicit arms trade, money laundering, human and migrant trafficking among others. These criminal activities greatly affect the human rights of all people within the national territory.

The Attorney General and Public Prosecutor's Offices, as the entities responsible for criminal prosecution, are at the forefront of the progress that is being made in the area of criminal investigation in other countries. Best practices that benefit justice administration must be adopted, respecting the rights of the victims of these crimes, and thus strengthening international cooperation through the possibility of sharing experiences and acquiring knowledge that benefits prosecution.

A. Current Status of Trafficking in Persons and the Smuggling of Migrants

With respect to trafficking in persons and smuggling of migrants, the Republic of Panama can serve as a transit territory in which criminal organizations use the different maritime and land borders to transport victims from their country of origin to their intended destination.

- Regarding trafficking in persons, organized crime groups exploit victims by forcing them into prostitution or other forms of sexual exploitation, forced labour, servitude, begging, as well as the extraction of organs, so it is important to know exactly the different forms of exploitation that exist today.
- However, the purpose of smuggling of migrants is different: to obtain a material or economic benefit based on the illegal entry of a person to a country in which they do not have a stable migratory situation, for which migrants grant their "consent", in order to reach their destination.
- Transnational organized crime groups play roles in both trafficking in persons and smuggling of migrants, which represents a threat against the state in which they are carried out, since in order to carry out these crimes they have an operative team willing to do anything necessary to achieve their objective, even if these "techniques" endanger the lives of the victims, This includes the commission of various acts of corruption that undermine the legal security of the state.

B. Criminalization of Trafficking in Persons, Smuggling of Migrants and Related Offences

In Panama, trafficking in persons is criminalized and understood as the means by which the capture, transportation or transfer of people is made through the use of threats, deception, or vulnerability of the victim, to carry out their exploitation, for which a penalty of 15 to 20 years in prison will be imposed if the victim is subject to sexual exploitation, labour, slavery, forced labour, begging and the illegal extraction of organs. Nevertheless, the crime is classified as aggravated, and penalty will be enhanced from 20 to 30 years, if the victim is a minor, is in a vulnerable situation, if the victim is used in acts of exhibitionism through photographic means, if the act is executed by deception, if it is performed by a close relative or is performed

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by a public servant.

The smuggling of migrants, on the other hand, is directed to any person who promotes, finances or facilitates the entry or exit of people from the national territory, for the purpose of smuggling migrants, even when they give their consent. A sentence of 15 to 20 years in prison will be assigned to the investigated, while the penalty will be aggravated from 20 to 30 years, when the migrant is a minor, when their life is at risk, when they are pregnant, have a mental or physical disability, as well as having the act committed by a public servant.

C. Investigation, Prosecution and Adjudication of Trafficking in Persons and Smuggling of Migrants Cases

1. Challenges in the Investigations

The investigation and prosecution of crimes of trafficking in persons and smuggling of migrants is an important challenge given the clandestine nature in which the events take place. Handling such cases is complex, precisely because of the empathic relationship that may arise between the trafficker and the victims; in many cases the trafficker is the only contact the victim has with her place of origin. Similarly, the investigation of these crimes poses a challenge to the prosecutors since the victims of these crimes are distrustful of the law, the police, migration and any other intervening authority, due to the manipulation that can be carried out by the trafficker.

Effective measures are necessary to identify, investigate and prosecute the masterminds and the true beneficiaries and to deprive them of their illicit gains. Panama, through Law No. 121 of 2013, has adopted a specialized Law against Organized Crime, in which the purpose is to identify, investigate, pursue and punish organized crime. The law enables the use of special investigation techniques for the purpose of dismantling criminal organizations by using covert operations, surveillance and monitoring, controlled delivery, controlled purchases, and interception of communications. These techniques must be tailored to the nature of each particular case in which care must be taken to protect the lives of the victims and witnesses of the events while obtaining valuable information on the operations of organized crime groups.

In the same sense, in order to obtain better results in the different investigations, the application of penalty agreements can be adopted. Penalty agreements are carried out between the prosecutor, the person under investigation and their legal representatives, so that the masterminds of the criminal organizations can be identified through effective collaboration. This should be the main object of the investigation, because if we limit ourselves to investigating the people who make the transfers and not those in charge of making these connections, the investigations will not have any purpose, since these people in charge of executing the orders can be replaced by the criminal organization. That is why penalty agreements are promoted by prosecutors. Such agreements help prosecutors determine the structure of the criminal organization, allowing it to be attacked at its core. However, in order to carry out these investigative strategies, it is necessary to promote reciprocal international assistance through joint investigation among nations so that progress can be achieved in parallel.

2. Ensuring Cooperation of Trafficked/Smuggled Persons and Securing Their Testimony

The protection of witnesses and victims must occur comprehensively at each stage of the process. Different protocols for cases of human trafficking and migrant smuggling have been adopted for the victims who are in need of protection when detained while transiting through Panama. These protocols provide for the physical and psychological recovery of the victims, witnesses and other intervening parties. The protocols are administered by the Victim Attention Unit, which ensures that victims receive the legal, psychological and social support that facilitates an understanding of the real situation of the victim and what support should be provided to avoid revictimization. In this way, taking into account the seriousness of the events in which the victims are immersed, protection measures are applied to ensure the safety of the victims and witnesses throughout the process, such as:

- Holding closed-door hearings
- Non-disclosure of information
- Preventing contact between the suspect and the victim
- Testimony through video or other technologies
- The use of pseudonyms

- Use of Gesell chambers to obtain victim testimony while protecting their integrity and avoiding their participation on repeated occasions throughout the process
- Avoiding revictimization
- Not treating victims as criminals

It is of the utmost importance that the victims of human trafficking and migrant smuggling can be protected through the cooperation of different agencies, among which the application of all measures of security to remain in the territory can be carried out first during the Prosecutor's investigation, without any type of attack against their physical integrity, protecting them from a new risk of victimization. Thus, through international cooperation, the process of repatriation must be secure, which requires extensive communication with the country of origin that guarantees the security of the person upon return, as well as granting the corresponding permits and documents of travel without delay.

3. Suppression of Related Crimes, Investigation, Prosecution and Adjudication of Those Involved in the Exploitation of Trafficked/Smuggled Persons

The criminal laws punish all people who knowingly assist a trafficker engaged in trafficking in persons or smuggling of migrants. Those people are investigated and punished with a sentence of imprisonment even if they provide assistance with the consent of the victim.

In the Public Prosecutor's Office of Panama, the crimes of trafficking in persons and smuggling of migrants are handled by different regional agencies in charge of the investigations. Officials from these agencies must be trained to identify the different peculiarities of trafficking and smuggling crimes and to handle the victims with dignity, because not knowing how to handle these investigations at the initial stage can result in the loss of evidence, or the case might be treated as another type of crime. Trafficking in persons can be confused with the forced labour of minors or pimping, which can lead to an investigation of a less serious offence, and those under investigation may be punished with inappropriate penalties. Once the case has been identified as smuggling of migrants or trafficking in persons, the Republic of Panama has at the investigation stage a Superior Specialized Prosecutor's Office against Organized Crime, which has jurisdiction throughout Panama to conduct investigations, and with the support of the different regional offices, it is possible to obtain good results.

In the area of procedure, Panama has adopted a system of oral prosecution, which entails a constant process of adaptation and preparation of investigations based on a theory of the case which should be tested at the trial stage which corresponds to practice the tests and demonstrate the responsibility of the person investigated. With regard to trafficking in persons, penalty agreements have been reached in which the persons investigated have admitted responsibility and have accepted prison sentences to avoid being brought to trial.

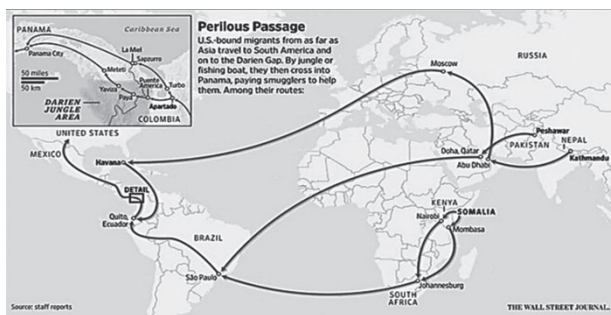
The Trafficking in Persons Section is currently investigating a case of Internal Labor Trafficking of a victim of 17 years of age, female and indigenous, which is originally from the Province of Bocas del Toro, where it was caught, the report was filed by a neighbour, where she relates that the girl was brought from the province of Bocas de Toro by a family as a domestic worker, working specifically in the care of 4 underage children as well as all the household chores without receiving a payment for 5 months, until she was able to escape after having been threatened by the owner of the home with a knife to continue doing her job, many times. The minor indicated that she had been mistreated, humiliated and insulted by her boss because she was an indigenous person, she pointed out that her working day was over 14 hours. She was even forbidden to talk to neighbours or tell someone that she had not been paid or communicate with her family, so she decided to flee and seek help.

On the other hand, the type of trafficking that occurs most frequently in Panama is trafficking for the purpose of sexual exploitation, in which in many cases the victims are foreigners, usually from Colombia and Venezuela, because of the economic situation and social issues facing these countries, the victims are captured for prostitution, first they are confined in hostels and they profit through the sexual relations service, where they provide all the elements to receive the clients from whom they obtain great economic benefits, that in many occasions it is tolerated by the victims because they require the economic income to help their families, to carry out this activity they completely control the documents of the young people and they watch them to avoid having economic losses, for which here I am going to include some pictures of different centres

where this activity took place.



In relation to the crime of migrant trafficking, Panama is an international transit route, being the access route to North America. People enter South America through Brazil or Bolivia, and they transit through Peru to Ecuador. Subsequently, through the Colombian and Ecuadorian border, they leave for Panama, then Costa Rica. They pass through Guatemala and Mexico, with their final destination in the USA, for which Panama uses a Biometric Analysis System to verify the entry and exit from the country.



For the year 2016, a joint operation called 'Mesoamerica' was carried out, which integrated the police teams of five nations (Costa Rica, Honduras, Guatemala, El Salvador and Panama), which aimed to put an end to an associated criminal structure with migrants and their illegal transfer to US territory. Through this collaboration, 33 subjects were captured. They used to traffic people of Asian and African origin who wished to enter the United States using 'green roads'.



D. International Cooperation

It is of the utmost importance that the judicial bodies of the different nations create links where cooperation can be effective through officials who have full knowledge of the vanguard techniques, where each state handles the same tools that facilitate timely communication and in real time to minimize the consequences of transnational criminal groups, to achieve effective mutual legal assistance.

Cooperation with related agencies in other jurisdictions is also important. Achieving judicial communication between the different states that are victims of the scourge of organized crime is a joint task that involves a lot of coordination; however, if it is carried out in a timely manner, it will be a mechanism through which the different migration institutions will have open communication channels, and administrative bureaucracy will be reduced, which translates into better care for victims within these crimes.

E. Prevention and Detection of Trafficking in Persons and Smuggling of Migrants

As part of a management programme for these crimes of high international impact, it is very important, as a representative in this course of the Attorney General's Office, to act as a multiplying entity of knowledge through institutional academic spaces in which we will support comrades in the different criminal investigations that arise from the crimes of human and migrant trafficking.

In the same way, as representatives of society, we carry out periodic training for the community in different crimes of impact such as sexual crimes, for which campaigns of the crimes of human and migrant trafficking in the different medical centres may be initiated, educational establishments, institutions in which they collaborate providing information on the importance of assessing the emotional reactions presented by the victims of these crimes, always having gender as a central perspective.

Sensitizing the community to the possible signs of people who are victims of such crimes—such as depression, hopelessness, numbness, detachment, loss of interest in life, as well as panic attacks, fear and hyper-vigilance—can help detect possible acts of human trafficking. In this sense, the approach that institutions must provide must be focused on guaranteeing the safety, protection and assistance for victims without judging them or accusing them of crimes, as they have no responsibility for the events that led to their trafficking. This requires a high degree of professionalism of the staff.

Currently, the role I play is as prosecutor in charge of the Decision and Early Litigation Section in the Province of Bocas del Toro. My section is in charge of ordering the apprehension of the persons under investigation, formulating charges and adopting the precautionary measures and measures that help the process to be carried out without any interruption. Within this section we have had the opportunity to conduct high-profile investigations for crimes of possession of weapons, extortion, sexual crimes in which we have achieved good results through teamwork. Our aim is to protect the victim of the crime through effective collaboration.

Among the victims that we have had to attend, we have been able to work with victims in a great state of vulnerability, for which we apply protection measures against the aggressor, as well as the making advances within our jurisdiction by using Gesell chambers—with the presence of judges, defenders and other interveners—which serve as a method to avoid revictimization. The video recording of interviews and witness testimony given in Gesell chambers also avoids revictimization because the recordings are played as evidence at trial, thus avoiding the need for the victim to testify again.

As well as in the cases in which operability has been required, there have been searches, visual inspections and covert operations aimed at the clarification of the different investigations, which have been positive, and the facts investigated have been clarified.

The province of Bocas del Toro faces geographical challenges with broad maritime and land access, which is a key point in Panamanian tourism, in which the crimes of trafficking in persons can occur through the mode of traffic and destination of the victims, in the different hotel and leisure spaces, for which I consider it is important to have the trained human resources in this vulnerable area, who can count on the skills and the current techniques for the detection and attention to the victims.

With respect to the crime of trafficking in persons, the territory in which we operate borders on Costa Rica, making it a vulnerable area to be used as a transit point for migrants to North America, since many of the border crossing points may be trafficking migrants without the proper controls that organized groups can take advantage of so that teamwork with immigration officials and the Border Police, together with the Public Prosecutor's Office are key in the follow-up of these international crimes.

It is very important to have a space where colleagues from the international community can share experiences. By the nature of our geographical position, the participation of the Attorney General's Office of Panama is very important because we can illustrate to origin and destination countries our approach to people who are in transit and how our approaches have evolved by placing emphasis on victim protection from the first contact with law enforcement authorities through the investigation phase, trial and repatriation.

Being able to share our experiences allows us to acquire knowledge and to be able to adopt concrete strategies that may be effective in another part of the world. This directly influences the adoption of best practices in justice systems, and leading of objective investigations in which the rights of all participants are recognized, always remembering that we work willingly to respond to society.