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## PARTICIPANTS' PAPERS

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### CHALLENGES IN FIGHTING HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION IN BRAZIL AND AROUND THE WORLD - PROPOSALS FOR IMPROVEMENT

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#### I. INTRODUCTION

The United Nations Office on Drugs and Crime (UNODC) and the International Labour Organization (ILO) already indicated, in 2010, that human trafficking victimized around 2.5 million people, and generated approximately US\$32 billion per year, making it the third most profitable illicit business in the world, right behind drug and arms trafficking.<sup>1</sup> Still according to the UNODC, in 2016, official records revealed more than 26,000 cases of human trafficking, with a “black cipher” estimated to be much higher.

In as much as the “Palermo Protocol” defines human trafficking as the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. Meanwhile, “[e]xploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Absolutely, there are various forms (registered around the world) to commit the crime, such as trafficking for exploitative begging, forced or fraudulent marriage, pornography, illegal adoption, forced criminal activity, removal of organs, recruitment of armed combatants in wars (“children-soldiers”), kidnapping babies (of pregnant women), among others. However, in general terms, trafficking for sexual exploitation and forced labour purposes stand out (the main activities are: livestock farming, heavy agriculture, industrial textile, mining, coal, civil construction, domestic work, etc.).<sup>2</sup>

In truth, the most common reasons for human trafficking around the world are sexual exploitation (38.7%) and forced labour (38.8%), as shown in the United Nations Office on Drugs and Crime report 2022.<sup>3</sup> Although sexual exploitation has decreased proportionally compared to forced labour, female victims continue representing 60 per cent of the identified trafficking in persons cases. In South America, 63 per cent of the victims are female: women and girls, even though forced labour is the most common form of exploitation experienced by detected victims of trafficking in Brazil. Regrettably, the country has the highest incidence of trafficking for sexual exploitation in South America, according to UNODC.

Human traffickers, lamentably, violate the most basic human right: to be free. Through violence, threat, or fraud, traffickers affect every country in the world, diminishing and destroying communities, the public’s sense of safety, and the global economy. The impact of this evil has severe repercussions on the entire global structure, requiring joint work by all countries and the partnership of all people to effectively combat the crime.

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<sup>1</sup> United Nations Office on Drugs and Crime report 2010.

<sup>2</sup> United Nations Office on Drugs and Crime report 2018.

<sup>3</sup> The UNODC 2018 report shows different numbers for sexual exploitation (50%) and forced labour (38%), however, the most recent numbers cannot be attributed exclusively to the reduction in human trafficking for sexual exploitation, but rather due to the closure of public spaces (places where exploitation was more frequent) and the removal of the activity to hidden locations, making it difficult to detect this form of trafficking.

For all these reasons, almost all countries in the world currently have legislation in force criminalizing human trafficking, mostly based on the “Palermo Protocol”.

## II. THE BRAZILIAN EXPERIENCE

Brazil has a territorial area of 8,510,295 km<sup>2</sup>, boasting a maritime border of 7,367 km and approximately 16,886 km of land borders with 10 countries: Argentina, Bolivia, Colombia, “France” (French Overseas Department of French Guiana), Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela.<sup>4</sup>

In the past, Brazil was considered just a country of origin, preponderantly for prostitution of women in Europe. Currently, Brazil is the origin (for example, for prostitution/exploitation and illegal adoption in Europe and Asia), transit (from South America for drug trafficking and prostitution in North America and Europe, as well as from Africa and Asia to the USA), and destination (for instance, from Latin Americans to slave labour and prostitution) for thousands of victims.

Data from the National Human Rights Ombudsman’s Office of the Ministry of Women, Family and Human Rights of Brazil reveal that, in 2018, the dominant forms of human trafficking were internal and international, forced labour and sexual exploitation. Nonetheless, other reasons for human trafficking in Brazil are not rare, such as for illegal adoption<sup>5</sup> or forced criminal activity.<sup>6</sup>

“The World Childhood Foundation” – an NGO founded by Queen Silvia of Sweden – estimates that, in Brazil, there are significantly more than 20,000 cases of sexual exploitation of children and adolescents per year. In truth, data from the Ministry of Health from 2011 to 2017 revealed 141,105 notifications of sexual violence against children and adolescents, that is, more than 20,157 cases per year.<sup>7</sup> Likewise, the relationship between human trafficking and the sexual exploitation of minors is very strong. In fact, it is estimated that there are more than 240 national and international trafficking routes for sexual exploitation of women and girls across Brazil.<sup>8</sup>

In Brazil, the “Palermo Protocol” was promulgated through Decree #5,017, of 12 March 2004, following the best world practices, focusing on three areas of action: prevention and repression of crime, as well as protection for victims. Guided by the “Palermo Protocol”, Law #13,344, of 6 October 2016 – which provides for the prevention and repression of internal and international human trafficking – amended the Brazilian Penal Code, inserting article 149-A,<sup>9</sup> which requires the conjugation of “Conduct” + “Means” + “Purposes”

<sup>4</sup> See <<http://info.lncc.br/#:~:text=Com%20uma%20fronteira%20mar%C3%ADtima%20de,da%20ordem%20de%2016.886%20quil%C3%B4metros.>> accessed on 9 March 2024.

<sup>5</sup> “Case Deverra” (Penal Action #5010493-22.2023.4.03.6105) was launched, between 2023 and 2024, to combat an international organization created to traffic babies from Brazil to Europe for illegal adoption. In this case, the social network Facebook was used to create a bond between the traffickers and the pregnant women who sold the children.

<sup>6</sup> “Case White Sand” was developed, between 2022 and 2023, to combat an international criminal organization that enticed Brazilians, through social networks (Facebook and Instagram), with false promises of employment in Asia, aiming to traffic people to commit “cyber fraud” (forced criminal activity), in Cambodia, Laos, and Myanmar.

<sup>7</sup> See <<https://ch-wordpress.s3.amazonaws.com/uploads/2022/12/dadosviolenciasexualcontracriancase%20adolescentes2020-final.pdf>> accessed on 9 March 2024.

<sup>8</sup> According to the “Research on trafficking of women, children, and adolescents for sexual exploration purposes - PESTRAF - December 2002”, in <[https://andi.org.br/wp-content/uploads/2020/10/Pestraf\\_2002.pdf](https://andi.org.br/wp-content/uploads/2020/10/Pestraf_2002.pdf)> accessed on 9 March, 2024.

<sup>9</sup> “Article 149-A - Agency, entice, recruitment, transportation, transfer, purchase, host or shelter a person, through serious threat, violence, coercion, fraud or abuse, with the purpose of:

- I - remove organs, tissues, or parts of the body;
  - II - subject her to work in conditions similar to slavery;
  - III - subject him to any type of servitude;
  - IV - illegal adoption; or
  - V - sexual exploitation.
- Penalty - imprisonment, from 4 (four) to 8 (eight) years, and fine.

§ 1º The penalty is increased from one-third to half if:

- I - the crime is committed by a public official in the exercise of his functions or under the pretext of carrying them out;

(See Figure 1, below).

Thereafter, at least in terms of criminalizing human trafficking, Brazil obeys the principles of the “Palermo Protocol”, minimally typifying the most common conduct. However, Brazil still needs to implement more preventive and assistance actions, in addition to improving criminal repression.

Incidentally, in Brazil, the Federal Prosecution Service (MPF) is the entity authorized to prosecute criminal cases of international human trafficking, being the exclusive holder of the criminal action in this matter. Nevertheless, inappropriately, the Brazilian Federal Prosecution Service has just partially specialized offices in human trafficking in the capital of the state of São Paulo, the biggest unit in Brazil. All the other units spread across Brazil are not specialized, which can be a major challenge in prioritizing cases involving human trafficking.

**Figure 1**

<b>Conduct</b>	<b>Means</b>	<b>Purpose</b>
1) Agency	1) Serious threat	1) Removal of organs, tissues and other parts of the body
2) Entice	2) Violence	2) Submission to work in conditions similar to slavery
3) Recruit	3) Coercion	3) Sexual exploitation
4) Transport	4) Fraud	
5) Transfer	5) Abuse	
6) Purchase		
7) Host		
8) Shelter		

In the same way, the Brazilian Federal Police (PF) – responsible for investigating cases of international human trafficking in Brazil – does not have teams specialized in the subject to conduct investigations, with cases being spread across the country (as in the MPF). This omission in specialization and prioritization – both in the MPF and PF – generates several problems, from simple unfamiliarity with the subject to the lack of preference of cases, which often remain invisible. Just to illustrate, according to data extracted from the MPF’s management data system (“Único”), in 2023, there were 317 investigations, 10 criminal actions, and 4 convictions relating to human trafficking (article 149-A of the Penal Code), besides 12 convictions under article 239 of Law # 8,069/1990<sup>10</sup> (Child and Adolescent Statute). These numbers are very timid for a country with the continental size and population of Brazil, as well as if compared to the estimates of several researchers.

### III. DIFFICULTIES AND COUNTERMEASURES

The difficulties in holding those involved in human trafficking criminally responsible are many due to numerous factors, especially the poor communication among authorities responsible for repressing the crime, the lack of specialized units and professionals involved in combating the problem, as well as even cultural

II – the crime is committed against a child, teenager, or elderly, or disabled person;

III – the agent invokes kinship, domicile, coexistence, hospitality, economic dependence, authority, or hierarchical superiority inherent to the exercise of employment, position, or function; or

IV – the victim of human trafficking is removed from national territory.

§ 2º – The penalty is reduced by one to two-thirds if the offender is a first-time offender and is not part of a criminal organization.”

<sup>10</sup> Article 239 - Promote or assist in carrying out an act aimed at sending a child or adolescent abroad without complying with legal formalities or aiming to obtain profit:

Penalty - imprisonment of four to six years, and fine.

Single paragraph - If there is violence, serious threat, or fraud:

Penalty - imprisonment, from 6 (six) to 8 (eight) years, in addition to the penalty corresponding to violence.

and socioeconomic issues.

It is common for victims to stop seeking help and refrain from reporting delicate facts because they do not want their names involved in such a practice, mainly they do not consider themselves victims, or they are afraid for their physical safety and families, or even they are just ashamed. In other cases, the large time lag between the consummation of the facts and the arrival of the news to the competent authorities for repression and criminal liability of criminal agents ends up hindering precautionary measures that could strengthen the process.

For example, many cases of international human trafficking are reported to the State Police Stations, which initiate investigations related to trafficking in persons as if they were false imprisonment, ruffianism, or sexual harassment. Additionally, the State Police fail to send information to the competent federal authorities (MPF and PF) about a possible international human trafficking crime. These repeated delays in reaching the authorities responsible for repressing trafficking in persons make it extremely difficult to repress criminal agents and hold them accountable.

For instance, in 2020, the MPF was informed by Latin American counterparts (Prosecution Service of Paraguay) about two cases of human trafficking that occurred in Brazil (and were not being adequately investigated): 1) Paraguayan women trafficked for prostitution in São Paulo (only discovered when they tried to cross the border back to Paraguay due to the pandemic), and 2) Paraguayan men brought, through fraud, to forced labour in the (counterfeit) tobacco industry in Rio Grande do Sul (more than 35 individuals were held captive in a basement without windows, natural light and exit route, for weeks, being served by a single latrine, with the investigation focusing exclusively on slave labour and ignoring the trafficking of workers and their perpetrators).

The news reached the Prosecution Service of Paraguay through some of the victims who returned to the country (and were blocked during the Covid-19 pandemic) and the press (newspaper article published in Paraguay about the rescue of Paraguayan workers by the Civil Police in Rio Grande do Sul). After direct communication through the Ibero-American Network of Specialized Prosecutors against Human Trafficking and Migrant Smuggling (REDTRAM) of the Ibero-American Association of Prosecution Services (AIAMP),<sup>11</sup> and a survey with the local police, it was possible to observe that the cases had been communicated to the Brazilian authorities; however, they had been limited to minor crimes, under state jurisdiction. Investigations and prosecutions for human trafficking simply had not been conducted. As communication was quick through REDTRAM, the two cases could be investigated. However, these are satisfactory exceptions, when the investigation could move forward despite the initial problem of communication, mostly due to the ease of reliable communication inside REDTRAM.

Furthermore, due to the high complexity of the criminal description of human trafficking, with 8 types of conduct, 5 means, and 5 specific purposes, which must be conjugated, most of the time criminal agents end up being investigated, prosecuted and convicted for other less complex types of crime, such as article 239 of the Child and Adolescent Statute. The same occurs with trafficking in persons for forced labour, which is usually just prosecuted as modern slavery.<sup>12</sup>

Unfortunately, Brazil shows modest efficiency in preventing, repressing and controlling trafficking in

<sup>11</sup> REDTRAM was created in 2011 within the scope of AIAMP, with contact points from each of the 21 participating Prosecution Services, to serve as an informal cooperation network to combat human trafficking and exploitation, through activities and actions that seek to improve communication between countries, promote preventive actions, reduce the delay in criminal repression, increase the efficiency of criminal prosecution and increase the real-time protection of victims. The main objective of trying to overcome the slowness and excessive formalism of international legal cooperation instruments is generally sought through the exchange of good practices (for instance, training on the crime of human trafficking from a gender and human rights perspective), paradigmatic cases and information (spontaneously exchange of relevant information through the web platform "IberRed" or, in case of urgency, through mobile phone and WhatsApp group), creation of joint activity plans (for example, common database), establishment of general or specific commitments (e.g., minimum standards related to the protection, assistance and repatriation of victims of trafficking, confiscation of assets resulting from the crime in order to guarantee adequate and comprehensive reparation to victims, etc.), Joint Investigation Teams, among others.

<sup>12</sup> See second example above.

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persons, with a very low number of initiatives of prevention against the crime and assistance to victims, as well as criminal prosecutions and convictions against the traffickers. Undeniably, the Federal Prosecution Service itself does not appropriately prioritize the fight against this kind of crime, as it should. Thus, the future JICA/UNAFEI's training (conveying a greater specialization) is intended to be a tool to reduce this lack of prioritization.

The Federal Prosecution Service is already trying to strengthen the fight against human trafficking through the creation of a "Special Action Group to Combat International Trafficking in Persons and Smuggling of Migrants (GAEETCO)", still in progress in the Superior Council of the Federal Prosecution Service (CSMPF) through Resolution Project #147/2022.

Certainly, the installation of specialized offices for privately fighting against human trafficking (in the MPF and the PF) would significantly improve the quality of the work, since data collection (to be used strategically in defining actions) to the development of investigations and criminal proceedings, as well as freezing and forfeiture of resources arising from and intended for the crime. However, the expertise of the GAEETCO's members is essential for the success of the strategy.

In addition, other possible solutions could favour the liability of criminal agents (or, at least, decrease the challenges), such as promoting controlled listening to the accounts of victims of trafficking in persons, and better coordinating institutions that work on the front line of repressing this criminal practice would also be very helpful.

Indeed, the approbation of project Resolution # 147, of 19 September 2022, in analyses at the CSMPF for the creation of the GAEETCO – which will be made up of offices with national assignment, specialized in human trafficking, migrant smuggling, and related crimes – would greatly improve the repression against trafficking in persons in Brazil, giving the necessary priority to the problem inside the criminal prosecution.

Moreover, the engagement with survivors of human trafficking – listening, learning and protecting victims – can be a real driving force in combating the crime, allowing a precise understanding of the context and causes of the illicit, as well as the way traffickers operate. While on the subject, active and sensitive listening proves to be fundamental in this scenario, chiefly in cases of sexual exploitation, which, as a rule, occurs in the dead of night and in hidden places.

Finally, from the attentive and receptive hearing of victims, many ideas can be extracted for the development and implementation of public policies aiming for the social reintegration of those rescued, taking into account their peculiar traumatic situations, and facilitating their readaptation to society.

## IV. CONCLUSION

To sum up, human trafficking must be combated with a focus on the three "Ps": 1) prevention; 2) prosecution, and 3) protection (assistance to victims). In this sense, to be very pragmatic, countries should focus on actions that address the problem holistically, such as:

- 1) disseminate to the general public the most common forms of human trafficking and the means to report it;
- 2) train employees of airlines, public transport (buses), airports, immigration, borders, taxis, transport apps, among others involved in transporting people and/or crossing borders to identify cases of human trafficking;
- 3) qualify vulnerable groups on forms of trafficking in persons, ways to identify traffickers and contacts for help;
- 4) train operators and agents responsible for law enforcement in identifying cases and victims, avoiding undue penalization of the latter in cases when different conduct is unenforceable (crimes committed

by victims who were forced to commit it);

- 5) investigate, prosecute, and vigorously punish (with significant penalties) cases of trafficking in persons regardless of the purpose for which it is intended, but in particular for sexual exploitation and child abuse;
- 6) prosecute and convict officials/authorities complicit in trafficking, including for any related corruption offences (even cases of “sextortion”);
- 7) increase the specialization of criminal prosecution teams – police and members of the Prosecution Service – creating units designed to exclusively combat the problem at a national level, as well as maintaining coordination with external bodies and partner countries;
- 8) compile and use strategically comprehensive data on, among others:
  - a) investigations, prosecutions and convictions involving human trafficking, identifying cases of sexual exploitation, slave labour, forced servitude, organ removal and illegal adoption;
  - b) identification of victims;
  - c) assistance offered and social reintegration of those rescued;
  - d) among others;
- 9) adequately criminalize the trafficking in persons, including children sexual exploitation, regardless of the use of violence, coercion or fraud, due to the special condition of vulnerability of minors;
- 10) implement programmes to protect victims and witnesses of human trafficking, avoiding threats and pressure from traffickers;
- 11) develop assistance and social reintegration programmes for victims of human trafficking in the community and in the formal job market;
- 12) confiscate assets and resources originating from or used in trafficking in persons, seeking to financially stifle traffickers and make the crime very costly;
- 13) investigate possible money-laundering arising from the lucrative crime of human trafficking.