



Human Trafficking in Puerto Rico: An Invisible Challenge

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January 2010

Ricky Martin Foundation

Universidad de Puerto Rico, Recinto de Río Piedras

The Protection Project 

JOHNS HOPKINS
UNIVERSITY



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As a human rights activist, I am honored to participate in this first investigation entitled “Trafficking in Puerto Rico: An Invisible Challenge”, carried out by sociologist and President of our Board, Dr. César Rey. Likewise, we are very grateful to Dr. Luisa Hernández Angueira and the extraordinary group of students from the University of Puerto Rico, Río Piedras Campus, who had the support of The Protection Project at The Johns Hopkins University School of Advanced International Studies and its Executive Director, Dr. Mohammed Mattar.

This historical publication strengthens the ongoing efforts of our principal project, People for Children. Committed to education as a prevention strategy, we recognize the findings of this investigation and the accompanying case studies, public policy recommendations, and series of educational initiatives as positive steps that will benefit our society.

Finally, I thank those partners that have supported us in this battle from the very beginning: The InterAmerican Development Bank, UNICEF, the International Organization for Migration, Save the Children, ATEST (Alliance to End Slavery and Trafficking, an initiative of Humanity United), Ambassador De Baca from the TIP Office, Nuestra Escuela, Iniciativa Comunitaria, SER de Puerto Rico, and all of the survivors who inspire me daily to continue fighting the battle against human trafficking.

This research and subsequent findings will enable us to abolish this modern form of slavery in Puerto Rico, and I am truly grateful that you are joining our cause today.

Ricky Martin
President and Founder
Ricky Martin Foundation



Human trafficking is a form of modern day slavery, a human rights violation, a crime against the state and the individual and a threat to human security. As such, combating this serious problem requires a comprehensive and multi-faceted approach that must begin with an understanding of the problem's magnitude so that an appropriate response may be developed and implemented.

The present study, "Human Trafficking in Puerto Rico: An Invisible Challenge," carried out by César A. Rey Hernández and Luisa Hernández Angueira of the University of Puerto Rico, in cooperation with the Ricky Martin Foundation; provides us with an in-depth exploration of the problem of human trafficking in Puerto Rico by way of valuable research and current data on the various forms of trafficking, including commercial sexual exploitation, labor exploitation and so-called "purchased marriages." Drawing on these findings, the study also examines existing government responses and makes a number of specific and actionable recommendations to enhance them.

The first of its kind in Puerto Rico, this study is therefore an important and timely work in the area of human trafficking.

As a long-time partner of the University of Puerto Rico, as well as the Ricky Martin Foundation, with which we published an earlier work on "Comprehensive Legal Approaches to Combating Trafficking in Persons: International and Comparative Perspectives"; The Protection Project at The Johns Hopkins University School of Advanced International Studies applauds these two distinguished institutions on a thorough and important work.

I hope you find this publication insightful and informative.

Mohamed Mattar

Executive Director

The Protection Project

The Johns Hopkins University

School of Advanced International Studies (SAIS)



“To understand the significance of an atrocity, to not negate its existence, to face the reality without prejudice.”

- Hannah Arendt

With this quote, Roberto Saviano begins his investigative work into the Gomorra, a project that researched the inhumanity of the Italian mob; the quote also precisely describes what inspires us to research a topic that has been thus far completely unknown and invisible in our country: human trafficking.

Investigative work requires the dismantling of preconceived notions and the development of new and unconventional approaches to the interpretation of reality. Three years ago, by invitation of The Protection Project at The Johns Hopkins University School of Advanced International Studies and under the initiative of the Ricky Martin Foundation, we attended a symposium on the unfortunate global phenomenon of child trafficking which, until then, seemed a problem much closer to the Pacific than to the Caribbean.

It is in this way that we recognized the need to include Puerto Rico on the map of human trafficking, realizing that our government was neither aware of nor prepared to address the problem. In this inadvertent manner, we began to construct a puzzle of very difficult, incoherent realities in a country that considers itself to be civilized. We came to discover the many different “Puerto Ricos” that are often overlooked in the national context, yet together make up the Island’s identity.

This effort has taken three years and was made possible due to the commitment of three institutions: the Faculty of Graduate Studies and Investigation and, in particular, the Interim Dean Dr. Ana Guadalupe and her assistant Migdalia Rivera, who always facilitated our work along the way; the Graduate School of Public Administration and The Sociology and Anthropology Department of the School of Social Sciences.

I am also very grateful for the inspiration and vision of the President of our Foundation, Mr. Ricky Martin, who has been advocating on behalf of children’s rights for the last decade. I would also like to highlight the commitment of our Board of Directors and our Administrative Body and, in particular, the passion and work of Bibiana Ferraiuoli, Executive Director of the Foundation; Brenda Cardona, Gladys Martínez and Fernando Fernández, who always believed in and supported this effort.

Likewise, I would like to acknowledge the work of our investigators, particularly the help and vision of Dr. Luisa Hernández Angueira, the Principal Co-Investigator, who is responsible for much of the work; and all the assistants to the Investigation, including Fernando Bentz, Karla González, Damayra Ortiz, Linda Navedo, Kyria Rodríguez, Aníbal

Escobar, Alixmarie Sánchez and Bárbara González, who were instrumental in this project. I would also like to mention all of the effort and assistance of Dr. Mohamed Mattar, Jessica Morrison and the team at The Protection Project, to whom we owe the publishing, translation, and editing of our work.

Finally, I wish to express our gratitude for the participation and advice of Nuestra Escuela, particularly Professor Justo Méndez and Ana Yris Guzmán; of Iniciativa Comunitaria, particularly Dr. José Vargas Vidot and Yorelis Rivera, who were instrumental in this project; and, in a very special manner, to all of the government officials who were our primary sources of information.

The reality is that this project could not have come to fruition without the volunteers who agreed to participate in this effort, trusting us with their secrets, and opening their hearts and private homes to serve as examples and facilitators of a work that is so important to our youth in a time of such need.

This is the work that we share today with passion and commitment, confident that it will serve as a platform for public policy discussions and social transformation that will help Puerto Rico become a better country for the well-being of our children and youth.

César A. Rey Hernández
Director and Principal Investigator
Ricky Martin Foundation

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I. Origin and Methodology of the Project

Trafficking in persons is a serious crime that must be confronted given its profound impact on society: it is estimated that some 2.7 million people worldwide are currently victims of this modern day form of slavery, 50 percent of whom are women and children. Human trafficking¹ is a crime that knows no boundaries, as nearly all countries are points of origin, transit or destination, or some combination of the three. Currently, trafficking in persons is the third most lucrative crime in the world, preceded only by the trafficking of arms and drugs, producing between five and seven billion dollars per year. This is without taking into account estimates of the amounts earned when the victims arrive at their country of destination, which, according to the International Labor Organization (ILO), produces an additional 32 billion dollars per year.

Therefore, any response to this problem must involve governments, non-governmental organizations (NGOs) and members of civil society. Committed to the rights of children, the University of Puerto Rico has undertaken the following research project to analyze and make policy recommendations on this sensitive problem, and, in cooperation with the Ricky Martin Foundation and The Protection Project at The Johns Hopkins University School of Advanced International Studies (SAIS), to publicize its findings and impact policy direction.

Puerto Rico is a destination for sex tourism and a transit point for women and children from other Caribbean islands and from the interior of the Island for the purpose of sexual exploitation. Cases have also been reported of foreigners, both men and women, who are trafficked into Puerto Rico for labor exploitation. Besides transnational trafficking, domestic trafficking of Puerto Rican children seems to be a common occurrence in the country. Some of the activities for which minors are used include: the distribution and sale of drugs, work as drug runners, prostitution, pornography, and other illegal activities. Often the exploiter is a family member, a member of a foster family or someone in charge of the foster home. The exploiter could also be a neighbor, particularly in cases of prostitution and other forms of sexual exploitation. Although specific statistics on cases of human trafficking in Puerto Rico do not exist, the high number of minors living in “upbringing” (*crianza*) or foster homes (close to 9,000), the nearly half of all families (48 percent) living in poverty and the high levels of immigration to the Island, taken together with gender discrimination, suggest the high potential for trafficking and exploitation in Puerto Rico. These factors,

¹ The terms “human trafficking” and “trafficking in persons” will be used interchangeably throughout the document.

among others, contribute to Puerto Rico's status as the third highest country in Latin America in which social inequality is most evident, preceded only by Paraguay and Brazil (*El Nuevo Día*, Nov. 12, 2009).

It is in this context that our investigation explores the various methods of human trafficking in Puerto Rico. The investigation has four main objectives: first, to understand the overall problem of human trafficking in our region of the Caribbean; second, to examine the problem in the context of Puerto Rico; third, to identify the agencies and organizations instrumental in the development of anti-trafficking measures and initiatives; and fourth, to recommend public policies aimed at appropriate anti-trafficking interventions. This report is the first comprehensive study and analysis of the various forms of human trafficking in Puerto Rico. During the first phase, interviews were conducted with various members of governmental agencies, including: the Department of Justice, the Department of Police, the Department of the Family Services, the Puerto Rican Tourism Company, and Immigration and Customs Enforcement (ICE). Representatives from various NGOs working on behalf of children's and women's rights were also interviewed. Literature on the problem in general and specific to the case of Puerto Rico was also reviewed, as well as existing relevant legislation.

The second phase of the investigation allowed us to corroborate and further analyze the phenomenon in the context of Puerto Rico, as we were able to interview adolescents who were former victims of some form of human trafficking. Interviews were also conducted with officials from a variety of governmental agencies and NGOs, and a focus group study was carried out with community leaders to corroborate and exchange information. Finally, twenty interviews of both male and female youth, all victims of this phenomenon, were conducted. To this end, a questionnaire was prepared with structured questions that allowed us to compile basic socio-demographic data. The information compiled from these interviews reveals some of the ways in which these individuals were exploited sexually and for forced labor. Although the interviewees are no longer minors, their experiences of sexual and labor exploitation commenced when they were children.

Based on interviews conducted with various officials from public agencies and NGOs and the victims themselves, it is possible to conclude that there is a lack of understanding in Puerto Rico regarding trafficking in persons. Although the present study has determined that human trafficking exists on the Island, there is a lack of literature on the subject and there have been neither investigations nor studies to address the phenomenon. There is also an overall absence of news coverage on trafficking in persons by the mass media, NGOs and other elements of civil society. This knowledge discrepancy prevents the classification of the problem as such, making it impossible to reach the necessary consensus to establish a public policy and the appropriate legislation to safeguard the interests and the human rights of the most vulnerable sectors of the population.

II. Terms and Definitions

Successful eradication of human trafficking requires a clear and precise understanding of the problem. However, a lack of conceptual understanding of the problem of human trafficking is notable among government agencies and the general public in Puerto Rico, with many denying the problem's existence, as we have been able to corroborate. Therefore, in order to proceed with coherent anti-trafficking legislation and policy, one must first clarify the definition of the problem.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children [Palermo Protocol], supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as:

“the recruitment, transportation, transfer, harboring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” (see Annex I)

Organized criminal activity is not a requirement for establishing the crime of human trafficking, and Puerto Rico has seen cases of trafficking by groups of people and trafficking by individuals. For example, a mother was recently accused of sexually exploiting a 10-year-old girl in exchange for money that she was receiving from a predator (*El Nuevo Día*, 2007), and other cases have been reported of children who were used for pornography. These cases can and should be considered more serious than those of organized crime because they usually involve parents, relatives, foster parents or some other individual who has been given the responsibility to protect the children. Therefore, amendments to child protection laws should include enhanced punishment for exploitation involving parents or other family members.

Despite the definition of trafficking in persons established by the Palermo Protocol, the terms ‘human trafficking’ and ‘human smuggling’ continue to be used as synonyms in Puerto Rico. It is critical in our discussion and analysis of human trafficking that we differentiate between these two distinct crimes. The smuggling of migrants is a voluntary act: the relationship with the smuggler ends at the point of destination, there is payment in advance, there is no restriction on movement at the point of destination, the recruitment is not premeditated, there is no confiscation of documents, and the purpose is to go to a country outside the country of origin. In this case, the merchandise is the service—the transfer of the person—and the crime is committed against the State (see Annex III).

On the other hand, human trafficking is involuntary and sometimes done by deception: in human trafficking, the relationship with the trafficker continues at the point of destination, payment of the trafficker begins at the time of exploitation and there is restriction of movement at the point of destination as, generally speaking, victims are kept locked up and traffickers confiscate the documents of their victims. In this case, the merchandise is the person, and the crime is against the person, rather than just the State. So while both phenomena may share in common commercial operations involving human beings, the existence of organized networks, and human rights abuses, the crossing of international borders is not necessary to establish the crime of trafficking in persons, as it can occur both domestically and internationally.

III. Perspective on the Phenomenon

A. Migration and Geography: Puerto Rico as a Destination or Transit Country?

A study presented by Isis International/UNIFEM (1998) explained that Latin American countries have proven to be fertile ground for human trafficking and related crimes because they lacked or lack specific legislation to prevent and/or penalize them. According to the United States Department of State, “approximately 100,000 people from Latin America and the Caribbean are subject to slavery every year” (UNFPA, 2006, p. 45). The limited legislation and lack of funds allocated make it difficult to implement any public policy on this matter. An investigation carried out by the Organization of American States in 2006 reported the lack of studies measuring the probability of human trafficking in Puerto Rico, and indicated that the Island could possibly be a transit route for victims. Furthermore, the investigation suggested that there are strong connections between Puerto Rico and the Dominican Republic, while also including other countries in its analysis, such as Cuba and China. The study indicated that the final destination of many of the immigrants to the Island is the United States, confirming that the economic and political stability of Puerto Rico, as well as the accessibility of open sea routes and the availability of illegal documents on the Island, have contributed to its becoming a destination and transit point for immigrants from the Caribbean. According to the 2000 Census, there are approximately 45,000 undocumented persons who live and work in Puerto Rico, and every week there are reports of arrests and/or detentions of undocumented persons.

The western part of the Island is the main point of entry to Puerto Rico for trafficking victims, although the northwest area has in recent years experienced increased activity. In a report for the newspaper *El Nuevo Día*, Javier Colón (2005) revealed the core elements to the business of human trafficking in Puerto Rico, including the provision of shelter and transportation to those who cross the ocean in “*yolas*”, or small hand-made boats; the forgery of documents to find employment or enter United

States' jurisdiction; and the participation of "kidnappers" who demand payment after imprisoning their victims (Colón, 2005, p. 4). However, we must distinguish between practices of extortion and trafficking from the regular immigration to the Island arising from economic necessity, as seen in the influx of Dominicans to the island in recent decades.

The large influx of Dominican migrants to the island in recent years is due to the Dominican Republic's geographic proximity to Puerto Rico. Dominican migration to Puerto Rico can be divided into two main periods. The first period involves emigrants who migrated motivated mainly due to political pressure from the Trujillo regime in the 1950s, who used legal channels and did not find much difficulty in regularizing their status in the United States; among this group were professionals and students that came to work and/or study in the country. At the end of the 1970s, a second group began to dominate Dominican migration, which consisted predominantly of the lower middle class. Lacking options for legal migration to reside in the USA, many migrants resorted to entering illegally by crossing the Mona Passage between the Dominican Republic and Puerto Rico on *yolas*.

The second wave of emigrants is of critical importance because this expanding population came from a noticeably lower economic situation, which was more desperate and in many senses more vulnerable to exploitation (OAS, 2006). These characteristics continue to dominate the migration of the Dominican population. According to theories of family migration networks, as the size of the Dominican population in Puerto Rico increased, the risks associated with migration decreased and the process became less selective. However, since legal migration is highly regulated by American authorities, an increasing number of emigrants choose clandestine migration to access their networks in the country of destination.

Migrants in the labor market generally work in positions not occupied by Puerto Ricans, or in the tertiary or service sector of the economy. Many of these are women employed as household help, caregivers for seniors, and storekeepers, among other sectors of this tertiary activity. We know that there is a whole generation of Puerto Ricans that is in some way receiving the valuable services of Dominican women, and that these women are caring for both children and the elderly. However, these women are easy prey to abuse by traffickers, and xenophobia and racial discrimination are important contributing factors to human trafficking.

It is also suspected that there is trafficking of Haitian and Chinese victims into Puerto Rico, operated and driven by international mafias that are probably behind the migratory process (*Hernández Cruz, 2007; El Vocero, 2009*). Given the political relationship of Puerto Rico with the United States and the Island's strategic location, it is reasonable to conclude that for many of these migrants – and traffickers – Puerto Rico is a transit country to North America. According to the U.S. Immigration and Customs Enforcement (ICE), the Cuban Diaspora is also of interest, given that the

number of Cubans who are currently entering Puerto Rico is higher than the number of both Haitians and Chinese. In December 2004, five Dominican citizens were accused of human trafficking for trying to transfer other Dominican citizens into Puerto Rico on a trip in which seven of them died,² and in October 2005, ICE agents arrested two Cubans in Puerto Rican territory for trying to smuggle seven Cubans into North American territory.³ A report published by the local newspaper *El Nuevo Día* (January 2006) indicated that Hondurans, Dominicans and Chinese had been illegally transported to Puerto Rico and were found on the *EureKa* shrimp processing farm in the Municipality of Dorado, where they were held captive for labor. In another case in March 2006, ICE and Puerto Rican authorities and police officers reported the arrest of six Puerto Ricans in the town of Yauco who were allegedly involved in human trafficking in U.S. territory.⁴ Finally, in 2007, the online newspaper *Hoy Digital* (Tejada, 2007) published a report on a trafficking network that recruited 148 children into Puerto Rican and North American territory; a woman connected to this case was arrested in Puerto Rico for allegedly being part of the group. It is also known that minors have been taken to the eastern part of the United States by North Americans who recruit them to hostels—mainly those located on the beach—with the consent of their parents. Minors are misled with promises that their economic conditions will improve or that they will be able to study.

B. Domestic Causes of Human Trafficking and Exploitation

The rapid economic and social transformation of Puerto Rico in the 1970s opened up new opportunities for some members of the society, particularly for women. Therefore, Puerto Rican women with higher levels of education became part of the service sector with better salaries, particularly the fields of education, health, real estate, and banking, among others. Consequently, the opportunities in other sectors requiring lower levels of education and providing lower salaries expanded, and these were the very sectors into which Dominican women were incorporated. Many Dominican women became part of the personal services sector, particularly household services—a task that is increasingly rejected by Puerto Ricans, who expect higher paying jobs. The large-scale Dominican migratory flow started in the 1980s as a result of the economic crisis in this neighboring country, with many men and women migrating to Puerto Rico in search of better opportunities.

Furthermore, economic restructuring since the middle of the 20th century and the consequent entry of the Puerto Rican economy, and other Caribbean economies, into the new global order has promoted the development of tourism in Puerto Rico and its apparent link to the increase in prostitution and trafficking in women. In the

2 U.S. Immigration and Customs Enforcement. (2005). 5 Dominicans Convicted of Human Smuggling.

3 U.S. Immigration and Customs Enforcement. (2005). ICE Arrests 2 Cubans for Alleged Human Smuggling, Suspects Conspired to Smuggle Seven other Cubans to Puerto Rico.

4 U.S. Immigration and Customs Enforcement. (2006). ICE Arrests 6 Puerto Ricans for Alleged Human Smuggling.

definition of trafficking in persons, consent is irrelevant, as although a person may give consent during recruitment to move to another city, he or she does not necessarily give consent to the service or work that ultimately he or she is forced to perform during the exploitation and trafficking phase. Dominican women, for example, arrive in Puerto Rico voluntarily in search of opportunities for a better life, and in some cases are recruited and forced to work in prostitution, particularly in so-called “massage parlors”, as will be discussed. Agents working for the Drug Division in the capital city of San Juan arrest an average of 100 to 125 women every month for prostitution (*Primera Hora*, November 13, 2009). Fear of deportation leads many of these women to continue to perform such activities under conditions of exploitation.

C. Forms of Trafficking in Persons in Puerto Rico

1. Commercial Sexual Exploitation.

Although there are no statistics or official reports to corroborate this data, it is believed that many Dominican women connect with Dominican and/or Puerto Rican male partners, who turn them into easy prey for illicit activities including prostitution, forced labor, household services and others. These women are victims of another type of exploitation that occurs within the home: domestic violence. Because they are migrants, these crimes go unreported for fear of deportation; these women have also experienced harassment and rape at work, and that same condition prevents them from accusing the aggressor. Recent literature on human trafficking reveals that the majority of women—approximately 90%—who are in prostitution have been victims of sexual abuse in their own homes. Although there are no data or studies that link prostitution with migration in Puerto Rico, based on interviews with top police and justice authorities, it can be inferred that most of the women involved in prostitution are foreigners, mainly Dominicans and Colombians. Puerto Rican women, on the other hand, while linked to this type of prostitution, are more involved in street prostitution, which is also associated with drugs (See Annex II).

Although prostitution is practiced all throughout Puerto Rico, the authorities indicate that it is most sophisticated in the metropolitan area of San Juan. Recent studies on trafficking indicate that Dominican, Colombian and Mexican women are the Latin American groups most vulnerable to trafficking for this purpose, and Puerto Rico is no exception. Buying sex from these “muchachas” is often referred to as “checking their migratory status”.

As a result of the closing of a number of nightclubs in San Juan, prostitution has become a more sophisticated, more expensive system of sex tourism with a different type of clientele. Prostitution, which once took place in the so-called “brothels”, has now moved to the hotels, where foreigners who are often recruited by taxi drivers predominate. According to government officials, hotels are not aware of the problem.

Some of these women will work in prostitution for a period of time in Puerto Rico and then travel to the United States. Thus, the Island serves as a bridge to the United States, where “the creation of the Hollywood-like image of Pretty Woman” shows prostitution as a means to make a lot of money and even to get an education. Another form of prostitution in Puerto Rico is known as “street prostitution,” a cheaper type of prostitution and an industry comprised predominantly of Puerto Rican women that often provides the means to pay for the women’s drug expenses and for those of their partners.

The so-called “*massage parlors*” are another type of prostitution which earn their name from a term adapted from centers in Mexico known as “Esthetic Centers”. These massage parlors are located mainly in the metropolitan area of San Juan and are promoted through local press ads, inviting customers to take part in their personal services. There are also deceptive press ads recruiting young people and immigrants to work in these parlors. As one of the police officers interviewed explains: “I arrive for the massage, they offer me some women to choose from, I choose who will give me the massage and I pay \$50 for the massage, but when I go to the room, there is another bed besides the massage bed, heart-shaped with lights and all” (Interview with an officer of the Puerto Rican Police, 2008). Many immigrants are “persuaded” by these ads, but once hired find it very difficult to accuse the owners of exploitation because of their status as undocumented aliens.

Finally, cases have also been reported of conventional marriages that resulted in the sexual exploitation of women. For example, in the case of one couple, both of whom worked for the Municipal Police, the woman was a prostitute and the man her “pimp or procurer”. Cases such as this one suggest that some sectors of the Police may act as accomplices.

2. Sexual Exploitation of Minors

Given that human trafficking is a term to which the authorities are still not accustomed in the realm of proposing public policies, and much less from the point of view of public administration, we will continue to provide some illustrations to clarify and elucidate this phenomenon within Puerto Rico’s borders. Trafficking of minors in Puerto Rico may have the following characteristics: in some cases, family members, particularly parents, are the exploiters and pressure the children to have sexual relations in exchange for any economic benefit; in other cases, children who have been placed in foster homes are prostituted and sexually exploited by their “protectors”.

a. Sexual Exploitation by Parents and Relatives

There are a number of cases of children whose families, particularly their parents, force them to have sexual relationships in exchange for money. Such is the case of one of the interviewees, Liza, who, like her sister, was sold for money. Her testimony describes the exploitation to which she has been a victim since childhood.

As a newborn, her father abandoned her along with her mother and older sister, and she has lived with her mother, grandparents and sister ever since. Her mother was involved in prostitution and she began to exploit Liza when she was five, as well as her sister.

She always exploited me. When I was younger, I remember I was in first grade, and she locked us down in a room, both me and my sister, in those beds with mosquito nets with the metal rod frames...and she tied us there, and she was given 100 pesos and the men had relations with us.

At this age her grandfather, her uncle, cousins and then her brother-in-law also sexually abused Liza. They threatened her so she could never accuse them. Her mother, she says, never knew.

At the age of eight she was taken to a foster home, where, according to her statement, she was initially treated well by a very elderly couple. Later on, her mother took her to another home where the owners had a supermarket business and were wealthy. At this home she slept in the same bed with her foster parents and was raped by her foster father. She later realized that her mother was an accomplice in these acts. *“Later, I began to realize that it was a business because when I started growing up they told me how everything was.”* Her mother was paid for her daughter’s services. When she was 13, Liza had her first son and never saw her son’s father again. She then lived with a man with whom she had a daughter and from whom she had to separate because of abuse. She currently has no communication with any of her children. She knows her son was in jail many years for robbery and her 11-year-old daughter lives with her father.

Liza uses drugs and prostitutes herself to pay for this vice. Yet at 44 years she is still faced with exploitation by her own family.

I have a cousin who is now in the Port Authority Police, and he is tasked with checking the area where women prostitute themselves. I was offering sex services in Carolina and without wanting to I slept with him and I did not know he was my cousin. And after we finished he told me: “Are you Liza...?” And I: “Yes” Well, I’m agent “such” and I am your cousin. I didn’t even know what to do. I broke down crying.

Liza clarifies that she does not work, but she prostitutes herself in order to maintain her vice and to shoot up every day. She says she does it,

“To not think that I have roots of bitterness, since my life is completely destroyed from within, I mean, I have no desire to live.

Honestly, if someone tells me they are sick [with HIV/AIDS], I stick around them to see if I can get sick too and die for real. That is what I do. If there is a person that says he has AIDS I stick around him because I'm tired of living, I expect nothing from life. I hope, at least before my birthday, that I get to go to God. Because I think my body needs rest, there have been many knocks in this life and I expect nothing more from it.

With these words, Liza ends the interview. At 44 years of age, she remains a prisoner of her childhood and wishes only to die to get rid of her past.

Another case is that of a 10-year old girl, whose mother forced her to engage in oral sex and lewd acts with a 73-year-old man in exchange for money and economic benefits. The individual was arrested when he was having oral sex with the minor in the back seat of the car where they were traveling with the minor's mother. The mother was seated in the front seat of the car, waiting for them to finish, then was planning to take her to a nearby shopping mall to purchase food and clothing. (*El Nuevo Día*, 2008)

As the former chief prosecutor has indicated, the sentence prescribed in cases such as this one, probation, is ineffective because the sexual predator may continue to commit the crime in his own home. However, most cases of sexual exploitation are among members of the same family. On the Island, these cases can be classified according to judicial districts, and the districts of Arecibo and Utuado traditionally have the highest rates of sexual crimes against minors.

Nevertheless, the phenomenon is widespread, and the latest statistics show that in the San Juan metropolitan area, these cases have increased. According to the chief prosecutor, "A father having sex with his daughter is a cultural pattern in the mountain [rural] areas". He indicated that this occurs frequently due to social and cultural reasons, among others, when there are 20 young people living in a small house:

"The fathers take their daughters as wives and the mothers act as accomplices, making matters even worse" (Interview, 2008).

Some cases involve not only sexual abuse by fathers, but also cases of sexual abuse of sons by mothers, who coerce the children to keep quiet. In the area of Utuado, in 1997, there was a case in which the wife of a policeman in Lares sexually abused two of her sons. It took the authorities nearly two years to solve the case, and finally the people involved were arrested. "It is challenging in this system to charge public officers (such as lawyers, judges, policemen, etc.) In this region a lot of sexual abuse is also committed with minors who have severe to moderate mental retardation, mainly by their parents" (Interview with the prosecutor, 2008).

b. Sexual Exploitation of Minors in Foster Care

The Department of Family Services removes some minors from dysfunctional homes to foster homes to better protect them. However, it is in these foster homes in which some minors have become easy prey for predators. In fact, the local press reported in November 2008 that 16,022 foster homes have been accused of exploitation and that 38,149 children have been removed from these homes (*El Nuevo Día*, November 20, 2008). Such is the case of Ana, a young woman who was sexually abused in her foster home, where drug usage was prevalent and there was a near complete lack of supervision.

Ana never met her father and her mother, who suffered from a drug addiction and abandoned her and her two siblings in their public housing when she was just an infant. Her neighbors called the Department of Family Services and they were removed. Since then, Ana has been in six foster homes where she has been physically and emotionally abused and sexually molested. In the second home, she stayed for a decade:

I fell into depression, tried to commit suicide twice. She [the foster mother] did not physically abuse me, she emotionally abused me. Physically, when she had it with me she gave me a “slap” in the face, but it was not all the time. But she abused me emotionally to the point I felt depressed and I did not want to be involved with anything or anyone.

For some time, Ana was the only girl at home, but then the foster mother started to pick up older boys.

She picked up a 15 year-old boy and apparently fell in love with him, or something happened, there was chemistry between them and she changed completely. A radical change from top to bottom. She left my dad [as she called her foster father], she always argued with him every day. The boy asked her for something every day and she would do anything to find it for him. It was all about him. Then she started to change. It was like everything was separate for me. I mean, I had to be locked down in my room all day. I could not talk to the boys because she was in love with them. I could not smile at them because I was something else for her. In this home they tried to sexually abuse me as well. That was the only time and the one that marked and traumatized me forever because he touched me in my private parts and I felt very bad.

The perpetrator was another foster child who was 15 years old who then threatened Ana with death if she told anyone. Although Ana was never involved in drugs, she fell in love with the drug dealer in the school and helped him to collect the drug payments.

Currently Ana lives in the first foster home that received her. She is in her senior year of high school and hopes to finish her studies and become a psychologist.

In another case heard by the court of Mayagüez, for example, minors were placed in a foster home where the foster father abused both the boys and the girls, dressing like Batman or Spiderman to “entertain” the minors and to then create sexual fantasies with them. This individual was charged with 90 counts, found guilty by a jury trial, and sentenced to 100 years in prison.

As one community leader indicated, “to a certain extent, foster homes have become a form of child transaction, a source of income, and a government-sponsored economic solution” (Interview with a community leader, 2008). According to data obtained by the Kamaria organization, an NGO offering services to sex workers who are predominantly minors who have been in and out of foster care, 70 percent of the young women that the organization has cared for have passed through 15 or more foster homes during their lifetime. These minors have been victims of violence, rape, mistreatment, neglect, indifference and negligence since a young age, and most of them have received no form of rehabilitation. While many of these minors are involved in prostitution, as the Director of the center points out, “this prostitution is the product of former human trafficking”. In instances when foster care could have supported these minors, the system failed, and foster homes resulted in even more anguish, insecurity and pain for these already vulnerable minors.

c. Sexual Exploitation of Minors by Other Predators

Poverty and high levels of inequality also make minors easy prey for sexual predators. An example of this is the fire at the Hotel Dupont in 1986. In the days following the fire, a work group consisting of a police officer (now a Colonel), a member of the Dupont union and a hotel representative was organized to collect the belongings of the hotel guests. “They found everything, from substantial amounts of money—up to \$40,000—to pornographic photos, especially of men having sex with minors. This was in approximately 20 rooms” (Interview with a police officer in Puerto Rico, 2008). According to the police officer’s statement, these activities took place with people who were visiting the Island and used the hotel for these purposes. The photographs showed that these were Puerto Rican children. Traditionally, many incidents of sex tourism took place in this hotel.

According to the police officer interviewed, North American men travel to Puerto Rico searching for child sex using deceitful means, offering children and/or their families large sums of money in exchange for the sexual services of minors. Although there are no studies or reports on this specific occurrence, statements of some of the victims attest to the facts and provide evidence. These cases of human trafficking and sexual exploitation provide evidence of a situation that is specific to Puerto Rico, in which it is mainly the parents and relatives who exert pressure on their own children to

participate in these illicit activities as a complement to or as the main source of family income.

Another case of sexual exploitation that occurred in the Utuado region, for example, is that of a man who did not have sexual relations with minors, but who made pornographic films of them engaging in sexual acts with one another. There is also evidence of human trafficking through the Internet. Such is the case of two minors who disappeared and who authorities believe to have been murdered. According to the Prosecutor's Office, "The person linked to this crime pleaded guilty before the Federal Court and was sentenced to 20 years in prison. Everything indicates that the predator contacted them through the Internet, abused them, then murdered them and made the bodies disappear" (Interview with the Puerto Rico Prosecutor's Office, 2008).

3. Labor Exploitation of Minors

High levels of poverty and social inequality are among the factors that push minors to fall into these types of crimes. Judicial authorities are aware of the increased use of minors for labor at illegal drug selling points throughout Puerto Rico, and the authorities confirm that this type of crime can be classified as labor exploitation: "Frequently these minors are in contact with unscrupulous individuals who pressure them to perform some type of crime, such as selling drugs". This is revealed in the testimony of one adolescent, who entered the dangerous world of drugs when he was just a young boy. While the boy was not necessarily forced to run drugs, he nonetheless is a victim of labor exploitation, as the drug lords abused his position of vulnerability for their own profit.

José was born on the coast and, at 17 years of age, still has an innocent look about him. His mother physically and verbally abused him until his parents' separation. His father fought for his son and won custody.

"He...allowed me to do whatever I wanted. My dad gave me good advice, but in my ignorance and fun I never followed his advice. I felt alone, I had no affection from my dad".

He started to smoke marijuana with his stepmother when he was 12.

"I started smoking, started making friends, started becoming aggressive, started to change who I was and all that, it wasn't me, you see? I was so lost..."

He added both pills and cocaine and then started selling it in the slum area where part of his mother's family used to live and where he had "contacts". He worked for a drug point in the community and was paid to be the "runner" of that point.

They paid me. I received between \$80 and \$125 daily, besides what I made from stealing. I started working in the community, threatening people with my firearm, started to fire up a few people from the community [i.e. selling drugs to people and building their addiction].

During this stage he began to rob houses and schools as well.

Robbing houses and schools, I left them empty, robbed everything, computers, all computers, printers and social security numbers. I hung out with people using all kinds of firearms and all kinds of drugs. All kinds of drugs, not just marijuana – pali, Percoset and then I finally tried coke. I was always the youngest and they were old, you see, and I wanted to be the craziest because I was the youngest. I was the youngest; they were all 20, 27, 17, 15 and 16. That’s how it is...every time they admired me more and said “the young one is a crazy one, the young one knows this and that. They flattered me and this made me go higher, every time to be crazier, smash more faces, shoot that guy or whatever. You see? This is what happened, I got screwed, I let go.

Besides selling drugs, José sold social security numbers and birth certificates he stole from the schools. At his young age he was already together with the big drug lords where he lived and was feared by others. He had many arrests and his record is extensive. His father always reminded him and said, “Take care of yourself, because at this rate you’ll not make it to 21. Your life is a mess, I hear rumors about you.”

And I rejected him...It was not a life. After that I cried almost every night in my house, I felt alone...these people are a bunch of pigs and traitors, and after you give everything to them, they stab you in the back; but now I’m realizing, I am 17 and I got out of that world. It was one year and four months ago that I met Christ, and now I’m in the church, I’m realizing that all those things I did, how I was the one who was wrong.

He returned to live with his mother and stepbrothers in another town, where they all go to church, and he aspires to become a marine biologist.

Other children are not so fortunate as to get out at such a young age. Children learn that they can earn more money in these illicit activities than in any other legal activity, such as washing cars, and in many cases the minors run the risk of becoming drug users themselves. These minors work for the boss or *master* who pays them a previously stipulated percentage. It is estimated that in Puerto Rico there are around 1,100 drug selling points, many of them in the metropolitan area. The minors devoted to this business work in the capacity of *runners* who deliver drugs to customers. Some are exploited directly by their parents or relatives who are involved in this type of business as well.

Paco quit school in the seventh grade due to problems in the institution and his drug addiction. He began smoking marijuana when he was just 10. By age 12 he had already snorted cocaine and he first smoked marijuana with crack at age 13. At that same age, he began to sell drugs, working as a dealer and a runner in different communities. He got paid when he delivered. Today he is 17.

Paco says that he began to use drugs because his parents used drugs at home. Together with his parents, Paco shared with a foster brother, who was the only one who did not use drugs, but who was a drug dealer, “*one of the big ones.*” Currently that foster brother is in federal prison. Paco’s parents, upon finding that their son used drugs, “*allowed him to,*” and even told him to do it at home. Although they did not sell drugs, their house was a warehouse of drugs and firearms.

“All kinds of firearms, and there were many. The boys went there and they went crazy. After they made them crazy, others came and took it to a car, they distributed it in different points to the “runners” with a notebook registering every package delivered...drugs...”

Paco indicates that he did not distribute drugs for his parents, but “*sold for other people*”. The owners of the community’s (drug selling) points paid him.

4. “Purchased” Marriage

“Purchased” marriage is another form of trafficking on the Island, a type of marriage not motivated by love, but rather by the hope of obtaining residency papers. Although this type of marriage is not very common on the Island, some newspapers and/or testimonies of Dominican women as well as women from other countries indicate that they have been blackmailed and pressured by their “purchased” husbands. The following case describes a purchased marriage, in which although the woman initially consented to the marriage, she did not consent to the sexual exploitation to which she was subsequently subjected. A young woman from the Philippines arrived on the Island with a marriage contract with a high-ranking officer of a Federal public entity; the young woman’s situation was not legalized, but instead she was held in Puerto Rico and forced to have sex with other men and forced into all kinds of aberrations for over eight months. In the end, the woman became pregnant, and before she gave birth, she was able to escape to the Center for Rape Victims, where she received assistance. The woman’s trafficker was charged with rape, lewd acts and sodomy; he pleaded guilty to the charges but escaped outside the jurisdiction of Puerto Rico. The young woman was deported to the Philippines, but before she departed, she left a video recording giving testimony of the extraordinary situation that she had endured.

IV. Public Policies in the Context of Puerto Rican Society

A. Government Response to Human Trafficking

In 2000, the international community for the first time defined the problem of human trafficking and made a call to all nations to fight it. Most nations, including the United States, responded to this call by ratifying the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention against Transnational Organized Crime. The United States passed the Trafficking Victims Protection Act in 2000 to protect victims of human trafficking, provide them with assistance, and strengthen the prosecution and punishment of traffickers; the law applies to all states and territories of the United States, including Puerto Rico. Furthermore, on December 26, 2008 the United States passed the Trafficking Victims Protection Reauthorization Act of 2008, which significantly increases protection for survivors of human trafficking (see Annex IV).

Although there is some degree of awareness of transnational trafficking, little attention is paid to domestic trafficking in Puerto Rico, which is the predominant form of trafficking on the Island. Some government officials consider it an individual problem instead of a form of organized crime, and not all forms of trafficking as defined by international law are recognized as such in Puerto Rico. This is problematic especially in cases of trafficking for labor purposes, including panhandling at traffic lights, child labor and the distribution and sale of drugs, as well as other illicit criminal activities.

Even though in Puerto Rican several forms of human trafficking are categorized as crimes under the Penal Code and are represented in laws against exploitation, there are neither comprehensive laws on this problem nor specific initiatives to combat human trafficking on the Island.

The Puerto Rico Police have been cooperating in matters related to violence and assault against women and children, and there is a division that deals specifically with sex crimes and child abuse; however, this effort has not expanded to include human trafficking. First of all, the terminology used by the agency does not coincide with the classifications of the Penal Code, much less with those used in the Palermo Protocol. Under the new Penal Code, all related crimes fall under sexual assault, while the agency classifies sex crimes as forced rape, domestic violence, dishonest proposals, felonies, exploitation or prostitution. As long as there is a complaint, it is considered a crime. Otherwise, it is not accounted for in the statistics. If a case arises that is believed to involve trafficking for the purposes of sexual exploitation, it is transferred to a Federal agency, namely the Department of Homeland Security (the umbrella agency for ICE). According to this agency, human trafficking and exploitation encompass cases only in which minors are involved, particularly those related to Internet pornography and those that involve the transfer of people through federal territory, waters or airspace.

Regarding the problem of prostitution at the local level, which is linked to the movement of foreign women, a police officer indicated that this has become part of a more sophisticated sex tourism industry, which has made it a difficult problem for the police to handle. As previously discussed, the “*massage parlors*” in Puerto Rico have become a form of trafficking on the Island, where most of the women who perform this type of work are foreigners. An owner of one such massage parlor said when questioned, “I sold a massage. Whatever else happened over there was intimacy (sic) and that is their problem”. Thus, as a general rule, the owner of the business avoids all responsibility for the crime due to the way in which the transaction is structured.

There also exists a problem of “cost-effectiveness,” as police may have to invest \$5,000 of confidential funds [in cash] in investigation expenses, while the fines for such offenses amount to less than \$200. Legislation is critical, according to one police officer interviewed, because, “Unfortunately, the work of the Police is on criminal cases. If I have a law that is so vague...and I submit a report for which I spend \$3,000-\$4,000 dollars for a confidential investigation and the fines amount to less than \$600 dollars, the expenses do not make the operation profitable” (Interview at the Puerto Rican Police Department, 2008). Taking into account these considerations, the interviewed police officer recommended that the problem be handled through actions of government and civil society and, above all, through legislation.

Another challenge facing the police is that it is very difficult to provide evidence in sex crime cases involving minors. Any statement provided by a minor must first be authorized by a mental health professional, and until this authorization is provided, the case cannot go to court; there are a number of cases, therefore, that have gone unresolved for years. Furthermore, the Police have no control over sexual abuse cases pursued by the Department of Family Services (DFS) when the victim refuses to file a complaint with the police; the DFS is also not obliged to file the complaint.

As illustrated, there are varying perspectives among the agencies as to how to define the problem, and the conceptual limitation among the agencies does not allow for the establishment of a public policy to effectively confront, prevent, and combat the problem. However, the Puerto Rican police, who have become more aware of this problem, have become proactive in their efforts to combat the phenomenon.

The DFS has also implemented programs directed at protecting children, including children who are at high risk, as well as children with emotional and economic needs. One of the programs developed by this agency provides protection to children who are physically or sexually abused or involved in child labor. These are placed in foster homes, which in most cases means at the home of a member of the child’s extended family.

A high percentage of abused children in Puerto Rico are under State custody, or in the foster care system. Relative to the United States, Puerto Rico has a high number of foster homes that are headed by a relative of the child. According to various officials

of the DFS interviewed at the time of this investigation, this practice could stem from the Puerto Rican cultural model of custody, whereby it is common for children to end up in the care of extended family, or “upbringing” (*crianza*) homes. The end of the welfare State, coupled with the high rates of unemployment in Puerto Rico, means that relatives are often prepared to have minors in need or at risk in their custody, as they are offered \$300 dollars per month per child; this amount may vary if the minor has a physical or mental disability. The limit of the aid depends on the number of minors in these homes, with a maximum of six minors allowed per home.

According to officials from the DFS, there is no accurate profile of the crime of sexual exploitation of children in foster homes [or its perpetrators]. One interviewed official said, “I don’t believe we have anything that is very solid...the best sources of recruitment are the churches, where people normally say, ‘I do this [i.e. become a foster parent] because it is part of my ministry’” (Interviews 2008). Even though the Department does not have exact statistics regarding institutional abuse, they have designed a manual for foster homes, including the duties and the rights of these homes. Likewise, this agency has developed an Integrated Protocol (*Protocolo Integrado*), which stipulates that minors under State custody shall have one sole service provider.

However, cases of mistreatment and/or sexual abuse are not included in this Integrated Protocol and, according to the Department of Family Services, it is working to present these cases separately; the agency considers them to be isolated cases and they are referred to the Justice Department. Due to the lack of understanding in the agency, all cases of trafficking and sexual exploitation are classified as “multiple mistreatment” (*maltrato múltiple*), which accounted for 6,845 cases, according to recent statistics (*El Nuevo Día*, November 20, 2008). Therefore, the agency is not aware of the severity of the problem which, as analyzed by our team, is of greater magnitude than the statistics reveal. As DFS officials themselves have indicated, this category makes the cases a “wastebasket statistic” (*estadística zafacón*) in which all of these cases are dumped. As a public policy measure, DFS has signed agreements with the Department of Health, the College of Social Workers, the University of Carlos Albizu, the Center of Victims of Rape and the University of Puerto Rico to better handle cases of sexual abuse.

The Department of Justice, on the other hand, is responsible for prosecuting the traffickers and criminals and for enforcing the law, and handles cases of prostitution, undocumented aliens and child labor, among others. However, at present, according to the Prosecutor General, there is no crime of human trafficking that falls under the jurisdiction of the Commonwealth of Puerto Rico. While the agency does handle sexual abuse crimes with minors, the prosecutor himself has indicated that these are the most difficult cases to prove.

B. Legislation regarding Exploitation

We have identified several legal responses in our investigation that have already been developed in Puerto Rico to respond to these dilemmas facing Puerto Rican youth. For example, Puerto Rico approved the Comprehensive Child Welfare Law No. 276 of 2008, which states, “everyone, professionals or public officials; public, private and privatized entities, who are aware or suspicious that a minor has been or is at risk of becoming a victim of mistreatment, institutional mistreatment, negligence or institutional negligence are under the obligation of fulfilling their duties and taking affirmative action.”

Law No. 276 clearly defines what constitutes abandonment, mistreatment, negligence, sexual abuse, and mental or emotional damage, and includes the option of issuing protective orders with measures requiring that a person who has mistreated a minor refrain from performing certain acts or from engaging in certain conduct that would constitute mistreatment or negligence. It also includes a rehabilitation program for re-educating first-time offenders convicted of the crime of mistreatment, institutional mistreatment, negligence and/or institutional negligence. So while this legislation addresses corrective measures to address the problem, it still ignores one serious dimension of the crime: the trafficking of children.

Another piece of important legislation is Law No. 151 of 2003, which amended Section 10 of Law No. 3 of 1955: Department of Family Services, regarding foster (*crianza*) homes. One of its provisions reasserts the need to be more selective in the process of granting permits to foster institutions and more rigorous in their supervision. Nevertheless, our work suggests that irregularities in the implementation of the law continue to place these children at great risk.

Another initiative that merits discussion is Law No. 142 of 2002 (P. del S. 1553) establishing in the Department of Consumer Affairs (DACO) the Office to Provide Guidance to Citizens to Counter Obscenity and Child Pornography in Radio and Television. The project has several dimensions, and it has an educational component that aids in the creation of campaigns to raise awareness of crimes against children and what those crimes involve.

1. Sexual Violence

The New Penal Code of 2004 establishes the following crimes as a form of sexual violence:

Sexual Assault (Article 142) Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances shall incur a second degree felony:

- (a) When the victim has not attained the age of sixteen (16) years at the time of the commission of the crime.

- (b) When due to mental illness or disability, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission.
- (c) When the victim was compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm.
- (d) When the victim's capability to consent has been annulled or diminished substantially by means of hypnotics, narcotics, depressants or stimulants, or otherwise similar means or substances without his/her knowledge or consent.
- (e) When at the time of the commission of the act the victim is not aware of its nature and this circumstance is known to the accused.
- (f) When the victim submits to the act by means of deception, ruse, simulation or concealment with respect to the identity of the accused.
- (g) When the victim is forced or abetted by means of abuse or physical or psychological violence into participating or becoming involved in an unwanted sexual relationship with third parties.
- (h) When the accused has kinship with the victim, for being an ascendant or descendant relative, or through consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (i) When the accused takes advantage of the trust placed on him/her by the victim because there is a relationship of superiority due to having the victim under his/her custody, guardianship, or primary, middle or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship of religious belief leadership with the victim.

If the conduct classified in subsection (a) herein is committed by a minor who has not attained eighteen (18) years of age, the perpetrator shall incur a third degree felony if tried as an adult.

Lewd Acts (Article 144) Any person who without the intention to consummate the crime of sexual assault described in Article 142 submits another person to an act that tends to awaken, excite or satisfy the sexual passion or desire of the accused, under any of the following circumstances hereinbelow, shall incur a third degree felony.

- (a) When the victim has not attained the age of sixteen (16) years at the time of the commission of the crime.
- (b) When the victim was compelled to the act by means of physical force, violence, the threat of serious and immediate bodily harm or intimidation, or by means of hypnotics, narcotics, depressants or stimulants, or otherwise similar means or substances.
- (c) When the victim, due to mental disease or a temporary or permanent disability was unable to understand the nature of the act.

- (d) When the victim was compelled to the act through the use of deceptive means that substantially annulled or impaired his/her capacity to consent.
- (e) If the accused has kinship with the victim, by reason of being an ascendant or descendant relative, by consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (f) When the accused takes advantage of the trust placed upon him/her by the victim because there is a relationship of superiority due to having the victim under his/her custody, guardianship, or primary, middle school or special education, or medical or psychotherapeutic treatment, or any type of counseling, or because there is a religious belief leadership relationship with the victim.

Sexual Harassment (Article 146) Any person who in the ambit of a workplace, educational or rendering of services requests sexual favors for him/herself or for a third party, and conditions the terms of the employment, education and service to its fulfillment, or by means of sexual conduct provokes an intimidating, hostile or humiliating situation for the victim shall incur a misdemeanor.

2. Crimes of Public Indecency

Indecent Exposures (Article 147) Any person who exposes any intimate part of his/her body in any place in which another person is present, including law enforcement officers, who can be offended or upset by such exposure, shall incur a misdemeanor.

Indecent Proposals (Article 148) Any person who in a public or open space makes indecent proposals in a manner that is offensive to public decency shall incur a misdemeanor.

3. Prostitution and Other Activities [including human trafficking]

Prostitution (Article 149): Any person who engages in, accepts, offers or solicits to have sexual relations with another person for money, stipend, compensation or any type of payment shall incur a misdemeanor.

Houses of Prostitution (Article 150): The following shall incur a misdemeanor:

- (a) Any person who owns or exploits under any denomination a house or annex thereof, building or annex thereof, or premises thereof to arrange or practice prostitution or sodomy, or otherwise manages, directs or administrates or participates in the property, exploitation, direction or administration thereof.
- (b) Any person who, as owner or administrator, or under any denomination, leases a house or annex thereof, building or annex thereof, or any premises thereof to be used as a house to arrange or practice prostitution or sodomy.
- (c) Any person who, as owner, administrator, director, person in charge, or under any denomination, has a house or annex thereof, building, annex, or premises

thereof, allows the habitual presence therein of one or several persons to arrange or practice prostitution or sodomy.

It is hereby provided that regarding establishments or places referred to in this Article, the court shall also order the revocation of any licenses, permits or authorizations to operate. In these cases, the juridical person where the conduct occurs may also be a participant in this crime.

Pandering and Human Trafficking (Article 152): Any person who:

- (a) for profit, or to satisfy the lewdness of another promotes or enables the prostitution of another person, even with the consent of said person;
- (b) Makes the prostitution of others his/her habitual means of livelihood; or
- (c) Promotes or enables the entry or exit from the Commonwealth of Puerto Rico of another person, even with the consent of said person, to have the person practice prostitution or sodomy.

Aggravated Proxenetism, Pandering and Human Trafficking (Article 153): Any person who commits the crime described in Article 152 shall incur a third degree felony if any of the following circumstances concur:

- (a) If the victim has not attained eighteen (18) years of age.
- (b) When there is deceit, violence, abuse of authority or any means of intimidation or coercion.
- (c) If the perpetrator is an ascendant, descendent, spouse, brother/sister, guardian or the person in charge of the education, guardianship or has the custody of the victim.
- (d) If the prostitution or sodomy of more than one person is promoted or enabled.

4. Obscene Material and Child Pornography

Definitions (Article 154). (f) “Child Pornography” means any representation of sexually explicit behavior, any act of masturbation, sadomasochistic abuse, real or simulated sexual relations, deviate sexual relations, bestiality, homosexuality, lesbianism, acts of sodomy or the exhibition of genitalia performed by persons under eighteen (18) years of age. “Sadomasochistic abuse” means acts of flagellation or torture performed by one person to another or to him/herself, or the condition of being chained, tied or otherwise restricted as an act of sexual gratification or stimulation.

Sending, Transporting, Sale, Distribution, Publishing, Exhibiting or Possessing Obscene Material (Article 155). Any person who knowingly sends or has another send, transports or has another transport, brings or has another bring obscene material to Puerto Rico for its sale, exhibition, publication or distribution, or who owns, prepares, publishes, or prints any obscene material in Puerto Rico with the intention of

distributing, selling, or exhibiting it to others, or to offer it for its distribution or sale shall incur a misdemeanor.

If the crime described in the previous paragraph is intended for or in the presence of a minor, or if a minor is used to help or assist in the prohibited conduct, the offender shall incur a fourth degree felony.

5. Crimes against Humanity

Crimes against Humanity (Art. 306) A crime against humanity is any of the following acts when committed as part of a general or systematic attack against a civilian population:

- (a) Murder;
- (b) Extermination;
- (c) Slavery;
- (d) Forced deportation or transfer of population;
- (e) Imprisonment or other serious deprivation of physical freedom breaching the fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or other sexual abuse of comparable seriousness;
- (h) Persecution of a group or community with its own identity based on political, racial, national, ethnic, cultural, religious, gender or other motives universally recognized as unacceptable pursuant to international law;
- (i) Forced disappearance of persons;
- (j) Apartheid;
- (k) Other inhuman acts of similar nature that intentionally cause great strife or seriously attempt against bodily integrity or mental or physical health.

6. Classification and Penalty of Crimes

Definition (Article 15). A crime is an act committed or omitted in violation of a law forbidding or commanding it, which entails, upon conviction, a punishment or security measure.

Classification of Crimes (Article 16). Crimes are classified as misdemeanors and felonies. A misdemeanor is a crime punishable by an individualized fine of up to five thousand (5,000) dollars or imprisonment for up to ninety (90) days. A felony, in all the classifications specified further on, comprises all other crimes. A felony is a crime that entails imprisonment for more than six (6) months and which, according to the corresponding punishment, is classified into four degrees, as follows:

- (a) First degree felony, the punishment of which is imprisonment for a term of ninety-nine (99) years.
- (b) Second degree felony, the punishment of which is imprisonment for a term fluctuating from eight (8) years and one (1) day to fifteen (15) years.
- (c) Third degree felony, the punishment of which is imprisonment for a term fluctuating between three (3) years and one (1) day to eight (8) years.
- (d) Fourth degree felony, the punishment of which is imprisonment for a term fluctuating between six (6) months and one (1) day and three (3) years.

However, other types of punishment in addition to imprisonment may be imposed for felonies and misdemeanors. The felonies in special laws maintain the classification of felony and the corresponding punishment if they entail a punishment of imprisonment of more than six (6) months or a fine of more than five thousand (5,000) dollars, unless otherwise provided by law.

Misdemeanors classified in special laws maintain the classification of misdemeanor and the corresponding punishment if they entail a punishment that does not exceed six (6) months or a fine that does not exceed five thousand (5,000) dollars, or both penalties.

Crimes Without an Established Punishment (Article 17). If any act or omission were declared to be a crime and no proper punishment were established, such act or omission shall be punishable as a misdemeanor. If any act or omission is declared to be a felony and no proper punishment is established, the sentence to be imposed shall be that of a fourth degree felony.

C. Other Government Initiatives

In addition to the DOJ and the DFS, there are other government agencies that have been working to implement programs to combat violence and violations of the rights of women and children in Puerto Rico since the 1970s. In 1975, the UN proclaimed the International Women's Year and Decade, with the purpose of raising worldwide awareness of the situation of women and to demand that member countries review their legal structures and public policies and programs which could restrict the civil and political rights of women. This initiative did not go unnoticed in Puerto Rico, and several governmental and women's NGOs used this as a platform for their work. A study of the situation of women and legislative investigations were carried out, culminating in the Report of the Civil Rights Commission in 1972, which concluded that there was a serious situation of gender-based discrimination in Puerto Rico.

The impact of these findings marked a milestone in the acknowledgment of the human rights of women and led to the passage of Law No. 57 on May 30, 1973, which established the Committee for the Improvement of the Rights of Women [now known

as the Women's Affairs Committee]; the chapter on the Individual and the Family in the Civil Code was also revised. On the international scene, in 1979 the UN approved the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As the CEDAW Committee stated in 1979: "this text...was the first legal instrument that defined discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (CEDAW Committee, 1979).

Such world events have expanded the basis for asserting that the rights of women are indispensable to the achievement of international equality, development and peace. The government of Puerto Rico participated as an observer, and women's NGOs in Puerto Rico attended the parallel forum during the last conference which took place in Beijing in 1995. This conference produced an Action Plan directed at advancing gender equality, which constituted a commitment by countries around the world to the rights of women. As a result of this Fourth World Conference on Women, Puerto Rican NGOs developed an action plan for the women of Puerto Rico and began to analyze the progress, obstacles and limitations of advancing the human rights of women. In this context, an analysis was made of the achievements and progress reached since the establishment of the Committee for Women's Affairs in 1973. Among the achievements identified were:

- Increased awareness by society regarding the different forms of discrimination and violence against women;
- the approval of legislation, such as Law No. 102 of June 2, 1976 that declared March 8 as International Women's Day;
- Law No. 69 of July 6, 1985, Discrimination based on Sex;
- Law No. 77 of July 9, 1986, Protection for Victims and Witnesses;
- Law No. 18 of May 18, 1987 establishing November 25 each year as the Day of No More Violence Against Women;
- Law No. 17 of April 22, 1988 for the Prohibition of Sexual Harassment in the Workplace;
- Law No. 54 of August 15, 1989 for the Prevention of and Intervention in Domestic Violence;
- Law No. 123 of November 11, 1994, eliminating the requirement of a Corroboration Test in a trial for rape or attempted rape, when the evidence arises from the existence of a previous friendly relationship, love relationship or intimate relationship with the accused;

- Law No. 226 of September 13, 1996, establishing a pilot medical program to care for victims of domestic violence;
- Law No. 188 of December 26, 1997, imposing on an employer the penalty of suspension or loss of the professional license of a business when a woman is fired because of being pregnant, or for denying a worker the maternity leave period; increases the maximum fine for non-fulfillment of these provisions to \$5,000;
- Law No. 3 of January 4, 1998 (3 L.P.R.A., sec. 400), which prohibits sexual harassment against students in learning institutions;
- Law No. 16 of January 10, 1998 establishing norms to follow regarding evidence of conduct that constitutes sexual harassment;
- Law No. 129 of July 17, 1998, which eliminates discriminatory provisions on business practices of married women;
- Law No. 181 of July 30, 1999, leveling the rights of maternity leave for adopting women with those of biological mothers;
- Law No. 212 of August 3, 1999 ordering public agencies to establish Affirmative Action Plans to guarantee non-discrimination against any employee or candidate for a job based on gender;
- Law No. 233 of August 13, 1999, which considers the history of previous violent domestic conduct for granting custody;
- Law No. 245 of October 28, 2000, obliging employers to pay full salary to a female worker during maternity leave;
- Law No. 284 of August 21, 1999, Law Against Stalking in Puerto Rico, among others.

Despite this progress, it is evident that there remain many different forms of oppression, discrimination, and marginalization of women, such as various forms of violence against women; receipt of less pay for equal or comparable work; sexual harassment in the workplace and in educational institutions; the feminization of poverty and the increased number of women heads of household and teen mothers; sexism and sexual stereotypes in education; sexism in the mass media and the promotion and exploitation of women as sex objects; discrimination of women based on race and age; and the absence of a comprehensive approach to address the economic development, health and all other rights of women. Finally, there continues to be resistance in acknowledging the existence of diverse forms of families, social roles and expressions of sexuality.

Among the best-known agencies involved in this matter are the Women's Advocate Office (OPM in its Spanish acronym) and the Civil Rights Commission (CDC in its

Spanish acronym). On April 11, 2001, The Women's Advocate Office was created through the passage of Law No. 20, which amended Law No. 57 of 1973, which established the position of a Women's Advocate with investigative, supervisory and quasi-judicial powers to implement the law's provisions: the establishment of the Advisory Council of the Women's Advocate; the establishment of a procedure for filing claims and Complaints; the prescription of administrative fines, compensation for damages and the establishment of punishments; and the transfer of funds, equipment, files and staff to the new Office from the former Women's Affairs Committee.

The absence of control mechanisms and authorities to effectively implement proposed public policies led women's NGOs to propose the creation of the Office of the Women's Advocate to replace the Women's Affairs Committee. The proposal was to establish an organization with sufficient autonomy and full powers of supervision, investigation, regulation and allocation to guarantee respect for the rights of women and fulfillment of all existing policies. Consequently, the Legislative Assembly, in fulfillment of its constitutional mandate to strengthen and enforce public policies that guarantee the rights of women and promote gender equality, created the Women's Advocate Office and the position of Women's Advocate to perform specific actions to eliminate all discrimination against women and to guarantee the protection of their human rights.

Although similar proposals had been submitted in previous years, it is the Legislative Assembly that expressed the unequivocal determination to establish the Women's Advocate Office with the institutional support and allocation of funds that would allow it to perform its duties (P.de S. 201, 2001, Law 20). An important task of this the OPM is the coordination of the National Task Force to Eradicate Domestic Violence, Sexual Assault and Stalking against Women (CNEV in its Spanish acronym). Since CNEV's inception on November 7, 2001, the OPM has directed its efforts and its work to identify and establish strategies geared toward the development of comprehensive action plans to address violence against women. The CNEV is the vehicle to comply with the development of the Annual Implementation Plan for the funds of the "STOP Violence against Women" (STOP VAW) program. Among the special conditions the allocation of funds to the STOP VAW Program, it is required that the Funds Management Agency – in this case the OPM – file the Implementation Plan for the use of such funds within 90 days following their allocation. It is a requirement for the Implementation Plan to be developed in coordination and collaboration with NGOs and those government institutions that provide services to women and victims/survivors of domestic violence, sexual assault and stalking. The funds of the STOP VAW Program are allocated under the "Violence Against Women Act" and are granted by the Office on Violence Against Women of the U.S. Department of Justice.

Through the Division of Investigations and Complaints, the OPM has the following duties: to supervise public and private agencies to guarantee women's rights compliance;

to investigate complaints of violation of women's rights, such as: discrimination due to pregnancy, violations of maternity leave, provisions for breastfeeding, access to jobs traditionally closed to women, equal pay for equal work, and others; to establish a procedure to respond to complaints in a short period of time; to collect information, request documents, inspect agencies and summon witnesses that may provide evidence of violation of women's rights; and, when it is understood that a violation has occurred, and upon filing a formal complaint in the Women's Advocate Office, the Advocate may assign responsibilities, impose sanctions and demand that the violation is corrected.

The procedure to handle complaints is as follows:

1. A person or group requests the OPM in writing, by phone or by email to investigate a complaint for violation of women's rights;
2. The Division of Investigations and Complaints of the OPM gathers information and interviews witnesses to determine if it is appropriate to submit the claim as a formal complaint to the Women's Advocate;
3. If the Division's investigators determine that there could have been a violation of women's rights, a formal complaint is filed before the Advocate;
4. The Advocate appoints an Official Examiner who studies the evidence and carries out impartial hearings to listen to both parties, allocates responsibilities and issues an opinion and a recommendation to the Advocate;
5. The Advocate approves or rejects the recommendation of the Official Examiner, orders corrective actions and issues sanctions;
6. The OPM always represents the complainant. All investigation procedures shall be confidential.

The possible remedies available to the Advocate's Office are to impose sanctions and administrative fines of up to \$10,000, order the stop of the illegal action, order compensation for damages, demand corrective actions on the part of the agencies responsible for the violations, and require the agencies responsible for the violations to adopt programs that guarantee the rights of women in the workplace. In the event of non-compliance, the OPM may impose fines or go to the competent Court.

On the other hand, the OPM Division of Prevention and Education offers educational discussions with the community. Among the subjects that it deals with are: "Roles by Gender and Socialization", "Women, Work and Family", "The Psychosocial Aspects of Domestic Violence", "Sexual Harassment in the Workplace", "Law 54" (legal aspects), "Preventing Domestic Violence during Courtship," aimed at High School and Middle School Students; "Domestic Violence in a Work Environment"; and "Laws that Protect Women".

The agency's website provides the following statistics updated to 2004: of the total number of women murdered for different reasons, 44% were murdered for reasons of domestic violence (average for the years 1993-2004); in 2004, every 12 days a woman was murdered for reasons of domestic violence and approximately 52 women were victims of domestic violence in Puerto Rico every day (19,051 female victims of domestic violence per year). The website also provides reference to a list of laws and documents related to the work of that agency.

The OPM has also developed a set of educational materials to raise awareness among the general public. The subjects that the educational materials address are: "Roles of Gender and Socialization", "Gender Discrimination in the Workplace", "The Self-Esteem of Women", "The Double Shift", "Sexual Harassment at Work", "We are Dating," a set of material to prevent violence among young couples; "Mistreatment is a Crime"; "Women, Alert!"; " You don't have to be a victim of domestic violence to act"; "Domestic Violence Affects Us All"; "Protective Orders"; "For Women's Health and Peace"; "From Man to Man: What can we do to face domestic violence?".

The Women's Advocate Office publishes a quarterly magazine, *Gender Perspective* ("*Perspectiva de Género*"), whose purpose is to provide a written means of communication with women and with the community. This publication circulates among public agencies, community-based organizations, universities, various professional organizations and the community in general in order to inform, educate and raise awareness among Puerto Rican society of the problems faced by women and of women's rights. It is expected that through this magazine, many people will be reached who are interested in learning about the perspectives of women, as well as the work and activities of the Advocate's Office, without distinction of class, race, political affiliation, national origin, or even sex.

The publication consists of several sections and an editorial. One section entitled "By Way of Legislation" contains information on the legislation submitted by legislative initiative or by administrative initiative. Another section, "Our Projects", has information on the work, developments, international events and activities sponsored by the Women's Advocate Office, while a third one, "Community Education", gives us the opportunity to provide historical or political information developed by the Women's Advocate Office to the community in general. At present, the following editions are available: March/2004; June/2004; November/2004; March/2005; June/2005; March/2006; June/2006; March/07.

The Civil Rights Commission is the agency responsible for ensuring that human rights of people in Puerto Rico are not violated. It is a public organization, created by virtue of Law No. 102 of June 28, 1965, as amended. Its main duty is to educate the people on the significance of the fundamental rights of people and the means to respect them, protect them and promote them. It has the obligation to manage the protection

of human rights with individuals and authorities as well as the strict fulfillment of the laws that protect such rights.

As part of its duties, the Commission carries out studies and investigations on the protection of the fundamental rights in our country and handles complaints regarding violations of such rights. Likewise, the Civil Rights Commission evaluates the laws, regulations and actions of the government, both State as well as municipal, ensuring that they do not damage the fundamental rights of our People. The amendment of 1996 extended the duties of the Commission to include the power to appear in court as “*amicus curiae*” (friend of the court) in those cases where the result may have an impact on the effectiveness of fundamental rights in the country. The Commission does not have awarding capacity, nor can it represent individuals in legal procedures beyond appearing as *amicus curiae*. One of the basic duties of the Commission is to educate people on fundamental rights and the protection of human rights, serving as an essential tool in the studies and investigations carried out on the subject of civil rights.

As part of its main duty of educating citizens on matters of civil rights, the Commission fulfills its mission by providing a series of services such as: Educational chats (“Sexual Harassment in the workplace”, “The Rights of the Elderly”, “Police Interventions with Citizens”, “Civil Rights in General”, and “Sexual Harassment in Learning Institutions”), training sessions, seminars and conferences. The Commission has a collection of specialized documents that cover several aspects of human and civil rights. Among its resources are publications with information on civil rights in Puerto Rico, the United States and other countries. Currently, there are 22 booklets on Civil Rights in Puerto Rico available for download in PDF format. The subjects included in these booklets range from the Bill of Rights to the Rights of Children and the Rights of the Elderly. Some publications that the Commission has available are: Regulations on Child Labor, and regarding educational material, of the 22 civil rights booklets, only five address the subject matter of this study; (1) “Charter of Rights for Children”; (2) “Sexual Harassment in Educational Institutions”; (3) “What is domestic violence and how is it defined?”; (4) “Sexual Harassment in the Workplace”; (5) “Domestic Violence: What is it and how does a protective order work?”

However, given the lack of knowledge among considerable sectors of the population and a lack of awareness of the existence of civil rights, which is the basis for democracy, we could question the effectiveness of the message spread by the Civil Rights Commission. We believe that the Civil Rights Commission could play a leading role and be proactive in the process of drafting a bill against human trafficking, in approaching the Legislative Chambers for subsequent approval, and in promoting civil rights with a greater commitment in management, which is its *raison d’etre*.

V. Response of Civil Society to the State’s Public Policies regarding Human Trafficking.

Civil society is comprised by the broad and heterogeneous group of citizens who are at once impacted by public policies and, who in turn, are the agents of change in our society. During the last decade, the failure of the State to bring people together has prompted an increased presence of NGOs in Puerto Rico. These organizations play a major role in defining solutions for citizens, sometimes complementing the actions of government institutions, and often becoming more effective than the governmental agencies themselves. Their closeness to the people and their ability to understand the psychology of the communities and the urgency of the actions of community leaders all add to the value of the work of NGOs.

This development has to take shape in formulating proposals for public policies. For example, one of the first initiatives in light of our work is evident in the “Regional Coalition against Trafficking of Women and Children in Latin America and the Caribbean”, known by its acronym in English as “CATW”.

CATW has always kept an analytical line that links all forms of sexual exploitation as part of the same problem (referring to children and adults). The organization was internationally established in the 1980s by sociologist Kathleen Barry. In Puerto Rico, the organization is represented by María Ortiz, who has denounced the lack of sensitivity by some State and municipal agencies in working with the prostitution problem on the Island. Likewise, it tries to promote legislation for an amendment to the new Penal Code to eliminate any statute of limitations for violent sexual crimes. It also pursues the consideration of sexual slavery cases as domestic violence cases under Law 54 of the Penal Code.

One important response of civil society is the Kamaria initiative—a prevention rehabilitation home (and type of prevention program) that offers services to female sex workers who may be at risk of sexual exploitation. The program reaches some 1,700 participants of all ages in municipalities from San Juan to Fajardo. The initiative is supported by the services of young people who are doing outreach work on the streets. Demographic information on the impacted population is gathered through the services provided by the NGO, and the most significant segment of the population impacted by the work of the program is:

1. Girls involved in prostitution, aged 13 to 15.
2. 75% of the women that are in rehabilitation at Kamaria have experienced violence at home when they were children.
3. Minors who distribute crack and are earning 60 and 90 dollars per day.
4. 70% of individuals have been in 15 or more foster homes during their lifetime.

Another area requiring more in-depth study is that of male prostitution in Puerto Rico. One of our sources, as well as NGO community leaders, attributes this to discrimination against homosexuality in Puerto Rico and labor marginalization of members of the transgender community. Certainly, these are vulnerable groups to whom the NGOs provide services and for whom the State has limited its assistance, whether due to negligence, ignorance or the inability to act given legal limitations.

Evidently, all considerations referring to integrated planning on how to face this situation suggest that one of the problems is the poverty facing many segments of the country's population. In the center of the Island, young people may get involved in prostitution for economic reasons, due to great social and economic deprivation.

We studied legislation of other countries such as the Netherlands, where prostitution is legal under the principle that legalization will be to the benefit of the prostitutes, which is not necessarily true. Prostitution may be considered a form of work, but with the aggravating factor that it is immigrant women who assume this market—with familiar consequences. On the other hand, we evaluated the legislation of countries such as Sweden and Finland, where only the client is punished—this legislation seems more equitable in the response toward this phenomenon.

One of the recommendations and concerns of some community leaders with respect to prostitution is that, if analyzed as a form of labor, it legitimizes a situation that only further leads to the ongoing exploitation and oppression of women. They also understand that after analyzing the situation that exists in our country regarding this matter, it is necessary to talk about sexual exploitation or exploitation of women involved in prostitution.

VI. International Response to Human Trafficking

As we have stated before, the phenomenon of human trafficking is not a thing of the past. Worldwide each year, approximately two million people—one million children, 700,000 women and 300,000 men—are suffering in silent terrifying situations of slavery and sexual servitude without the possibility of freeing themselves. Therefore, human trafficking is one of the major challenges to human rights and development policies, because, in addition to having a high human, social and economic cost, it brutally deprives nations of vital human resources for their development. This phenomenon appears to be supported or tolerated by official structures and ignored by public opinion.

Kofi Annan, former Secretary General of the United Nations, summarized it very well: human trafficking is a worldwide outrage and plague that takes place everywhere in the world, with almost absolute impunity, and, in many cases, carries sanctions much less severe than those stipulated for drug trafficking. The international dimension of this problem has resulted in public policies of different calibers and international responses

that should help us reflect on our challenges in this part of the Caribbean. One of the most notorious cases, which is not very well known in Puerto Rico, is the case of Japan. In December 2004, the government of Japan announced a new national plan to fight human trafficking and slavery. A study by the Organization of American States (OAS 2005) indicates that the government of Japan hopes to establish an improved anti-trafficking legal framework by ratifying the international anti-trafficking protocol and by revising the penal code to establish human trafficking as a new category of crime. New revisions to immigration laws will also include provisions to exempt identified trafficking victims from deportation as illegal migrants. As a measure to protect victims, the government plans to grant them special permission to stay in Japan temporarily, as well as to provide them with financial assistance, if necessary, to return home. (Preliminary Report of the OAS Investigation: Human trafficking from Latin America and the Caribbean (LAC) to Japan (March 1, 2005)).

According to this report, the Japanese *Yakuza* and other criminal organizations are deeply involved in this lucrative business, which produces an annual income of 83 billion dollars. As we can see, there are parallels with the operations that we are seeing in our country, as well as in other countries studied herein. Most victims are treated as illegal immigrants. This means that when they are discovered by the authorities, they are immediately detained and deported. The lack of a comprehensive anti-trafficking statute in Japan means that criminals rarely face prosecution for exploiting their victims. In fact, evidence clearly indicates that other Latin American countries, particularly Perú and Brazil, may have a significant number of nationals subject to trafficking within the Japanese sex market. This subject shall be examined in greater detail in the second phase of our research.

According to the *First World Congress Against the Commercial Sexual Exploitation of Children*, which took place in Sweden in 1996, an agenda was adopted with different initiatives to strengthen the handling of this problem, and many initiatives have come to public light that need to be reinforced, such as: promoting solid cooperation between the states, criminalizing prostitution and child sex tourism, guaranteeing punishment for the client and not for the victims, revision of laws, policies, practices and programs; and creating a climate of protection for the citizens, both parents as well as victims.

Other initiatives are: promote participation of children and citizens in those matters; promote the adoption and implementation of laws, policies and programs against sexual exploitation; develop and implement programs that will protect and provide assistance to the victims and facilitate their recovery and reintegration into society; and political mobilization of the inter-governmental sector, the non-governmental sector and the international sector to work against sex tourism and sexual exploitation.

We note that, among the efforts made to provide an international response to these crimes, in 1985 the world tourism industry adopted the *Tourism Bill of Rights and Tourist Code*. The World Federation of Travel Agents produced a “Children’s and

Travel Agents' Charter" to provide assistance to groups devoted to fighting for the well-being of children who are victims of sex tourism. In its conclusion, the study exposes the need for the cooperation of all societal institutions, the governments, the NGOs, and the international communities, among others. Thus, we can say that, in order to work with this social dilemma, governance is of vital importance, which means a more effective and inclusive participation of our citizens and of the sectors of the population affected by this reality.

VII. Recommendations

Building on previous studies that have been conducted on human trafficking in other parts of the world and on our findings from the investigation, we present some alternatives and suggest some courses of action for both government and members of civil society. Currently, there exists no structured or defined governmental agency in Puerto Rico that is specifically charged with the issue of human trafficking; therefore, it is urgent that we establish such an institution, which must be permanent and government-sponsored. Inter-agency collaboration is also imperative, and thus coordination and networking must be further encouraged between agencies, including members of law enforcement and health officials. We therefore suggest that this agency be at the level of the central government to streamline efforts not only between Federal and local authorities, but also to act as mediator and interlocutor with non-profit organizations.

The following are some additional, specific recommendations that would help pave the way in combating a crime that has remained essentially invisible and unaddressed by public policy:

Recommendation No. 1: The most pressing recommendation derived from our study is the urgent need to define human trafficking in the specific context of Puerto Rico. We recommend that this term be structurally defined in a standardized manner such that it impacts the responsibilities of all the agencies concerned. Likewise, formal procedures must be established in the compilation of data and statistics regarding human trafficking that will enable us to propose adequate public policies to protect vulnerable populations, especially children, in Puerto Rico. Among the agencies concerned should be the Department of Family Services, the Puerto Rican Police, the Department of Health, the Department of Justice, the Attorney General's Office and the Department of Education. With this measure in place, it will be possible to gather the necessary data to draft a coherent and preventive public policy for this crime.

Recommendation No. 2: We recommend the passage of comprehensive anti-trafficking legislation, including provisions on education and collaborative efforts, developed by DFS, in conjunction with the Department of Justice and with the input from civil society. In preparation, these entities should submit drafts of anti-trafficking legislation to the Legislature of the Commonwealth of Puerto Rico.

Recommendation No. 3: Create an organization that will coordinate efforts for the collection of information and statistics on human trafficking in Puerto Rico, help direct public policy and assist in the coordination of governmental efforts to combat human trafficking.

Recommendation No. 4: Launch a national effort for the investigation of the phenomenon of human trafficking in the Caribbean region and its relationship with the illicit economy, its link to other forms of migration, its connection to drug mafias and to the sale of arms. In this effort, some natural allies for the investigative phase and the coordination of these projects include: the University of Puerto Rico, DFS, the Department of Education, universities and law schools in Puerto Rico, NGOs and other members of civil society.

Recommendation No. 5: Raise awareness of the general public on the problem of human trafficking in Puerto Rico. To this end, we recommend the creation of an alliance among NGOs, the media and the government to launch a public awareness campaign that will reach all sectors of society through a variety of media. Collaboration with the Chamber of Commerce, the Association of Industrialists, and others should also play a key role in this in order to ensure the success of the campaign.

Recommendation No. 6: Establish a curriculum for levels K-20 of public and private education to inform Puerto Rican youth about the problem of human trafficking, especially labor and sexual exploitation and forced migration, among others. As a starting point, we recommend a regional forum with the agencies concerned, NGOs, and universities that have experience on these issues, particularly The Protection Project at the Johns Hopkins University SAIS, whether locally and/or in the United States, in order to have a regional perspective.

Recommendation No. 7: Establish a training and guidance program for federal authorities—particularly ICE and the State government—and NGOs about the protocols to be followed to better detect and fight human trafficking its different forms. There is sufficient information collected in the first part of this investigation to prepare an initial meeting and orientation in coordination with these agencies and with civil society organizations to develop such a program.

Recommendation No. 8: Implement a Plan of Action against Human Trafficking, especially of Children, in Puerto Rico. This should serve as a guide for the actions that the country will undertake regarding public education, civil action, security, and the coordination between State agencies and the business and academic communities. The key elements of such a plan that must be agreed upon are as follows:

- *Prevention:* Provide information and carry out rigorous training and education campaigns.

- *Protection*: Identify the causes of the problem, document the findings and translate the data into proactive educational campaigns; provide support and legal assistance to the affected population by establishing support centers that serve children and are safe havens from exploitation.
- *Jurisdiction*: Establish a clear relationship between the actions of federal authorities and the State government in terms of their respective jurisdictions and the limits of their actions, clearly defining the crime at the national level through a legal ordinance and thus empowering local authorities with a clear policy to better prosecute the crime. We likewise suggest the examination of cases of fake marriage contracts as a cover for human trafficking under the Federal law known as the “RICO Act” and the role of work contracts as a cover for forced labor.

VIII. Conclusions

This investigation has shown the many complex factors that contribute to the dehumanizing crime of human trafficking against the backdrop of the unique cultural attributes and traditions of Puerto Rican society, and we see now that human trafficking, once regarded as a phenomenon limited to the Pacific or Central Europe, now exists on our Island.

One of the first matters that we must clarify in terms of the results of this study is that migration is not a *sine qua non* condition of this crime. In other words, our work proved that the nature of human trafficking and its forms in Puerto Rico is predominantly domestic, prevalent especially at the points where drugs are sold. While one cannot ignore the possibility of the involvement of international organized groups, our study pointed especially to the domestic trafficking of children. Although it is certain that there exists organized human trafficking in the Caribbean region, it is evident that this phenomenon is linked to other illicit markets, such as drugs and illegal arms.

Another conclusion we have drawn is that the fragmented information revealed in this study on different forms of child trafficking leads us to believe that a more in-depth study of incidents found to be isolated by the authorities *may* suggest there exists a more elaborate infrastructure for child exploitation, including child pornography, child prostitution and child labor. In recent years, part of this activity has centered, among other places, around the so-called “*massage parlors*” that have a legal commercial façade, but which may be involved in the exploitation of minors. There are many such establishments in Puerto Rico, and, according to testimony from the security authorities of this country, they are an extremely lucrative activity. The monitoring and prosecution of these cases is very challenging to the authorities, making it difficult to bring those responsible to justice.

Other forms of exploitation involving minors may include abuse and exploitation in the cases of foreign migrants working in domestic service. In the present study, we

discovered cases in which victims of this type of exploitation were too afraid to file a complaint and thus remained in indefinite oppression and servitude. We saw in the case of the governmental official and the minor from the Philippines.

As serious as the aforementioned cases may be, even more significant are our findings that in our country there are many cases of incest between blood relatives and of sexual abuse in foster homes. One Department of Justice attorney interviewed said that the situation is so grave and the cases so disturbing that he had to quit working on such cases. Equally grave is the large number of biological parents who exploit their children in sexual work, prostituting them and mistreating them physically and mentally. Although the incidence of child abuse is not specifically addressed in this study, its occurrence helps us to understand the overall deterioration of the situation of children and young people in this country.

As we recommended in the previous section, there are three areas which require immediate attention from the authorities concerned. These are: 1) the foster care system and its lack of supervision, which is affecting the well-being of thousands of children; 2) the lack of effective legislation to combat human trafficking in a coordinated manner among the federal agencies charged with handling this type of crime; and 3) the lack of communication and coordination among the various federal agencies, especially regarding the elaboration and application of a common definition for human trafficking among the agencies and a protocol for how to address the problem in a synchronized manner; this protocol must be reinforced with comprehensive and specific legislation if it is to be effective on a national scale.

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Annex I: Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women And Children, Supplementing The United Nations Convention Against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article

5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
 - (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.
 5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
 6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:
 - (a) To prevent and combat trafficking in persons; and
 - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral

cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
 - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
 - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
 - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian

law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the grounds that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States

has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex II: Interviews and Cases

The following data were collected through interviews carried out by the principal investigators in collaboration with two NGOs. The interviewees, all of whom quit school and came from broken families, shared their experiences as victims of sexual and/or labor exploitation. Although the interviewees are no longer minors, their experiences of sexual and labor exploitation began when they were under the age of 18. Names have been changed for reasons of confidentiality.

Sexual exploitation, prostitution and drugs

Case 1: “I expect nothing more from this life.”

As a newborn, Liza’s father abandoned her and she has lived with her mother, grandparents and sister ever since. Her mother was a prostitute and began exploiting Liza and her sister when Liza was just five.

She always exploited me. When I was younger, I remember I was in first grade, and she locked us down in a room, both me and my sister, in those beds with mosquito nets with the metal rod frames...she tied us there, and was given 100 pesos and the men had relations with us.

At this age Liza was also sexually abused by her grandfather, her uncle, cousins and then her brother-in-law, all of whom threatened her so she could never accuse them. Her mother, she says, never knew. At the age of eight she was taken to a foster home, where, according to her statement, she was treated well by a very elderly couple.

Later on, her mother took her to another home where the owners had a supermarket business and were wealthy. At this home she was raped by her foster father (she slept in the same bed with [her foster parents]), after which she realized that her mother was an accomplice in these acts. “*Later, I began to realize that it was a business...because when I started growing up they told me how everything was.*” Her mother was paid for her daughter’s services. When she was 13, Liza had her first son and never saw her son’s father again. She then lived with a man with whom she had a daughter, but later separated from him because of abuse. Currently she has no communication with any of her children. She knows that her son was in jail many years for robbery and that her 11-year-old daughter lives with her father.

Liza uses drugs and prostitutes herself to pay for this vice. Yet at age 44 she is still faced with exploitation by her own family.

I have a cousin who is now in the Port Authority Police, and he is tasked with checking the area where women prostitute themselves...I was offering sex services in Carolina and...I slept with him and I did not know he was my cousin. And after we finished he told me: “Are

you Liza...?” And I: “Yes” “Well, I’m agent “so and so” and I am your cousin.” I didn’t even know what to do. I broke down crying.

Liza clarifies that she does not work, but she prostitutes herself in order to maintain her vice and to shoot up every day. She says she does it,

“To avoid thinking about how bitter I am, since my life is completely destroyed...I mean, I have no desire to live. Because honestly, as soon as someone tells me they are sick, I stick around them to see if I get sick too and die for real. That is what I do. If I meet someone who says he has AIDS, I stick around him because I’m tired of living, I expect nothing more from life. I hope, at least before my birthday, to go to God. Because I think my body needs rest, there have been many knocks in this life and I expect nothing more from it.

With these words, Liza ends the interview. At 44 years of age, she remains a prisoner of her childhood and wishes only to die to get rid of her past.

Case 2: “Now I understand that was abuse, abuse, sexual infant abuse”

Carmela is 46-years-old and still wanders the streets as a consequence of her loveless childhood. Given this absence of affection and complete abandonment, without knowing the love of her family, she is first victimized at age 5 by an elderly man—in exchange for “love,” the man gave her a dollar to buy candies.

Because, umm...they gave us (to me and my siblings) one pesito to buy candies and since we bought a bag of candies we stayed relaxed, for me that was love, I confused true love with those disgusting things that man was doing. Well, that man took out his penis and he put it inside me...

Carmela now understands that at that time, she found in that adult the love she did not have at home from her mother. Carmela never went to school because her mother never took her. During her childhood, she went to several homes or children’s shelters, as her mother had a strong alcohol addiction. Carmela recounts the mistreatment by her mother, whom she describes as a witch. *“She beat me with electric cables, she marked my face with her nails, one time she left one (nail) stuck (inside me).”* Her wickedness had no limits. Carmela testified, *“A two-year old little baby named Luis arrived. She broke his leg twice... and his little arm once, and she took it out on me...She threw him on the bed...And the baby fell and broke his hand”*.

When she was 13, Carmela fell in love and became a mother for the first time after having a relationship with a young man. However, she could not continue the relationship with this individual, since her mother did not allow her to do so. Later on,

she reveals to us that she was a victim of a rape on three occasions, at age 15, age 23 and on a third occasion that she prefers to forget. *“But that rape, what they did to me was forced, it was very mean...in the building, they locked me in an apartment and they tied me up, they beat and raped me.”*

This last one rape was so violent that it forced Carmela to go to the Medical Center, since at the time of the rape she was beaten and became infected with the HIV virus. She could not accuse anyone, even though she knew who they were, because she was threatened with death. By that time, Carmela was getting into drugs and became a dealer of coke, cocaine, marijuana and heroin in an urban slum area. Although she no longer sells drugs, she continues to use crack and prostitutes herself to support her and her partner’s drug habits.

Case 3: “My childhood, it was cursed, Misi, I don’t even want to remember”.

After her parents’ sickness, Agatha cannot stand it anymore. She falls into an abyss, and at her 35 years of age, she escapes from her reality in the world of drugs. After a little while, prostitution becomes her solution to pay for the vice. She had two children who were raped by the neighbor and children’s godfather.

When my mother was sick, then, the neighbor told me, “I’ll help you. While your mother gets better, I will take care of the children.” And he, her husband, tried to hurt my children, sexually, you know.

The rape of her children was not a crime unknown to Agatha as, when she was a child, she was raped by her stepfather.

Not just me, but all of us, my siblings and me. And my mother kept her mouth shut, never said a word. [My stepfather] threatened her and me too, when I was a child, he, he gave me a lot of work, and, “if I have to support you, you have to work, you understand what I’m saying?”

He exploited her sexually. For this reason, Agatha says of her childhood,

“It was bad, it was cursed, Misi, I don’t, I don’t even want to remember”.

Case 4

Look, it was horrible because I always had a nice body and I had no father figure, so I crushed on any man who approached me...I was given my first telephone as a present from an elderly man who I had

to date so I could live. Now I am able to say that I felt I prostituted myself, but actually I did not ask for money. It was just that, I dated him, I felt he was with me and well, it was ok, I could eat...

This statement is from a 19 year-old girl, who at 11 “sold herself” as merchandise to older men for food. This was in the absence of her parents, who worked for long hours. The absence of her parents created behavioral problems that disrupted her progress in school. She was aggressive toward her peers, once attacking one of her fellow students, and was expelled from school and rejected from several more in the system. “...I was taken away handcuffed in eighth grade”. After the arrest, she started getting involved in the underworld of criminals and discovered the existence of a lucrative business of pushing drugs and prostitution. In this unscrupulous world, vulnerable in her pain, the adolescent felt a pressing need for someone to take care of her.

Really, I felt so in need of love and I had illusions that...it was clear in my mind they were not going to leave their women to be with me. I was just a girl, it was clear, but I built up my hopes.

In the world of drugs,

I started meeting people...and the shooters were kids as young as 10. I started in my hometown, but I can tell you about other towns where it is amazing. You see kids that have control of everything... with firearms. (They said) that they're going to kill them. I got really scared. .. I remember the first time I saw a firearm, I did not even know that he had it on. It was pretty traumatic because he took out the firearm to hand it out to a boy. He was a boy because he had to be there at that moment... He was younger than me.

Foster Home/Drug Dealing and Sex Abuse

Case 1: “In this same home, they tried to sexually abuse me. That was the only time and it was the one that marked and traumatized me”.

Ana never met her father and her mother abandoned her when she was an infant. Her mother’s drug addiction left the three siblings alone in their public housing. Her neighbors called the Department of Family Services and they were removed. Since then, Ana has been in six foster homes where she has been physically and emotionally abused and sexually molested. In the second home, she stayed for a decade:

I fell into depression, tried to commit suicide twice. [The foster mother] did not physically abuse me, she emotionally abused me. Physically, when she had it with me she gave me a “slap” in the face, but it was not all the time. But she abused me emotionally up to the

point I felt depressed and I did not want to know about anything or anyone.

For some time, Ana was the only girl at home, but then the foster mother began to pick up older boys.

She picked up a 15 year-old boy and apparently she fell in love with him, or something happened, there was a chemistry between them and she changed completely. A radical change from top to bottom. She left my [foster father], she always argued with him every day. The boy asked her for something every day. She would do anything to find it for him. It was all about him. Then she started to change. It was like everything was separate for me. I mean, I had to be locked down in my room all day. I could not talk to the boys because she was in love with them. I could not smile at them because I was something else for her. In this same home they tried to sexually abuse me as well. That was the only time and the one that marked and traumatized me because [a boy] touched me in my private parts and I felt very bad.

It was a foster peer of 15 years who did this and afterwards threatened her with death if she told the facts. Although Ana had never been involved in drugs, she stated that in school she experimented with some.

“Well, I don’t know if they call the “palis”(Xanax pills) drugs, but...I used a “Phillie” just once, just for the sake of tasting it. But nothing to do with marijuana, cocaine”.

Nevertheless, in love with the drug dealer in the school, she helped him to collect the payments. Currently Ana lives in the first foster home that received her. She is a senior in high school and hopes to finish her studies and become a psychologist

Case 2: “... you had to sell drugs - if not, you got punished.”

Jorge is 16 years old and has been in 52 foster homes. In this series of homes, the boy from Coamo has learned to be an adult despite his young age. In these homes... [he became] involved in unlawful and illicit activities, forced by adults who constantly reminded him that his stay in that home had a price - a price that depicts a frightening picture of modern slavery. To be in the home...(he) “*had to earn it*”. Refusal to wash the owner’s car would mean a beating for sure, or to find himself locked in a bathroom for days without food. On other occasions, the owner “*got upset about something with me, and they beat me with a metal ruler on my back*”.

He also participated in drug dealing and was involved in illegal weapon transactions, among other jobs he was forced to perform. Jorge revealed that he saw other kids in similar situations who had worse luck for selling and consuming drugs...10- and 11-

year old boys, a lot of drug dealing and consumption of drugs like “*pali and percocet*,” both highly popular among boys and girls in that environment. He concludes that “*the worst is the corruption everywhere, including the cops and parents in charge of us.*”

Drug Dealing, Robbery, Firearms and Others

Case 1: “I cried almost every night at home, I felt alone, these people are a bunch of pigs and traitors, and after you give everything to them, they stab you in the back...”

Robbing houses and schools, I left them empty, robbed everything, computers, all computers, printers and social security numbers. I hung out with people using all kinds of firearms and all kinds of drugs. All kinds of drugs, not just marijuana – pali, Percocet and then I finally tried coke. I was always the youngest and they were old, you see, and I wanted to be the craziest because I was the youngest. I was the youngest; they were all 20, 27, 17, 15 and 16. That’s how it is...every time they admired me more and said “the young one is a crazy one, the young one knows this and that. They flattered me and this made me go higher; every time to be crazier, smash more faces, shoot that guy or whatever. You see? This is what happened, I got screwed, I let go.

Besides selling drugs, José sold social security numbers and birth certificates he stole from the schools. At his young age he was already together with the big drug lords where he lived and was feared by others. He had many arrests and his record is extensive. His father always reminded him and said, “*Take care of yourself, because at this rate you’ll not make it to 21. Your life is a mess, I hear rumors about you.*”

And I rejected him...It was not a life. After that I cried almost every night in my house, I felt alone...these people are a bunch of pigs and traitors, and after you give everything to them, they stab you in the back; but now I’m realizing, I am 17 and I got out of that world. It was one year and four months ago that I met Christ, and now I’m in the church, I’m realizing that all those things I did, how I was the one who was wrong.

He returned to live with his mother and stepbrothers in another town, where they all go to church, and he aspires to become a marine biologist.

Case 2

Paco quit school in the seventh grade due to problems in the institution and his drug addiction. He began smoking marijuana when he was just 10.

By age 12 he had already snorted cocaine and he first smoked marijuana with crack at age 13. At that same age, he began to sell drugs, working as a dealer and a runner in different communities. He got paid when he delivered. Today he is 17.

My dad knew when I was 16 and my old woman gave me the green when I was 12. When I was 16, you see? When I was 15, almost 16, I smoked drugs. I wanted to try it so I smoked dope, you know to be in.

Paco says that he began to use drugs because his parents used drugs at home. Together with his parents, Paco shared with a foster brother, who was the only one who did not use drugs, but who was a drug dealer, “one of the big ones.” Currently that foster brother is in federal prison. Paco’s parents, upon finding that their son used drugs, “allowed him to,” and even told him to do it at home. Although they did not sell drugs, their house was a warehouse of drugs and firearms.

“All kinds of firearms, and there were many. The boys went there and they went crazy. After they made them crazy, others came and took it to a car, they distributed it in different points to the “runners” with a notebook registering every package delivered...drugs...”

Paco indicates he did not distribute drugs for his parents, but “sold for other people”. The owners of the community’s (drug selling) points paid him.

Case 3: “...I like to feel the danger”.

Norma is addicted to drugs and prostitutes herself to get them. Her parents abandoned her and, as she states it, they manipulated her. She says she is addicted to marijuana and crack. She robs and also likes to “get laid by old men” to survive. She is 34 and she tells us very little about her parents beyond the information given by third parties. She was born in Río Piedras, but lived most of her youth in Manhattan. She was expelled in the ninth grade for selling marijuana, ending her academic education.

At age 14, her father gave her a drug point to manage, and, at age 18, she began to prostitute herself, which she continues to this day.

Case 4

“My father got me addicted, it is in the blood, he told me”.

At the age of 11, Pedro quit the fifth grade and began using drugs, smoking marijuana along with “his buddies in the neighborhood” and selling drugs in small bags he prepared himself. At the time he lived with his mother. Both his father and mother were drug users, for which they were both incarcerated. His father had also been involved in stealing.

Pedro, like his siblings, was taken to live with an uncle in another town. While living with his uncle, he wanted to continue his studies so he went back to school, but quit in tenth grade to “*work and have money*”. He returned to his mother’s community and got involved with selling drugs “*on a bigger scale*” in the neighborhood where he lived. He worked for the owners of the drug points and earned “*\$300 dollars on the table alone.*”

With certain “*admiration*” and resentment towards his father, Pedro says that it was him who introduced him to the addiction. His father motivated him, telling Pedro that “*it was in the blood, that [I] had to be like him and do the same*”. With a smile on his face, Pedro adds that his father soon later told him, “*You have surpassed me,*” referring to his ability to sell drugs. Pedro’s father contracted HIV in prison and passed away days before this interview. “*I found him dead, we buried him on Sunday*”. Pedro maintains that his father treated him well and feels admiration for him. Pedro has since left his “buddies” behind and today lives with his aunts and uncles.

Case 5

Andrés is just 20 years old. At the age of 12, this young man, who could be easily mistaken for a professional basketball player, was expelled from the eighth grade. Andrés’s expulsion paved the way for his involvement in gangs. Although he claims never to have sold drugs, he was imprisoned twice for aggression and for violating probation. He knows well the hierarchy of the world of drugs and talked to us about police corruption. Likewise, he discussed the role of some children from the slums, who since the age of 10 have possessed and used firearms in their jobs in the drug (dealing/selling) points.

His saga begins at age 14 as a child exploited for labor...his job was to kill people for drug-related motives. He explains the corruption in the gangs and the illegality.

...“*[the cop] is a good friend of mine... and...since he knew what I was [dealing], well he helped me and told me if I had something on me then get out of here, run to that house.*” *I am not telling the name of the officer because he is still an officer...he protected me, [he said] “if you have a firearm run to that house, throw it and I’ll take you out.” There are officers who are given a couple of pesos undercover, for example, and they buy me 10 boxes of rifle bullets or whatever and I give them at least 100 pesos to go [to the firearm shop]. And they go as they are and show the license, all that, so they come and give it to them, they do not say anything.*

Annex III: Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing The United Nations Convention Against Transnational Organized Crime

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,

Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,

Convinced of the need to provide migrants with humane treatment and full protection of their rights,

Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,

Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,

Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- (b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) “Fraudulent travel or identity document” shall mean any travel or identity document:
 - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
 - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (iii) That is being used by a person other than the rightful holder;

- (d) “Vessel” shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.

Article 5

Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.

Article 6

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:
 - (a) The smuggling of migrants;
 - (b) When committed for the purpose of enabling the smuggling of migrants:
 - (i) Producing a fraudulent travel or identity document;
 - (ii) Procuring, providing or possessing such a document;
 - (c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
 - (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

- (b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;
 - (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.
3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:
 - (a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or
 - (b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.
 4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.

II. Smuggling of migrants by sea

Article 7

Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

Article 8

Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.
2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling

of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, *inter alia*:

- (a) To board the vessel;
 - (b) To search the vessel; and
 - (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.
3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.
 4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.
 5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.
 6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.
 7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9

Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:
 - (a) Ensure the safety and humane treatment of the persons on board;

- (b) Take due account of the need not to endanger the security of the vessel or its cargo;
 - (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
 - (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.
2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.
3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:
 - (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
 - (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.
4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10

Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:
 - (a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;
 - (b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;
 - (c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

- (d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;
 - (e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and
 - (f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.
2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.
2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 (a), of this Protocol.
3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.
6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

- (a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and
- (b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Article 14

Training and technical cooperation

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.
2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:
 - (a) Improving the security and quality of travel documents;
 - (b) Recognizing and detecting fraudulent travel or identity documents;
 - (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes

- of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;
- (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and
 - (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.
3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

Article 15

Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.
2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.
3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Article 16

Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States Parties may cooperate with relevant international organizations in the implementation of this article.
7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.
8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19

Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.
2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.
2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.
3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.
4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.
2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General

of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex IV: Summary of the Federal Trafficking Victims Protection Reauthorization Act of 2008

Coalition to Abolish Slavery & Trafficking

5042 Wilshire Blvd., #586 ♦ Los Angeles, CA 90036 ♦ 213-365-1906 phone ♦
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THE FEDERAL TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008, H.R. 7311, PUBLIC LAW 110-457

After a lengthy debate, the Trafficking Victims Protection Reauthorization Act (TVPTA) of 2008 was finally signed into law on December 26th 2008. This far reaching act is the most comprehensive reform of the Trafficking Victims Protection Act (TVPA) since the enactment of the law in 2000. It includes significant increased protections for survivors of trafficking in the following areas:

Immigration Relief

- The Department of Homeland Security (DHS) is empowered to provide Continued Presence (CP) not just to victims already present in the United States but to family members so they can enter the country more quickly and be reunited with family sooner. Section 205.
- DHS is empowered to provide CP to family members being threatened in the home country because of cooperation with law enforcement. Section 205.
- Victims who have filed a civil action based on trafficking claims can receive authorization to remain in the country during the course of their trial. Section 205.
- Makes formerly ineligible parents or unmarried siblings under the age of 18 of an adult trafficking victim eligible for T-visas if the individual is in danger of retaliation as a result of cooperation with law enforcement. Section 201(a).
- Expands the T-visa requirement of “physical presence in the United States...on account of trafficking” to include victims who are physically present in the U.S. for the purposes of participating in the investigation or prosecution of trafficking. Section 201(a).
- Provides for the extensions of T-visas. Section 201(b).

- Fees that were associated with the T-visa application that could mean that some applicants and their families had to pay thousands of dollars to be eligible for a T-visa and/or a green card can now be waived. Section 201(d).

Protections for Immigrant Workers

- Provision of information at consulate offices about legal rights when entering the United States on domestic worker and nonimmigrant visas (employment and education-based visas). Section 202.
- Interviews at consular offices that confirm that the applicant understands his or her legal rights. Section 202.
- Enhanced reporting and protective measures provided to those who enter to work for a diplomat or an international organization including:
 - Suspending visas issued to diplomatic missions or international organization where there is evidence of abuse.
 - No longer issuing or renewing visas without an employment contract.
 - Conducting a personal interview with the application outside the presence of the employer and providing the information pamphlet described above. Section 203.

Protections for Immigrant Children

- Upon receiving credible information that a child may have been subjected to a severe form of trafficking in persons, the Secretary of Health and Human Services shall determine if the child is eligible for interim assistance as a trafficking victim. Section 212.
- Within 24 hours, a Federal, State, or local official that discovers a person under 18 years of age who may be a victim of a severe form of trafficking in persons must notify the Secretary of Health and Human Services to facilitate the provision of interim assistance. Section 212.
- The Attorney General and the Secretary of Health and Human Services must develop policies and procedures to ensure that unaccompanied alien children in the United States are safely repatriated to their country of nationality or of last habitual residence. Section 235.
- Clarifies eligibility for Special Immigrant Juvenile Status for unaccompanied immigrant children. Section 235.

Prosecution

- Clarification of definition of coercion to ensure it encompasses all forms of modern-day slavery.
 - The Forced Labor (§ 1589) and Sex Trafficking (§ 1591) statutes now include in the definition of coercion a clarification that “serious harm” means any harm, including psychological, financial, or reputational harm, that would compel a reasonable person with the victim’s background and in the victim’s circumstances to perform labor, services, or commercial sex acts to avoid that harm. Section 222.
- Expands Crime of Sex Trafficking.
 - New language broadens the crime of sex trafficking by force, fraud or coercion by expanding the mens rea requirement to include “reckless disregard” so that the government now need prove either actual knowledge OR reckless disregard that force, fraud, or coercion caused a person to engage in a commercial sex act. Section 222
 - Eliminates the requirement that an alleged trafficker must know a minor sex trafficking victim’s age and provides that if the defendants had a reasonable opportunity to observe the minor, knowledge of minor age need not be proven. Section 222
- Creates a new crime codified at 18 U.S.C. Section 1251, prohibiting fraud in foreign labor contracting.
 - Imposes criminal liability on those who, knowingly and with intent to defraud, recruit workers outside the United States for employment in the United States by means of materially false or fraudulent representations. Section 222
- Expands authority for detention of defendants charged with trafficking offenses pending trial. Section 224.
- Creates new crimes for obstructing human trafficking enforcement and trafficking-specific conspiracy that severely penalizes perpetrators. Section 222.
- Expands extra-territorial jurisdiction to trafficking crimes committed outside the United States where the offenders is a U.S. national or lawful permanent resident. Section 223.

Prevention

- Increases effectiveness of anti-trafficking programs by ensuring grants are awarded through a public process open to full competition. Section 105.
- Creates an integrated data base within the Human Smuggling and Trafficking Center. Section 108.

- Mandates the Department of Labor (DOL) submit a report detailing a public list of goods the DOL has reasons to believe are produced by forced labor or child labor. Section 110.
- Creates funds for specialized programs to assist United State Citizen and Legal Permanent Resident Victims. Section 213.

Ricky Martin Foundation



**Universidad de Puerto Rico,
Recinto de Río Piedras**

