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New Law, Old Impunity: Mexico Has a New Anti-Trafficking Law. But Will It Address the Country's Problems?

By Victoria Rietig

Abstract

The new Mexican anti-trafficking law is an important step to fight human trafficking, but the bigger problem in the country is widespread impunity: corruption, powerful cartels and scarce funding allow human trafficking to flourish in Mexico, while human rights workers face threats and violence. This article advocates three changes to make anti-trafficking efforts more effective: (1) the Mexican government needs to increase prosecution efforts to decrease impunity; (2) anti-trafficking organisations need to improve their cooperation; and (3) more statistical analysis is needed to create better-targeted policies. The chances that presidential-elect Enrique Peña Nieto will push these changes depend on his party's willingness to evaluate prior work and to allocate sufficient funds to combat human trafficking.

Introduction

Mexico's president Felipe Calderón was satisfied: he confidently described the law published on 14 June 2012 as a 'modern and solid legislation to combat the scourge [of human trafficking]' (*El Diario* 2012). This new anti-trafficking law is the latest addition to a series of legal efforts Mexico has made to fight human trafficking in the last five years. In 2007, Congress passed the first national law on human trafficking. Since then, all of the 31 Mexican states and the Federal District entailing Mexico City have reformed their state laws to include penalties for the crime of trafficking human beings.

The law, with the tongue-twisting name of the General Law to Prevent, Sanction, and Eradicate Human Trafficking and for the Protection and Assistance of Victims, replaces the 2007 law and aims to simplify the legal maze of more than thirty different penal codes. This attempt to harmonise Mexican law is commendable. Praise is justified for the parts of the law that introduce reparation payments for victims and expand sanctions to all parts of the trafficking chain, including consumers. However, criticism comes from civil society groups, which lament that the law lacks precise language and is too complex to be consistently applied by the necessary authorities.

The new law is an important step to fight trafficking, but there is a bigger problem the country faces: laws in Mexico are often a catalogue of intentions rather than a guarantee of justice. Rampant corruption at all levels of government is acknowledged openly, and it allows trafficking to flourish. By examining this new legislation within its wider policy context, this article answers four questions: (1) How big a problem is human trafficking in Mexico? (2) What has the government done to curb it? (3) Which changes are needed in Mexico to make the fight against human trafficking more effective? and (4) How likely are we to see these changes in the future under the new Mexican government?

Trafficking: A Lucrative Criminal Business

Trafficking is a growing business in Mexico: next to the drug and arms trade, the trade in human beings is the third most lucrative businesses of organised crime (Flores 2010). Reliable numbers are hard to come by, but an estimated 250,000 men, women and children are trafficked each year

in Latin America, and at least 16,000 children are trafficked annually in Mexico (UNODC 2008, ECPAT 2010). As source, transit and destination country of large-scale migration flows, human trafficking is a forgotten issue, buried among the larger migration challenges in Mexico.

Victims are trafficked along the same routes as drugs, where traffickers can utilise established criminal networks. Migrant victims often enter the country in hubs such as Tapachula on the Guatemalan border and are distributed to tourist centres around the country, where they may remain for exploitation or are trafficked further north, either to border cities or into the United States (CEIDAS and CNDH 2008). A victim profile, published by the IOM Mexico based on a small sample, shows that about 80% of assisted victims are female, mostly between the ages of 8 and 22. Most victims are of Latin American origin, yet cases from Africa, Asia, and Europe are also reported (LeGoff and Weiss 2011).

Fighting the crime of human trafficking is a daunting task in Mexico, a country where violence against human rights activists and the media is common. In interviews with anti-trafficking and human rights NGOs, employees routinely report having received threats and personal attacks on themselves and their families. Few of these cases are investigated, they claim, and rumours of government collusion with the country's powerful cartels are widespread. When asked how she would rank the cooperation with government on a scale from one to ten, an NGO representative in Ciudad Juárez responded 'Minus One' and added, 'in Mexico, government and cartels are sometimes the same' (Juarez NGO 2012).

Criminal impunity is reported not only by NGOs, but also by the Trafficking in Persons Report, which is published annually by the US Department of State and ranks governments' anti-trafficking efforts. Since 2008, Mexico has been ranked as a 'tier two' country, designating that the country is not fully complying with the minimum standards set by the report, yet is making significant efforts to do so. The report mentions the sentencing of a mere 14 trafficking offenders in 2011 and criticises that 'the number of human trafficking investigations, prosecutions, convictions, and sentences remained low' (US Department of State 2012).

Government Efforts: A Patchy Track Record

The government entity tasked with coordinating efforts to stem this tide of crime is the so-called Inter-Secretarial Commission to Prevent and Sanction Human Trafficking, housed within the Ministry of the Interior. Following the request of the 2007 law, this Commission developed a National Programme to Prevent and Sanction Human Trafficking and scheduled its launch for 2010.

Yet today, two years after its inception, the National Programme has failed to deliver the results for which anti-trafficking advocates had hoped. Two points are criticised. First, the programme never established progress indicators, which impedes the monitoring and evaluation of its work. It raised expectations, yet its work lacked methodological rigour. Second, the programme ailed from insufficient funding. Initially, the equivalent of US \$4.2 million was allocated, but this budget was cut by more than 90% to a mere US \$313,000 (US Department of State 2012). At the time of writing, the Commission is scheduled to present a report of its work in August 2012, yet experts expect a summary of implemented actions rather than a stringent evaluation.

Given this patchy track record, the success of the new anti-trafficking law is questionable. Without financial resources, no programme or law can lead to change, no matter how well intended or phrased. Mario Luis Fuentes, founder and director of CEIDAS, a Mexico City based

think tank, finds that ‘the problem was not the old law, not the content of the law; the problem is that the law does not transform reality’ (Fuentes 2012).

Recommendations: Three Changes

What does Mexico need in order to address these challenges in the future? Three areas need work. First, the country needs to increase its prosecution efforts and the number of sentenced trafficking offenders to decrease the reigning impunity. Prosecutors are said to be overworked, understaffed and insufficiently specialised. Trainings to close their knowledge gaps abound, but because of a high turnover due to poor and sometimes dangerous working conditions, training prosecutors is a Sisyphean work. More resources and efforts to retain trained staff are needed.

Second, anti-trafficking organisations need to strengthen their cooperation. There are networks on local, state and federal levels, but many participants lament that meetings often lack results or follow-up. A comprehensive and neutral platform for exchange is missing. Inter-agency conflicts, overlapping mission statements and competition for scarce funds further complicate this problem. More cooperation of the organisations offering awareness-raising campaigns or capacity building workshops would decrease duplication of work.

Third, more reliable data and statistics on human trafficking need to be compiled. Currently, the United Nations Office on Drugs and Crime (UNODC) is working on a report for the Mexican government to provide a country overview. From the publication of this report in November 2012, a clearer picture of the situation likely will emerge. But the work cannot stop there. The challenge is to find institutions willing to share their data, and to connect them with a trustworthy and neutral entity trained in statistical analysis.

These three changes would improve the situation in today’s Mexico. For this change to be lasting, however, a general improvement of rule of law in the country as a whole is necessary. The fight against corruption and the fight against cartels are the foundations without which anti-trafficking efforts will remain shaky.

Chances of Future Success

How likely are we to see these changes in the future? There are two answers: in the short term, it is unlikely that the situation will improve, simply because 2012 is an election year. The recent presidential elections showed a victory of Enrique Peña Nieto and his Party of Institutionalized Revolution (PRI). In Mexico, a change in government comes with a nearly complete change in administration personnel, which leads to a loss of institutional knowledge.

In the medium and long-term, improvements are possible, but only if Peña Nieto brings into office the political will to put human trafficking on the agenda. So far, the president-elect has not been notably involved with the topic, but there may be hope if he manages to revamp the National Programme against trafficking without discarding the lessons learned from its first unsuccessful work attempt. If the PRI evaluates prior work, refrains from developing new policies from scratch, and uses the data from the upcoming UNODC report as a base, change becomes more likely.

The new law demands that a National Commission continues to work on human trafficking, but only PRI leadership can bring the political will and allocate the necessary resources to implement the much needed changes. If they fail to do so, impunity in Mexico will continue.

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