

# ACCESS TO JUSTICE FOR HUMAN TRAFFICKING VICTIMS IN MEXICO.

IT'S IMPACT THROUGH THE LENS OF THE  
TRIALS OF THE CURRENT ANTI-TRAFFICKING  
GENERAL LAW.

DOCUMENT PRESENTED FOR MEXICO'S UPR -  
HUMAN RIGHTS COMMISSION BY COMISIÓN  
UNIDOS VS TRATA A.C.<sup>1</sup>

AN ORGANIZATION WITH CONSULTATIVE  
STATUS IN ECOSOC

1. The following document is an advance on the analysis of trial documents by Comisión Unidos vs Trata done to evaluate the General Anti-trafficking general law and its application, published in the Federal Diary on June 14, 2012. Rosi Orozcp, president, would like to thank the following persons that have worked in the research study under the direction of Rita María Mellado-Prince: Dr. Samuel González, Angélica Herrera, Evelyn Gutiérrez, Erika Aguilera, Karla Villagrán, Gabriela Morales, Ernesto Bautista, Nuria Hernández, Jorge Marban, Sara Fernández, Karina Martínez, Guadalupe Wilson, Pilar Rey, Luis Cortes, Ruth Gómez, Ricardo Zamorano, Santiago Muñoz, the Volunteers from @SinTrata, A.C, as well as the students from the Universidad Autónoma del Estado de México, and other committed citizens that have



Human trafficking, as we know, is characterized by the movement of a person within or outside the borders of a country, for the means of exploitation that can be sexual, labor, forced begging, and forced marriage, among others, without considering gender, age, or place of origin for potential victims. According to the Protocol of Palermo, to combat Human Trafficking efficiently, there is a need to adopt a wide, integral and transnational focus in the countries of source, transit and destination that include measures to **prevent** the crime, **prosecute** and sanction traffickers, and **protect** the victims.

Human Trafficking is a crime, like many others in Mexico, that are invisible to the community and the authorities, the invisibility of the victims in the public policies established for prevention, attention and sanction are evidence to the need to re-enforce actions that guarantee the victims of this crime have real access to justice.

Access to justice is a basic principal of any rule of law. Without it, the victims of Human Trafficking, women, men, and children, cannot be heard, and as a result, they can not make full use of their Human Rights. Article 2 of the Universal Declaration of Human rights states that this right must be guaranteed by the State to all of its citizens “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The denial to the access of justice is a result of the normalization that characterizes this crime that irreparably hurts a person’s dignity, pushes them towards discrimination, and to experience the worst violence that a human being can face.



According to the United Nations, the administration of justice, must be impartial and nondiscriminatory. In this sense, it is pointed out that the independence of the judicial system, its impartiality and integrity, is an important prerequisite and is essential to support the rule of law and to make sure that justice is administered sans any discrimination.

Strengthening the access to justice for the victims of Human Trafficking, will also give a clear message that society, but more specifically, those in charge of administering justice in Mexico, believe in the dignity and the lives of every Human Being.

The United Nation's' system, required among other actions, supervision and evaluation of the judicial system to make sure of its strength, as well as the judicial protection, and sensitivity. For this reason, the analysis of the trials emitted by the Anti-trafficking law is a much needed exercise.

The report on Human Trafficking prepared by the Department of Justice of the United States embassy points out that Mexico is still not in compliance with the minimum standards needed to eradicate Human Trafficking, however significant steps are being taken to achieve it. Al though Mexico has very strong legislation through the 2012 General Anti-Trafficking Law and its regulations.<sup>2</sup> There are still many things that need to be done, especially in the area of investigation and judicial process, and achieving the sentencing of traffickers at the Federal and State level, including cases of forced labor, strengthen the formal procedures for victim identification in vulnerable populations and in data gathering.



It is in this last point that the development of this exercise by **Comisión Unidos vs Trata** has taken place for the last year, with the purpose of knowing how the application of the law and its results is taking place since its inception on June 14<sup>th</sup>, 2012.

Because of the need that we have to count with reliable, clear and trustworthy information regarding the access to justice for the victims of Human Trafficking in Mexico, during a period of six months the trial documents emitted between June 14, 2012 and March 31, 2017 were gathered through the National Platform for Transparency and INFOMEX platform for the States in the United Mexican States.

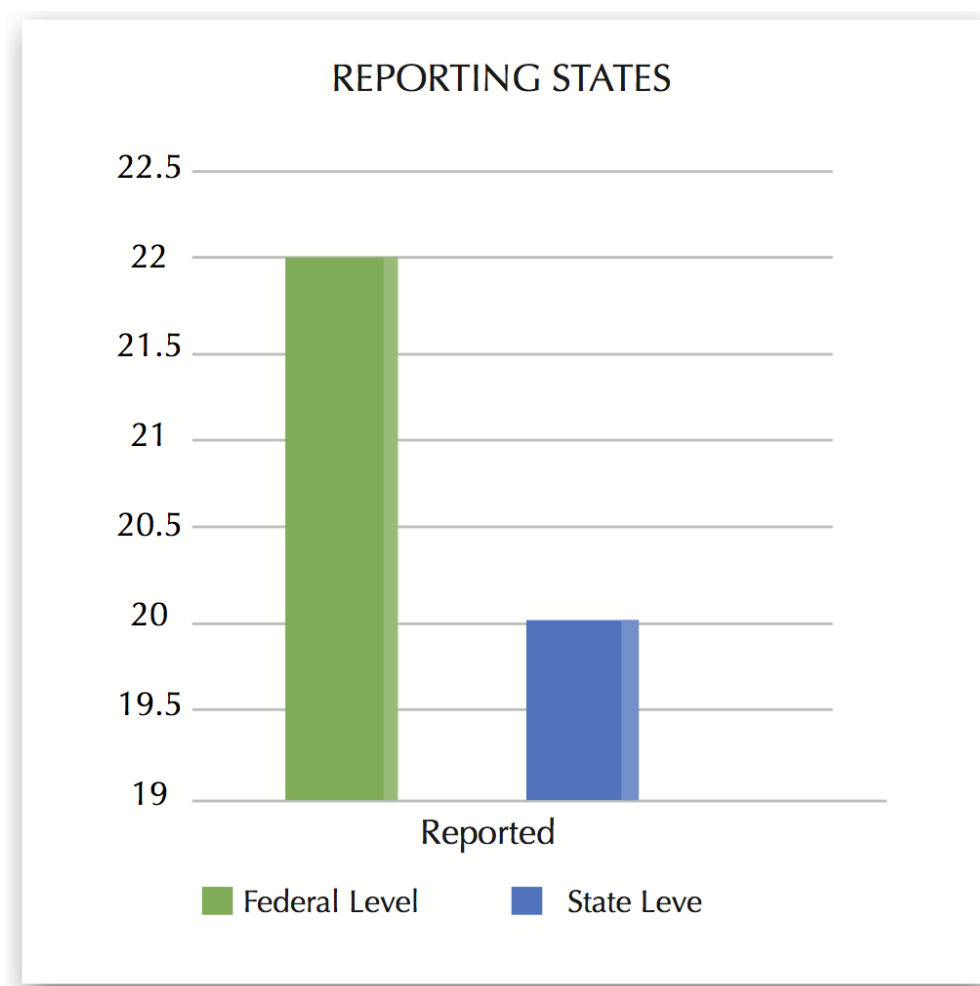
As a result of these petitions, Comisión was able to gather trial documents for 473 trials. 85 were excluded for being duplicates or for corresponding to other crimes such as, pimping, corruption of minors, eminent domain, or because they were outside of the date range specified, leaving a universe of 388 trial documents to analyze.

There were several States that limited our access to the documents, but were able to access them through the Federal Judicial Power.

It is important to note that of 32 states in the United Mexican States, we received a response from 22 states on Federal sentences, and 20 states at the State level.

<sup>2</sup> At the national level there has been an important effort to harmonize the Genial anti-trafficking law to the State laws. The States that have achieved this are: Baja California, Coahuila, Colima, Ciudad de Mexico, Jalisco, Nuevo Leon, Puebla, Querétaro, Quintana Roo, Tamaulipas, and Veracruz. The states of Aguascalientes, Campeche, and Chihuahua have modified their Penal Codes to harmonize with the General Anti-trafficking Law.



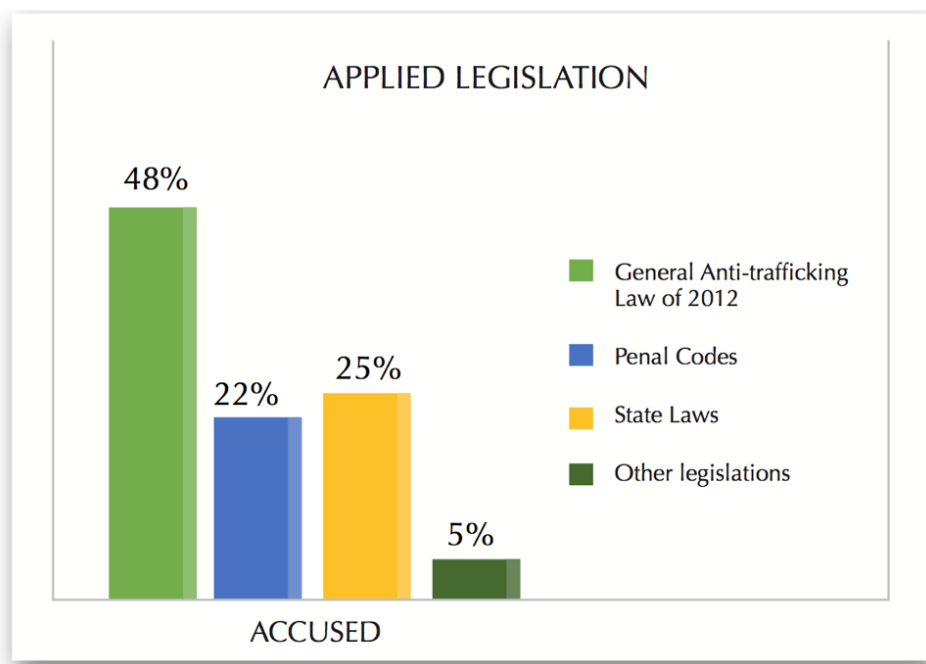


The last data generated from the analysis up until the month of February, 2018 reveal that the access to justice for the victims of Human Trafficking, is still an unresolved matter by the Mexican State, and that it can be affirmed that gender violence, stereotypes and cultural patterns that promote inequality and the power of one sex over the other are a constant that can be clearly observed.



As mentioned above, the 388 trials analyzed involve 533 traffickers and 1012 victims of Human Trafficking, highlighting by the legislation applied to each of the accused, justice was imparted to:

- 254 of the accused, that represent 48% were sentenced using the Genial anti-trafficking law.
- 118 accused, that represent 22%, were sentenced by the State Penal Codes
- 135 Accused, that represent 35%, by the State Laws on Human Trafficking
- 26 Accused, that represent 5%, based on other legislations.



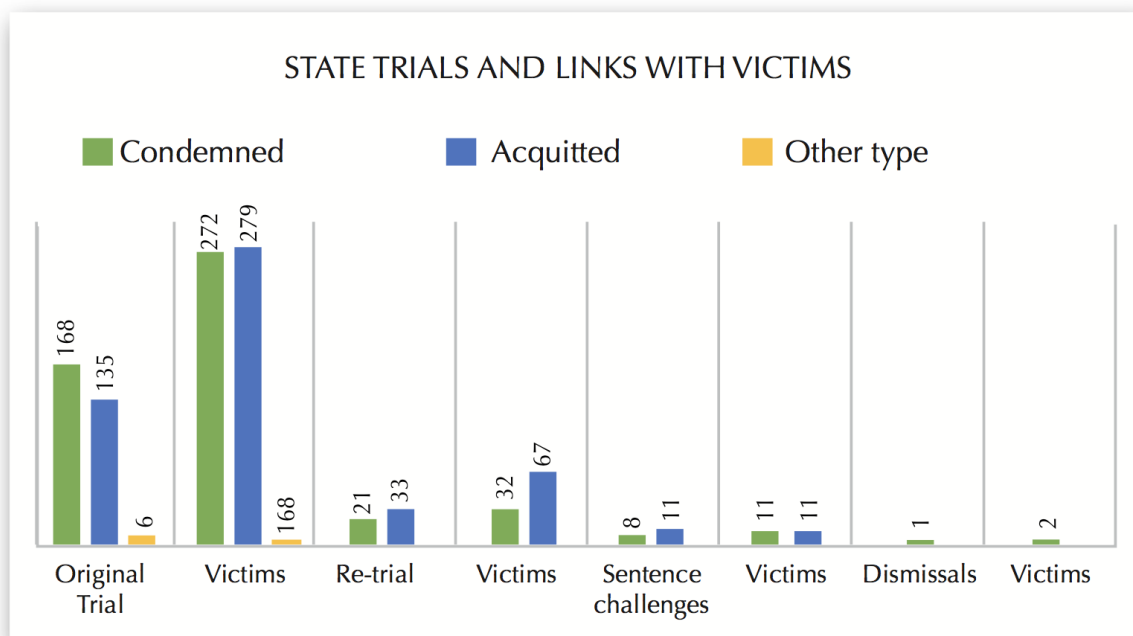
The Data shows that 113 sentences that involve 115 accused and 333 victims were emitted by the Federal Courts, and 275 sentences that involve 383 accused and 679 victims were emitted by the State courts.

Because of this, a closer analysis was done of the 275 cases overseen by the State courts, with the following results:

A. Of the cases that involved a first trial, 236 were analyzed that involved 309 accused and 556 victims:

- 54% of the accused were condemned to jail time. 168 that were related to 272 victims. (130 trials)
- 45% of the accused were acquitted. 135 accused that representing 279 victims. (104 trials)
- 1% received other resolutions to their cases that were favorable to their interests such as procedure reposition and case dismissal. These represent 6 traffickers and 5 victims (2 trials)





B. 26 retrials were analyzed that represented 54 traffickers and 99 victims, with the following results:

- 61% obtained results favorable to their interests that represent 33 traffickers and 67 victims in 17 trials.
- 39% were sentenced to jail time which corresponds to 21 traffickers and 32 victims in 9 trials.





C. Sentence challenges were also analyzed in 12 of the trials the represented 19 traffickers and 122 victims, with the following results:

- 42% did not obtain their liberty and sentencing was confirmed. 4 trials involving 8 traffickers and 11 victims.
- 58% were given their freedom in 8 trails involving 11 traffickers and 11 victims.

D. Finally there was one trial involving 1 trafficker and 2 victims that was dismissed for lack of evidence.

A relevant factor in measuring the compliance of access to justice for the victims of trafficking, is the compensation of damages. In the analysis of the 388 trials, there were only 119 instances where harm compensation was awarded benefitting 230 victims, these included cash settlements for moral and material harm, as well as payments for services such as psychological care, rehabilitation, social and labor reinsertion, transportation and family reunification. The data shows that in 36 cases the harm compensation include pecuniary claims that span from \$1,795 MX Pesos to approximately \$475 thousand MX Pesos.<sup>3</sup>

3. As of the printing of this document the approximate exchange rate in Dollars is \$18 Mx Peso for \$1 Dls.



Of the other 83 cases that involved compensation damages, only 5 order an integral harm settlement, and the other 78, only services are covered. It is important to mention that the General Anti-trafficking Law specifies the right to Compensation of damages for the victims in Article 3, as well as the States and Public Servants obligation to take all necessary measures to guarantee the victim restitution of all rights, compensation for damages and rehabilitation for all the harm suffered, and to guard against the repetition of the crime in the future, the right to the truth being exposed, the justice that looks to make sure that the criminals pay for what they had done, as well as making sure that due diligence by public servants will take place as first responders, and offering opportune, efficient and responsible care as well as being responsible for the prevention, investigation, persecution and action as well as the compensation of damages for all the crimes foreseen in the Law, including the protection and assistance to the victims. These two aspects continue to be over-shadowed in the trials, which is evidence that the application and the execution of the right to access to justice is the problem, and not the Law itself.

In conclusion, of the 275 State trials that refer to 383 accused and 679 victims, the data shows that the **results in favor of the accused or the victim** are as follows:

- **The accused:** 186 accused representing 48.5% of the whole received sentences in their favor.



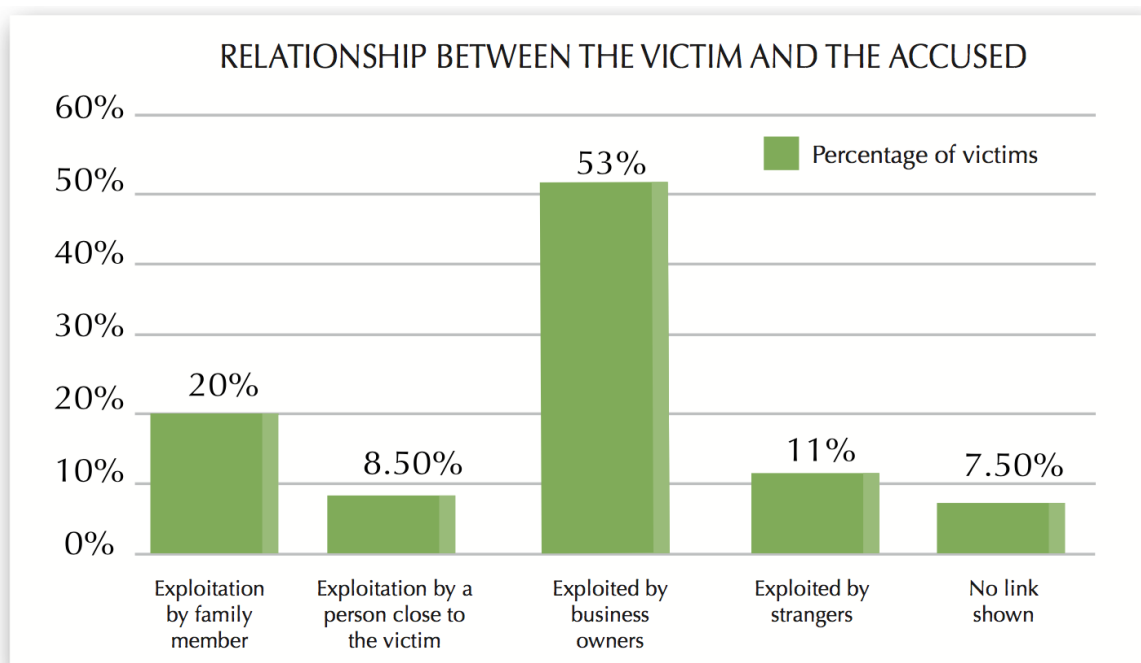


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On the **relationship that the accused had with the victim**, the data shows that in the 388 trials:

- In 53% of the cases, the victims were exploited by the business owners, especially of bars, brothels, and massage parlors.
- 20% of the victims were exported by family members especially the mothers, followed by the husband, step parents, father, brothers in law, aunts, uncles and brothers.
- 11% were excited by strangers to them
- 8.5% were exploited by people the victim knew like neighbors, friends, friends of the parents, mother of a friend, uncles of a friend, fiend's boy- friend.
- Finally, 7.5% do not show the link between the victim and the accused.





The results of the analysis show that Human Trafficking is still a crime that is obscured in Mexico, especially in the lack of knowledge of the authorities about the Anti-trafficking legislation, the fear that people still have about reporting, the corruption involved, and the normalization of the violence involved in sexual exploitation.

The exploitation of human beings in Mexico, as well as around the world, is a reality. The Mexican Anti-Trafficking law is one of the most advanced, especially in the protection of the rights of victims of Human Trafficking, since it specifically highlights the needs for a country like Mexico, in which many times, cultural and traditional practices and gender stereotypes, promote many types of exploitation such as false adoptions, forced marriages and servitude, among others.



As we can see in the following graph, the type of exploitation that prevails in the trials is sexual exploitation, followed by forced labor, with a majority of the victims being minors.

Type of Exploitation	TOTAL
Slavery	2
Coercive labor exaltation by a third party	3
Facilitate the access to a person by a third party	1
Find and offer a person to another	1
Labor exploitation	57
Labor and slavery	1
Labor and sexual exploitation	13
Forced work	1
Begging	8
Use of a minor for financial gain though the selling of drugs	1
Take advantage of the vulnerability of a migrant in transit	1
Forced services	1
Servitude and sexual exploitation	1
Sexual exploitation	268
Forced labor	8
Forced labor of a minor in adverse work	1
General Human Trafficking	14
Use of a minor for criminal activity	6
<b>Total general</b>	<b>388</b>

It is the job of every Mexican, and the authorities in charge, to apply the law, know it, share it, and make it work in the corresponding courts and judicial systems. As long as the numbers that the trial documents are showing do not change, we continue to be in debt with the victims of this, the worst of crimes any human being can endure.





Finally, as a result of the data shown, from Social Society we make the following recommendations:

1. That the results of this analysis be taken into consideration for any effort to reform or change the law of 2012
2. That the professionalization of the training given in the application of the law and the attention to the victims be strengthened and imparted to every justice provider at the federal, state and municipal level.
3. Continue to push for full harmonization of State laws to the General Law.
4. That prevention efforts widen their focus to include customs and traditions of the family, the fight against poverty, and the straightening of the family unit.
5. Highlight the strong links between human trafficking, prostitution and the businesses that promote it.
6. Highlight the responsibility of the client exploiter as the motor that promotes Human Trafficking.
7. Apply the obligations of damage compensation, assistance, and protection of the victims, making sure that the funds are diligently used for these purposes.

