



Executive Summary

GUIDE ON ANTI- TRAFFICKING IN PERSONS

Law Enforcement

June 2020

The Guide on Anti-Trafficking in Persons: law enforcement (hereinafter referred to as the Guide) was developed within the scope of the project “*ATENÇÃO Brasil: enhancing the capacity of the Brazilian government to tackle TIP*”. This project aimed at strengthening the capacity of the Brazilian government to identify, protect and refer victims of trafficking in persons (TIP), as well as increasing the number of investigations, prosecutions and convictions related to this specific crime.

The project was funded by the United States Department of State, Office of Monitoring and Combating Trafficking in Persons (J/TIP Office), and implemented by ICMPD in partnership with the National Secretariat of Justice of the Ministry of Justice and Public Security (Senajus / MJSP), the Federal Police (PF), the Federal Prosecution Service (MPF) and the Migration and Human Rights Institute (IMDH).

This Guide follows an important legislative update in Brazil regarding TIP. The Law No 13.344, enacted on October 6th 2016, promotes further harmonization between national and international laws, incorporating, in particular, provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, which supplemented the United Nations Convention against Transnational Organized Crime – known as the Palermo Protocol.

Globally, a strong theoretical body of knowledge has been mounting regarding TIP and its forms of exploitation, prevention measures, factors of vulnerability, curbing mechanisms, among other aspects. Hence, connecting the national legal framework with the international standards is urgent. The updated Brazilian legislation came to be so to meet international standards and incorporate the latest evidence-based knowledge available. Therefore, it is necessary for institutions combatting TIP to build their capacities towards the implementation of such a new law.

Law enforcement personnel encounter many challenges in their practices dealing with the crime of trafficking in persons and the protection of victims. These challenges can result from several factors, structural or specific, not affecting, nevertheless, all the stakeholders equally, but hindering the coordination of anti-TIP

measures and prosecution of cases. These challenges arise from several factors, such as the limited articulation and communication among the institutions responsible for the investigation and prosecution; the limited financial and technical resources allocation; the insufficient knowledge for an adequate identification of victims and prosecution of the crime; the unawareness of national and international legal frameworks and their proper application.

The objective of this Guide is to support, both conceptually and operationally, law enforcement agents working on TIP cases, be internal or transnational ones. Likewise, the Guide does not intend to solve all the challenges facing the stakeholders, but it aims to provide tools to prevent, identify, investigate and prosecute cases of trafficking, as well as protection of victims.

This Guide focuses, above all, on the promotion and protection of human rights. It contains chapters addressing themes related to migration, a phenomenon with tight ties with human trafficking; information and analysis on international and national legal frameworks governing TIP; particularities present during investigation, prosecution and sentencing of TIP cases; and mechanisms for international legal cooperation in criminal matters

The first chapter addresses the concepts and legal frameworks of migration and asylum within the Brazilian context. Similarly, it tackles the relationship between TIP and the international migratory phenomenon. Forced human displacement, for instance, may result in migrants and refugees being more vulnerable to exploitation and abuse, unfolding occasionally into TIP. It is certain that an appropriate legal framework is fundamental to provide for legal pathways to protect vulnerable migrants. Hence, the enactment of the Law No. 13.445/2017, the Migration Law, and the Decree No. 9.199/2017 have ensured a stronger legal framework, safeguarding the fundamental rights of individuals who are under the protection of the Brazilian state, regardless of their origin or nationality.

The second chapter intends to analyze the Law No. 13.344/2016 in the light of the Palermo Protocol. The new Brazilian legal framework has established novel parameters for the identification of the crime of human trafficking, criminalizing additional forms of exploitation when compared to the previous provisions. The chapter explains all forms of TIP criminalized in the national law: a) removal of organs, tissues or body parts; b) labor exploitation; c) servitude; d) illegal adoption; and e) sexual exploitation. This part also presents the characteristics of each form, including examples of cases within the Brazilian context. Understanding the different forms of trafficking foreseen in the Brazilian legislation is of utmost importance to determine whether a given case actually is one of trafficking in persons. The chapter explores challenges in interpreting certain provisions and poses a debate to help stakeholders understand them better. In addition to presenting definition of concepts in human trafficking, the Guide intends to bring relevant legal topics to an

interesting hermeneutic examination. The Brazilian law guarantees protection to the victim of trafficking, such as the right of receiving proper assistance, follow-up services to prevent re-victimization, the right to compensation, the right to preservation of privacy and safety, among others. The Guide reinforces the role of law enforcement to implement the aforementioned guarantees and provides them with operational instruments for such.

There are difficulties in investigating and prosecuting TIP cases in Brazil. Many investigations do not achieve satisfactory outcomes because there are challenges in notification, investigation, prosecution and/or sentencing. In this sense, the third chapter points to the main challenges of criminal investigation, prosecution and sentencing, in view of the legal frameworks presented in the previous chapters. Likewise, the challenges in composing this chapter were latent, as the Guide aims to be an accessible material for various professionals working in criminal prosecution, and this goal encompasses some variables: not all readers are lawyers or have a deep legal knowledge; and not all readers are professionals involved in all stages of criminal prosecution. Thus, the Guide addresses essential topics in a simple and objective way, in which each one can extract what is relevant for their work in a simple manner. However, the Guide does not shy away from offering a profound theoretical knowledge to those who are most familiar with the basic concepts. In the end, this Guide indicates possible solutions to common challenges facing professionals of the justice system, whether they are public defenders, prosecutors, police officers or judges.

The third chapter addresses fundamental issues in evidence gathering, so that prosecution is carried out effectively and, consequently, trials are fair and impartial. Essential topics such as the victim's hearings, criminal proof collection, and the use of special procedures in prosecution were the focus, aiming at improving effectiveness of court proceedings. This chapter also brings an epistemological discussion and introduces interdisciplinarity as a must for building a court case. The search for criminal justice would improve enormously if the prosecution process embraced other sciences, such as psychology, sociology, demography, anthropology, etc. In addition, the chapter gives robust techniques for the proper application of international treaties, as for instance the analysis of relevant international jurisprudence. The existence of numerous international human rights treaties, of which Brazil is a party, expands the guarantees and protection for those involved in a TIP case, be a victim or a defendant.

The third chapter also analyzes the importance of international and international jurisprudence, not only for verdicts but also in any stage of the criminal proceedings. In this sense, the Guide brings to part of the jurisprudential *corpus juris* of the Inter-American Court of Human Rights in order help the reader better understand past cases at that Court that are relevant to cases of human trafficking. It is important to note that, through Legislative Decree No. 89/1998, Brazil has rec-

ognized the jurisdiction of the Inter-American Court when interpreting or applying the American Convention on Human Rights. Accordingly, Brazil must make efforts to incorporate and apply inter-American jurisprudence domestically. In this way, the analysis of practices and concepts of Public and Private International Law in this Guide intends to subsidize and support the performance of the law enforcement agents dealing with TIP.

TIP is a crime that often goes across national borders. Thus, cooperation between States is increasingly necessary for efficient criminal investigation and prosecution - without ever forgetting the indispensable protection of the victim. In this spirit, the fourth chapter presents the concepts and principles of international legal cooperation, as well as examining the main instruments for this cooperation. The objective is, above all, to propose practical solutions for challenges the reader might experience. Additionally, it contains information on some of the main international networks of legal cooperation to which Brazilian anti-TIP stakeholders may need to resort. International legal cooperation in criminal matters is a fundamental tool for curbing human trafficking at a global level. It also demonstrates that international cooperation may be useful to dealing with internal trafficking. Despite difficulties in achieving effective legal cooperation between countries, the benefits it can provide for combating organized crime and the search for criminal justice is certain. This chapter stems from the various national institutions' needs - courts, prosecution services, public defenders' offices, and judicial police - to make use of legal international cooperation instruments in the search for faster and more effective investigation and prosecution.

This Guide came from the clear, enormous challenges in fighting trafficking in persons, particularly those facing authorities of the justice system. This Guide aims to bring the fundamental concepts and normative frameworks in relation to human trafficking, at both the basic and advanced levels, but it also seeks to offer possible paths and solutions to those challenges.