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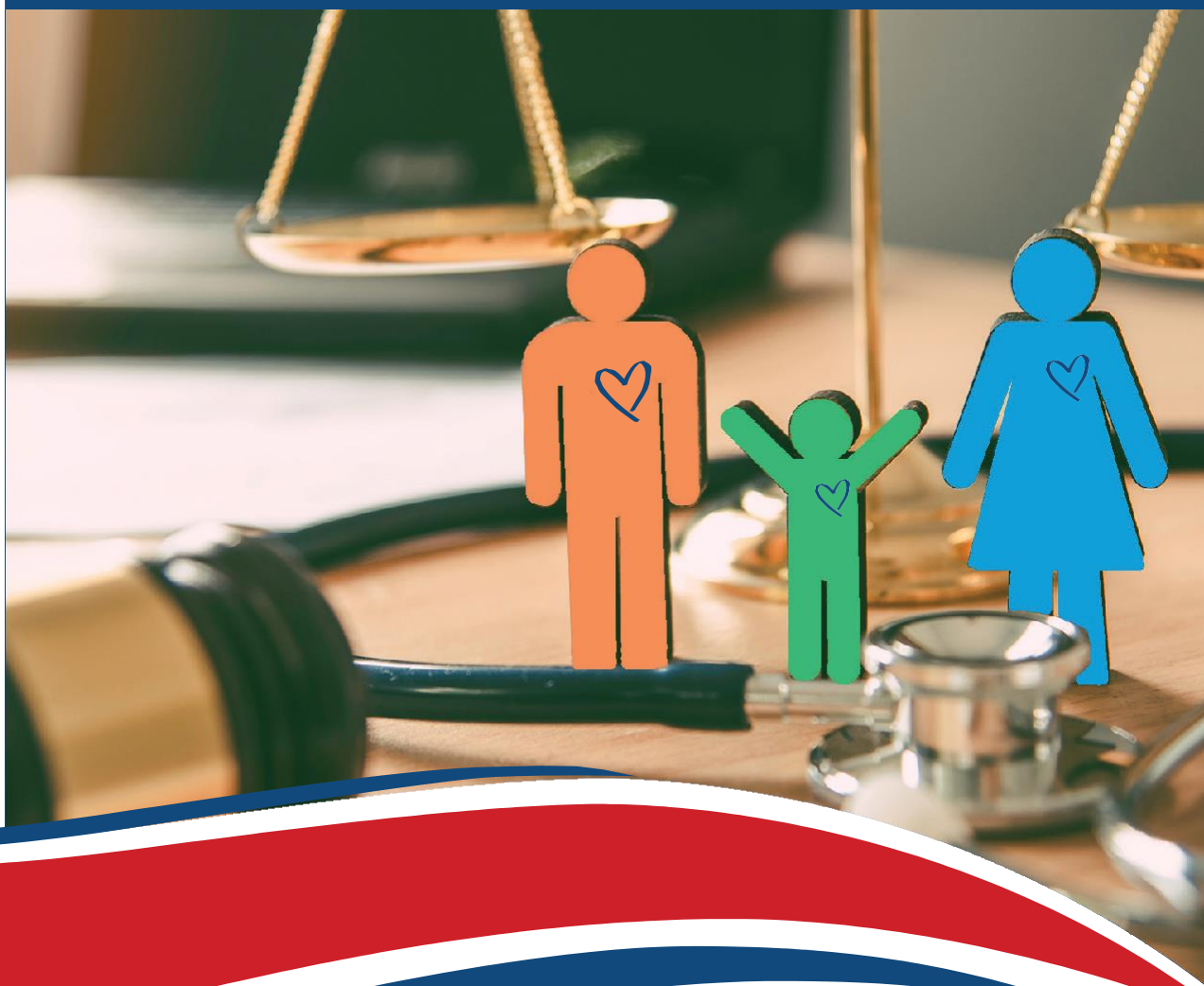
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المكتب الدولي لحقوق الطفل

# MANUAL FOR THE INVESTIGATION OF THE CRIMES OF TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS

Project "Strengthening Institutions to Combat Human  
Trafficking in **Costa Rica**".



With the financial support of the Department  
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# **GENERAL ASPECTS**

## A. Purpose of manual

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This manual has been designed to facilitate the learning of criminal investigation techniques in human trafficking cases by first contact officers and others who are responsible for investigating and solving cases related to these crimes.

The aim is for the justice operator to have access to a complete document that will enable him or her to identify and prosecute these scourges that violate human dignity, since many of the people who are trafficked from one country to another end up being exploited in some way; This is because they do not have their personal documents and criminal networks or many employers take advantage of this situation to require them to work long hours, falling short of the minimum conditions established by the Costa Rican Labor Code.

It is also intended, through the training method, to generate the advantages that procedural and criminal regulations, other specific laws and international treaties have developed to combat trafficking in persons and smuggling of migrants more efficiently and effectively, always taking into account the difference between the two figures.

In addition, the aim is for the officer to be able to provide an inter-institutional, agile and timely response for the comprehensive care of victims of human trafficking and smuggling of migrants, always oriented towards the respect and guarantees of the rights of any national or foreign person who is in the national territory.





## B. Presentation of manual

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Human trafficking is an international phenomenon that needs to be addressed in a comprehensive manner, both because of its complexity and because of the different modalities of human trafficking. The vulnerability of its victims and its national and transnational nature oblige States to assume an active and integrating role that involves all those involved (public officials, different police forces, governmental and nongovernmental organizations, nonprofit organizations, etc.) in a common front in the fight against trafficking in persons.) in a common front of struggle, in which prevention, with different approaches and methodologies, becomes a central task to improve the effectiveness in combating these crimes that affect the general population, regardless of their social status, age or ethnicity.

With respect to the crime of smuggling of migrants, due to its transnational nature, it is necessary to take into account the conditions of vulnerability in which the victims are immersed; the dangers to which they are exposed; as well as the possibility that in order to achieve their objective, the smugglers may engage in other criminal activities, such as document forgery, identity fraud, falsification of identity, etc., as well as the possibility that the victims of smuggling of migrants may be involved in other criminal activities.

ideological, etc. In addition, this criminal activity sometimes operates in the context of organized crime and, in turn, a person who starts out as a victim of migrant smuggling may end up as a victim of human trafficking.

Based on the above, it is important to have efficient and effective investigation strategies and methodologies to fight against both crimes.

The objective of this manual is to strengthen the investigative capacities of justice operators and police officers in charge of applying and enforcing the law. The emphasis is on the criminal prosecution of human trafficking and smuggling of migrants.

The manual will analyze cases of trafficking in persons and smuggling of migrants through the development of simulated cases appropriate to the Costa Rican reality. Through this exercise, the participant will solve these cases by applying his or her general knowledge of these crimes, as well as existing doctrinal concepts and treaties. At the end of the exercise, the participant will



The guide is a self-instructional method composed of several modules containing basic information on the main concepts and procedural and investigative elements that serve as useful tools for police officers and prosecutors. In addition, this guide seeks to raise awareness of the rights that protect them, as well as the duties that victims have when facing criminal proceedings.

We hope that this guide will be a convenient and easy-to-use tool for you.

The manual is designed to be understood by the justice operator in order to contribute to the prevention and combat of the aforementioned crimes. The participant, in this manual, has the entire catalog of national, international and other legal instruments available, as well as strategic lines and concrete mechanisms of action to combat, prevent and eliminate trafficking in persons and smuggling of migrants, crimes that represent serious violations of human rights and that are on the rise. It is therefore necessary to act promptly and effectively to eradicate them.



## C. Objectives of Manual

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The purpose of the "Manual for Investigating the Crimes of Trafficking in Persons and Smuggling of Migrants" is to develop the knowledge and skills of justice operators to investigate and prosecute these crimes. This tool contains three modules: one on Criminal Legal Management, which describes the type of crime, the elements of the crime, the legal good protected, the subjects of the process, the verbs that govern the type of crime and their meaning, as well as the purposes of the criminal action, aggravating circumstances and sources of prosecution. It also specifies the difference between the crimes of trafficking in persons, smuggling of migrants and pimping.

In the Procedural Management module, the relevant and timely steps in the processing of this crime are detailed. For example, the minimum conditions for the victim at the time of receiving the complaint and some of the basic questions that should be asked during the interview. In addition, the urgency of requesting the jurisdictional anticipation of evidence and the use of technological means to avoid the revictimization of the offended person is pointed out.

It also provides information on the functions of the Immediate Response Team (ERI), a body of the Anti-Trafficking and Human Trafficking Coordination (CONATT) responsible for the primary care and accreditation of victims and their dependents, in order to provide victims with the approach, care, protection and security they require. In turn, it informs about the main precautionary measures that must be requested to subject the persons charged to the criminal process and the considerations and arguments to support the procedural dangers stipulated in Article 239 et seq. of the Code of Criminal Procedure.

Finally, we will present the module on evidentiary management. Certainly, each case is unique and, therefore, not all cases can be handled in the same way, since there is no exhaustive list of requirements, design and strategies for conducting the investigation. Therefore, this section aims to detail the main requests and procedures that must be carried out in the investigation of human trafficking and smuggling offenses.

By way of example, the following actions may be mentioned: requesting the intervention of communications; the use of undercover agents under functional direction; the management of raids; the opening of evidence and the backup of information contained in mobile devices or computers, as well as in other information storage media; bank surveys; the annotation of movable and immovable property before the Property Registry, in order to obtain a future confiscation and the proper handling of the evidence collected.

Also, in accordance with the reform of May 24, 2018, it is important to consider the practice of proceedings that allow accrediting, demonstrating and visualizing the vulnerability of the victims, for the purpose of the opportunity and relevance of requesting medical, social, psychological and psychosocial assessments.

Each of the modules explains the characteristics that must be taken into account when carrying out an investigation, in order to conclude it satisfactorily and thus fulfill the purposes of the process, with a conviction of the accused and access to justice for the victims.

In addition, this manual seeks to educate and sensitize the justice operator, both male and female, with the purpose of

to provide an agile and timely institutional response for the comprehensive care of victims and survivors of the crime of trafficking in persons and smuggling of migrants, as well as for their dependents, always oriented towards respect for their human rights.

It is important to point out that this crime is not only committed by individuals who seek to take advantage of the victims by offering them jobs or favorable conditions to improve their quality of life, but there are also transnational criminal groups. Hence the need and importance of identifying each of their members, as well as determining their participation in the organization.

These crimes are often linked to other crimes, such as drug trafficking, money laundering, fraud, use of false documents, among others, and it is only through a proactive and diligent investigation that we can combat this crime, which affects fundamental human rights, namely human dignity. It also jeopardizes other protected legal rights, such as freedom of transit, sexual freedom, physical and mental health, freedom of personal self-determination and labor freedom. As can be seen, these are multi-faceted crimes, hence the focus should always be on the following aspects



human rights when combating this scourge.

For this reason, the main objectives of this guide are as follows:

Improve, through training, the approach, strategies and management of legal and procedural tools in order to generate an effective and efficient proposal to combat the crimes of human trafficking and smuggling of migrants.

To apply in practice the theoretical and practical knowledge proposed in the Manual for the criminal investigation of cases involving these offenses, within the framework of the procedural guarantees of all parties involved.

To be familiar with the different international treaties on human rights, available as complementary regulations for the processing of investigations.

Promote and generate the analytical capacity to document investigations of human trafficking and smuggling of migrants so that they have investigative and legal soundness to achieve the ends of the process.

Unify the research techniques that should characterize it, both internally and in terms of the use of international tools for international cooperation and assistance.

Improve the ways of approaching and attending to the victim, in order to provide empathetic and sensitive attention, at the first contact, during the interview or the taking of the complaint.

## D. Relevant aspects of the crimes of trafficking in persons and smuggling of migrants

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Trafficking in persons is characterized as a complex crime, starting with the fact that it is commonly confused with the crime of smuggling of migrants, hence the importance of being clear about the difference between the two; however, they have common elements or aspects. For example, both constitute a serious violation of human rights. Also, in both cases, the victims have a common interest, which is to improve their living conditions.

Hence, they seek to leave their native countries with the intention of finding the desired dream of improving their quality of life and that of their families, so they decide to leave their country and embark on an adventure that does not always end as they dreamed, because many fall into the networks of criminal organizations, where the "traffickers" or "traffickers" capture them and deceive them with job offers, which are impossible to refuse. However, when they arrive at their destination, they realize that they have been deceived and that they can no longer return, as they are often stripped of their documents and made to pay a non-existent monetary debt.

In addition, the purpose is to keep them subject to the demands of their "traffickers", who ultimately seek economic benefit in exchange for the exploitation of women, men and children in many ways. For example: performing one or more acts of prostitution, subjecting them to sexual exploitation, sexual or labor servitude, slavery or slavery-like practices, forced labor or services, servile marriage, begging, illicit organ harvesting or irregular adoption.

As can be seen, human trafficking has multiple purposes and all have the similarity that they affect human dignity, as well as the different freedoms that protect the human rights of each person. In addition, it is a clear violation of the human rights enshrined in the Magna Carta.

In the case of victims of migrant smuggling, "smugglers" or "traffickers" see migrants as "targets", since in exchange for a sum of money they offer them the opportunity to cross borders between one country and another in order to reach their final destination. Without



However, they are not the least bit interested in whether the "trafficked" person suffers any damage to his or her health or even dies in the attempt, since, once they have received payment, they tend to disregard the outcome that the migrants may have.

On the contrary, in the crime of trafficking in persons, the "traffickers" or "traffickers" try to ensure that the victim arrives in good conditions to his or her final destination, since the interest of the trafficker is to exploit the victim and thereby ensure that he or she obtains profits through the different purposes of the crime of trafficking in persons.

Human trafficking, in the current era, is known as the slavery of the 21st century; however, it used to be called "white slavery" because it was believed that only women were trafficked for sexual exploitation. However, with globalization and new technologies, it has been possible to determine the different means by which a person can become a victim of trafficking. In addition, it is important to note that it is not only women who are exploited sexually, but it is now known that child exploitation and the worst forms of child labor exist, as well as the labor exploitation of men, women and children on farms, in mines, textile factories, etc.

This circumstance forced the States to look for ways of

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," hereinafter referred to as the "Protocol against Trafficking in Persons. In this context, the "United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children", hereinafter referred to as the "Protocol against Trafficking in Persons", was adopted in Palermo in 2000 and is one of the three protocols applied to complement the United Nations Convention against Transnational Organized Crime.

The Protocol against Trafficking in Persons is the first global instrument to combat trafficking in persons and is the only one that establishes a universal definition of the term trafficking in persons, which each State Party must subsequently adapt and incorporate into its domestic legislation. This protocol is of vital importance because it allows international cooperation, among other things, to carry out joint investigations with other States Parties to combat this crime, as well as to protect and assist the victims with respect to respect for their human rights, which even exempts the victim from responsibility. In other words, if the victim commits a crime during the time he/she has been treated, he/she should not be prosecuted for those acts.

Trafficking in persons at the international level is considered a crime against humanity, as well as a crime against humanity.



The Rome Statute of the International Criminal Court, adopted on 17 June 1998 in Rome, stipulates that the participating States were aware that, in this century, millions of children, women and men have been victims of atrocities that defy the imagination and deeply shock the conscience of mankind. In doing so, they recognized that these grave crimes constitute a threat to the peace, security and well-being of humankind. At the same time, they affirmed that the most serious crimes of concern to the international community as a whole must not go unpunished and that, to this end, measures must be taken at the national level and international cooperation intensified to ensure that they are effectively brought to justice. Hence, determined to put an end to impunity for the perpetrators of such crimes and thus to contribute to the prevention of further crimes, recalling that it is the duty of every State to exercise its criminal jurisdiction against those responsible for international crimes, they created this Statute.

In this regard, Article 5 lists the crimes over which the Court would have jurisdiction; these are the most serious crimes of concern to the international community as a whole. Among them are: genocide, crimes against humanity, crimes of genocide, crimes against humanity and crimes against humanity.

crimes against humanity, war crimes and crimes of aggression.

In paragraph 7, the Rome Statute defined crimes against humanity as any of the following acts, when committed as part of a widespread or systematic attack against a civilian population and with knowledge of such attack: a) Murder; b) Extermination; c) Slavery; d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other sexual abuse of comparable gravity; (h) Persecution of a self-identified group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as unacceptable under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.





As can be seen, all of these crimes constitute violations of the fundamental norms of international law, which are also regulated in the Declaration of Human Rights, since the purpose is to protect the human dignity of every person in a State.

In addition to the above classification of crimes, it can be concluded that trafficking in persons can be classified as a crime against humanity and its importance lies in the fact that these crimes have the special characteristic of being imprescriptible, i.e., they can be prosecuted at any time, because they are not subject to any statute of limitations, as established in Article 29 of the Statute.

Evidently, in the criminal procedural legislation of Costa Rica, through the legal institute of the statute of limitations, the extinction of the criminal action is produced, which prevents or puts an end to the criminal prosecution of the accused persons, due to the passage of time. This is established in Article 33 of the Code of Criminal Procedure.

However, taking into consideration that the Costa Rican State has ratified the Rome Statute with respect to the crime of trafficking, since it is one of the crimes against humanity, it is necessary to analyze the timeliness and viability of a proposed law to introduce a reform to the

Code of Criminal Procedure; in order to make this crime imprescriptible. This can be justified and based on the obligation assumed by the State at the time of signing and incorporating this international human rights instrument into domestic law.

Such an aspect would be beneficial in the processing of these very serious crimes, even because many of the victims do not see themselves as victims and, on many occasions, it takes a long time for them to become aware and take the decision to file the corresponding complaints and take the criminal process to the end.

The statute of limitations of the crime in the criminal procedure regulations will be determined by the highest penalty of the basic and aggravated criminal type without exceeding ten years. However, thanks to the reform of the Criminal Procedural Code, specifically in Law 9057, of July 23, 2012, published in the Gazette No. 199, of October of the same year, by which the crimes committed against persons under eighteen years of age, the statute of limitations will begin to run once they reach the age of majority, as regulated by Article 31 of said legal body.

Certainly, when the victim of trafficking in persons is a minor, this reform applies.

In the same sense, Article 7 of the Constitution states that "Public treaties, international agreements and those duly approved by the Legislative Assembly shall have, from their promulgation or from the day they designate, superior authority to laws", hence our legislation establishes the viability of using international treaties as a source of interpretation of the law.

Likewise, in Article 20, our Political Constitution establishes that every person is free in the Republic, whoever is under the protection of its laws may not be a slave or slave. In addition, Article 40 states that no person shall be subjected to cruel or degrading treatment or life imprisonment; this is a constitutional guarantee for any national or foreign person: that he/she shall never be treated as a slave, nor receive cruel or degrading treatment.

Article 41 of the Political Constitution, as an individual guarantee, establishes that: "Owing to the laws, everyone must find redress for the injuries or damages they have received in their person, property or moral interests. Justice must be done to them promptly, without denial and in strict conformity with the laws"<sup>1</sup>. This principle of judicial protection

The effective implementation of the law entails a responsibility for the operators and operators of the criminal justice system, since it becomes an obligation of the State to ensure that people have a due process when they have been victims of a crime.

Thus, the Attorney General's Office orders the Specialized Prosecutor's Offices to generate national guidelines for the attention of the different criminal phenomena, based on the fact that specialization allows for the sharpening of the investigation and prosecution of crimes, and that this experience should permeate the rest of the institution in the public service they provide; thus, the user obtains greater homogeneity in their attention.

To this end, the Deputy Prosecutor's Office against trafficking in persons and smuggling of migrants proceeds to specify, in the criminal, procedural, administrative and evidentiary areas, the criteria for interpreting the crime of trafficking in persons and smuggling of migrants, as well as the approach to be taken in each of these criminal offenses. All of this with the aim of unifying the public service provided by the Public Prosecutor's Office to users throughout the national territory, for which the indicated topics are described.

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<sup>1</sup> Insert a quote from the Political Constitution



## E. Guiding and regulatory principles and guiding principles on trafficking in persons and smuggling of persons and smuggling of migrants

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This manual will be applied to combat all forms of trafficking in persons and smuggling of migrants, regardless of the nationality of the victim, and always focused on providing the victim and his or her dependents with the comprehensive approach necessary for their primary care, to provide care and support to cover basic needs, which include, to name a few: safe lodging, comprehensive health care, legal advice and protection measures, in order to safeguard their life and physical integrity.

Particularly in the case of trafficking in persons, the opportunity and relevance of applying secondary care measures, which correspond to short- or medium-term actions aimed at facilitating the process of victim care and protection, should be assessed. These measures include voluntary and safe repatriation to their country of origin or residence, resettlement in a third country if they are unable to return to their place of origin, and even family reunification. In addition, it is vital to

importance to apply national and international legislation, when appropriate.

In the attention, approach and investigation of cases of human trafficking and smuggling of migrants, the operators of the system must respect and apply, in addition to the provisions of international treaties on the subject, the principles that make up the due criminal process, in accordance with the Political Constitution, the Code of Criminal Procedure, Law 8720, Law against Trafficking in Persons and creation of the National Coalition Against the Smuggling of Migrants and Trafficking in Persons (CONATT), as well as the latest reform to the criminal type of trafficking, as established by Law 9545, of May 24, 2018, among which the following principles stand out when applying this law.

Therefore, the following principles must be taken into account and applied in the actions of the system operators and operators:

## I. Guiding principles

- a.** Access to justice and effective protection: Access to all the benefits and facilities of justice for all persons, without any discrimination based on gender, age, religion, nationality, ethnicity or disability. For it to be fully effective, mechanisms and substantive measures are required to improve relations between justice and the citizenry, which guarantee legal security. This means that the agencies that administer justice must guarantee women and men, without distinction, effective access to the services they provide, thereby eliminating all types of economic, psychological, informational, physical, etc. barriers. At the same time, they must offer the necessary services and resources to ensure that users enjoy the mobility, communication and understanding necessary to efficiently access judicial instances. This guiding principle is also enshrined in numeral 41 of the Political Constitution".<sup>2</sup>

<sup>2</sup> The One Hundred Brasilia Rules on Access to Justice for Persons in Conditions of Vulnerability. Chapter One, Section One, Paragraphs 1 and 2, and Article

- b.** Due diligence: "The international standard of due diligence has been used by different international instances to evaluate whether a State has complied with its general obligation to guarantee against acts that violate the rights to life, integrity and personal liberty of persons, particularly when they are the result of acts attributable to private individuals. As the Inter-American Court has emphasized: an unlawful act that violates human rights and is not initially directly attributable to a State, for example, because it is the work of a private individual or because the perpetrator of the violation has not been identified, may entail the international responsibility of the State, not for the act itself, but for the lack of due diligence to prevent the violation or to treat it in the terms required by the Convention"<sup>3</sup>.

41. Obeying the laws, all must find redress for the injuries or damages that they have received in their person, property or moral interests. Justice must be done to them promptly, without denial, and in strict conformity with the laws.

<sup>3</sup> ONUMJERES, Model Latin American Protocol for the investigation of gender-related killings of women (femicide / Femicidio), ....., page 38.



- c.** Rights-based approach: "...recognizes that all people, regardless of gender, age, culture, nationality or any other status, are entitled to the full range of rights inherent to human beings"<sup>4</sup> .
- d.** Child rights approach: "...takes a comprehensive view of the rights of minors, based on the recognition that children and adolescents are active subjects of rights rather than passive subjects of protection"<sup>5</sup> .
- e.** Gender approach: "...is used to refer to the meanings, relationships and socially constructed identities based on sexual differences that have conditioned women and men to be, think and act differently. In our context, gender converts these differences into inequalities, which makes it possible to understand that these forms of conditioning make women and men vulnerable to the effects of gender inequality.

specifically to each one, granting them a differentiated social status"<sup>6</sup> .

- f.** Gender perspective: "is understood as a category of analysis that maintains that the differences between men and women are explained on the basis of the social, cultural, political, economic and legal conditions historically created to determine the lives of men and women on the basis of their biological sex (...). The gender perspective thus explains how men and women have historically been regulated by behaviors 'permitted', 'expected', 'denied' or 'condemned' by the social environment in which they live, which is based on the ideas of male domination that posit - as the main foundation - the inferiority of women and the superiority of men"<sup>7</sup> .

<sup>4</sup> Coalición Nacional contra el Tráfico Ilícito de Migrantes y la Trata de Personas, Estrategia Regional de Atención Integral y de acompañamiento a víctimas de Trata de Personas, 1st edition San José, CR, Ministerio de Gobernación y Policía, 2009, page 22 (60 pages).

<sup>5</sup> Estrategia Regional de Atención Integral y de Acompañamiento a Víctimas de Trata de Personas, op. cit.

<sup>6</sup> National Coalition against the Smuggling of Migrants and Trafficking in Persons, Modelo de Atención Integral para sobrevivientes de Trata de Personas, op. cit.

<sup>7</sup> OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, JUDICIAL BODY OF THE UNITED NATIONS GUATEMALA, C.A., Herramienta para la incorporación del enfoque de los derechos humanos y la perspectiva de género en la elaboración de Sentencias relativas a delitos de feminicidio y otras formas de violencia contra las mujeres; Guatemala, December 2015, pp. 7-8, cited by ORGANO JUDICIAL, ESTADO PLURINACIONAL. BOLIVIA, Protocolo para juzgar con perspectiva de género, Bolivia 2017, page 81.

## II. Principles regulators

- a.** Speciality. Special rule prevails over the general rule, as regulated in Article

23 of the Criminal Code, for those situations in which the "same conduct is described in several legal provisions that exclude each other, only one of them will be applied". This principle is of importance, considering the existence of criminal types in the Criminal Code that describe facts that could be constitutive of trafficking in persons or smuggling of migrants, its different modalities or the typical actions established in articles of the Criminal Code, such as 183 bis, 184 bis, 383, 384 and 384 bis.

- b.** Protection: the protection of the life, physical and sexual integrity, liberty and security of the victims of the crime of trafficking in persons, witnesses to the crime and persons dependent on the victim, who are under threat, is considered to be of paramount importance, without the victim's collaboration with the investigation or prosecution being a prerequisite for granting protection.

the filing of the complaint. When the victim is a minor, the victim's best interests must be taken into account, as well as all of his or her fundamental rights as set forth in the regulations in force.

- c.** Proportionality and necessity: assistance and protection measures must be applied in accordance with the particular case and the special needs of the victims, as well as those of their dependents, after prior technical assessment.
- d.** Confidentiality: all information and administrative or jurisdictional activity related to the protection of victims of the crime of trafficking in persons, their dependents and witnesses to the crime shall be confidential, and therefore its use shall be reserved exclusively for the purposes of the investigation or the respective process. This obligation extends to all judicial and administrative bodies, both public and private, as well as to all mass media and social networks.





### III. Guiding principles

- a.** Equality and non-discrimination: regardless of the judicial or administrative the judicial or administrative process carried out for the investigation of the crime of trafficking in persons, the provisions contained in this law must be applied in such a way as to guarantee respect for the human rights of the victims of this crime, without any discrimination based on ethnicity, disability, sex, gender, age, language, religion, sexual orientation, political or other opinions, origin, nationality, economic status or any other social or migratory condition.
- b.** No revictimization: in the processes regulated by this law, any action or omission that harms the physical, mental or psychological state of the victim must be avoided, including exposure to the mass media and social networks.
- c.** Participation and information: information shall be provided clearly, accurately and in understandable language. The opinions and specific needs of the victims must be taken into account.

considered when decisions are made that affect them. In the case of minors, the right of expression must be guaranteed at all stages of the process, always taking into account their best interests.

- d.** Best interest of the minor: in strict compliance with the provisions of the United Nations Convention on the Rights of the Child and the Code on Children and Adolescents, in any public or private action involving a minor, the best interest of the minor must prevail, which guarantees respect for his or her rights with adequate attention and protection. The determination of the best interest is based on the condition of active subject of the rights and responsibilities of the minor, his or her age, degree of maturity, capacity for discernment and other personal conditions, the socio-economic conditions in which he or she develops and the correspondence between individual and social interests. The Patronato Nacional de la Infancia is responsible for the care, protection and assistance of minors, in accordance with its constitutional mandate.



- e. Principle of human dignity: the victim has the right to fair and equal treatment with due respect for his or her human dignity, especially with regard to his or her personal autonomy and physical, sexual, emotional, moral and psychological integrity<sup>8</sup>.

These fundamental principles must be respected and applied to provide the victim with an environment of trust and respect, which allows for the creation of appropriate conditions to generate an atmosphere of trust and empathy that will have a positive impact on the victim's participation and collaboration in all stages of the criminal process.

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<sup>8</sup> Law 9095, Law against Trafficking in Persons and creation of the National Coalition Against the Smuggling of Migrants and Trafficking in Persons (CONATT), article 2, published in the Digital Scope No. 27 of La Gaceta No. 28 of February 8, 2103.





## F. Terminology related to trafficking in persons and smuggling of migrants: Definitions

**Abortion:** *"...can be defined as the "death of the fetus". This death may take place in the mother's womb or by causing its premature expulsion. Logically, it must be an abortion produced by human activity, which excludes spontaneous abortions from the scope of criminal law."*<sup>9</sup>

**Irregular adoption:** "the one that takes place without the presuppositions established in Law No. 5476, Family Code".<sup>10</sup>

**Related activities:** rather than a definition, the Law lists what these are. "Sexual and labor exploitation in all its forms, all forms of organized crime, money laundering and corruption, falsification of public and authentic documents, ideological falsehood, falsification of private documents, suppression, concealment and destruction of documents, sale or distribution of public or private documents, ideological falsehood in medical certificates, and the falsification of public or private documents.

The following are some of the most important criminal activities that are derived from or related to trafficking in persons.<sup>11</sup>

**Aggravating factors:** refers to the fact that "in the face of certain conditions of the victim or the perpetrator, the law imposes a greater penalty than the one established in the basic criminal type. Usually, the aggravation refers to the age of the victim, some degree of disability or vulnerability, damage suffered, etc., and as for the victim, the family, legal or trust relationship with the victim, or if it is a public official who abuses his or her privileged position".<sup>12</sup>

**Accommodation:** "place where a person is temporarily housed".<sup>13</sup>

**Integral fight:** "actions aimed at intervening, preventing, repressing and punishing human trafficking, as well as measures taken to care for and protect its victims and dependents".<sup>14</sup>

<sup>9</sup> Muñoz Conde, Francisco. Derecho Penal, Parte Especial. 6th ed., Seville, Spain, Publicaciones de la Universidad de Sevilla. s.a./1985. (p. 66), cited by Castellanos Pedraza, Rocío, Definición de aborto, at <https://www.monografias.com/trabajos65/aborto/aborto2.shtml>.

<sup>10</sup> Law 9095, article 07, paragraph a).

<sup>11</sup> Law 9095, article 06.

<sup>12</sup> Centeno M., Luis Fernando, Glosario de términos de Trata de Personas, Derecho Aplicado, 2010, IOM, page 2.

<sup>13</sup> Gardey, A; Pérez Porto, J. (2013) Definition of: Definition of accommodation. Retrieved from <https://definicion.de/alojamiento/>

<sup>14</sup> Law 9095, article 07, paragraph d).

**Disability:** "the result of the interaction between a person with a physical, mental and sensory disability that limits the ability to perform one or more daily activities essential to life and an environment with barriers that does not provide the required services and supports, limiting and restricting participation".<sup>15</sup>

**Forced pregnancy:** "any action aimed at promoting, facilitating or carrying out the pregnancy of a woman, adult or minor, with the purpose of obtaining an economic or other type of benefit from the sale of the product of the pregnancy, as well as any of its organs, tissues, fluids and other anatomical components".<sup>16</sup>

**Slavery:** "situation or social condition in which a person finds himself/herself lacking freedom and rights because he/she is absolutely subjected to the will and dominion of another".<sup>17</sup>

**Exploitation:** "shall mean the obtaining of financial, commercial or other benefits through the participation of another person in acts of prostitution".

sexual or labor servitude, including acts of pornography and the production of pornographic material.<sup>18</sup>

**Illegal organ removal:** "is understood as the removal of a human organ without applying legally established medical procedures and without the consent of the victim, in most cases".<sup>19</sup>

**Forced or servile marriage:** "any institution or practice whereby a woman, without the right to object, is promised or given in marriage in exchange for a consideration in money or kind given to her parents, guardian, family or any other person or group of persons. .... also occurs when a person marries and is subjected to exploitation".<sup>20</sup>

**Forced begging:** "a person who is forced by another to beg for money for the benefit of the trafficker, the trafficker or third parties. Consent to carry out the begging is not valid in the case of minors, elderly or disabled persons or in any other situation."<sup>21</sup>

<sup>15</sup> CONAMAJ, Guidelines to reduce the revictimization of adults and minors of age, in condition of disability in proceso judiciales, San José, Costa Rica, no year of edition, page 05, 22 pages.

<sup>16</sup> Law 9095, article 07, paragraph i).

<sup>17</sup> Law 9095, article 07, paragraph j).

<sup>18</sup> Glossary, op.cit, page 9

<sup>19</sup> Glossary, op. cit, page 10

<sup>20</sup> Law 9005, article 07, op.cit, page 14.

<sup>21</sup> Law 9095, article 07, paragraph o).



**Irregular migrant:** "a person who migrates across borders without complying with the legal requirements of the destination country".<sup>22</sup>

**Concealment:** "to hide, cover, disguise, conceal from view".<sup>23</sup>

**Minor person:** "person under 18 years of age".<sup>24</sup>

**Elderly person:** "any person sixty-five years of age or older".<sup>25</sup>

**Persons with disabilities:** "include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others".<sup>26</sup>

**Practices analogous to slavery:** "includes debt bondage, serfdom, forced or servile marriages and the delivery of children for exploitation".<sup>27</sup>

**Forced prostitution:** "is the situation in which the victim is manipulated or forced to perform acts of sexual content involving his or her body, to satisfy the sexual desires of others, with or without compensation for it".<sup>28</sup>

**Servitude:** "state of dependence or subjection of the will in which the perpetrator induces, exploits or forces the victim of this crime to perform acts, work or provide services with the use of deception, threats and other forms of violence".<sup>29</sup>

**Situation of vulnerability:** According to Law 9095, it is: "any circumstance in which an individual has no alternative but to submit to the situation". This definition is complemented by the provisions of the One Hundred Brasilia Rules.

<sup>22</sup> Regional Strategy for Comprehensive Care and Support for Victims of Trafficking in Persons, op. cit.

<sup>23</sup> RAE, op. cit,

<sup>24</sup> Childhood and Adolescence Code, Law No. 7739, of February 6, 1998, published in Gazette No. 26, article 05.

<sup>25</sup> Ley Integral para la Persona Adulta Mayor, 4 ta. Edition, San José, Costa Rica, Editorial Investigaciones Jurídicas, S.A., 2009, article 2, 67 pages.

<sup>26</sup> United Nations, (2008), Convention on the Rights of Persons with Disabilities. Resolution adopted by the General Assembly 61/106. Law 8661, of August 19, 2008, published on August 29, 2008. September 2008, article 01.

<sup>27</sup> Op.cit. Glossary, page 18

<sup>28</sup> Op.cit. Glossary, page 19.

<sup>29</sup> Law 9095, article 07, paragraph w).



**Forced labor or services:** "is any work or service exacted from any person under the threat of any person and for which such individual does not offer himself voluntarily".<sup>30</sup>

**Trafficker:** "is the person who is responsible for moving one or more persons from one country to another by crossing one or more borders in an irregular or regular manner".<sup>31</sup>

**Transfer:** "should be understood as moving from one place to another using any available means (including on foot)".<sup>32</sup>

**Transportation:** "implies a means of locomotion".<sup>33</sup>

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30 Op.cit Glossary, page 24

31 Op.cit. Glossary, page 25

32 Op.cit. Glossary, page 25

33 See article 3 Law 9095



## G. Sources of interpretation

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In order to effectively and systematically apply Article 172 of the Criminal Code, it is essential that it be interpreted in accordance with the provisions of Laws 8720, 9095 and 9545, precisely from paragraph 3 of Law 9095, which, referring to the scope of application, states the following: "this law applies to combating all forms of trafficking in persons and related activities, whether national or transnational, whether or not related to organized crime, and to the comprehensive approach to the victims of this crime and their dependents, after technical assessment".<sup>34</sup>

In relation to the criminal offense of trafficking in persons, Law 9590 establishes sources of interpretation to which the operators of the criminal justice system should have recourse when it is necessary to clarify any aspect of the criminal offense or its prosecution. The most important sources are listed below, together with a citation or summary of the most relevant articles:

### 1.

#### Universal Declaration of Human Rights

Created with the common ideal that all peoples and nations should strive to promote, through teaching and education, respect for rights and freedoms.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### 2.

#### American Convention on the Rights and Duties of Man

This convention is also known as the "Pact of San José de Costa Rica", signed on November 22, 1969 in the city of San José, Costa Rica, and entered into force on July 18, 1978. It is one of the bases of the international system for the promotion and protection of human rights. It establishes two bodies to hear matters related to compliance with the convention: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

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<sup>34</sup> See article 3 Law 9095



Article 6: Prohibition from Slavery and Servitude.

1. No one may be held in slavery or servitude, and slavery, the slave trade and the traffic in women are prohibited in all their forms.
2. No one shall be required to perform forced or compulsory labor. In countries where certain offenses are punishable by deprivation of liberty with hard labor, this provision may not be interpreted as prohibiting the enforcement of such a penalty imposed by a competent court or tribunal. Forced labor shall not affect the dignity or the physical and intellectual capacity of the prisoner.

3.

International Covenant on Civil and Political Rights:

Created in accordance with the principles set forth in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Article 8: 1. No one No one shall be held in slavery. Slavery

Slavery and the slave trade shall be prohibited in all their forms. 2. No one shall be held in servitude. 3. a) No one shall be compelled to perform forced or compulsory labor.

4.

Convention on Slavery and its Protocol

Signed in Geneva on September 25, 1926, and its protocol adopted by the General Assembly on October 23, 1953, and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1957. It outlaws slavery and creates an international mechanism to prosecute those who practice it.

Article 1. Defines slavery as "the state or condition of an individual over which the attributes of the right of ownership or any of them are exercised".

Article 2. Defines the slave trade as "any act of capture, acquisition or transfer of an individual for sale or exchange; any act of transfer by sale or exchange of a slave acquired for sale or exchange and, in general, any act of slave transport trade".



Also in this convention, States undertake to take legislative, including penal and administrative measures to combat slavery and the slave trade, as well as to provide mutual cooperation to this end.

**5.**  
ILO Convention 29 concerning Forced or Compulsory Labor (1932) and ILO Convention 105 concerning the Abolition of Forced Labor (1959):

Article 2 of Convention 29 states that:  
"For the purposes of this Convention, the term forced or compulsory labor means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

**6.**  
The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. General Assembly Resolution 40/34 of 1985.

This declaration defines the term victim as "persons who, individually or collectively, have been the victims of a crime.

suffered harm, including physical or mental injury, emotional suffering, financial loss or substantial impairment of fundamental rights, as a result of acts or omissions that violate criminal laws in force in Member States, including those laws proscribing abuse of power".

**7.**  
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949: Unifies four previous League of Nations instruments on the same subject:

- a.** The International Agreement for the Suppression of the White Slave Traffic of 1904 (protection of victims).
- b.** The 1910 Convention for the Suppression of the White Slave Traffic (requires criminalization of pimping).
- c.** The International Convention for the Suppression of the Traffic in Women and Children of 1921 (child trafficking, protects migrant women and children).
- d.** International Convention for the Suppression of the Traffic in Women of Full Age.



**8.**  
1979 Convention on the  
Elimination of All Forms of  
Discrimination against Women  
(General Assembly Resolution  
34/180).

In Art. 6 of Part I, reference is made to the commitment of States to suppress trafficking in women and the exploitation of prostitution of women.

**9.**  
Inter-American Convention on  
International Traffic in Minors in  
Mexico, 1994.

Art. 1. Defines as the object of the convention the prevention and punishment of international trafficking in minors, as well as the regulation of the civil and criminal aspects thereof, all with a view to protecting the fundamental rights and the best interests of the minor.

**10.**  
Rome Statute of the International  
Criminal Court of 1998.

It establishes the meaning of slavery, which shall mean the exercise of the attributes of the right of ownership over a person, or of some of them, including the exercise of those attributes in the traffic of persons, in particular women.

and children. It also defines crimes against humanity.

Crimes against humanity

For the purposes of this Statute, "crime against humanity" means any of the following acts, when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack:

- a) Murder; b) Extermination; c) Slavery; d) Deportation or forcible transfer of population; e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; f) Torture; g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other sexual abuse of comparable gravity;
- (h) Persecution of a group or collectivity with a distinct identity based on political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as unacceptable under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of





(k) Other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

Regarding the previous paragraph, 1: a) ...; b) ...; c) "Slavery" shall mean the exercise of the attributes of the right of ownership over a person, or of some of them, including the exercise of such attributes in the trafficking of persons, in particular women and children; d) ...; e) ...; f) ...; g) ...; h) ...; i) ....

**11.**  
Convention against Transnational Organized Crime, United Nations General Assembly Resolution 55/25, 2000.

In its resolution 53/111 of 9 December 1998, the General Assembly decided to establish an ad hoc intergovernmental committee to develop a comprehensive international convention against transnational organized crime and to consider the development of an international instrument on trafficking in women and children. It provides an effective instrument and the necessary legal framework for international cooperation to combat, inter alia, criminal activities such as money laundering (money laundering),

corruption, illicit trafficking in endangered species of wild flora and fauna, crimes against cultural heritage, transnational organized crime and terrorist crimes.

**12.**  
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

It establishes the bases for the regulation or classification of the crime, the ends to be protected, the mechanism for assisting victims and, in general, all the aspects involved in dealing with this scourge.

**13.**  
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the "Convention of Belem do Para". Law 7499 of May 2, 1994, published on June 28, 1995.

The Belem do Para Convention was created in the belief that violence against women constitutes a violation of human rights and fundamental freedoms and totally or partially limits women's recognition, enjoyment and exercise of their rights.

exercise of such rights and freedoms. Moreover, because violence against women is an offense against human dignity and a manifestation of power relations.

historically unequal  
between  
women and men.

For the purposes of this Convention, violence against women shall be understood to mean any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.

Violence against women shall be understood to include physical, sexual and psychological violence:

- a.** that takes place within the family or domestic unit or in any other interpersonal relationship, whether the aggressor shares or has shared the same domicile as the woman, and which includes, among others, rape, mistreatment and sexual abuse;
- b.** that takes place in the community and is perpetrated by any person and includes, but is not limited to, rape, sexual abuse, torture, human trafficking, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in the workplace.

educational institutions, health facilities or any other place,

#### 14.

Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime.

This instrument seeks to effectively prevent and combat the smuggling of migrants by land, sea and air. At the same time, it provides a broad and international approach that also entails strengthening international cooperation through the exchange of information among countries. It establishes the humane treatment of migrants and the full protection of their human rights.

Article 2. Purpose: The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among the States Parties to that end, while protecting the rights of smuggled migrants.

Article 3. Definitions: For the purposes of this Protocol.

- a) For "smuggling of migrants". shall mean the facilitation of the



unlawful entry of a person into a State Party of which such person is not a national or permanent resident in order to obtain, directly or indirectly, a financial or other material benefit;

- a.** Illegal entry" shall mean the crossing of borders without having fulfilled the necessary requirements for legal entry into the receiving State;
- b.** The term "false travel or identity document" shall mean any travel or identity document:
  - 1. Prepared or issued in a spurious manner or materially altered by anyone other than the person or entity legally authorized to issue the travel document;
  - 2. Of identity on behalf of a State;
  - 3. Issued or obtained improperly by misrepresentation, corruption or coercion or in any other unlawful manner;
  - 4. Used by a person other than its legitimate holder...

#### Article 4. Scope of application:

Unless it contains a contrary provision, the present Protocol shall apply to the prevention, investigation and prosecution of

of the offences established in accordance with article 6 of this Protocol, when such offences are transnational in nature and involve the participation of 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 be subject to criminal prosecution under this Protocol on the grounds that they have been subjected to any of the conduct set forth in Article 6 of this Protocol.

#### Article 6. Penalties.

- 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally and for the purpose of obtaining, directly or indirectly, a financial or other material benefit:
  - a.** Smuggling of migrants;
  - b.** When committed for the purpose of enabling the smuggling of migrants:
    - i. The creation of a false travel or identity document;

- ii. The provision, supply or possession of such a document.
  - c. Enabling a person who is not a national or permanent resident to remain in the State concerned without having fulfilled the requirements for lawful stay in that State, by having recourse to the means referred to in subparagraph (a), (b), (c) and (d) above.
    - b) of this paragraph or any other unlawful means.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offenses:
- a. Subject to the basic concepts of its legal system, an attempt to commit an offence established in accordance with paragraph 1 of this article;
  - b. Participation as an accomplice in the commission of an offense established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participation as an accomplice in the commission of an offense established in accordance with paragraph 1 (b) (ii) of this article; and
  - 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 an aggravating circumstance for the offences established in accordance with paragraphs 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, for the offences established in accordance with paragraphs 1 (b) and (c) of this article.
- 2 of this article any circumstance that:
- a. endangers or is likely to endanger the lives or safety of the affected migrants; or
  - b. Result in inhuman or degrading treatment of these migrants, in particular for the purpose of exploitation.
4. Nothing in this Protocol shall prevent a State Party from taking measures against any person whose conduct constitutes an offence under its domestic law.



**15.**

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Law 8459 of October 12, 2005, published on November 25, 2005. It was created to adopt new measures to achieve the objectives of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.

**16.**

Code on Children and Adolescents, Convention on the Rights of the Child and the Protocol on the Sale of Children, Child Prostitution and Child Pornography.

These are national and international instruments for the protection of the rights of children and adolescents, as fundamental inputs for understanding the rights and duties of children and adolescents. They imply the State's commitment to adapt its domestic legislation to ensure the recognition and fulfillment of all rights for all children and adolescents.

adolescent girls living in the country.

**17.**

The Convention on the Rights of the Child lays the minimum foundation for the establishment of a full citizenship for children and adolescents, as subjects of rights, with special rights due to their condition development and with the same rights as everyone else.

**18.**

The Inter-American Convention against International Traffic in Minors.

Law 8071 of February 14, 2001, published on May 21, 2001. Its purpose is to regulate the civil and criminal aspects of international trafficking of minors, as well as the importance of international cooperation to achieve effective protection of the best interests of minors.

**19.**

The Inter-American Convention on the Restitution of Minors.

Law 8032 of October 19, 2000, published on November 10, 2000. It was created to ensure the prompt restitution of



The purpose of this convention is to ensure respect for the exercise of the rights of access, custody or guardianship by the holders of those rights. It is also the object of this convention to ensure respect for the exercise of rights of access, custody or guardianship by their holders.

All of these instruments are mandatory for operators and operators are required to be familiar with.

The international instruments are very useful tools that should and can be used in a supplementary manner to support the various requests made to the Judge of Guarantees and the Public Prosecutor's Office, who are in charge of the functional direction of the investigation. In turn, these international instruments are very useful tools that should and can be used in a supplementary manner to support the various petitions made before the Judge of Guarantees, including when an indictment and request for trial is formulated as a conclusive act.

# I Chapter

**Legal Management Module Criminal  
Law**

## I. Crime of human trafficking

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### 1. General aspects

The crimes of trafficking in persons and smuggling of migrants are complex crimes that are based on the needs of people who, lacking the basic resources to subsist or wanting to obtain more income to support their families, become victims of trafficking or smuggling, since poverty, economic disparities between populations, lack of access to basic services, unemployment and low education allow people to be deceived and end up being exploited in some way.

Thus, it is important to know the topics of the criminal offense, the legal good protected, the governing verbs, the purposes pursued, as well as the aggravating factors of the offense, in order to understand what trafficking in persons and smuggling of migrants are, as well as the similarities (if any) and differences between these crimes and pimping, offenses that often tend to confuse the operator or operator of justice at the time of applying the criminal offense.

With tens of thousands of people migrating irregularly, it is not surprising that some of this mobilization of people ends in exploitation. As soon as migrants leave the soil of origin, intending to move undetected, they enter a shadowy world. They all "put" their lives in the hands of strangers and many pay a high cost for that decision. Women are particularly vulnerable: irregular female migrants comprise about 20 percent of the world's migrants. % of all migrants.

Most of the victims of human trafficking from Central America detected in this region have been trafficked for purposes of sexual exploitation, but there are also statistics on men, women, boys and girls trafficked for sexual and labor exploitation, as well as for other purposes.

Human trafficking is a social and criminal phenomenon that affects virtually every country in the world, whether as a point of origin, transit or destination. It does not matter ethnicity or age, and is one of the most lucrative illicit businesses in the world, through the use of the most sophisticated and sophisticated





The trafficking in persons is a major business that preys on the world's most marginalized population, with criminal groups making profits of more than three billion dollars a year. Traffickers view people as mere commodities, objects to be exploited and traded for profit, and the trafficker limits or eliminates all inherent rights of the victim.

In the construction of regulations to combat trafficking in persons and smuggling of migrants, criteria must be based on respect for the human rights of the victim for his or her care and protection. Likewise, penalties should be implemented that are in line with the legal rights protected by this type of crime.

## 2. Criminal type

It is important to know the origins of some special regulations, as well as their antecedents in international conventions or treaties, in order to better understand the spirit of the norm. It is also mandatory in order to understand the existing international doctrine on crimes, since on many occasions the differences in the wording of a criminal type necessarily provoke,

that their dogmatic analysis differs from one place to another.

This is the case with the wording that emerges from the proposal formulated in Article 3 of the "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children", which complements the United Nations Convention against Transnational Organized Crime, which was created out of the concern of the States Parties. Although there is a wide variety of international legal instruments containing norms and practical measures to combat the exploitation of persons, especially women and children, there was no unified instrument that addressed all aspects of the person, because in the absence of such an instrument, persons vulnerable to trafficking would not be sufficiently protected.

Hence, this protocol complemented the United Nations Convention against Transnational Organized Crime and proposed as a universal model the meaning of trafficking in persons as follows:

- c.** Trafficking in persons" shall mean 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,

deception, abuse of power or of a position of vulnerability, or 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. Such 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;

- d.** The consent given by the victim of trafficking in persons to any form of intentional exploitation as described in paragraph 1.1.1.1.2 above is not a form of exploitation.  
a) of this article shall not be taken into account when any of the means set forth in said paragraph have been used;
- e.** The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if none of the means set forth in subparagraph (a) of this article are used;
- f.** Child" shall mean any person under the age of 18 years.

Similarly, the Protocol, in Article 5(1), provides that "each State Party shall adopt the necessary measures to ensure that

Such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in article 3 of this Protocol, when committed intentionally", and in subparagraph (2) provided that: "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, the attempt to commit an offence established in accordance with the first paragraph of this article; (b) Participation as an accomplice in the commission of an offence established in accordance with the first paragraph of this article. (b) participating as an accomplice in the commission of an offence established in accordance with the first paragraph of this article; and (c) organizing or directing other persons to commit an offence in accordance with the first paragraph of this article.

From the wording of this article, it is clear that each State Party must adapt the crime of trafficking in persons to its domestic law. This is where we should not be confused, since, as will be seen below, in Costa Rican legislation, the crime of trafficking in persons has been reformed on several occasions.

As a historical fact, prior to the ratification of the Protocol against Trafficking in Persons and the reform of 1999, Costa Rica's domestic legislation, through Law 7899 of August 3, 1999, regulated trafficking in persons.



by the legislator, as follows: *"Trafficking in women and minors. Anyone who promotes or facilitates the entry or exit of women or minors of either sex into or out of the country to engage in prostitution shall be sentenced to five to ten years in prison."*<sup>35</sup> The definition of trafficking in this number has none or very few of the elements contained in Article 03 of the "Trafficking in Persons Protocol". It has only two guiding verbs: to promote or to favor. As the active subject of the crime, it only includes women and minors, leaving out men, an exclusion that suggested that they were not victims of this crime. Finally, its sole purpose was "prostitution". In other words, it was a criminal offense limited in its scope of application and protection.

When Law 7899 entered into force, the criminal offense underwent a modification and the legislator approved a description of the criminal offense that is closer to or includes more aspects of the definition referred to in the "Protocol against Trafficking in Persons". We see how the norm refers to "whoever promotes, facilitates or favors the entry into or exit from the country of persons of any sex, so that they may engage in prostitution or keep them in sexual or labor servitude, shall be punished".

with imprisonment from three to six years".

This norm represents a step forward and is closer to the minimum contents of the "Protocol against Trafficking in Persons". The protection is for the person in that condition, without excluding by sex; it also includes other purposes of trafficking: "sexual or labor servitude". However, it does not yet describe all the elements of the definition, which is the framework from which States should regulate internally on this criminality.

During this period, in 2009, Law 8720, published on April 22 of the same year, added more purposes to the description of the offense, such as "slavery or practices similar to slavery, forced labor or services, servile marriage, begging, illicit extraction of organs or irregular adoption".

It is possible to determine that the Costa Rican legislator opted for a less rigorous, more open wording and, thus, there were fewer requirements for the commission of the crime, so that we should not be confused when someone tries to talk about the phases of trafficking in persons (recruitment, transportation, transfer, harboring or receipt of persons), since that reference is directed to the original proposal of the protocol and not to the criminal type of Costa Rican legislation.

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<sup>35</sup> Código Penal, Lehmann Editores, edited by Atilio Vincenzi, 6th edition, 1990.



Our legislation proposes trafficking in persons as a crime of abstract danger, which is characterized by the fact that in its three phases (recruitment or recruitment, transfer and exploitation), the actions alone are considered a consummated fact, understood as actions, means and ends. However, it should be clear that these phases correspond to the proposal of the protocol and not to the wording of the Costa Rican criminal definition. Here, transportation implies the use of a means of locomotion, which entails an action of transporting the victim by oneself, by oneself or by means of third parties. Transportation implies moving a person from one place to another using any available means, within or outside national borders. It can occur within a relationship of trust, subordination or power, but it is always characterized by a situation of vulnerability of the victim, as we will analyze immediately; the assumptions of the crime in Costa Rica are different and much simpler to demonstrate within our Theory of the case.

In the case of Costa Rica, the crime approved in the law is much more favorable in its wording, since, as indicated above, it has fewer requirements for its demonstration in the courts, for which the operator of the criminal justice system should

The following is the wording of the lawsuit: "The lawsuit is written in the following way Namely, the wording of the de- lite is as follows:

Article 172 Penal Code. -

Crime of trafficking in persons

Any person who promotes, facilitates or favors the entry or exit of persons of any sex into or out of the country, or the movement within the national territory, in order to perform one or more acts of prostitution or to subject them to exploitation, sexual or labor servitude, slavery or practices similar to slavery, forced labor or services, ser- vile marriage, begging, illicit extraction of organs or irregular adoption, shall be sentenced to six to ten years' imprisonment.

The penalty of imprisonment shall be from eight to sixteen years, if any of the following circumstances apply:

- a.** The victim is under eighteen years of age or is in a situation of vulnerability or disability.
- b.** Deception, violence or any means of intimidation or coercion.
- c.** The perpetrator is the spouse, relative or relative of the victim up to the third degree of consanguinity or affinity.




- d.** The perpetrator takes advantage of a relationship of authority or trust with the victim or the victim's family, whether or not there is a family relationship.
- e.** The perpetrator takes advantage of the exercise of his profession or the function he performs.
- f.** The victim suffers serious damage to his or her health.
- g.** The punishable act was committed by a criminal group composed of two or more members.

From the wording of numeral 172 of the Penal Code, as this conduct is described, with respect to the crime of trafficking in persons, it is clear that for the crime to be defined, it is only required that the active subject promotes, facilitates or favors the entry or exit of the country, or the displacement of the victim within the national territory, in order for the victim to carry out any of the purposes established in the same legal body. Evidently, it is a more open criminal offense than the definition given in Article 3 of the Protocol, since it is only required that any of the three actions: promote, facilitate or favor, for the crime to be committed, unlike other countries, in which the phases of trafficking in persons must be proven for the crime to be committed.

Having said this, it now corresponds to analyze the current criminal type of trafficking in persons, which corresponds to Law 9545, of May 24, 2018, which introduces significant modifications in the wording of this criminal act.

#### "Article 172 - Trafficking in persons

A prison sentence of six to ten years shall be imposed on anyone who, through the use of technology or any other means, resorting to threats, the use of force or other forms of coercion, abduction, fraud, deception, abuse of power, abuse of a situation of vulnerability, or the granting or receipt of payments or benefits to obtain the consent of a person who has authority over another, promotes, facilitates, favors or executes the recruitment, transfer, transportation, harboring, concealment, retention, delivery or reception of one or more persons within or outside the country, to subject them to forced labor or services and other forms of labor exploitation, to subject them to forced labor or services and other forms of labor exploitation, or to obtain the consent of a person who has authority over another person, the transfer, transportation, accommodation, concealment, retention, delivery or reception of one or more persons within or outside the country, to subject them to forced labor or services and other forms of labor exploitation, servitude, slavery or practices similar to slavery, servile or forced marriage, irregular adoption, forced begging, forced pregnancy and forced abortion and the



execution of any form of sexual  
exploitation. COSTA RICA



### 3. Protected legal good

It is a crime of the so-called plurioffensive type, in such a way that it affects not only human rights, but also the following legal assets:

Human dignity is the right of every human being to be respected and valued as an individual and social being.

Freedom of movement: the right to move freely and to choose one's residence in the territory of a State.

Sexual freedom: is the right to freedom of sexual choice of the individual. Sexual freedom is the power of the individual to self-determine his or her sexuality.

Sexual indemnity: are those that infringe on the individual's freedom of sexual choice or that promote sexuality in any sense.

Physical and mental health: is the state of balance between a person and his or her socio-cultural environment that guarantees his or her labor, intellectual and relational participation in order to achieve well-being and quality of life.

Freedom of personal self-determination: is the ability of the individual to

conscience to think and act according to the person's own will.

Occupational safety is the prevention of risks at work; it is the set of activities, measures adapted or planned in all phases of the company's activity in order to avoid or reduce the possibilities of workers suffering damages derived from work, whether they are accidents, illnesses, pathologies or injuries.

Right to determined filiation: right to know their parental or adoptive origin.

Hence, what is protected is not a single right, but a set of rights inherent to all persons from birth, which cannot be waived.

However, it is important to relate the protected legal right to the study of the criminal type, since it is not a crime of result, which means that there does not necessarily have to be an injury to the protected legal right for the crime to be considered exhausted, but rather, as will be analyzed in the following lines, it is an action directed to any of those ends that comprise the tutela, but whose actions in themselves constitute the exhaustion of the crime. The criminal activity may cease before concluding with the exploitation, it is not required that



is a consummated crime, if the victim is shown to be destined for exploitation, the offense has occurred. It is a crime of anticipated danger.

Regarding the nature of the legal property, it should be borne in mind that we are dealing with very personal legal property, which leads us to hold, for the purposes of prosecution, that there will be as many crimes as there are victims in the case. That is to say, those (the most personal) have as a trait the fact that the norm or precept is infringed as many times as there are victims, because they are goods that each person harbors within him/herself.

#### 4. Subjects of the crime

The crime of trafficking in persons is intentional and, as such, covers the purpose of the action, which is exploitation in any of its forms. However, this purpose need not be realized for the conduct to be punishable. The active subject must have knowledge and the will to exploit or any of the purposes. As to the perpetrator, the theory of dominion of the act is applied. The legislator expanded the forms of participation.

- a.** Subject active: can be any person.

The wording of the criminal offense of Article 172 does not require the following

The law does not provide for any special requirement to be an active subject, so anyone can be one, except in cases of aggravation of the type that refers to:

The victim is under eighteen years of age, elderly or disabled.

- b.** The perpetrator is the spouse, relative or relative of the victim up to the third degree of consanguinity or affinity.
- c.** The perpetrator takes advantage of a relationship of authority or trust with the victim or the victim's family, whether or not there is a family relationship.
- d.** The perpetrator takes advantage of the exercise of his profession or the function he performs.
- e.** The victim suffers serious damage to his or her health, death, or death by suicide as a consequence of the above-described human trafficking action.
- f.** The punishable act has been committed by a criminal group composed of two or more members.





The law does not apply to the crime of rape of an elderly or handicapped person. On the contrary, in the description of the previous type, the existence of a condition of vulnerability, which was protected by the legislator with a greater sanction, in the face of an increase in the established devalor, in the current norm ceases to be an aggravating circumstance and becomes part of the modes of execution.

In the same vein, the list of circumstances that aggravate the simple type is expanded, which imply a greater reproach: the fact that the victim suffers serious damage to health or dies, as well as death by suicide as a result of trafficking in persons.

- a.** Passive subject: can be any adult or minor. Some of these passive subjects may, on some occasions, but not always, present the following characteristics:
- b.** Persons who are being subjected to physical, emotional or sexual abuse.
- c.** Be in the sex trade as sex workers.
- d.** Are in migratory process, migrants in an irregular migratory condition.
- e.** Are in a situation of poverty or lack of resources
- of professional development opportunities, and offer them work or study.
- f.** Are subject to cultures or customs that facilitate rapprochement (sale of children, forced marriages, free deliveries).
- g.** Children and adolescents at risk for being in a "street" condition or situation, because they are homeless or without parental care, who seek food, attention and affection from adults.
- h.** Children and adolescents who are out of the educational system.
- i.** Children and adolescents who live with their families, but are sold or exchanged by their relatives in exchange for debt repayment or economic benefit; even parents may be deceived by traffickers who offer false opportunities for a better quality of life and end up being trafficked.
- j.** Since it is a business governed by supply and demand, the victim will be selected according to the requirements of the "client".  
/ The type of operation to which it will be subjected is always a function of the type of operation to which it will be subjected.



- k. They are chosen by sex, age, physical condition, appearance, etc.

## 5. Complicity

As for the passive subject, as can be seen, this can be any person. The "traffickers" select their victims according to the demands of the market and the "clients", and therefore take advantage of the socioeconomic, family, cultural and educational environment in which they live to make their recruitment easier.

According to the structure of the criminal offense of trafficking in persons, Article 172 of the Criminal Code, the active subjects are perpetrators or co-perpetrators to the extent that they have dominion or co-dominion over the act (Article 45 of the Criminal Code). But also, eventually, there could be accomplices, as long as they provide any assistance or cooperation for the commission of the punishable act (Article 47 of the Criminal Code).

It is important to point out that the crime of trafficking in persons, being a crime of anticipated danger, is not subject to attempt. Therefore, it can only occur in its consummated form, because, as already indicated, it is not required that the end be achieved, since it is a crime of mere activity.

## 6. Subjects of the crime

Within a grammatical analysis, the direct complement of these typical verbs (actions) comprises two subcomponents. On the one hand, a geographical subcomponent of external or internal transfer of persons without distance, and a teleological subcomponent, which is precisely exploitation as the purpose of such transfer.

Trafficking in persons is a complex and broad criminal offense, which, with its particular wording in its four governing verbs (promote, facilitate, favor or execute), encompasses different facets of the crime. Each of them is described below:

To promote: according to the Royal Spanish Academy, is to promote the development or realization of something. We should understand it then as encouraging or favoring the realization or development of something, initiating or activating it if it is at a standstill or temporarily detained.

Facilitar: according to the Real Academia Española, to make easy or possible the execution of something or the achievement of an end. To provide or deliver.

Favorecer: according to the Real Academia Española, is to help or protect someone. To support an attempt, enterprise or opinion. To give or do a favor.



Execute: The Real Academia Española refers to the words "consu- mir, cumplir", to go to the reaches that someone pursues.

These actions (promoting, facilitating, favoring, executing) should be aimed at recruitment, transfer,

the transportation, harboring, concealment, retention, transfer or receipt of a number of persons within or outside the country, meaning persons of either sex for the purpose of being subjected to the following (purposes of trafficking):

Forced labor or services.	Other forms of labor exploitation.
The easement.	Slavery.
Practices analogous to slavery.	Servile or forced marriage.
Irregular adoption.	Forced abortion.
The execution of any form of sexual exploitation.	Illicit removal or illicit transplantation of human organs, tissues, cells or fluids.

We see that this intention is both for entry into and exit from the country and that the doctrine defines it as international trafficking in persons; these actions may also be directed at mobilization within the national territory for the purposes described, which is known as internal trafficking.

It is possible to argue that this is a crime of abstract danger and mere activity, with intent directed at what is prescribed by law, since it is a special element of malice in the action of promoting, facilitating, favoring or executing; without the need for sexual exploitation or the purpose itself, but it is necessary for its configuration.

The action must contain this element of malice.<sup>36</sup>

#### 6.1. Inside or outside the country:

The typical action is configured with the entry into or exit from the country of the passive subject on the occasion of exercising any of the purposes of the crime.

For Creus<sup>37</sup>, "the concept of territory is the political-geographical one, that is, the one included in those geographical limits, excluding the places not included in those limits".

<sup>36</sup> Criminal Cassation Chamber, Vote 162-2012, of fourteen hours and forty-five minutes of April twenty-seventh, two thousand and twelve.

<sup>37</sup> (Creus, Carlos, Special Law, General Part, volume 1, p. 237).



limits, even though the jurisdiction of the law may eventually apply to them" (...). Hence, the victim must necessarily enter or leave the country to carry out some of the purposes established in the law, for example, to subject the person to the execution of any of the forms of sexual exploitation: These could include one or more acts of prostitution, sexual or labor servitude, slavery or practices similar to slavery, forced labor or services, servile or forced marriage, forced men- dicity, illicit extraction of organs or irregular adoption, forced pregnancy and the illicit extraction or illicit transplantation of human organs, tissues, cells or fluids.

Certainly, in vote 245-2018 of the Third Chamber, which analyzes trafficking in persons, reference is made to "transfer", "which consists of the following: "Once the victim has been recruited, he/she must be transferred to the destination place where he/she will be exploited. This may be to another place within the same country.

## 6.2. Displacement (Law 9095)

Despite the fact that with the new wording of the criminal offense, displacement is not part of the description of the conduct, according to Law 9545, it is convenient to present, in a very general manner, aspects related to this term.

It is worth noting that in the aforementioned article 172 of Law 8720, the action was aimed at promoting and facilitating travel and not transportation (included in the current type, as a requirement of the type).

Displacement is a broader concept than transporting, since the Royal Spanish Academy considers it as the action or effect of displacing, which means, in turn, to move from one place to another, which does not imply an intervening action of the active subject, as it would if the requirement set by the type were to transport, which already uses some means for this transfer and the action of executing it, that is, to take someone or something from one place to another. Thus, it is sufficient to promote the transfer, even if it is done by the victim himself.

In this regard, the Court of Appeals of Criminal Sentence, Second Judicial Circuit of Guanacaste, in its decision 162-2012, stated:

In this case it is clear, as stated in the judgment, that the accused: "... recruited women of legal age and minors with the purpose of sexually exploiting them in the coastal area of Filadelfia and Santa Cruz de Guanacaste, with people from that area and from Liberia, for which he provided or proposed to provide transportation, take them, provide the service and pick them up once they were in the coastal area.



concluded, during the weekends in which he promised the victims to receive two thousand or more dollars", so that the crime was fully consummated with the concurrence of two different aggravating factors: the minority of the victims and the use of deception, since they were "recruited" by falsely making them believe, at the beginning, that they would participate in a modeling academy..... It is possible to extract from this vote that the displacement of the victim may be because the trafficker moved them to the place where they were going to be exploited or where they were going to perform the acts of prostitution, either by providing them with the means of transportation or by taking them himself, however, either of the two ways is admitted to prove the displacement of the victim.

This vote also mentions the existence of two of the aggravating circumstances of the crime: the minority of the victims and deception, since the victims arrive because of a fictitious offer made by the "trafficker", offering them to be models in a modeling academy, which obviously worked as a lure for them to arrive at the place and be recruited.

### By way of summary:

The following are two graphic representations of article 172, the first as it was described in Law 8720, and the other as it was amended by Law 9545.



## Law 8720

Actions established by the governing verbs

promote

facilitate

facilitate

What are these actions intended to achieve?

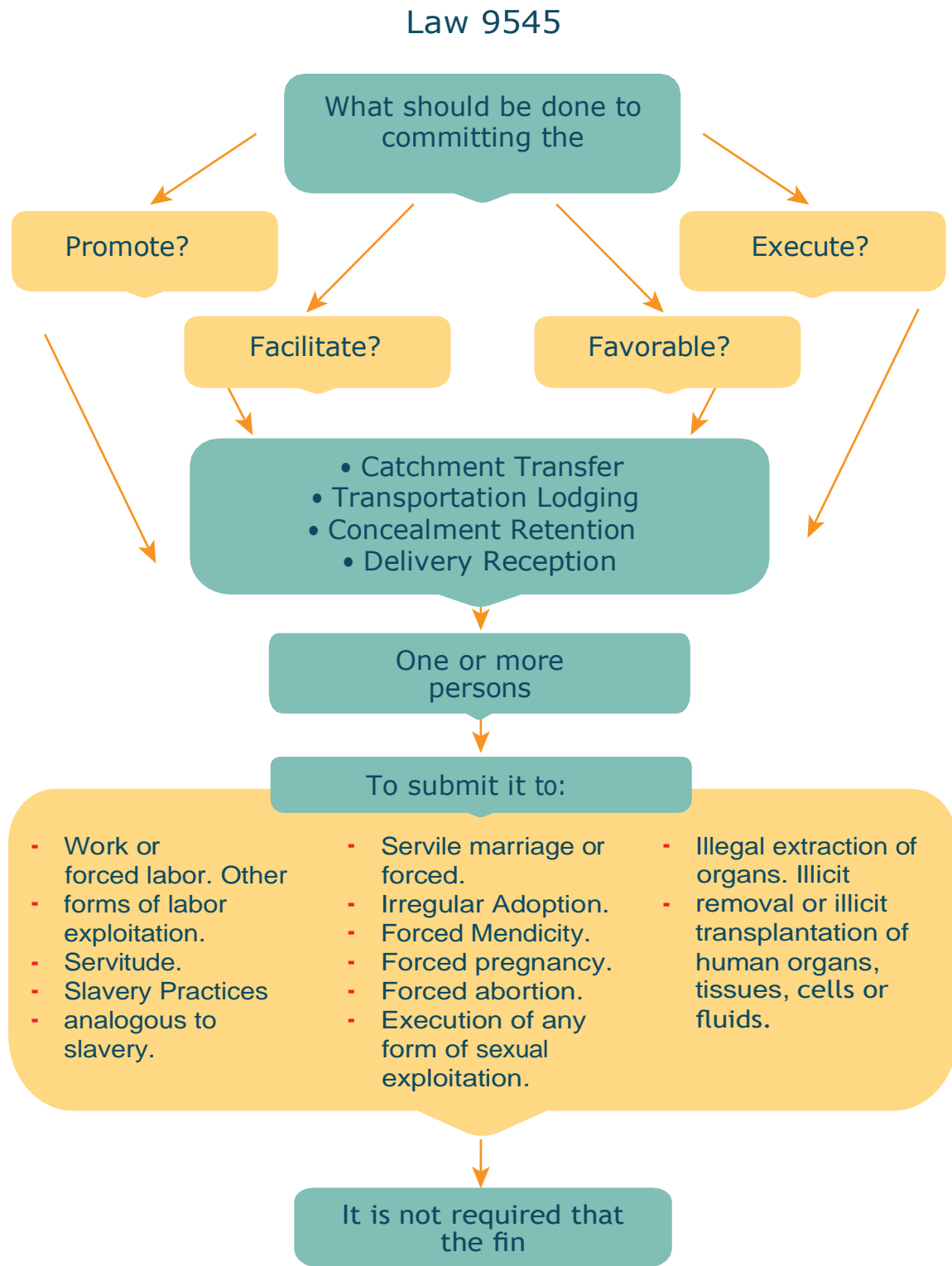
travel to and from the  
country

movement within the  
national territory

For what fiends (even if not achieved).

those established in  
numeral 172 of the Penal  
Code

prostitution or subjection to  
exploitation, sexual or labor  
servitude, slavery or practices  
similar to slavery, forced labor or  
services, servile marriage,  
begging, illicit organ harvesting or  
irregular adoption



## 7. Purposes pursued by the criminal action

Indeed, among the purposes of the criminal offense of trafficking in persons, there are several purposes pursued by the perpetrators of this offense, some of which are defined in Law 9095 and others whose meaning has been supplemented.

**Prostitution:** according to the Royal Spanish Academy, it is the activity of those who have sexual relations with other persons in exchange for money or remuneration. Understood as the activity of promoting prostitution, since it is not in itself a prohibited activity in our legislation, but promoting, facilitating or favoring the movement of a person to perform at least one act of prostitution falls within the assumptions that the Costa Rican legislation protects, regardless of whether the victim consents or not, since our criminal offense does not require forced prostitution as a purpose (understood as a situation in which the victim is manipulated or forced to perform acts involving his body to satisfy sexual desires of other persons, with or without remuneration for it). This is why, when the criminal offense details the performance of one of these acts, the victim is forced to perform another act, with or without remuneration.

o The purpose of the various acts of prostitution is that the victim must perform sexual acts with another person in exchange for a sum of money or remuneration, which was promoted by the trafficker.

**Exploitation:** is the obtaining of an economic or other benefit for the exploiter or for third parties, by means of the participation or subjection of one or more persons by force of law, or by means of the use of force to obtain an economic or other benefit for the exploiter or for third parties.

o deception to any type of act or state that harms or nullifies their fundamental human rights protected in national and international instruments on the matter. Some of the conducts that the "Palermo Protocol" indicates as conducts that may include exploitation, is that such exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation.

**Servitude:** it is understood as the state of dependency

o subjugation of the will in which the perpetrator induces, exploits or forces the victim of this crime to perform acts, work or provide services with the use of deception, threats or other forms of violence. Likewise, the author Carlos Creus<sup>38</sup>

<sup>38</sup> (Creus Carlos. Special Law, General Part, volume 1, p 273 to 275).





describes sexual or labor servitude as the state in which the active subject disposes of the passive subject as if he were his property, thereby reducing him practically to the condition of a thing, without granting him any consideration for the services he receives from him, and without any other conditioning in the exercise of his power. Therefore, there is a complete subordination of the will of the passive subject to that of the active subject, although the former is allowed to freely deploy his will in reduced sectors of activity (for example, moving from one point to another, acquiring consumer goods), in which the active subject is not required to exercise his dominion. Sexual servitude is also understood as<sup>39</sup> the relationship of subjugation and alienation of will, where the active subject dominates the will of the passive subject for sexual purposes. Labor servitude. In the same way, servitude for labor purposes implies the domination of the will of the passive subject to perform some type of work for the active subject, but practically in the condition of a slave. There is no room in this relationship for any type of labor rights. Work is performed without rest,

with little food and probably no pay.

**Commercial sexual exploitation:** means the participation of a person in prostitution, sexual servitude or the production of pornographic materials, as a result of being subjected to threat, coercion, abduction, force, abuse of authority, debt bondage or fraud.<sup>40</sup>

**Slavery or slavery-like practices:** understood as the situation and social condition of a person who lacks freedom and rights because he/she is absolutely subject to the will and dominion of another. It is the state or condition of an individual over whom the attributes of the right of ownership or any of them are exercised. The slave trade includes any act of capture, acquisition or transfer of an individual for sale or exchange and, in general, any act of trade or transport of slaves. According to Law 9095, practices analogous to slavery include debt bondage, labor servitude "de la gleba" (serfdom for land), forced marriages, forced labor, and forced marriage.

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<sup>39</sup> (Third Chamber of the Supreme Court of Justice. Resolution 2005-01223 of 9:35 a.m. October 26, 2005).

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<sup>40</sup> (Jordan, Ann D. The Annotated Guide to the Comprehensive Trafficking in Persons Protocol. International Legal Group, 2002. p. 11).



or servitude and the delivery of children for sexual exploitation. or labor.

**Forced labor or services:** those exacted from a person under the threat of harm or the duty to pay a spurious debt or by deception.

**Forced or servile marriage:** is any practice whereby a person, without the right to object, is promised or given in marriage in exchange for a consideration in money or in kind given to his or her parents, guardian, family or any other person or group of persons. Forced or servile marriage also occurs when a person marries and is subjected to exploitation.

**Begging:** in Law 9095, it is defined as a person who is forced by another to ask for money for the benefit of the trafficker, the trafficker or third parties. Consent to carry out begging is not valid in the case of minors, elderly or disabled persons, or under any other situation of vulnerability.

**Illegal organ removal:** understood as the removal of one or more human organs without applying legally established medical and legal procedures.

**Irregular adoption:** Adoption that occurs without the presumptions established by law.

N. No. 5476, Family Code, of December 21, 1973, as amended.

**Unlawful transplantation of human tissues, cells or fluids:** to determine the unlawfulness of transplantation, it is necessary to analyze Law No.9222, Law on Donation and Transplantation of Human Organs and Tissues, published in Scope No. 76 of the Gazette, on April 22, 2014:

In relation to the purposes, it is necessary to analyze two particular situations, given that the wording is generic and refers to the legal forms of its practice, precisely those that refer to the illicit extraction of organs, in order to be clear about when such extraction is licit and irregular adoption, so that it must be established which would be the regular or permitted form by law in order to determine, a contrario sensu, the illicit purpose included in the criminal offense.

It is also clear that the officer of the Public Prosecutor's Office must always analyze the factual framework to determine the possibility of concurrence of crimes applicable to the specific case. For example, in the case of irregular adoption, the possibility of concurrence with the offenses typified in paragraphs 182 (Violations of the registration process) should be analyzed, as well as the possibility of concurrence with the offenses typified in paragraphs 182 (Violations of the registration process).



(Evasion of adoption procedures / Violators of the adoption process), 183 bis (Evasion of adoption procedures / Violators of the adoption process) and 383 (Trafficking in minors) of the Criminal Code and, if this involves the use of forged documentation, trafficking in persons for the purpose of irregular adoption could also be covered, according to the offences set forth in Articles 366 (Forgery of public and authentic documents), 367 (Ideological falsehood), 368 (Forgery of private documents), 372 (Use of false document) among other crimes.

### i. Illegal organ harvesting

Without intending to divert the subject of the present rectory, it is necessary to know that the way to make donations in Costa Rica is regulated in the Law of donation and transplantation of organs and human tissues, law 9222 of March 13, 2014, published in La Gaceta of April 22 of the same year and its regulations, which were established by executive decree number 39895-S, published in the scope 217 of La Gaceta dated October 12, 2016.

It is important to note that this law does not apply to the therapeutic use of human blood and its derivatives, umbilical cord blood, with the exception of bone marrow transplants, bone marrow transplants, bone marrow transplants and umbilical cord blood.

In this case, there is no crime, since the law clearly excludes the use of human blood as an organ or tissue trafficking.

As established in articles 10 to 22 of Law No. 9222 and article 57 of its regulations in chapter one, on procurement of organs and tissues from living donors, the procurement of organs or tissues and surgical residues from a living donor for subsequent grafting or implantation in another person may be performed if the following requirements are met:

Any form of gratuity, remuneration, gift in cash or in kind, social, psychological or any other kind of conditioning for the donation of human organs and tissues by the donor, the recipient or any natural or legal person is prohibited (these terms of conditioning are defined in more detail in the regulations).

The financial or other costs of medical procedures related to organ donation, removal and transplantation cannot be attributed to the living donor or the family of the deceased donor.

It is prohibited to publicly solicit or make any publicity about the need for an organ or tissue, or about the need for an organ or tissue, or about its



availability, offering or requesting any type of gratuity, remuneration, gift in cash or in kind, social, psychological or any other type of condition.

The donor is fully identified, either by the Civil Registry in the case of nationals or by the diplomatic representation or consult in the case of foreigners or other authorities at the international level.

The donor is of legal age. The age of majority shall be certified by the Civil Registry in the case of nationals and by the corresponding diplomatic or consular representation in the case of foreigners. In case of doubt, minority shall always be presumed, as established in Article 2 of Law No. 7739 of January 6, 1998 "Childhood and Adolescence Code".

The donor enjoys full mental faculties, this condition must be certified after an assessment by a psychology or psychiatry professional and by social work, all duly certified by the health establishment responsible for the procedure, verifying that the donor's socioeconomic and environmental conditions are suitable for his recovery, as well as if any type of gratuity, remuneration, etc., is suspected.

This requirement does not apply to donors of surgical residues. This requirement does not apply to surgical waste donors.

The donor gives his consent in a free, express, informed and conscious manner, which must be expressed, in writing, by means of the corresponding informed consent document. In no case may the extraction of an organ, tissue or the use of surgical waste be carried out without the prior signature of this document.

No organs, tissues or surgical waste may be obtained from persons who, due to mental and behavioral disorders or for any other reason, are unable to give their express, free and informed consent.

The removal of the organ or tissue, part of it or both is compatible with life and its function can be compensated by the donor's organism in an adequate and sufficiently safe manner.

The destination of the organ and tissue removed is transplantation to a recipient for the purpose of substantially improving his or her life expectancy or living conditions.



The donor may revoke consent at any time prior to the procedure.

In cases with a living, emotionally related donor, a sworn affidavit before a notary public must establish the evidentiary element that certifies the existing relationship, according to annex 4 of the "Affidavit for Living Emotionally Related Donor".

Likewise, Article 17 of the same law establishes the prohibition to perform organ and tissue harvesting in the following cases:

- a.** Persons with volitional and cognitive incapacity to make valid decisions, certified by a competent professional or judicially declared.
- b.** A minor, except when the donation involves surgical waste or hematopoietic progenitors (hematopoietic progenitor transplantation is a therapy against neoplasms (malignant tumors) or alteration of bone marrow function). In these cases, the informed consent must be given by the person legally representing the patient and, in patients over twelve years of age, it must also include the following information

your informed consent.

- c.** Altruistic donor with directed donation.

In each particular case, it will be necessary to analyze the list of evidence and the intention of the subject or subjects investigated, in order to know which requirements were not met and what their intention was, as well as to expand, in the aforementioned regulations, the specific presuppositions in particular.

Regarding this modality of trafficking in persons, vote 2018-0864, of the Criminal Sentencing Court of Appeals of the II Judicial Circuit contains an analysis of article 272 and, specifically, refers to the illicit extraction of organs.

## ii. On regular adoption

The procedure for the determination of filiation through adoption is a legal institution of family integration and protection, public order and social interest, as established in numeral 100 of the Family Code. It is the procedure through which the adoptee becomes part of the family as a son or daughter for all purposes and this process is regulated in Chapter VI of the legal body of law. In addition, they are related to the subject:

Convention on the Rights of the Child. Articles 20 and 21. Both articles establish the right of children to be adopted and the duties that States Parties must observe in order to comply with them.

Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Articles 1 to 5. Establishes that States Parties must adopt measures to ensure that intercountry adoptions take place in consideration of the best interests of the child and respect for his or her fundamental rights, as well as to prevent the abduction, sale or trafficking of children.

Organic Law of the Patronato Nacional de la Infancia. Articles 4 clause o and 11 clause h. The Patronato Nacional de la Infancia will be the leading institution in matters of childhood, adolescence and family. Its primary purpose is to provide special and comprehensive protection to minors and their families.

Penal Code. Articles 182 (Violators of the registration process), 183 bis (Evasion of adoption procedures / Violators of the adoption process) and 383 (Trafficking in minors).

Regulations of the National Adoption Council and the Regional Councils of Adoption and Relocation of Minors on Types of Adoption. The purpose of which is the protection of minors and cooperation in national and international adoption matters, recognizing that, for the harmonious development of their personality, they must grow up in a family environment, as well as in a climate of happiness, love and understanding.

The Patronato Nacional de la Infancia establishes, through the Reglamento del Consejo Nacional de Adopciones, the procedure for adoptions of children and adolescents by persons applying for national and international adoption, in which it is stated that the following steps must be taken:

- 1) Administrative stage of determining the suitability of applicants.

This stage consists of determining the psychological, social and legal suitability of the applicants for placement for adoption of a child or adolescent for adoption purposes.

- 1.a) General conditions to be met by applicants. In order to be able to adopt, applicants for adoption must





must comply with the general conditions established by the Family Code in Article 106, namely:

- a.** Possess full capacity to exercise their civil rights.
- b.** To be older than twenty-five years old, in case of individual adoptions.
- c.** In joint adoptions, it is sufficient that one of the adopters has reached this age.
- d.** To be at least fifteen years older than the adoptee. In joint adoption, this difference shall be established with respect to the adopter of younger age. In the adoption by a single spouse, this difference shall also exist with respect to the consort of the adopter.
- e.** Be of good conduct and reputation. These qualities shall be proven by suitable documentary or testimonial evidence, which shall be assessed and evaluated by the judge in the sentence.
- f.** Possess family, moral, psychological, social, economic and health conditions that show aptitude and disposition to assume parental responsibility.

Article 107 of the Family Code establishes the impediments to adoption and, therefore, it is not possible to adopt in the following cases:

- a.** The spouse without the consent of the consort, except in the cases mentioned in the following article.
- b.** Those who have exercised the guardianship of the minor or the curatorship of the incapacitated person, as long as the competent judicial authority has not approved the final accounts of the administration.
- c.** Persons over sixty years of age, unless the court, in a reasoned decision, considers that, despite the age of the adopter, the adoption is convenient for the minor.
- d.** Those who have been deprived or suspended from the exercise of parental authority, without the express consent of the Court.

Once these general conditions for applying for adoption are met, the following documentation must be submitted to show the suitability of the person who wants to adopt.

1. b) Documents that must be submitted by applicants for adoption in order to determine their suitability:

Official PANI National Adoption Form (completed and duly signed).

Two passport size photographs of both applicants.

Birth certificate of the promoter(s) (issued by the Civil Registry).

Marriage certificate or civil status (issued by the Civil Registry).

Certificate of delinquency (issued by the Registry of Delinquency of the Judiciary).

Certificate of financial income (issued by a public accountant or by the officer responsible for the Human Resources department of the company or institution for which they work).

Medical health report issued by a CCSS or private professional (The treating physician must fill out the PANI report guide form).

Social assessment (See section on psychosocial assessment parameters).

Psychological evaluation (See section on psychosocial evaluation parameters).

Copy of identity cards.

Certified copy of your residence card (in case of persons of a nationality other than Costa Rican, with habitual residence in the country).

It is important to mention what types of adoptions exist in our legal system and these are contemplated in Article 109 of the Family Code, which establishes who are adoptees. The adoption will proceed in favor of:

- a.** Minors judicially declared in a state of abandonment, except when one spouse adopts the minor children of the other, as long as the spouse with whom the minors live exercises exclusive parental authority.
- b.** Persons of legal age who have lived with the adoptive parents for a period of not less than six years before reaching the age of majority and have maintained family or emotional ties with the adoptive parents. If the adoptive parents are relatives up to and including the third degree of consanguinity, the required period of cohabitation will be three years.
- c.** Minors whose parents, in the exercise of parental authority, registered as such in the Civil Registry, consent to the following before





The judicial authority must be satisfied that there is a willingness to surrender and detach and that, in the judgment of said authority, there are justified, sufficient and reasonable causes that lead it to determine that this act is in the best interest of the minor.

In the domestic adoptions indicated in paragraph c) of this article, the competent judge shall order protective measures in the best interests of the minor. Likewise, the judge shall order PANI, within a period of two months from the respective judicial notification, to assess the reasons and psychosocial conditions of the parents, to verify the existence of free and informed consent and to carry out the necessary actions to exhaust the possibilities of placing the minor with his or her biological extended or affective family.

Once the respective reports have been issued, PANI, through the competent official, will declare or not that the minor person or persons are adoptable, by means of a declaration of adoptability, which must be sent to the judicial authority together with the technical reports, within a period of one month.

The competent judge shall decide on the provisional location of the

The court may, by means of a duly justified resolution and taking into account the will of the parents in consenting to the surrender of the adoptee, as well as the will of the minor, when he/she is able to express it. Likewise, it may request, by means of a duly reasoned resolution, any other diligence that it considers pertinent, in case there is reasonable doubt with respect to the filiation of the parent or parents and the minor person.

Once it has been established that there is no filiation, the judge will reject the request for surrender and will determine the definitive location of the minor, in accordance with the judicial protection process established by Law No. 7739, Code for Children and Adolescents, of January 6, 1998.

Articles 109 bis and 109 ter, detail the requirements to proceed to request an inter- national adoption, as well as the follow-up that must be given to the minor once he/she has been adopted by a foreign family, which can be up to three years after the adoption and two years when it is a national adoption. The international adoption will only proceed when the National Adoption Council has determined that there is no possibility of placing the minor in an adoptive family with habitual residence in Costa Rica.



Here it must always be taken into account that what is known as direct adoption can take place, which is properly speaking paragraph C of article 109, according to which the parents, in the exercise of parental authority, registered as such in the Civil Registry, consent before the corresponding judicial authority (judge), the will to surrender and detachment of the child, which they can do without any inconvenience.

In these cases, Family Jurisprudence has indicated that a woman over fifteen years of age who has been a mother may dispose of her child for adoption. In these cases, once the mother gives her child to the adoptive family directly without the intervention of PANI, our legislation does not detail how much time there is for the adoptive parents to make the adoption proceedings before PANI and the Court of Childhood, hence even the child or adolescent can be raised by the adoptive parents without having been adopted, so that the adopted person, when he or she reaches the age of majority, could make the adoption proceedings himself or herself. Or, the adoptive parents, at any time, can carry out the corresponding procedures, since there is no cause to determine that this is an improper and therefore illegal act.

In short, the adoption process has several stages,

The first is direct adoption: once the minor has been surrendered by his or her parents directly to the adoptive parents and they have agreed to take the necessary steps before the corresponding Children's Court. The Family Judge, first, upon receiving the adoption request, must verify that the mother surrendered the child without any type of coercion and must ensure that she effectively always maintains her will to surrender the child. For this reason, she summons the parties to a hearing in which the judge will ask if she always agrees with the relinquishment and, if so, will proceed with the processing of the adoption request.

A second phase is when the mother does not come to this hearing, so that the Criminal Judge must first declare the state of abandonment of the minor and dictate urgent protective measures to protect the minor. Generally, the child is left with the adopting family, which has remained with the child since the mother "voluntarily" relinquished him/her (this voluntariness is always presumed).

After exhausting all means to locate the child's consanguineous family and reporting to PANI and not having found any relative, the same court will proceed to declare the child's adoptability and will continue with the adoption process.



The adoption without further delay, as long as the adoptive parents complete all the requirements established by the Family Code. Likewise, once all the social and psychological reports support the adoption, the judge will proceed to give the child for adoption. This adoption is irrevocable. This, roughly speaking, is the procedure for a direct adoption.

It is important for the justice operator to determine if we are in the presence of an irregular adoption, as care must be taken when assessing the facts, since not every surrender of a child or adolescent for adoption is human trafficking.

Therefore, when assessing the factual situation, it must first be determined whether the adoption procedure is vitiated by some aspects to be taken into account, among them, for example, the fact that there was a payment or type of gratification on the part of the adoptive parents to obtain the child or adolescent; that false information of the mother was given in the medical centers to make believe that the adoptive mother is the biological mother, by inserting false information in the birth certificate of the minor or by altering it; among other situations that allow to presume that the procedure was not the one established by the Code of Family, and that in addition there were some false information in the birth certificate of the minor; among other situations that allow to presume that the procedure was not the one established by the Code of Family, and that in addition there were some false information in the birth certificate of the minor.

of the four verbs established in the crime of trafficking in persons for the crime to be committed.

In the national regulations, specifically the Family Code, paragraph 125 establishes the adoption procedure, which establishes the competence to determine the adoption in the jurisdictional body, specifically the Family Judge of the adopter's habitual place of residence, in a process of non-contentious judicial activity. On the other hand, if the adoptions are by persons without domicile in the country, they will be processed by the Family Judge of the adoptee's habitual place of residence.

The adoption application must contain the following information:

Name; age; nationality; marital status; profession or trade; identity card number; passport or residence card number, in the case of foreigners; domicile and habitual residence, both of the adopter and of the spouse who must give his/her consent.

Name, age, nationality, domicile and habitual residence of the adoptee.

Name, marital status, profession or occupation and domicile of the father and mother by blood, legal guardians or

guardians of the adoptee, in the case of minors who are not subject to a judicial declaration of abandonment.

Description of the facts that motivate or justify the adoption, indicating the relevant evidence and legal grounds.

Place to receive notifications.

This request must be accompanied by the documentation determined in article 128 of the same legal body (various certifications). Then, a hearing will be summoned, which will be informed by means of the official newspaper La Gaceta, and then, propiously in the Judicial Bulletin, always in direct respect of the rights of the children according to the Convention on the Rights of the Child of the United Nations, approved and ratified by our country, through Law No. 7184 of July 18, 1990, which came into force, according to Article 2 of that legal instrument, on the day of its publication in La Gaceta No. 149 of August 9, 1990. If all the documentation is adequate, the adoption decree is issued and, from that moment on, the minor will have the surnames of the adoptive parents when it is a joint adoption and, if it is an individual adoption, he/she will repeat the surnames of the adopting parent.

## 8. Aggravating factors

In the case of certain conditions of the victim or trafficker, the criminal law imposes a greater penalty than the basic criminal offense. Usually, the aggravation refers to the age of the victim, some degree of disability, incapacity, or if the victim suffers serious damage to his or her health as a result of the trafficking to which he or she was subjected.

As for the "trafficker", it rather refers to relationships of kinship, power and trust that the trafficker has with respect to the victim, or if the "trafficker" is a public official who abuses his or her position.

Article 172 aggravates the penalty, with a prison sentence of eight to sixteen years, if there is also any of the following circumstances, which, for purposes of comprehension, will be detailed below:

- a) The victim is under eighteen years of age, elderly or disabled, circumstances that by themselves place them in a situation or condition of vulnerability.



In this case, it is aggravated by the special condition of the victim, in one case because of his or her minority, since it is understood that the lack of maturity is taken advantage of by the perpetrator, either because of his or her condition of vulnerability or because he or she is an older adult. Finally, it is determined whether the victim suffers from a disability that places him/her in a more vulnerable situation vis-à-vis the trafficker.

Circumstances in which the individual has no alternative but to submit to the situation, this must be studied in each particular case, analyzing the circumstances of time, manner and place, because sometimes not even the victims themselves are aware of their condition.

- b. The perpetrator is the spouse, relative or relative of the victim up to the third degree of consanguinity or affinity.

This aggravating circumstance of kinship stands out due to the ease with which the perpetrator is supposed to approach the victim and keep her in human trafficking for any of its purposes, but above all due to the fact that precisely from the kinship relationship existing between the perpetrator and the victim, the existence of certain moral duties derives due to the family relationship of the relatives, therefore socially deserving a special consideration.

The greater the reproach and, consequently, the greater the penalty.

- c. The perpetrator takes advantage of a relationship of authority or trust with the victim or the victim's family, whether or not there is a family relationship.

This disvalue of the action is punished more severely by the perpetrator's abuse of his position of authority or trust, which causes the victim to reduce his possibility of defense against the attack on the protected legal right.

- d. The perpetrator takes advantage of the exercise of his profession or the function he performs.

As in the previous case, the legislator considered more reproachable the conduct of the person who, because of the previous relationship, exercises power over the victim, in this case because of the function performed, which also causes the victim's defense to be reduced in the given circumstance.

- e. The victim suffers: serious damage to health, death or death by suicide.

Here we have an aggravating circumstance due to the result, although we have argued that the crime is a mere activity in pursuit of the illicit purpose, that is, that it is exhausted with any of the phases of trafficking, without the result sought being necessary, what is certain is that this aggravating circumstance is operative in this case.

The evaluation of these results, which should be seen by the prosecutor as the consequences to the physical and emotional integrity of the victims.

- g. The punishable act was committed by a criminal group composed of two or more members.

Reflecting its normative antecedent, this aggravating circumstance penalizes the organization of two or more

In many cases, "traffickers" work in association with other persons forming an organization, but they could also work individually, as does the United Nations Convention against Transnational Organized Crime and its protocols, raising the reproach to the level of organization of the offenders for the exercise of this scourge.

## II. Crime of smuggling migrants

### 1. General aspects

From a strictly grammatical interpretation, the definition of the verb "to traffic" refers to trade, to buying or selling, and, in a negative sense, it refers to the existence of an illicit trade. However, if we transfer this concept of "trafficking" to the context of migration, we can say that we are talking about migratory trade, but illegal because it is trafficking, hence the term smuggling of migrants.<sup>41</sup>

Smuggling of migrants is synonymous with "lethal business", vio

The violation of the rights of the thousands of "trafficked" persons and in particular their "dignity", exposure to exploitation, abuse and endangerment of their lives, also means very lucrative business.

The "Protocol against the Smuggling of Migrants by Land, Sea and Air", one of the three protocols supplementing the Convention against Transnational Organized Crime, defines, in paragraph 03, what is meant by smuggling of migrants:

*"The facilitation of the illegal entry of a person from a State Party of which that person is not a national or permanent resident for the purpose of obtaining, directly or indirectly, a financial benefit from the illegal entry of such a person."*

<sup>41</sup> Regulatory Guide, Human Trafficking and Smuggling of Migrants in Mexico and Central America, 2007, p.4





*or other material benefit".*<sup>42</sup>

This international human rights instrument on the smuggling of migrants includes, as part of the commitments acquired by the State party upon signing this convention, the addition of this crime to its domestic legislation. It also emphasizes the importance of cooperation, exchange of information, that is, international cooperation.

The socio-familial context, on many occasions the need for employment or the search for a new option for subsistence leads, or rather, it could be said, forces people, due to their circumstances, to make the decision to leave their country of origin and move to another country. However, in view of the requirements of some countries, which demand mandatory procedures that are difficult for foreigners to obtain, such as visas to allow entry into that State, and even other requirements that are impossible for migrants to obtain, a situation arises in which migrants look for other options to cross borders undetected and thus reach their final destination.

Costa Rica, in the Central American region, is a bridge country, used as a transit point to reach the United States. A large number of migrants only use Costa Rican soil as a transit route and for this purpose they resort to criminal networks that provide them with false or altered documents in order to cross some borders without being discovered, or they cross through mountainous areas or areas far from immigration posts to evade established immigration control.

Human trafficking, also known as "coyotaje", is related to the management of transporting or facilitating the movement of people from one country to another for any purpose, thereby protecting the State's migratory order rather than the individual.

This type of crime involves an "agreement", usually verbal, between victim and offender, whereby they agree to transport from the point of origin to the point of destination, for a certain amount of money, using means that may be illegal or clandestine.

The agreement ends when the migrant arrives at his or her destination, where the relationship between the "smuggler", the "trafficker" and the "trafficked person" ends, and has no further purpose other than to take him or her to the agreed-upon destination point. The same is true of human trafficking.

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<sup>42</sup> Protocol against the trafficking/smuggling of Migrants by Land, Sea and Air, article 03

The contrary, since it implies a situation of exploitation, for which reason the illegal action will be extended for the entire time that the victim is held and subjected to any of the purposes described in this criminal act.

The illicit traffic of persons in our legal system is punctually regulated in articles 249 and 249 bis of the General Law of Migration and Foreigners, Law 8764 of September 1, 2009; however, it is important to clarify that number 249 bis has its origin in Law 9095: Law against the Trafficking of Persons, which also criminalized the traffic of nationals to a second or third country through article 249 bis.

## 2. Criminal type and objective elements of type

Similarly, it applies to the crime of smuggling of migrants the aspects related to the leadership and, therefore, aspects such as: analysis of the criminal type, protected legal interest, guiding verbs, protected purposes and aggravating factors, in compliance with General Instruction 01 of 2016, of the Attorney General's Office of the Republic.

### 2.1 International smuggling of migrants

Article 249 states that:

"A prison sentence of four to eight years shall be imposed on anyone who drives or transports persons, for their entry into or exit from the country, through places authorized or not authorized by the competent immigration authorities, evading the established immigration controls or using legal data or documents, or using false or altered data or documents, or not carrying any documentation whatsoever.

The same penalty shall be imposed on anyone who, in any way, promotes, promises or facilitates the obtaining of such false or altered documents, and on anyone who, with the purpose of promoting the smuggling of migrants, harbors, hides or conceals foreign persons who illegally enter or remain in the country.

The penalty shall be six to ten years imprisonment when:

1. The migrant is a minor, elderly and/or disabled person.
2. The life or health of the migrant is endangered, due to the conditions in which the act is carried out, or serious physical or mental suffering is caused.





3. The author or participant is a public official.
4. The act is carried out by an organized group of two or more persons.
5. When the person suffers serious damage to health".

When assessing this criminal offense, it should be noted that there are two moments for this crime. In the first instance, the first paragraph establishes whoever drives or transports persons into or out of the country through places authorized or not authorized by the competent immigration authorities, evading the established immigration controls or using legal data or documents, or using false or altered data or documents, or not carrying any documentation.

In these cases, it is understood that the perpetrator is driving or transporting a migrant to enter or leave the country. For example, when the smuggler or trafficker guides or accompanies the migrant through a certain area to evade immigration control, or drives or transports him or her to cross the border at a checkpoint, either by evading the immigration post or by using legal or false or altered data or documents, or by not carrying any documentation at all. For example, by giving them travel documents

The passport holder's biometric sheet (the sheet containing the passport holder's identification data) is often altered, often by inserting the migrant's photo, but with the document holder's data, and the "trafficked" person is asked to learn the data contained therein.

This is often because there are nationalities that do not require visas to enter a given country, so organized groups obtain these passports, which have almost always been stolen or lost, and thus get the victims to enter a given country. An example of this is Spanish passports. Because they belong to the European Community, the holder does not require a visa to enter the United States, which is why they are so sought after for use by Colombians and Dominicans.

The same article, in the second paragraph, is used in two different situations, the first is when the "trafficker" or "trafficker" procures, promises or facilitates the obtaining of legal documents or false or altered documents to the person who is the object of the illicit traffic, so that he/she may use them to enter or leave the country, for example, false passports or visas.

While the second situation is when the active subject, who



The "trafficker" or "trafficker" may be any person, not necessarily the "trafficker", with the purpose of promoting the illicit trafficking of migrants, harboring, concealing or harboring foreign persons who enter or remain illegally in the country.

This assumption refers to when the migrant has entered the country in an irregular manner, that is, when he or she is already in the national territory, but is in an irregular migratory condition. In this case, the action to be taken by the perpetrator is to lodge the migrant in a house or hotel. Hiding or concealing him or her refers to the manner in which he or she is being "hidden"; he or she may be transferred in a vehicle or bus. This transfer does not always take place in the best conditions.

For example, there have been cases in which a sedan-type vehicle, with a capacity to transport five people, has been used to covertly and concealedly transport up to twelve people. The question arises: how can this be done? Answer: in the passenger seat they seat one person on top of another, and in the middle of the driver's seat and the passenger seat, they seat one more person. So, in the front part of the vehicle there are four people including the driver. Then, in the back seat they sit

three people and on top of them, i.e., on their laps, another three people; so far, ten people have been counted. Finally, they use the trunk, trunk or trunk of the car, in which they put two more people.

In the end, they manage to bring in a total of twelve people per trip. This modality was discovered in a case that was processed in Liberia and Peñas Blancas in 2013, in which a criminal organization was dismantled, made up of at least twenty-two people, who worked as "informal cab drivers" in the area and were dedicated to hiding and covering up Nicaraguan migrants who crossed the border in an irregular manner. Once on national soil, they picked them up and transported them to San José and other parts of the country, thus promoting their illegal trafficking.

Criminal groups have many ways and strategies to hide migrants when they transport them in private vehicles, for which they make some modifications to the drivers. For example, they darken the windows with limousine-type tinted windows, making it impossible to see inside the vehicle, so that neither the number of people nor their physical features can be seen, which would allow the authorities to establish that they are foreigners.



In addition, they modify the vehicle, reinforcing the springs of the original suspension, so that when the vehicle is carrying more than the permitted load, its bodywork does not lower and allows it to circulate with more weight and at a constant speed, which favors traffickers so as not to arouse suspicion when they pass through the police posts located on the road.

## 2.2. Illicit trafficking from nationals


Certainly, the conduct described in numeral 249 will only be applied when the migrants are foreigners, unlike article 249 bis, which is used only when the victim is a national, that is, Costa Rican, and is trafficked to a second or third country. Said article is very recent, since it entered into force on February 8, 2013, when Law 9095 came into force. That is why before this date this crime did not exist and the trafficking of nationals to another country was not penalized.

This criminal offense was created due to the need to combat the massive trafficking of nationals, which occurred in the southern part of Costa Rica, where a large number of people from that area migrated (and still migrate) to the United States of America and other countries. Likewise, in the absence of a law criminalizing this conduct, it was not possible to investigate the crime.

This was a social reality that had to be addressed. This was a social reality that had to be addressed, and thus, the criminal offense 249 bis was created, which establishes:

Article 249 bis. - A prison sentence of four to eight years shall be imposed on whoever promotes, plans, coordinates or executes the illicit trafficking of national migrants to a second, third or more countries through places not authorized or authorized by the General Directorate of Migration and Foreigners, even when the beginning of the transfer is carried out through the legal channels established by said entity, or evading the established migratory controls or using false or altered data or documents, or they are undocumented.

The same penalty shall be imposed on anyone who, in any way, promotes, promises or facilitates the obtaining of legal, false or altered documents or conceals legal or illegal financial transactions that affect the assets of the person concerned or his guarantors, with the aim of promoting the smuggling of national migrants, and anyone who coordinates, facilitates or carries out actions aimed at housing, hiding or concealing nationals who enter or stay legally or illegally in a second, third or third country, and who, in any way, promotes, promises or facilitates the obtaining of legal, false or altered documents or conceals legal or illegal financial transactions that affect the assets of the person concerned or of his guarantors, with the aim of promoting the smuggling of national migrants, and anyone



who coordinates, facilitates or carries out actions aimed at housing, hiding or concealing nationals who enter or stay legally or illegally in a second, third or third country.



or more countries, with the purpose of consolidating the smuggling of migrants. The penalty shall be six to ten years of imprisonment when:

1. The migrant is a minor.
2. Life is endangered  
The migrant's health, due to the conditions in which he/she performs the act, or serious physical or mental suffering is caused to him/her.
3. The author or participant is a public official.
4. The act is carried out by an organized group of two or more persons.
5. As a result of the smuggling of migrants, the person becomes a victim of trafficking.

### 3. Protected legal good

This criminal offense established in the Special Law on Migration and Foreigners, No. 8764, has as its main purpose the protection of the sovereignty of the State, at the moment that a border crossing is made by evading immigration controls or through the use of false documentation. The infringement directly affects the power of the State, hence the legal right protected is the "security of the State".

### 4. Subjects of the crime of smuggling of migrants

This offense (249 and 249 bis), as is the case with most of the criminal offenses, does not require any special requirement to be an active or passive subject; however, the legislator considered some circumstances, characteristics or conditions of the victim or the "trafficker" or the "trafficker" to impose a penalty due to the increased value of the offense.

### Complicity

In the crime of illicit trafficking of migrants, according to the structure of this criminal offense, the active subjects are perpetrators or co-perpetrators to the extent that they have dominion or co-dominion over the act (Article 45 of the Penal Code). But there may also be accomplices, provided that they provide any assistance or cooperation for the commission of the punishable act (Article 47 of the Criminal Code).

It is important to indicate that, with respect to this offense, since it is a crime of anticipated danger, there is no room for attempt. Therefore, it can only occur in its consummated form, because as has already been indicated, it is not required that the end be achieved, since it is a crime of mere activity.



## 6. Governing verbs

### ILLICIT TRAFFICKING IN COSTA RICAN CRIMINAL LAW

#### Active Subject

- Any person
- Aggravating traficant conditions.

#### Passive Subject

- Any person
- Aggravating conditions of the victim

#### Verb rectors

- Driving, transporting in authorized or unauthorized places, evading immigration controls, etc.
- Use of data or legal documents
- Falsified or altered, or without documentation
- Promote, promise or facilitate
- Obtaining altered false documents
- To house, conceal or disguise

End Border crossing

#### Protected Legal Asset

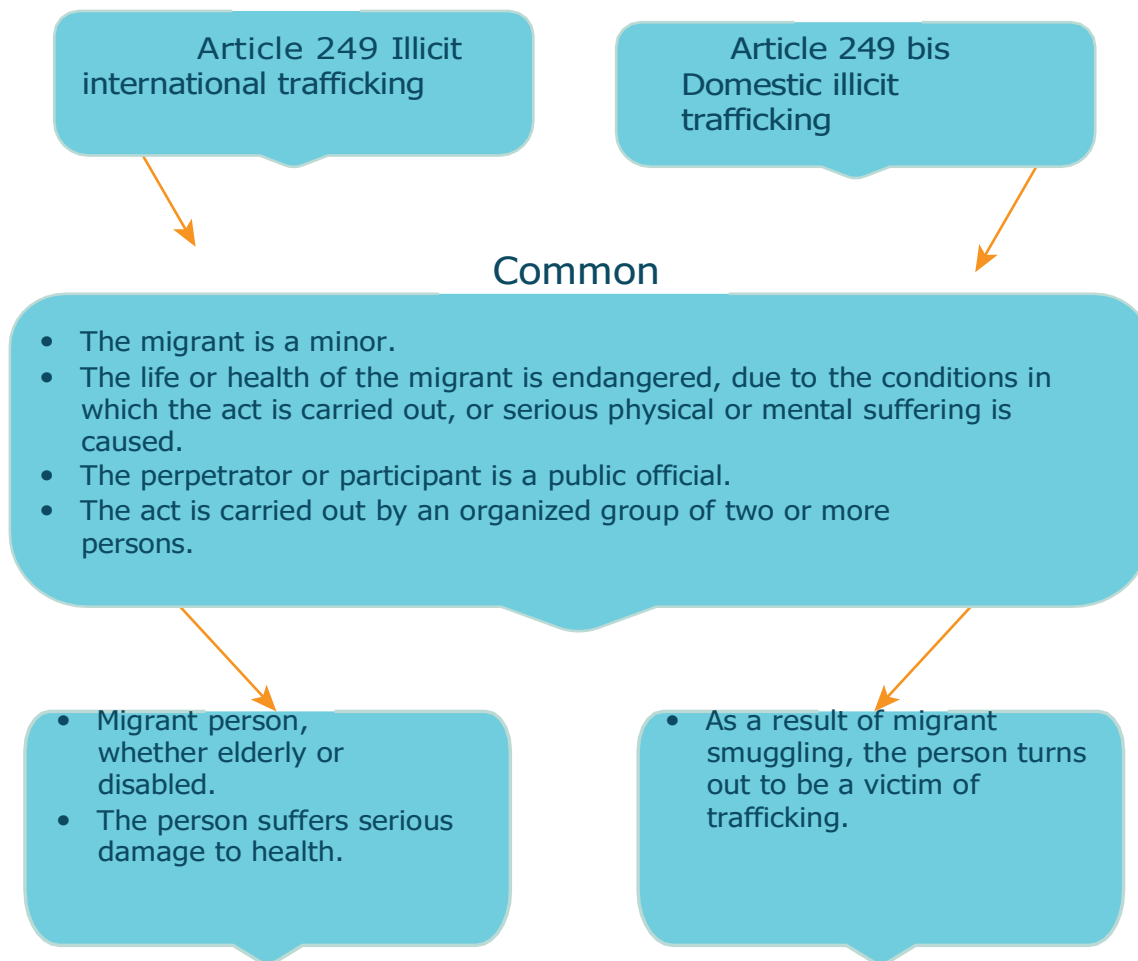
- State Sovereignty

Illegal entry or stay



## 7. Aggravating factors

Both ordinals share some of the circumstances that aggravate the legal figure:





## 8. Sources of interpretation

The smuggling of migrants, unlike trafficking in persons, does not have an express rule (Article 04 of Law 9095) that refers to the sources of interpretation; however, it is possible to affirm that they are the same for both types of crime, as described at the beginning of the Manual.

In light of the above, it is obvious that it is not necessary to list, explain and analyze the importance of these sources again; however, it is worth highlighting some relevant aspects of the "Protocol against the Smuggling of Migrants by Land, Sea and Air".

In summary, paragraphs 16, 18, and 19 set forth the obligation of States Parties to protect smuggled persons from trafficking in persons:

To death, torture and other cruel, inhuman or degrading treatment or punishment.	Provide appropriate assistance to persons whose life or safety is in danger.
Against violence.	
Facilitate notification and communication with the Consulate.	
Take into account the special needs of women and children.	Facilitate and accept repatriation.
Irregular adoption.	Forced abortion.
Allow them to apply for asylum.	

## 9. Difference between human trafficking and human smuggling

Migrant smuggling and trafficking in persons are different crimes, and although they have some elements in common, such as the crossing of borders, they are not the same.

In the case of trafficking in persons, there is not always border crossing, but in the smuggling of migrants there must necessarily be border crossing; it is a transnational crime precisely because of the crossing of different borders. Trafficking in persons, on the other hand, can be national or international.





With regard to the smuggling of migrants, beyond the degrading conditions in which migrants are moved, it can be affirmed that they have given their consent to cross borders. In human trafficking, on the other hand, the victims have not always given their consent or, in any case, their consent is vitiated by the offer of the trafficker.

It is important to point out that the crime of trafficking in persons, when it is international, does not subsume the crime of smuggling of persons, since it is not a crime of passage or necessary for the commission of a felony, nor does it protect similar legal interests, since it should be kept in mind that the maximum goal in trafficking is the protection of the sovereignty of the State. Therefore, the crime of trafficking in persons and the crime of smuggling of migrants could be charged, since they do not coincide.

Migratory control, when violated, is affected to the extent that sovereignty must determine who enters or leaves the territory where state power is exercised. In the case of trafficking in persons, in addition to being other protected legal rights that are inherent to each individual, it could even occur internally, which has nothing to do with national borders and their controls, but also protects legal rights.

The same is true in the case of international trafficking in persons, if the transfer is done in an irregular manner.

Somehow, to simplify its understanding, we can cite:

Migrant / trafficker-victim relationship.

This is reflected in the fact that while in migrant smuggling the victim-trafficker relationship is established only during the international cross-border movement. In the crime of trafficking in persons, the relationship lasts over time, given that the purposes pursued by the trafficker extend to subsequent exploitation of the victim at the destination.

Transnationality: smuggling always implies the cross-border movement of a person from one country to another, while in human trafficking, this cross-border movement may or may not take place, and the crossing may or may not be legal or illegal.

Event / process: smuggling implies an event that occurs with the movement at the border, specifically in the crossing of the international border in an illicit or licit manner, while trafficking in persons presents a multiplicity of behaviors that usually occur in an illicit or licit manner, while trafficking in persons presents a multiplicity of behaviors that usually occur in an illicit or licit manner.

stepwise, so it is defined as a process.

Violation of the legislation: it is different because while in migrant smuggling there is a violation of a criminal offense contained in the Migration Law that protects the security of the State; in human trafficking we have a crime that protects the human rights of women and children.

victims, which represents a marked difference between the two crimes.

In the "Manual on Investigating the Crime of Trafficking in Persons" (UNODC Self-Learning Guide, 2009), a table is presented that clearly shows the aspects that distinguish trafficking in persons from smuggling of migrants.

Smuggling of Migrants	Human Trafficking
The migrant establishes direct and voluntary contact with the "smuggler" (pollero or coyote), i.e. there is no vitiation of consent.	The contact is given under deception and/or abuse, and/or coercion. In other words, the consent is vitiated, except when the victim is a minor.
It always involves crossing borders.	It can occur within or outside a country, no border crossing is necessary.
Money is a value intrinsic at the transfer.	The purpose is to subject the person to one of the purposes of trafficking, money for the transfer is not an important factor.
The relationship between the "smuggler" and the migrant ends once the border crossing takes place or when the migrant arrives at the destination.	The relationship between the trafficker and the victim will depend on the role of the trafficker and the phase of trafficking in which the trafficker is involved, and could therefore be short or prolonged.
The victims are mostly men, but there are also women and minors.	The victims are mainly women and minors, and to a lesser extent men.
During the transfer there are greater risks to life and health.	During the transfer, the risks to life and health are minimized, but in the long term the physical and psychological impact is prolonged and devastating for the victim.
The protected legal right is Sovereignty, and it is committed against the State.	It is a crime that affects fundamental human rights, violates human dignity, and is plurioffensive.



## 10. Difference between human trafficking and pimping

It should be noted that article 172 of the Penal Code was reformed by law 8720 of March 4, 2009, which introduced sexual exploitation and servitude as purposes of trafficking. In the case of the crime of pimping typified in article 169 of the Penal Code, this was reformed by law 8590 of July 18, 2007, indicating the following:

"Whoever promotes prostitution of persons of either sex or induces them to engage in it or keeps them in it or recruits them for that purpose, shall be punished with imprisonment for a term of two to five years. The same penalty shall be imposed on anyone who keeps another person in sexual servitude. Therefore, both crimes are very similar; however, since the criminal offense of trafficking in persons was reformed later, it contains the elements of a special rule.

Note that both criminal offenses punish the promotion of prostitution and both punish sexual servitude; however, the crime of trafficking in persons contains a special element, which is that the conduct of the perpetrator must promote the displacement of the victim to achieve that end. In addition to this, since it is a rule that was created subsequently to that measure, if it is opposed, the special rule must be applied over the general one.

When assessing a case of trafficking in persons when its purpose is to engage in one or more acts of prostitution, exploitation or sexual servitude, it must be analyzed in depth to determine whether the victim has been displaced in order to carry out the purpose proposed in the criminal offense, since if there is no such displacement or it cannot be demonstrated that the victim has been displaced. In this case, we could be facing another criminal offense known as pimping, which is confused with the crime of trafficking in persons. Although both crimes are very similar, they are not the same.

Differences between both types of crimes:

Article 169 Pimping	Article 172 Trafficking in persons
<p><b>Whoever promotes prostitution of persons of either sex or induces them to engage in it or keeps them in it or recruits them for that purpose, shall be punished with imprisonment for a term of two to five years. The same penalty shall be imposed on anyone who holds another person in sexual servitude (emphasis added).</b></p>	<p>Any person who promotes, facilitates or favors the entry into or exit from the country, or the movement within the national territory, <b>of persons of any sex to perform one or more acts of prostitution or to subject them to exploitation, sexual or labor servitude, slavery or practices similar to slavery, forced labor or services, servile marriage, mendicancy, illicit extraction of organs or irregular adoption (emphasis not in original) shall be sentenced to six to ten years' imprisonment.</b></p>

Trafficking in persons and pimping are closely related, as it is stated in the analysis of the criminal types of the judgment 2014-1373 of the Sentencing Court of Appeal of the Second Judicial Circuit of San José, in Goicoechea, when it analyzes the content of article 172 of trafficking in persons, regarding sexual exploitation, in comparison with the content of numeral 169, which typifies the crime of pimping. It is concluded that there is a similarity of conducts that must be analyzed by means of the principle of specialty of the crime, specifically indicating:

"Note, from the above, that both criminal offenses punish the promotion of prostitution; both punish sexual servitude and both contain the aggravating factors of age and deception. However, the crime of trafficking in persons contains a special element, which is that the conduct is carried out through the transfer of persons for that purpose, on the one hand, and, on the other, the first rule was subsequent and, to that extent, leaves without effect, insofar as it opposes it, the previous one (pimping)".



"It should be noted that, although this is the case in this matter, the solution would not always be the same with respect to procuring, since it will depend on the action attributed to the subject, within the wide range provided for in that other provision. In the specific case, it was clearly established that the purpose pursued by the accused [Name 001] was always to bring the victims from abroad in order to sexually exploit them in our country, and all of these actions are considered a single unit of action.

Thus, in order to establish the difference for the application of one or the other crime, it will be necessary to be clear about the factual picture of the theory of the case that will be set forth in the indictment by the Prosecutor's Office, governed by the aforementioned principle of specialty, which is contained in numeral 23 of the Criminal Code on the apparent concurrence of norms, to wit:

ARTICLE 23.- When the same conduct is described in several legal provisions that are mutually exclusive, only one of them shall be applied, as follows: the special rule

prevails over the general one, the one that fully contains another is preferred to it, and the one that the law has not expressly or tacitly subordinated to another is applied instead of the accessory one.

In such a way that the same legislation indicates to the operator or the operator of the criminal legal system how the process of analysis should be to subsume the conduct in the criminal type, or the so-called subsumption, initially urging that the special norm prevails over the general one and it is that in fact, as Dr. Francisco Castillo Gonzalez indicates in his work "Teoría de delito", specificity exists when a criminal type regulates in a special and more precise way, by adding other elements of the factual situation, as indicated by Dr. Francisco Castillo González in his work "Teoría del delito", specificity exists when a criminal type regulates in a special and more precise manner, through the addition of other elements, the factual situation that another more general criminal type regulates.

In addition to the foregoing, it is important to add that the law is in force. In this regard, the reform of the crime of trafficking in persons is a much newer legislation than pimping, both circumstances make possible this analysis and the appropriate framing of the conduct in the crime of Article 172 of the Criminal Code.

# II Chapter

PROCEDURAL MANAGEMENT MODULE



In addition to knowing the type of criminal offense and the criminal procedure regulations, it is necessary to have the knowledge to execute the strategy of the Theory of the Case that prosecutors must develop. For this reason, a fundamental objective of the Manual is to reinforce, in this section, important aspects to be taken into account for the ideal exercise of the criminal action by the prosecuting entity in charge of the criminal prosecution, in order to achieve the best possible result in the sentence, which is the end of the criminal process.

From a procedural perspective, this guide aims to generate guidelines and strategies for the approach and care of victims and for the investigation of trafficking in persons and smuggling of migrants, given the nature of this crime. In addition, it seeks to review technical and legal issues contained in the Code of Criminal Procedure, Laws 9095 and 9545, as well as aspects that are important in practice, in order to achieve better results in the investigation process and, therefore, in terms of effective criminal prosecution.

## 1. Complaint

The denunciation should be understood in a broad sense and not only as the material act through which the aggrieved person appears before the judicial instance to report the fact. This act

In the case of crimes such as trafficking in persons and smuggling of migrants, given its nature (public action), it can be materialized by means of:

Complaint	News about crimes:
Victim.	Law Enforcement Report.
Third persons that know the facts. Public officials (arts. 281 CPP and 49 CNA). Confidential (interview victim / witnesses who do not wish to denounce).	Report / 911 call. Institutional Report: INAMU PANI MEP CCSS



Because of its importance in the preparatory stage, when a victim or witness of any of these crimes files a complaint, this section focuses on drawing attention to the aspects that should be considered by the system operator when interviewing or taking the victim's account.

As the initial act of a criminal proceeding, the legislator establishes the denunciation, which is nothing more than the exercise of the right to seek access to justice in a state governed by the rule of law. Thus, numeral 278 of the Code of Criminal Procedure indicates that: "those who have notice of a crime of public action may report it to the Public Prosecutor's Office, to a court with criminal jurisdiction or to the Judicial Police".

The above is amplified with the control, attributions and powers that Law 8764, General Law of Migration and Foreigners, in its numeral 18 paragraph 2), gives to the Professional Police of Migration and Foreigners to carry out investigations in this matter, which opens another opportunity to denounce before them. At the same time, it positions the investigations on the crimes of smuggling and trafficking in persons, as well as any other infraction of migratory nature as an auxiliary organ of the Public Ministry; but beyond the right of every citizen, it is important here the work of the official who receives the complaint, because in addition to being the one who receives the complaint, he/she is also the one who is responsible for the investigation of the crime of smuggling and trafficking in persons.

the primary source of information that will serve as the basis for the elaboration of the work plan or drawing of the execution of the investigation, its content is important because in our system it becomes one of the exceptions to the oral procedure in the debate phase (art. 334 C.P.P.).

Pursuant to the provisions of General Instruction 01-2016 of the Attorney General's Office, the Deputy Prosecutor's Office against Trafficking in Persons and Smuggling of Migrants, through this Office, establishes that complaints in this matter must be received by the prosecutor, the prosecutor or assistant prosecutor not delegable to the administrative assistants of the offices and that, in order to avoid revictimization to the greatest extent possible, the Gesell camera should be used for this procedure, if available. Otherwise, a suitable place with video recording should be set up. Likewise, although the aforementioned police agencies are competent to receive this type of report, in the case of complainants/victims, an attempt should be made to do so directly at the Prosecutor's Office in order to respect the aforementioned principle.

The official who receives the complaint must understand that he/she is providing a public service, that he/she is a victim, and that as a user he/she has the right to receive quality service, which implies a high level of attention.





The legal mandate is that it is the responsibility of the Judicial Police, the Professional Migration Police and the Public Prosecutor's Office to attend to such denunciation in accordance with the aforementioned principles.

Evidently, the official who takes the report or receives the complaint, considering the provisions of paragraph 11 of the Constitution and Article 111 of the General Law of Public Administration, is a "simple depositary of power" and, therefore, is not doing a favor to the victim or the complainant, who is probably cooperating and favoring the exercise of the criminal action.

Likewise, in order to obtain the greatest amount of information from the complainant or witness, the person conducting the diligence should show interest and respect for his or her case, and practice attentive listening. This means that he/she should pay attention in order to prevent the interviewee from having to repeat the events, except for clarifying or amplifying questions on the subject.

It is inappropriate, inadequate, disrespectful and inopportune to use the cell phone while attending to the complainant or witness. It is also inappropriate to carry out other activities in a way that may cause inattention, lack of concentration and inattention to the complainant or witness.

The fact that the person would use, and even the fact that he or she feels that there is no interest in his or her situation.

As in all criminal investigation activities, it must be clear that each case is unique. Therefore, the interrogation must be governed, in the first instance, on the specific facts under investigation, but always oriented to seek the evidentiary basis that supports the Theory of the case that the prosecutorial representative will sustain, which is why the questions must be mainly focused on demonstrating the existence of facts that confirm the governing verbs of the criminal type: to know how any of the modes of execution of the offenses were promoted, facilitated, favored or executed.

Having said this, it is appropriate and necessary to prepare the officer who conducts the interview or takes the account, and, in this sense, to have a list of preliminary questions, it is reiterated that each case is particular. Therefore, when applying this list of suggested questions, the "special" conditions of each of the offended persons must be considered.

It is important to point out that the Code of Children and Adolescents, in Articles 104 to 108, grants minors the right to be a party to the proceedings in which they are involved,



The law requires the judicial authority to take into account the emotional maturity of the child. It also requires the justice operator to ensure that all proceedings are carried out without delay, in simple and precise terms. Likewise, Articles 113 and 115 establish the guiding principles of the code, which indicate the absence of ritualism, the ex officio procedural impulse, immediacy, concentration and speed of the process, as well as the avoidance of any delay in the process. These articles are fundamental when we have victims who are minors.

In the case of an interview of a child or adolescent victim, the Attorney General's Office of the Republic has established the following in the Protocol for the Care of Older and Younger Victims of Sexual Crimes and Commercial Sexual Exploitation Committed by Older Persons:

To take as a primary consideration during the process, the best interest of the child or adolescent.

To guarantee that the child, adolescent and adolescent can form his or her own judgment.

Take into account the opinions of the child or adolescent.

and the adolescent in accordance with his or her age and maturity throughout the judicial process.

To listen to the child and adolescent throughout the judicial process.

Meet the special needs of children and adolescents.

Avoid the repetition or suspension of court appearances of the child or adolescent in relation to the same process.

To offer information in a clear, accessible, understandable and timely manner for children and adolescents.

Ensure that the space where the child, adolescent or adolescent must stay meets the conditions that allow for proper and adequate care.

Request adjustments in the process, in the event that they are required because the victim is a child or adolescent.

- o a teenager, without affecting
- o violate due process. See, in this sense, Articles 212 and 352 of the Code of Criminal Procedure and 126 and 127 of the Childhood and Adolescence Code.



Allow the victim or child to be accompanied by specialized experts (professionals in social work or psychology) or by a person he/she trusts during the proceedings he/she attends: complaint, interview, photographic or physical examination, jurisdictional evidence preview, oral hearing, statement in debate, medical or psychological evaluation, etc.

Set up the courtroom according to age (to which we would add the Gessell chamber or office where they are interviewed in the case of denunciation or jurisdictional advance of evidence).

Gesell Chamber: it consists of a room specially equipped to record an interview. The use of the camera is a resource that allows the non-revictimization, this interview can be used for everything in the judicial process.

In the same vein, if the person interviewed is a minor, the person conducting the interview must apply the special regulations that protect this age group and must comply with a series of actions related to the special approach and care of children and adolescents, among others, in accordance with the principle of the "best interests of the child" established in the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

and the Childhood and Adolescence Code, ordinals 03 and 05, respectively.

On the other hand, article 123 of the Code for Children and Adolescents establishes the intervention of the Department of Social Work and Psychology, which is why the prosecutor should coordinate with this office so that a professional in social work or psychology can accompany the minor during the complaint. Of course, a humane and respectful treatment should always be provided, and the interview or taking of the complaint should take place in a physical space that meets privacy conditions. The language used should also be clear and simple, without resorting to formalism or technicalities, and efforts should be made to be empathetic. In this regard, see Public Prosecutor's Office Circular No. 22-ADM-2007.

In all those investigations for the crimes of trafficking in persons, smuggling of migrants and related crimes, which have identified victims who are minors, the immediate procedure after the interview or taking of the complaint is to inform the National Children's Trust of the situation, as indicated in numeral 111 of the Childhood and Adolescence Code.

In cases in which the minor is at risk, due to the existence of interests of the minor, it is necessary to



In the event that the person against whom the investigation is being conducted is a parent, guardian or curator, or the child or adolescent is in a street situation, it is the obligation of the prosecutor, at the time of communicating to the National Children's Trust, to expressly report such a situation. Of course, he/she must provide the documents and indicate that the institution must assume the legal representation of the child or adolescent in an active manner, as established in the second paragraph of the aforementioned article. These aspects are part of the institutional regulations of the Attorney General's Office, according to circulars 22-ADM-2008 and 09-ADM-2009.

Attention should be drawn to those cases in which there is danger to the life and physical integrity of the minor. The Office for the Attention and Protection of Victims of Crime should be immediately informed so that, obviously in coordination with the adults in charge of the guardianship and custody of the minor or, failing that, the National Child Welfare Agency, the appropriate legal provisions may be taken to safeguard the integrity and life of the minor.

In turn, since they are persons of legal age, according to the provisions of the administrative circular of the Attorney General's Office ADM-09-2009, it is necessary to

The Victims and Witnesses Attention Office should be referred to the Victims and Witnesses Attention Office for the matters in its charge.

The main objective of the complaint or interview is to obtain information to determine the circumstances of the manner, time and place of the facts, in order to determine: who has promoted, facilitated and executed the acts according to the purpose of the illicit trafficking in persons. On the other hand, when the facts under investigation refer to the crime of Smuggling of Migrants, it is of interest to establish: who drove or transported the persons for their exit or entry to Costa Rican territory. When the facts refer to national trafficking, what is important is to establish who promoted, planned, coordinated or executed the illicit transit of nationals to another country.

This should be the focus of the interview of the victim and witnesses, always within the factual framework to be demonstrated, in accordance with Costa Rican criminal procedure regulations.

The United Nations Office on Drugs and Crime has designed the "Handbook on Combating Trafficking in Persons" within the framework of the "Global Program against Trafficking in Persons", which is a valuable working tool for operators and operators of the system to guide and assist them in conducting an interview. The following



is a list of questions, taken from the form:

**a. Possible questions to identify victims:**

Can you leave your job or get out of the situation you are in if you want to?

Can you come and go as you please?

Have you received threats if you try to leave?

Have you been physically harmed in any way?

What are your working or living conditions like?

Where do you sleep and eat?

Do you sleep in a bed, on a cot or on the floor?

Have you ever been deprived of food, water, sleep or medical care?

Do you have to ask permission to eat, sleep or go to the bathroom?

Are there locks on your doors and windows so you can't get out?

Has anyone threatened your family?

Have your identity papers or documentation been taken from you?

Is someone forcing you to do something you don't want to do?

How did you get there?

What people facilitated or assisted you in the move?

Prior to these events, through whom were you contacted or informed of the possibility of relocation?

When did you receive remuneration or payments, who sent you the money?

It should be added that, in the specific case of Costa Rica, the interrogation should also include questions that lead to the determination of the verbs of the type: promoting, facilitating, favoring or executing, transferring, transporting, harboring, concealing, etc., in accordance with the typical purpose of the accused.

It will also be necessary to consult aspects that could prove aggravating circumstances, such as the relationship of kinship with the accused. In turn, given the current typical description of article 172, the procedural management must be oriented to demonstrate deceit, use of force, fraud, to mention a few, the



The victim's situation of vulnerability, as well as the victim's place of residence, social conditions, whether there are people who are economically dependent on the victim, the victim's source of income for personal sustenance, the victim's level of schooling, and anything else that may be useful for the formation of the evidentiary basis of the prosecution's Theory of the case.

It is important to emphasize that in order to prove vulnerability it is not enough to say that the victim was in that condition, but rather that the means of proof must be sought to demonstrate it, in this sense, the contribution made by other disciplines and institutions. Therefore, the prosecutor should request social, psychological and psychosocial evaluations from the Department of Social Work and Psychology, the Department of Forensic Medicine, Clinical Forensic and Forensic Psychiatry sections, as well as legal, psychological and psychiatric medical evaluations.

### **b. Fraud and economic coercion questions**

How did you get your job?

Could you please tell us when you entered the country and how was your arrival?

Who brought you to this country?

Did you come to this country to do a specific job that you were promised?

Who promised you that job?

Were you forced to do another job?

Who forced you to do a different job than the one you were promised?

Was any type of employment contract signed?

Who organized your trip?

How was the payment for your trip made?

Are you paid for your work?

Do they actually pay you or do they withhold money?

Do you owe money to your employer?

Are there vouchers or receipts for what you owe your employer or recruiter?

Are there vouchers or receipts of what you have earned or what you have been paid?

How were the financial transactions carried out?



Do you have your own official identity documents? If not, why not?

Have you been provided with false identity papers or documents?

Do you have to do things you don't want to do?

Questions about physical abuse

Have you ever been threatened with harm if you try to leave?

Have you ever witnessed other people being threatened if they tried to leave?

Have they threatened your family?

Do you know if anyone else's family has ever been threatened?

Have you ever been physically abused or witnessed someone else being abused?

What type of physical abuse have you witnessed?

Were objects or weapons used in the physical abuse?

Where are these objects or weapons located?

Was such abuse ever reported to an outsider (e.g., police reports, domestic violence reports in the home, hospital records, social service records)?

Have they ever mistreated or threatened to harm another person in your presence?

How were the medical issues resolved and who resolved them?

Freedom of movement questions

Was your freedom of movement restricted in any way or were you able to move wherever you wanted?

Do you live and work in the same place?

Under what conditions were you left alone?

Were there cases of physical restraint by means of locks, padlocks, chains, etc.?

Where are the locks or padlocks used and who has the keys?

How was travel in public places carried out (by car, van, bus)?





Who supervised their movements in public places?

How were private goods and services (e.g., medicines, prescriptions) procured?

What means of communication or telecommunication did you have access to (e.g., television, radio, newspapers, magazines, telephone, Internet)?

**c. Questions about psychological coercion, indicators of conduct**

In order to help you, would you tell me if you are afraid of anyone?

Why are you afraid of them?

What would you want to happen to people who have harmed you (e.g., incarceration, deportation)?

**d. Questions about relocation**

How did \_\_\_\_\_ was contacted originally contacted?

Who suggested that you move?

Who moved it?

How was your transfer?

Do you remember places where you stopped during that transfer?

Did you receive money or any kind of assistance for your relocation?

These are some of the questions that are important and necessary at the time of conducting an interview or taking the story, always bearing in mind (do not forget) to ask the basic questions: Who? When? and How? in order to obtain the necessary data to identify how the denounced events took place.





## 2. Jurisdictional advance of evidence

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The jurisdictional anticipation of evidence is a legal tool, useful in the investigation of crimes of trafficking in persons and smuggling of migrants. It is an instrument for reducing revictimization, as well as a way of ensuring evidence for the trial stage, as it is an exception to the principle of orality, proper to the debate.

This procedural institute makes it possible for the victims to testify closer to the time of the events, so that they do not forget details of importance for the solution of the case. Also, since the crime is characterized by the territorial relocation of its victims, it is most likely that by the date of the debate, the victim will no longer be in the country, thus securing the evidence.

Article 72 of Law 9095 establishes that the jurisdictional advance of evidence shall be immediately and in all cases, when a person is identified by the corresponding procedure as a victim of trafficking in persons and is willing to give an interview or statement in the criminal proceeding. This shall be carried out in accordance with the provisions of the

numeral 293 of the Code of Criminal Procedure, which establishes: When it is necessary to perform a definitive and irreproducible (sic) act, which affects fundamental rights, or when a statement must be received that, due to some obstacle difficult to overcome, it is presumed that it cannot be received during the trial, or when, due to the complexity of the matter, there is a probability that the witness will forget essential circumstances about what he/she knows or when it is about persons who must leave the country, the Public Ministry or any of the parties may request the judge to perform or receive it. In the case of a witness or victim whose safety, life or physical integrity are at risk by reason of his participation in the proceedings and it is reasonably presumed that his testimony at trial will not be possible, since the risk will not be reduced or could increase, the Public Prosecutor's Office, the complainant or the defense shall request the judge to order that his testimony be received in advance. In all cases in which the confidentiality of the physical characteristics of the declarant has been agreed upon, due to the existence of a risk to his life or physical integrity, his testimony shall be received in advance.



The judge shall perform the act, if he or she deems it admissible, summoning all the parties, who shall have the right to attend, with all the powers and obligations provided for in this Code.

For the reception of the jurisdictional advance of evidence, the technological means available may be used, such as videoconference, recordings, closed circuit television, filming or any other means, in order to guarantee the purity of the act and the validity of the principles of immediacy and orality properties of the trial, as well as the right of defense. When the identity of the witness, the witness or the victim is protected, the advance will be received, keeping their identification data confidential and with the aid of the available technological means or special cameras that allow keeping their physical characteristics hidden or disguised, according to the scope of the protection granted by the judge.

The resolution that accepts or rejects the advance payment may be appealed by the defense, the Public Prosecutor's Office and the plaintiff.

The rejection of a request for a jurisdictional review of evidence shall not prevent its reconsideration, if new circumstances or evidence so indicate.

## 2.1. Request

Immediate processing: Law 9095 establishes, in its numeral 72, that the jurisdictional advance of evidence shall be processed immediately and in all cases, when a person is identified by the corresponding procedure as a victim of trafficking in persons and is willing to give a hearing or statement in the criminal proceeding. Thus, as a starting point, the legislation establishes the responsibility of the prosecutor, who, knowing that a crime of trafficking in persons is involved, is obliged to request the corresponding advance of evidence from the court.

For this purpose, and based on the fact that judges usually decide on the sufficiency of the grounds of the petitions made to them, it is necessary to detail in the petition the grounds that serve to argue aspects of the crime, for example:

The particularity of this type of crime is that it usually involves well-organized criminal organizations that take advantage of the vulnerability of the victims to subject them to inhumane treatment.



The vulnerability of the victim, understood according to the same law 9095 "as any circumstance in which the individual has no alternative but to submit to the situation". Due to the influence of the victim given this condition, the anticipation should be part of the foundation, as a means of ensuring that, at the time of the trial, the victim's account will be available.

The international nature of the crime sometimes applies when the victims have been brought to the country from other nations and their presence at the eventual debate is a very difficult point to ensure, so their immediate appearance through the advance payment is indispensable.

The danger to physical integrity, if there is a criminal organization, since the level of organization may have, in its structure, sufficient levels of aggressiveness to make an attempt against the physical integrity or life of the victim.

Apply the principle of non-revictimization established by Law 9095, which specifically determines that in the processes regulated by this law, any action or omission that harms the physical, mental or psychic state of the victim must be avoided, including exposure before

the media of and social networks.

If the victim has been relocated, this circumstance will mean that the details of the place where the crime takes place will not be the most everyday ones for the victim, which could make him/her forget details due to the passage of time, which are secured with the advance of evidence.

In the case of minors, it is very likely that they may forget important details, first because of their stage of development and cognitive abilities and, second, because they could block out the traumatic event to which they were subjected. The request must base its arguments on the provisions of Article 19 of the Code of Childhood and Adolescence.

## 2.2. Protection with videoconferencing

For a better result of the jurisdictional evidence anticipation proceeding, it is not only necessary that the interview takes place in the Gesell chamber, if available, but, in any case, a suitable place with video recording should be enabled, so that the videoconference is used, preferably, for the security of the witnesses.



victims. In this regard, the request must be based on:

Principle of Protection established in paragraphs 2(b) and 46 of Law 9095.

Victims' rights of protection or assistance, article 71 paragraph 2 of Law 8720.

Procedural Protection, Articles 204 and 293 of the Procedural Code.

In addition, to should endeavor to the following:

As in the case of a witness preparation for oral debate, the victim should be explained what it consists of, how the jurisdictional advance works, its purpose, the importance of the process and exactly what his participation consists of, as well as the possibility of requesting clarification when any question is unclear.

It is necessary to be very careful when dealing with children, as there should be no distracting elements.

within the room, less so if they are in any way intimidating.

In accordance with emotional intelligence, you must act in an attempt to gain the declarant's trust, otherwise his or her discomfort will directly prejudice the outcome of the proceeding.

In the interview, technical language should not be used because it confuses the interviewer.

Prevent the victim and offender from coinciding in the same space.

Clarify any doubts or concerns related to the process that the victim may have prior to the realization of the advance payment.

Avoid victim-blaming and victim-blaming.

The prosecutor should prepare in detail so that this act is as fruitful as possible, in order to ensure that the victim's rights are respected and, thus, to obtain the best results in the criminal process.

\_\_\_\_\_

of Children, Professional Migration Police, Technical Secretariat of the National Coalition against the Smuggling of Migrants and Trafficking in Persons.

The following are the functions of the Immediate Response Team, as defined by law:

Receive and respond to all possible situations of human trafficking referred to it within the framework of its attributions.

Execute the immediate intervention actions required to guarantee the care, protection and security of persons suspected of being victims of trafficking, as well as those duly accredited as such, in coordination with the competent authorities or other instances.

Identify, through a specialized technical assessment process, situations of human trafficking brought to its attention and ensure that victims have access to primary care measures.



To accredit, through a reasoned technical resolution, the status of victim of human trafficking, in order to have access to the platform of comprehensive services for survivors of this crime. The accreditation must be issued within a period not exceeding seven working days from its knowledge, by a simple majority of the members of the ERI.

Coordinate immediate and unrestricted access to the identification and documentation process of alleged victims.

Coordinate immigration protection measures for non-national victims.

Any other necessary to ensure the protection and safety of the surviving victims.

#### 4. Request for injunctive relief: preparation and substantiation

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When the persons involved are arrested in an investigation for the crime of trafficking in persons or smuggling of migrants, it is important to consider the need or advisability of requesting protective measures against them. Preparation prior to the hearing is important.

As a starting point, it should be considered that the imposition of precautionary measures should be the exception and not the rule, without this meaning that they should not be used as a means to guarantee the purposes of the process, namely: to ensure the presence of the persons charged in the process, to avoid hindering the investigation and to prevent the repetition of crimes.

Of course, always respecting legitimacy, necessity and opportunity in the investigation of crimes and in accordance with numbers 37 and 39 of the Political Constitution of Costa Rica, as well as the content of the American Convention (Art. 7.1 and 8.2), Universal Declaration of Human Rights (Art. 3 and 11.1), in the American Declaration of the Rights and Duties of Man (Art. 3 and 11.1), in the American Declaration of the Rights and Duties of Man (Art. I and XXVI), in the International Covenant on Civil and Political Rights (Arts. 9.1 and 14.2), in the European Convention (Arts. 5.1 and 6.2) and in the African Charter on Human and Peoples' Rights (Art. 6 and 7.1.b Declaration of the Rights of Man and of the Citizen of 1789 (Arts. 7 and 9).



Precautionary measures and specifically pre-trial detention must be based on precise facts and not confuse, in order to transmit orderly and truthful information to the Judge of Guarantees.

#### 4.1 Budgets

Procedural requirements for the imposition of the precautionary measure, which is not the same as procedural dangers (this is only one of the requirements):

Probability of authorship.

Procedural danger.

Danger of leakage.

Danger of obstruction.

Criminal continuity.

Imprisonment.

Danger to the victim, complainant or witness.







The case of article 239 bis, similar in substance to those of numeral 239:

Sanctioned with imprisonment.

Article 37 of the Constitution stipulates: "No one may be detained without proof of having committed a crime".

Organized crime.

crime.

Flagrancy (life, sexual, robbery, drugs, money laundering).

Reiteration of the crime.

Criminal recidivism.



4.2 Basis of the request:  
procedural hazards

Grounds to be stated when requesting a precautionary measure:

Factual relationship (address and explain elements of the type).

Analysis of evidence linking the accused (degree of probability).

Third scenario (danger of absconding, obstruction or repetition).

Indication of the established penalty.

Greater reproach when the act was committed by a public official.





### a. Danger of leakage

Leakage hazard considerations:

Rooting.

Economic possibilities.

Relatives residing outside the country.

Fixed address.

Seat of his family.

Business or work.

Facilities to leave the country.

Any false information given in addresses or qualities in the inquiry.

The *quantum* of the penalty.

In the case of foreigners, the immigration status.

The magnitude of the harm caused as a motive for leaving the country, related also in cases of smuggling to the deportation or repatriation of irregular migrants or the assistance that the State must give them while they are in the national territory, health, economic assistance, food, a place to stay, etc.

The defendant's behavior during the process.

### b. Danger of obstruction

Considerations for hindrance:

Evidence that remains to be located or collected. Possibility of being destroyed, modified, concealed or falsified by the accused.

Evacuation of the evidence is given in the debate phase.

Possibility of influencing or intimidating witnesses, experts or co-defendants or, worse, going so far as to kill witnesses.

### c. Reiteration of crime

Considerations for criminal reiteration:

Background of the accused, not only of the judicial file, but also of existing arrests or criminal cases. Let us remember that criminal reiteration is different from recidivism (the latter is for convictions and for purposes of reproachability in the penalty).



If it is a criminal organization, remaining in it as a means of subsistence or as a way to secure one's life in the face of reprisals from the same criminal group will cause the person to remain inside. Criminal organizations rarely end with the arrest of all their members.

Given the procedural requirements for the issuance of precautionary measures, it is important to note that, above all, imprisonment cannot be thought of as an automatic measure, in the sense that it will be requested in all proceedings, but must be seen as what it really is: a way of keeping the accused linked to the process.

However, it should be borne in mind that when the acts being investigated and attributed to the accused as perpetrators are for the crimes of trafficking in persons and smuggling of migrants, they are certainly different from "common" crime. Here, we are dealing with an offense that necessarily involves an organizational structure of criminals, even if the investigation only indicates that the perpetrators were involved in the crime of trafficking in persons and smuggling of migrants.

a person as the perpetrator. It should be borne in mind that this person is part of a structure, which makes it possible to argue the danger of criminal reiteration, since he or she is part of a larger organization than just one member who generally provides economic support to the criminal activity. Precisely, that same structure could have an impact on the possibility of removing the defendant from the process, for which the same structure would be used with the purpose of removing him from the country.

Another point to consider is that the penalty of the criminal type is quite high. Needless to say, it is one of the most reproachable conducts in our criminal system. Therefore, in this context, the danger of flight must be taken into account.

In addition, being part of an organization is an indication of more, i.e., for example, that the victims could be influenced, manipulated, coerced, threatened, without leaving aside that it would configure a specific requirement of 239 bis. It is important when public officials who carried out the act are involved, since the suspension of the exercise of their office must be requested immediately.



## 5. Formulation of the accusation

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When the prosecutor in charge of the investigation formulates, as a conclusive act, "indictment and request for trial", the basic requirements established for indictment for any other crime must be met.

An account of the facts must be compiled that imputes actions to the participants of the criminal act, according to the determined form, the description of aspects of time, manner and place of the action of the accused; not, as is sometimes mistakenly done, "literally telling the story of the victims".

This narrative must detail in time the actions carried out that constitute the verbs that constitute the verbs of the criminal type, in order to bring the victims to the typical condition that demarcates the crime of trafficking in persons.

Of importance is the obligation to substantiate the accusation. In this respect, it should be emphasized that in the Code of Criminal Procedure, the foundation is for both the jurisdictional organ and the Prosecutor's Office, and must be factual, legal and in- telective; made in such a way that it is not important to think that one is "teaching the weapons", because what it is about is to respect the

The rules of the game, imposed by the regulations that together we call due process, as well as the right of defense of the accused, which in no way diminishes the prosecutor's actions. On the contrary, it gives strength to the work and confidence to the operators of the system to act objectively. The strategies will be left for the preliminary hearing and the debate, eventually.

The offer of evidence must describe, in detail, what evidence is offered, where it is located and what it is intended to prove. It is incorrect if, at the time of offering the evidence, it is not stated what the evidence is to prove. It is important, in the case of the an- ticipos, to always offer the testimony of the victim in the testimonial evidence section and in the documentary evidence, to also offer the anti-copy made, since some judges or defense attorneys request to locate t h e victims so that they can give their testimony again.

It is important to remember that, when offering documentary evidence, the location data related to telephone and address of the victims and some witnesses should not be re- gistered, but simply indicate "that the victim will be located through the Public Prosecutor's Office".

# **III Chapter**

## **EVIDENCE MANAGEMENT MODULE**



In developing the evidentiary process, the prosecutor does not have a recipe or list of investigative techniques to be applied to all crimes. Certainly, each type of crime has its own particular circumstances of mode, time and place. Therefore, it will be the specific case that will provide the basic information, which in turn defines the lines of investigation.

Having said this, what must be clear during the preparatory stage is to determine and know that there are some special investigative techniques and valid means of evidence of vital relevance to investigate the crime of trafficking in persons and smuggling of migrants:

The intervention of communications: the aspects to be considered with respect to the processing of this.

The use of undercover agents.

The break-in.

Surveillance.

Telephone tracing.

The lifting of bank secrecy as a means of approaching either the assets resulting from the crime under investigation or the possible links with the criminal offense of money laundering.

## 1. Intervention of the communications

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Before analyzing the details of wiretapping, it should be noted that this tool is an "unconventional" technique for investigating unconventional crime, hence its importance and the restricted nature of its use. It is clear that the rejection of wiretapping does not imply that investigative actions should be stopped; it is the responsibility of those in charge of this function to resort to other means of evidence, based on the principle of evidentiary freedom, as is the case with the use of other means of evidence.

Article 182 of the Code of Criminal Procedure regulates it.

This document is applied in crimes of smuggling of migrants, trafficking in persons and aggravated pimping, which is known in doctrine as invisible crimes, which refers to the fact that victims do not usually declare or report; perhaps sometimes they do not even feel that they are victims, due to the degree of vulnerability in which they find themselves. In accordance with the above, the investigations by

These cases must be fully proactive.

Another aspect to consider for the use of this research tool is related to the fact that having direct evidence such as that produced by this tool lowers the profile of the victims' statements, which reduces personal dangers.

It is extremely important to bear in mind that the Attorney General's Office, through a circular, has established a procedure for submitting such a request for interception of communications to the Judge of Guarantees, namely, the prosecutor in charge of the investigation drafts it, forwards it to the Deputy Prosecutor for review and approval. Subsequently, in the case of trafficking in persons and smuggling of migrants, if it is considered opportune and pertinent, it is forwarded to the Attorney General's Office for evaluation and authorization. Once approved by the head of the Public Prosecutor's Office, it will be sent to the judge with territorial jurisdiction, who, by means of a substantiated resolution, will order or reject the prosecutor's request.

#### a. National legislation

In short, in Costa Rica, under the current legal framework, the possibility of

The power to intercept communications is regulated and restrictive. The first legal instrument referred to is the Political Constitution, which warns of its non-absolute nature by stating that the law will determine in which cases the Courts of Justice may order the interception of any type of communication, as well as the fact that the law will determine in which crimes it may be used and the limitations on its use, as established in Article 24 of the Constitution.

Law 7425 of August 9, 1994, approved the Law on Registration, Seizure and Examination of Private Documents and Interception of Communications, which establishes the procedures, requirements and general terms and conditions for the interception of communications.

This law has been interpreted as part of the practical application. In this regard, there is jurisprudence of the Criminal Courts and Constitutional Chamber, which regulate the application; sometimes, perhaps not so adjusted to law, since they were interpretations before the last criminal procedural reform, when a mixed system operated, whose participation of the judge at present could border on impartial action, but which, in definiti- va, were regulating the activity.

As stated in Article 24 of the Constitution, a special law (7425) will determine in which cases, by means of the



The intervention of the communications will be carried out with jurisdictional authorization, and indicates:

A). -ARTICLE 9.- Authorization of interventions

"Within the procedures of a police or jurisdictional investigation, the courts of justice may authorize the intervention of oral, written or other types of communications, including fixed, mobile, wireless and digital telecommunications, when it involves the clarification of the following crimes: kidnapping for extortion, aggravated corruption, aggravated pimping, manufacture or production of pornography, trafficking in persons and trafficking in persons to market their organs; aggravated homicide; genocide, terrorism and the crimes provided for in the Law on narcotics, psychotropic substances, drugs of unauthorized use, money laundering and related activities, number 8204, of December 26, 2001".

Indeed, the aforementioned article establishes a list of crimes in which this investigative tool may be used, which was later expanded by Law 8754, known as the Law Against Organized Crime, which broadened the range of crimes in which wiretapping may be used in two ways, as follows:

First:

B). -Article 15. Interception of Communications

"In all investigations undertaken by the Public Prosecutor's Office for organized crime, the court may order, by a well-founded resolution, the interception or listening of communications between those present or by epistolary, radio, telegraphic, telephonic, electronic, satellite or any other means. The procedure for the intervention will be the one established by Law No. 7425, Registration, seizure and examination of private documents and intervention of communications. The time of the interception or wiretapping may be up to twelve months, and may be renewed for an equal period, with prior authorization of the judge".

In the first case, the legislature authorizes interventions in those investigations in which the judicial body has previously authorized special proceedings, through the application of the institutes of the Law Against Organized Crime, under the assumptions of Article 2 of said law.

"When, during the course of criminal proceedings, the Public Prosecutor's Office establishes that, in accordance with the inter-governmental rules, it is not possible for the

The court shall request a declaration of application of a special procedure before the court that is acting, in accordance with the national laws in force and this Law, the facts investigated qualify as organized crime. The procedure authorized in this Law excludes the application of the procedure of complex processing and never in the same procedure may both be requested".

Thus, as authorized by said norm, it is possible for the interception of communications to be used in investigations whose requirements no longer have to do with a specific list of crimes, but rather with the characteristics of the organization or group under investigation, so that it will proceed with a prior jurisdictional resolution when the group is under investigation:

Articles 1 and 2 of Law 8754:

Two or more persons.

With continuity or duration of time in its organized action.

That their actions are concerted with the purpose of committing one or more felonies.

That the crimes to be committed have within the extremes of its sanction four years of imprisonment.

In addition, with respect to the second sub-subject of authorization for the use of the research instrument, the

The same Law Against Organized Crime, in its Article 16, establishes two more cases of self-laundering, different from the previous ones, as indicated in the heading of the law:

C). -Article 16.- Authorization for the interception of communications

In addition to the provisions of Article 9 of Law No. 7425 and the present Law, the judge may order the interception of communications when it involves the clarification of the following crimes:

- a.** Kidnapping for ransom or hostage taking.
- b.** Aggravated corruption.
- c.** Sexual exploitation in all its manifestations.
- d.** Manufacture or production of pornography.
- e.** Corruption in the exercise of public functions.
- f.** Illicit enrichment.
- g.** Bribery cases.
- h.** Property crimes committed on a massive scale, either successively or simultaneously.
- i.** Telematic bank robberies.





- j.** Human smuggling, human trafficking, trafficking in minors and trafficking in minors for adoption.
- k.** Trafficking in persons for the purpose of commercializing their organs, trafficking, introduction, exportation, commercialization or illicit extraction of human blood, fluids, glands, organs or tissues or their derived components (underlining not in the original).
- l.** Qualified homicide.
- m.** Genocide.
- n.** Terrorism or its financing.
- o.** Offenses under the Law on Narcotic Drugs, psychotropic substances, drugs of unauthorized use.
- p.** Money laundering originating from activities related to drug trafficking, terrorism, organ trafficking, human trafficking or sexual exploitation, or any other serious crime.
- q.** International crimes.
- r.** All other crimes considered serious, according to current legislation.

Evidently, is verifies that in this last rule the legislator

clearly describes that in addition to the provisions of Article 9 of the Law on Registration, Seizure and Removal of Private Documents and Interception of Communications (No. 7425), which is a special law on the subject, and the cases established in Article 15 of the other special law, the Law against Organized Crime, where it has been decreed to be processed.No. 7425), which is a special law on the matter and of the assumptions established by the other special law, Law against Organized Crime, in its Article 15 where the special procedure has been decreed; the intervention of communications also proceeds, and generates a list and even goes further, when in paragraph q) it authorizes its use to "all other crimes considered serious", according to the meaning of seriousness established in numeral 1 of said law, analyzed above.

The wording of the Law against Organized Crime is clear and obeys the current reality of the social situation and the form of de- linquir of the organizations and their transnational characteristics, that is why it was sought, with the extension, to give some balance between the guarantees of the accused in the process and the necessary effectiveness of criminal prosecution in a society. This point was already analyzed by the Constitutional Chamber of the Supreme Court of Justice, when in its vote 13876-2012 it indicated:

- "These are provisions that have sufficient points of reference and have legal hierarchy. The fact that their application falls under the jurisdiction of a jurisdictional authority, a

The judge must adapt the facts to the norm, which is typical of jurisdictional activity, not a violation of the principle of legal reserve. The adaptation that the judge must make of the facts to the norm is typical of the jurisdictional activity, not a violation of the principle of reserve of law....

- a. ...In short, it must be ruled out that Article 16 paragraphs h) and q) of the Law against organized crime contravenes the Constitution or the American Convention on Human Rights, since its wording is not ambiguous, nor does it have the effect of leaving to the judge the definition of the essential elements of the conduct that provokes the interception of communications, leaving in some way the privacy of individuals unprotected". (the underlining does not correspond to the original).

However, it should be noted that the interpretation given by the Attorney General, in office at the date of preparation of this manual, is a restrictive view in terms of ensuring the validity of the evidence in the criminal proceeding, hence she interprets that there are only two ways to support a request for wiretapping: the

The first is in accordance with the provisions of Article 9 of Law 7425 of August 9, 1994, Law on search, seizure and examination of private documents and interception of communications; and the second consists of requesting the Judge of Guarantees to declare the proceedings as organized crime, a situation that must be respected in view of the principle of hierarchy that governs the institution and the Organic Law of the Public Prosecutor's Office itself, which states:

D). -Article 13.- Hierarchy and instructions

"The Attorney General of the Republic is the superior head of the Public Prosecutor's Office and its representative throughout the national territory. He shall give his subordinates general or special instructions on the interpretation and application of the laws, in order to create and maintain unity of action and interpretation of the laws in the Public Prosecutor's Office. The instructions shall be given regularly in written form and transmitted by any means of communication, including teletype. In case of danger of delay, instructions may be given verbally and confirmed in writing immediately thereafter".



## Internal regulations of the Public Prosecutor's Office

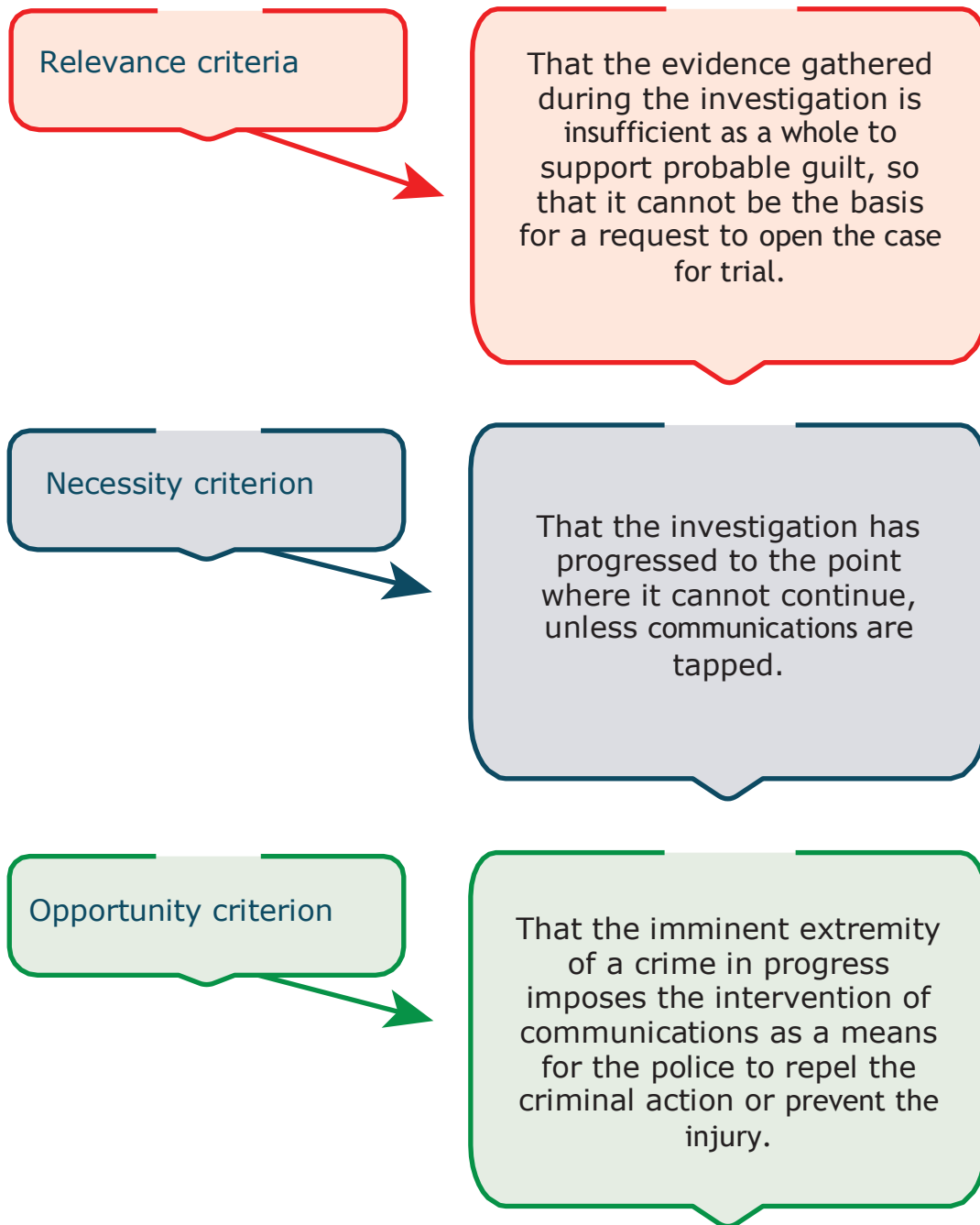
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The Public Prosecutor's Office has followed a responsible and cautious criterion in the application of intervention in the process of investigation of cases with legal-criminal relevance, as can be seen in Circular 34-2006 of the Public Prosecutor's Office, which regulates this evidentiary management, as far as the Public Prosecutor's Office is concerned.

In its background section, it provides that any assistant prosecutor or prosecutor who believes it is appropriate to request the interception of communications, must first

The authorization of the Deputy Prosecutor must be obtained and, if so, the consent of the Attorney General, the only official of the Public Prosecutor's Office authorized to request it from the Judge of Guarantees, according to Article 10 of Law 7425.

The circular also provides an overview of this measure of last resort in criminal investigations. The second point, on the substantive parameters, establishes that it may only be requested in compliance with four criteria, namely:



With these criteria, the Attorney General's Office intends, on the part of the Attorney General's Office, a responsible use and, why not, restrictive, of this legal remedy as a tool for

The main reason for this is the invasive nature of the invasion of privacy and intimacy that is implied in the impounding of people's communications.



### 1.1. Procedure for requesting a judge's order

Through administrative channels, the Public Prosecutor's Office, in the aforementioned Circular 34-2006, and by law, as regulated in the Law on registration, seizure and examination of private documents and interception of communications, determines that in order to make a request for interception of communications, several aspects and procedures must be respected in order to legitimize the request for interception.

Article 10 of Law 6425 establishes that: the judge, by means of a well-founded resolution, ex officio, at the request of the head of the Public Ministry, the director of the Judicial Investigation Agency or any of the parties to the proceedings, if any, may order the interception of oral or written communications, when it may serve as indispensable evidence of the commission of any of the criminal conducts. This means that they may request the intervention:

- a.** Ex officio by the judge (currently questionable due to the impartiality that governs it).
- b.** Chief Public Prosecutor.
- c.** Director of the Judicial Investigation Agency.

It should be kept in mind that the current law dates from August 1994, when the prevailing system was mixed, with an investigative stage in charge of a judge, which is why it establishes the possibility of ordering it ex officio, which currently lacks all logic with the guaranteeing and impartial role that characterizes the Judge of Guarantees or the Judge of Guarantees. Furthermore, it is striking that the request is limited only to the head of the Public Prosecutor's Office, in the case of the Prosecutor's Office, not even the Deputy Prosecutors have this attribution, while the same norm provides for the possibility that the parties may request it.

This entails a great deal of work for the Prosecutor General, and according to the circular, the internal procedure to be carried out by those who direct investigations and deal with this means of evidence is established.

- Procedure internal of the Public Prosecutor's Office:

- a.** Only the prosecutor in charge of the investigation may initiate the process to request the initiation or extension of an interception of communications, so that when the Prosecutor or Assistant Prosecutor deems this test necessary and appropriate, he/she will so inform the Deputy Prosecutor or Assistant Prosecutor. As soon as the latter

If the Prosecutor shares the criteria of the Assistant Prosecutor, he/she will order the preparation of the draft request to be submitted to the highest head of the Public Prosecutor's Office, as well as the draft petition, which the head of the Public Prosecutor's Office will submit to the corresponding Criminal Judge or the corresponding Criminal Judge. These documents will be prepared in digital format, as well as in hard copy. It should be emphasized that in practice only the second draft, which will be presented to the jurisdictional body, is used, but the second part of the draft is the one that will be presented to the judge.

3.1 of Circular 34-2006 originally stated so, with two projects.

- b.** The aforementioned projects, according to the circular, shall be submitted to the Deputy Prosecutor. The Deputy Prosecutor will evaluate them and, if he/she considers the diligence inappropriate, impertinent, premature or unnecessary, he/she will reject it by means of a well-founded resolution. However, if he/she considers it to be appropriate, pertinent, opportune and necessary, he/she shall sign the draft request and send the documents without further delay to the Prosecutor General's Office of the Republic.
- c.** Once the projects have been received by the Attorney General's Office, they will be reviewed and studied by either the Deputy Prosecutor or the Deputy Prosecutor of the Office.

The Attorney General or the General Prosecutor appointed by him or her or by the Assistant Prosecutor appointed by this Deputy Prosecutor or this Deputy Prosecutor, who will examine once again the appropriateness, relevance, timeliness and necessity of the interception of communications. Although the internal regulation under study establishes that the rejection shall be ordered by a founded resolution signed by the responsible officer, with the endorsement of the Attorney General of the Republic, the fact is that in practice it does not work that way. If the request is admitted, the examiner will sign the request formulated by the Deputy Prosecutor and, with the draft petition to be presented before the Criminal Judge, corrected or improved by the person in charge of its review in the Attorney General's Office, will send all the background information to the Attorney General of the Republic.

- d.** If the latter agrees with the request for interception of communications, he/she shall sign the request and send it to the Criminal Judge. On the contrary, if he/she disagrees with the request, he/she shall give the indications or reasons so that the Deputy Prosecutor or the Assistant Prosecutor



This aspect is not usually used in practice either.

It is necessary to indicate that the same circular provides for the possibility of avoiding this procedure in the case of a crime in progress in the preparation, execution, permanent consummation or exhaustion phase, and it is considered that the delay in the intervention could increase the injury. In these cases, the petition to be presented before the Criminal Judge will receive the treatment indicated by the Prosecutor General.

### Requirements of the wiretap application:

According to the internal regulation of the Attorney General's Office in dealing with the subject, Circular 34-2006 and the practice for compliance with the requirements and budget of the law, the request that the Deputy Prosecutor approves to be addressed to the Attorney General, so that he or she in turn may ask the Criminal Judge for the intervention of communications, must meet the following requirements:

Name of the prosecutor requesting the intervention.

Unique file number.

Name(s) of the defendant(s), if identified.

Description of the event under investigation.

Legal and intellectual basis for the proceeding.

Name of the addressee of the communication and its link to the facts.

Number or numbers to be intervened.

IMEI numbers to be tapped.

Name of the owner of the telephone line.

Term for which intervention is requested.

Name of the office and of the officials in charge of carrying it out.

In the event of a request for an extension of the interception of communications, reasons shall be given as to its appropriateness, relevance, necessity and timeliness, in accordance with the results obtained from the diligence in relation to the rest of the evidence gathered during the investigation. The Deputy Prosecutors shall request the Prosecutor General, with at least eight days' notice, the management of





extension, a requirement imposed by Circular 15-2007.

In addition, it is of utmost importance to make clear, in the request for intervention, the claims that are held and must be included in the order, as a minimum are the following:

Possible number changes.

Interception and recording of incoming and outgoing communications.

Recording of communications between those present.

Tracking of incoming and outgoing calls.

Recording and reading of text, voice, video and video messages

e-mails sent to and from the aforementioned communication channel.

Identification by IMEI of the telephone or cellular devices that are using the right.

#### 1.2. Deadlines for telephone tapping

- e. As established in Article 12 of the Law on Registration, Seizure and Examination of Private Documents and Intervention of Communications No.7425 of August 9, 1994, and Article 15 of the Law against Organized Crime No.8754 of July 24, 2009, the deadlines can be summarized as follows:

Deadlines	Law 8642	Law 8754
Ordinary term	3 months	12 months
Extension	6 months	12 months

#### 1.3. Relevant aspects during the intervention

A file must be drawn up for the intervention of the communications, in which the prosecutor's request and the resolution of the Criminal Judge or of the Criminal Judge who organized the communications must be attached.

The file will be the way in which the results of the wiretap are transmitted to the trial. The dossier will be the way in which the results of the intervention will be transmitted to the process, so its control, order, updating and, in short, all the details are necessary (realization of the wiretap visit, dossier of selected calls, etc.), so that the results of the intervention will be available to the process.





can be taken to the trial judges, who are ultimately the ones who resolve the case, this is of utmost importance.

Substantiation of the interception order: although the order to intercept communications is an act that corresponds to the judge, the fact is that the case in the current accusatory system corresponds to the prosecutor and, for this reason, once an interception of communications has been approved and ordered, it is necessary to review and, if necessary, request clarifications or additions to the grounds to avoid future defective procedural activities.

According to Article 10 of Law 8642, the order of the jurisdictional body must be substantiated, which is why, if it lacks any of the factual, legal or intellectual elements of the substantiation, it could, a posteriori, become ineffective and, consequently, in the evidence obtained.

Matching of incoming numbers: it is essential to verify that the telephone numbers contained in the judge's order match the numbers requested.

Verification of the date and time of the resolution: it is important to check that there is no material error in the date and time of the resolution.

Casual findings: those facts that are known by the intervention carried out in the investigation of a crime, but that have no direct relation with it; however, they could not be ignored due to the principle of legality and because the Constitutional Chamber of the Supreme Court of Justice has listed them in resolution 1571- 1996, such as:

- Criminal acts of the accused other than the one that motivated the intervention.
- Criminal acts of a third party who is not the perpetrator or participant in the crime under investigation, but is related to it.
- Criminal acts of a third party, but unrelated to the crime under investigation.
- Knowledge The knowledge provided by a third party, but related to the fact under investigation.
- Knowledge coming from a third party that refers to a criminal act other than the one under investigation.

By vote 14547-2011 of the Constitutional Chamber of the Supreme Court of Justice, it was stated that the information obtained by means of chance findings does not violate the rights of the intervened parties,

The intervention was ordered by a Judge of Guarantees or a Judge of Guarantees and it is through this tool that other information was obtained, the extraction of the vote:

From the analysis of the present case, the Chamber deems it appropriate to clarify that the fact that a criminal act is being investigated does not preclude the prosecution of other related acts, which are discovered when investigating the former. (...) From the foregoing, the Court considers that in this case the discovery does not violate any of the rights of the protected parties since it has occurred in the context of a wiretap ordered by the criminal judge, who is the competent judicial authority and, on the other hand, from the evidence brought to the file it does not appear that the evidence revealed during the wiretap is not objective, lacks accessibility or is not sufficiently important to be used in another case. That is, such evidence is objective, accessible and sufficiently important to be used in other cases".

This, which in the beginning was treated by the national jurisprudence as facts that could only be considered as *noticia criminis*, has now been changed and it is currently held that they can be used as *noticia criminis*.

The same as for any other means of proof, always clear under all the parameters of valuation.

In the same sense, "the data obtained through them do have probative value, but, as with any other means of evidence, they must be put in accordance with sound criticism" (Vote 275-2004 Third Chamber of the Supreme Court of Justice).

The jurisprudential interpretation held that only the judge could hear the intervention, this was modified by vote 12771-2016 of the Constitutional Chamber, indicating that it is not unconstitutional to delegate the act to the assistants of justice who were under the subordination of the directing judge of the intervention, and that the judge was not required to do the wiretapping alone, approved by a majority, which means a change in the model of the exclusive functions of the judge in the wiretapping of calls resulting from a wiretap.

In summary, several aspects must be kept in mind when using this research tool:

The exclusively evidentiary purpose of the interceptions to establish the existence of the crime and the discovery of the crime.



briment from the responsible for it.

The exceptionality of the measure, which should only be adopted when there is no other means of investigating the crime, which has less incidence and causes less damage to the fundamental rights and freedoms of the individual than those affecting personal privacy and the secrecy of communications. Criterion of necessity and opportunity.

The proportionality of the measure, which implies that it should only be adopted in the case of serious crimes.

The time limitation on the use of the measure. With respect to the strict time limits determined by law.

The specialty of the criminal act to be investigated, since it is not possible to decree a telephone interception to try to discover criminal acts in a general and indiscriminate manner. The taxativity of its origin.

The prior existence of indications of the commission of a crime and not mere suspicions or confidential information.

Sufficient motivation of the judicial resolution agreeing to the telephone tapping.

Jurisdictional exclusivity, in the sense that only the judicial authority can establish restrictions and derogations to the right to secrecy of telephone communications. In this regard, vote 12771-2016 of the Constitutional Chamber establishes:

- "In the opinion of this Court, the rights protected in Article 24 of the Constitution are duly safeguarded provided that it is a judge of the Republic who, by a duly motivated resolution, and under his control, supervision and oversight, orders the interception of certain oral or written communications, with determination of the time that such interception should last, of the persons intervened, of the intercepted communication channels and, in addition, that he is the one who filters the information to be incorporated to the process, without his physical presence being indispensable in the listening act itself, being able to delegate it to officials duly identified and qualified to carry it out".

The requirement of judicial control in the ordering, listening, development and cessation of the intervention measure. Even if the listening, as noted, is done by the assigned police officers.

When casual findings occur, the prosecutor should assess the following:

To request the extension of the interception to cover that fact, in the understanding that the intervention has been requested based on the investigation of a fact "x" and now it must be extended due to the existence of another crime found, that is, crime "y", in such a way that in order to cover the legal basis of the order by the jurisdictional organ, the extension of the order must be requested to the judge or the judge of guarantees complying with all the aforementioned premises of substantiation. This in the event that the crime discovered is within the range of crimes provided for by Article 9 of Law 7425 of August 9, 1994, Law on search, seizure and examination of private documents and interception of communications.

If the crime is contained in said law, the prosecutor must request before the Judge of Guarantees, the processing of organized crime in order to cover the legal basis with law 8754 and once decreed, request the extension of the intervention according to the previous paragraph.

It could be the case that upon discovering the existence of another crime, due to an investigation strategy, it is decided that it will be processed in a separate file. This could be due to the fact that the investigations in the original case are advanced, to the protection of evidence, in short, whatever justifies not mixing the investigations, in such a way that it will be taken as a starting point for another investigation, through the ordering of a testimony of pieces; the explanation of the new facts known, the legitimate origin of the information or the referral for processing.



## 2. Covert operations: undercover officers and undercover collaborators

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A starting point for the use of this verification technique in the process of investigating the crimes of trafficking in persons and smuggling of migrants, to a lesser extent, is based on the fact that, as analyzed. The first source of interpretation is the United Nations Convention against Transnational Organized Crime (Palermo Convention 2000), law 8302, of September 12, 2002, published in La Gaceta number 123, of June 27, 2003. Thus, in the treatment of crimes related to the convention and its protocols, it must be taken as a source. In addition, specifically that legal body establishes in its article 20 the following:

### Special research techniques

- 1- To the extent permitted by the fundamental principles of its domestic legal system, each State Party shall, within its means and under the conditions prescribed by its domestic law, adopt such measures as may be necessary to permit the proper

recourse to controlled delivery and, where it deems appropriate, the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

Thus, from the text of the aforementioned rule, not only the possibility of using undercover operations should be extracted, but also the fact that this is possible, provided that its domestic law allows it.

In the case of Costa Rica, the aforementioned Article 182, in developing this principle, emphasizes that: "the facts and circumstances of interest for the correct solution of the case may be proven by any means of evidence permitted, unless expressly prohibited by law".

This means that, in the search for evidence to present a case, all those means of evidence that are legitimate or permitted may be used to prove everything that is deemed important in the case.

This is a permanent investigative technique in this type of crime, in which an undercover policeman is used, that is, a policeman disguised as a normal user, whose activity of contact with those under investigation is only to come when the crime is being committed, in such a way that the criminal activity and the participants in it are ascertained through him.

This figure is radically different from what has been called agent provocateur, since the latter, far from mere ascertainment, induces by his actions the will to commit a crime.

In addition, we speak of collaborators and non-informants, for those individuals who, in cooperation with other individuals, are

The police should be aware of this from the moment prior to their intervention until the moment immediately after the act with which they collaborated; this formula may be used in places where, because they are in rural areas, the officers are already known and known in the community.

In this regard, see Ruling: 00269-04, File: 03-000389-0006-PE, of the Court of Appeals of the Supreme Court of Justice.

Third of the Court, which indicates the validity of the use of undercover agents in sex crimes.

### 3. Practical aspects of trespassing

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As part of the functional management, there are cases in which it is necessary to conduct searches of homes or commercial establishments and, by law, this diligence, by its nature, violates a constitutional right such as privacy. Therefore, it is the responsibility of the representative or the tax representative to submit a duly grounded request to the judicial authority of guarantees, who must ultimately resolve the matter by approving or rejecting the request.

#### a. Coordination of raids:

Coordination is a process that requires coordinated work. Its results are generally very good, since they are the result of prior investigative work. It should not be thought of as an investigative act that arises only from the interpretation of the case by the investigative police, but should respond to the design of the group work.



It requires a meeting of the investigation group to analyze the need, the origin, the characteristics of the search, among them the amount of human resources, the type of personnel, the extent to which the information to be handled will be compartmentalized, what is to be searched, the complexity of the site, security, etc.

Due to its characteristics, for the practice of this investigative diligence, it is necessary to have a prior operational plan designed by the police, in which the tasks and responsibilities of each of the officers who will participate are distributed, in order to avoid situations of lack of coordination by entering a home or private premises without such a plan and, definitely, in such complex matters, it is not allowed to take any risk whatsoever.

The operational plan will determine which officers will participate in the investigation and what will be the task of each one of them, which gives the investigative act the order necessary to obtain optimal results and greater security for the operators and system operators who participate. Likewise, when the detention of persons is part of the investigation, it should be clear who should be in charge of their custody and thus provide security for them.

Another relevant aspect is the fact that, if necessary, with the reconstruction of the chain of custody due to the misplacement of the evidence or due to some control error that does not necessarily mean a tort, as determined by the Third Chamber of the Supreme Court of Justice (see resolution 057-2004), it will then be easier to know who located the trace or evidence, who packed it and who was responsible for preparing the record. Their testimony in the debate can eventually ensure compliance with the chain of custody or reconstruct it.

On the other hand, the attitude of the prosecutor's representative in this type of investigation should support the search, not in the act of scrutinizing, but by carefully directing what is of interest to the process to be confiscated or placed on record, as well as what evidence will be useful for the determination of the factual picture presented as the hypothesis of the investigation.

It must also be a guarantor of the rights of the persons charged and an overseer of the legality of the acts of the police, both of what is discovered, as well as the conditions where they are found and the detailed description in the respective record, also in reference to the acting jurisdictional body.





In the case of a search of the home of the person or persons charged, detailed observation is essential. A person's home can tell a lot about him or her, both for understanding something of the criminal environment and for the planning of the proposed penalty, insofar as something can be discerned from a criminological point of view.

In the crime of trafficking in persons, specifically, we must remember the possibility of the victim's stay, which is against his or her will. For this reason, the characteristics of the place can give us a lot of information about the illicit act, which must be duly recorded.

The following are recorded, both in the minutes of the proceedings and in the corresponding video recording.

If the investigated act is the smuggling of persons, it is important to look for closed or hidden places, since these are the places where migrants are usually hidden and concealed. In many cases, false floors are used in homes or warehouses to hide them; in the case of hotels or cabins, double walls are also used to hide the persons; the same happens in cases of human trafficking, which often use places designed to hide the victims so that they will not be discovered.

## b. Primary objectives of the search

Rescue of possible victims.
<b>2.</b> To protect the physical safety of the victims, for this reason, prior to the diligence, the ERI is notified and coordinated with the ERI.
<b>3. To</b> apprehend possible defendants.
<b>4.</b> Collect evidence related to the case under investigation.





- Issues to be taken into account for the planning of the search, among other possible issues:

Accurate intelligence on the internal distribution of location, number and description of victims and perpetrators.

Specific knowledge about the routine or behavior of victims and offenders.

Information on the possible presence of armed persons.

Provision of medical and psychological support equipment.

Request for support from a specialized police tactical team.

Provision of an interpreter, if it is known that all or some of the victims do not speak Spanish.

Pre-planning of the entities or places where victims will go for care and protection.

Try to make a video and photographic record of the place of the facts, detailing where the victims were, the place of the identification documents of the victims, if it was accessible or not, if the building has security mechanisms that aim to prevent the exit instead of the impediment of people from outside the place, as it would be logical, what things are inside the building, the possible place where the victims spend the night and the conditions themselves, etc.

Prepare for the identification and separation of victims and perpetrators. Traffickers often try to hide among the victims.

- Also to be considered in the practice of a search diligence are aspects related to the site, such as:

In cases of human trafficking, many locations may present health and safety risks for operators and system operators.

It is likely that, in many trafficking sites, there is considerable contamination of the scenarios with multiple traces. In addition, it is important to record for the investigation, which should take into consideration the executing authorities.

An analysis must be made to differentiate victims from perpetrators.

Also, in human trafficking cases, an event site may have to be preserved intact for a long time in order to plan and complete a forensic examination.

The review of the vehicles on the site is of utmost importance, due to the possible traces or indications that may be located.



Other evidence to be located that may be of importance, given the commercial nature of the crime, in sexual and labor exploitation, and in the crime of smuggling of migrants, as well as other manifestations that seek illegitimate wealth, are the following:

Accounts of money collected from brothels or other illegal enterprises.

Bank statements and details of unstructured transactions ("hawala" type systems: one of the informal funds transfer (IFT) systems generally used in many regions locally and internationally. Hawala means "transfer" or "wire" in Arabic banking jargon).

Utility bills, such as gas, electricity or telephone.

Rent payment entries, landlord data, etc.

Tickets, boarding passes and other travel documents.

Annotations of invoices paid for advertising.

Customer credit card details.

Documents containing work instructions or "menus" of available "services".

Photographs of employees.

Identity documents, both authentic and forged/alterred, passports, identity cards, among others.

Cash.

Documents in factories or other workplaces containing details of the people who work there.

Documents indicating the volume of business at a given location, such as incoming material and finished goods shipped.

Computer equipment, which must be properly handled so that information is not deleted from its RAM memory, due to an inadequate way of disconnecting it (remember that its power source must be removed and not execute the normal shutdown), as well as a proper chain of custody, if possible even with the generation of the alphanumeric algorithm that guarantees it (hash).

Cell phones and any other electronic device.



Travel tickets, reservation of air, land or sea tickets.

Hotel bills or hotel or cabin reservation requests.

Documents with international telephone numbers, which could be the contacts of other members of the organization.

All the evidence collected, it is important that the investigator incorporates them in a report, in which it is indicated what each one of them proves in order to offer this report in the accusation and to have the facility to know what will be proved with each one of them.

#### 4. Request to support information contained in computer media

Computer evidence has become, in the last two decades, an important source in the exercise of criminal investigation; this, above all, is due to the advances in technology and communications, to the extent, for example, that most people have smart phones, which are nothing more than small computers. But the analysis of

This type of evidence and the extraction of evidence useful to the case is not an easy matter, since it requires highly technical knowledge and specialized equipment for its processing. Therefore, in the request for approval, it is also necessary to request the delegation of registration, extraction, backup and analysis of private documents that are seized on computer media. Annex 01 includes a form that is proposed as a model or guide to manage such diligence.

#### 5. Evidence management and expert evidence

The evidence, traces or proofs related to the investigation must be processed so that they contribute to the search for the truth. These will be in charge of the corresponding police that carried out the investigations for their analysis in relation to all the existing evidence, as well as the referral, when necessary, of the traces to the different laboratories and to study the results of the expertise.

In short, it is a matter of ensuring that the investigative management of the police results in a final report that takes into account all existing means to reach the conclusion closest to the truth of the case.



the historical facts investigated, thus ratifying what was said by the victims or, failing that, ruling out the existence of the unlawful act.

Regarding the destination of the confiscated goods, if the processing has been decreed as organized crime, the police authorities must send, when it is in the interest of the Asset Management Unit of the Costa Rican Drug Institute, such is the case of a vehicle free of encumbrances, whose economic value is significant. Otherwise, the confiscated goods must be sent to the vehicle or object deposit, in order to, a posteriori, request the confiscation, in accordance with the provisions of numeral 110 of the Penal Code.

As indicated, the starting point in the investigative process is the responsibility of the investigation officers of the police, who are in charge of carrying out the investigations that, on their own initiative or in association with the prosecutor's office, depending on the type of functional direction applied, have been determined as indispensable in the approach and planning of the specific case.

It is important for the investigator to be clear about this function, because only then will he/she understand the relevance of a good police report that details from the first moment of the investigation the importance of a good police report.

The investigation process is a scientific method of inculcating any person who remains until that moment in the state of innocence that the Political Constitution assures him/her.

The investigating officer must present himself or herself to the courts of justice as a serious, capable and knowledgeable professional who could even be seen as an advisor to the judges when presenting his or her conclusions, report or deposition at trial. At the same time, he/she should generate absolute confidence in the points investigated and in his/her expertise to interpret the evidence in accordance with the criminal phenomenon.

The police must keep the seized evidence, because in this way they have it at hand for analysis, together with the other evidence in the case. Likewise, they must treat it in such a way as to respect the set of procedures aimed at guaranteeing the authenticity and integrity of the evidence from the moment it is located in the place of the search, until the result of its analysis is presented to the Court or competent authority. The police report must provide investigative conclusions and this can only be reached with the complete analysis of the entire evidentiary cast, including the



control of the chain of custody and the results of expertise in appropriate cases.

After requesting the forensic analysis from the expert, the procedure to follow is to wait for the result and, once the result is available, it should be incorporated into the integral study of the evidence for the investigator to render the final report. Otherwise, it would be evidence without a logical order to support a position.

o Theory of the case. In such a way that the police conclusions should include the scientific basis from the analysis of the scope of the expertise, so it will have more support, will experience greater professionalism and will force the investigators to relate more with the experts and understand, in the best way, the real scope of the conclusions of the technique used.

## 6. Lifting of banking secrecy

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It should be borne in mind that trafficking in persons and smuggling of migrants are the crimes that produce the most illicit money worldwide, behind only drug trafficking and illegal arms trafficking. They generally behave or manifest themselves as organized crime. In addition, it is clear that criminal organizations do not seek to violate the protected legal right; perhaps some of the participants in the crimes are not even aware of what is protected in trafficking, what is protected in illicit trafficking or in other crimes, since what they seek are illicit profits. For this reason, and as a more intelligent criminal prosecution policy, investigations should not only be directed against the persons involved, but also against their assets, whether as proceeds of crime or as a result of the trafficking in persons.

The only way to remove only convicted participants from the criminal organization is to take away its power to commit crimes, because if only convicted participants are removed, it is very likely that others will be part of the same organization. Therefore, it is important to carry out specific procedures for the investigation of assets, such as the lifting of bank secrecy.

Originally, a public function as important as criminal prosecution would seem to be easy, since the authorities in charge of the criminal investigation must request the provision of banking information, with only the following conditions



generate an order summarizing the facts under investigation, their nature and the need to investigate the origin and movements of the funds.

However, this is not so easy, because the banking secrecy exists, with an interpretation at national level that establishes the need of a jurisdictional order to lift it, since it is interpreted as a ramification of the right to privacy with protection at constitutional level, not only as an imposition of legal rank, but also as other judicial systems conceive it: to protect companies from unfair competition; since it foresees that the competition knows about the financial extremes and operations. For them it does not operate as a secret neither for tributary nor for criminal matters, since they suppose in that case conflict of interests more important socially, but our reality does not see it from that optics, since it is wanted to order the Judge of Guarantees or the Judge of Guarantees.

Article 226 of the Criminal Procedure Code expressly authorizes the Public Prosecutor's Office to request reports from private persons or public entities, without having to have the endorsement, approval or a court order. In practice, it is understood that such power finds an insurmountable limit when the content of the information is not clear.

The claim is protected by Article 24 of the Political Constitution or by law.

Even though the constitutional text does not contain express norms regulating banking secrecy, it has been established through various legal provisions and, as far as it is of interest, through article 615 of the Commercial Code, which provides that:

"Bank current accounts are inviolable and the Banks may only provide information about them at the request or with the written authorization of the owner, or by order of the competent judicial authority. An exception is made for the intervention made by the General Audit Office of Banks in compliance with its functions determined by law. The review of current accounts by the tax authorities is prohibited.

This committee considers that by "competent judicial authority" it is only possible to understand a jurisdictional authority, since in this case not only the documents in their physical materiality, but also the information that can be obtained from them is expressly protected by law, thus restricting the access and knowledge of third parties.

In this context, the secrecy relating to current accounts is established as a guarantee in favor of



The Commission is of the opinion that the Public Prosecutor's Office must have the written permission of the affected party or the endorsement of the judge, who must analyze whether the protection provided by law for this specific type of information should be lifted, as is the case with other documents regulated by special laws (pronouncement of the Commission on Criminal Matters, according to official letter 126-99 in response to the consultation of the Prosecutor's Office for Economic, Corruption and Tax Crimes No. 026 FADECT-MRS-99 dated February 1999).No. 026 FADECT-MRS-99 dated February 25, 1999).

As can be observed, it seems strange that the content of the law only speaks of the secrecy of current accounts, a clearly identifiable product within the different financial products offered by financial entities, but which unfortunately for the effectiveness of investigations, has been given jurisprudential scope beyond the scope of the law, as will be seen below. For example, this secrecy would not apply to information on time deposits, savings accounts, electronic accounts, etc., in short, the great variety of products of the financial entities, let alone is it thought to cover other matters that have nothing to do with the Code of Commerce, such as insurance matters, or worker-employer contributions to the Costa Rican Social Security Fund.

Both the request and the order must comply with formal and substantive requirements. In other words, the factual, legal and intellectual assumptions of the need to overcome this right to privacy, which is not absolute, but which has this procedural requirement, must be explained. Currently, a request for the lifting of bank secrecy must contain at least a legal basis covering:

Article 24 of the Political Constitution.

Article 615 of the Commercial Code.

Articles 198 and 277 of the Code of Criminal Procedure.

Articles 1, 2 and 3 of Law 7425, Law on Registration, Seizure and Examination of Documents and Interception of Communications.

Articles 114 and 115 of the Code of Tax Rules and Procedures, Law number 4755.

Also aimed at extremes beyond current accounts, specifically:

Savings accounts.

Electronic accounts.

Safety deposit boxes.





Investments of any kind, including contracts relating to investment funds and mandatory or supplementary pension plans.

Transfers of foreign currency from or to foreign countries in their own name or in the name of legal entities, by themselves or through third parties.

Subscription of loan or trust agreements.

Other contracts for the administration of securities.

Transactions related to international means of payment, such as letters of credit or collections of any kind ordered from Costa Rica or received for processing from banks abroad.

Money transfers between accounts in the same bank or to other banks, financial institutions or companies within the country.

Debit or credit cards, including accessory cards to the cardholder.

Cash transaction reports.

Suspicious transaction reports.

Services or financial movements

The Company has not been able to determine the amount of the taxes contracted or carried out by the persons investigated in the financial group and remittance agencies, either by themselves or through third parties.

Original supporting documentation of transactions.

Lifting of tax secrecy.

Directed to the General Directorate of Taxation of the Ministry of Finance requesting information on whether the investigated persons are registered as taxpayers, indicating the type of regime to which they are registered.

Income tax returns, sales or any other management.

Addressed to the General Directorate of Customs of the Ministry of Finance, reports of cash receipts or values made before customs, as well as imports and exports made.

Finally, it will be necessary that the request for the lifting of the bank certificate be clearly detailed:

List of investigated facts.

Identity of individuals and legal entities related to the investigations.

Research deadlines, with detailed dates.

# IV Chapter

## ADMINISTRATIVE MANAGEMENT MODULE



According to General Instruction 01-2016 of the Attorney General's Office of the Republic, the Deputy Prosecutor's Office against trafficking in persons and illegal smuggling of migrants, in association with the Attorney General and the Prosecutor II of the Territorial Prosecutor's Office Column or the Prosecutor II of the Territorial Prosecutor's Office Column, must manage the Administrative Management of the Case, which translates into the route that the file will follow, the steps considered indispensable by the Specialized Prosecutor's Office, both for its processing and for the processing of the case, must manage the administrative management of the case, which translates into the route that the file will follow, the steps considered indispensable by the Specialized Prosecutor's Office, both for its processing and for the legal attention to the victims of the crime, considering their gender, age, nationality, migratory condition, race; without neglecting the considerations related to the right of defense of the persons charged in the process.

As determined by the Prosecutor General's Office, this module should be re-presented by a flow chart that allows the staff of the Public Prosecutor's Office to visualize the path of the processing of the file, without encroaching on the existing provisions on alternative exits and file routes that the Prosecutor General's Office has, but that clarifies the route of the file. For example, with emphasis on the inter-institutional coordination involved, as this is perhaps what differentiates it from the normal processing of another criminal file.

Specifically, to verify the victim's state of health, to ensure respect, from the beginning, for the rights of children, adolescents and adolescent victims of this type of crime. Attending to security aspects of the offended persons, these should be immediately communicated to the Office of Attention to Victims and Witnesses of Crime. In the case of minors, the communication must be immediate to the National Children's Trust.

In cases of urgency, seek the reception of testimony as an advance jurisdictional evidence, respecting the rights of the affected parties, as a means to avoid revictimization with the use of the Gesell camera or recording the proceedings. When the legal requirements are met, take the necessary steps to accredit the victim before the Immediate Response Team ERI, through the Deputy Prosecutor's Office against Trafficking in Persons and the Illegal Smuggling of Migrants (FACTRA). It is also important to determine how hearings will be conducted during the process.

The flowchart does not end with the description of the route of the preparatory stage trial by the prosecution; it also covers the intermediate stage and the cases in which it is proposed by the prosecutor's office.






The defense of the persons concerned, as well as the abbreviated procedure, if authorized by FACTRA.

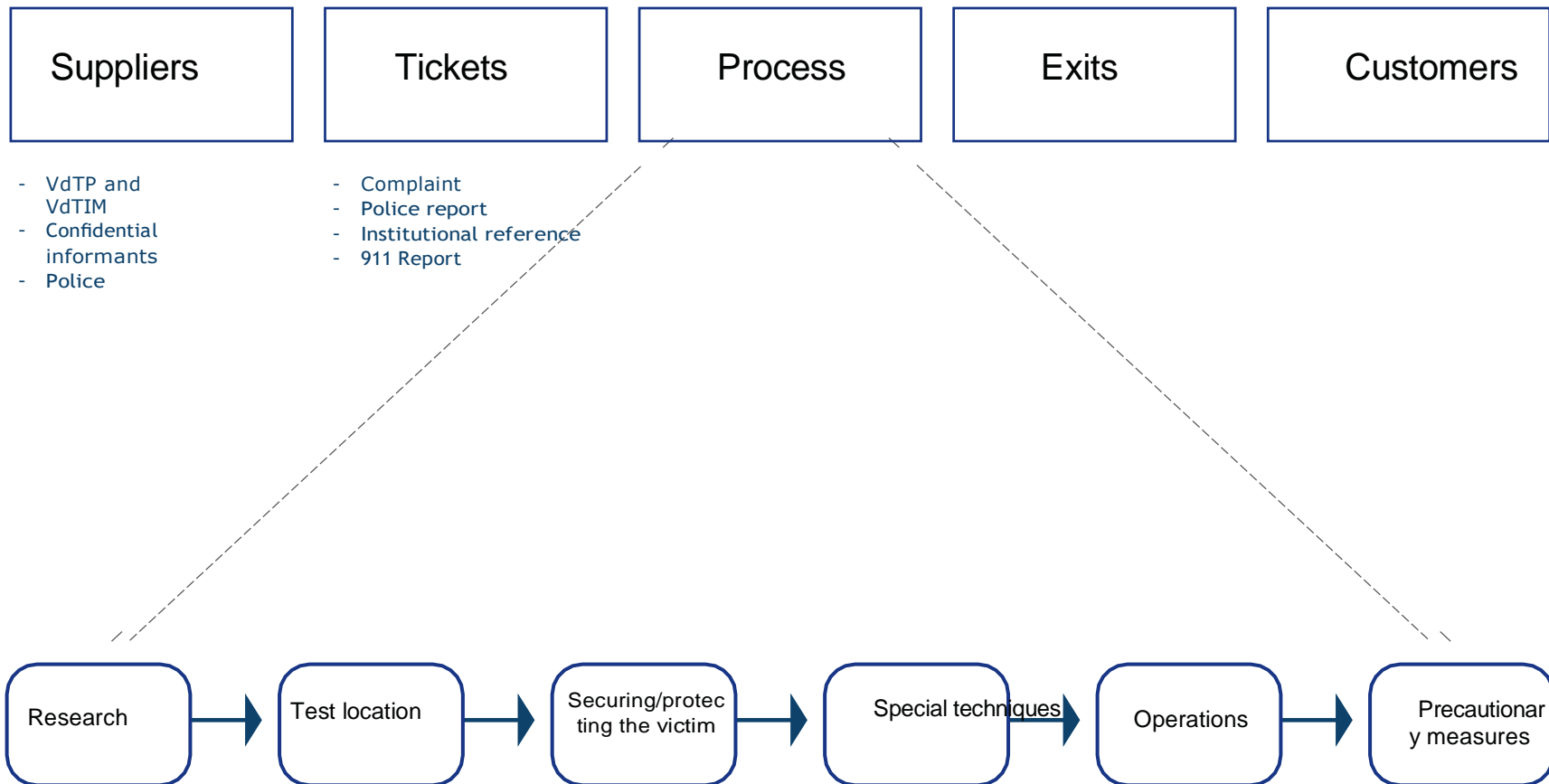
Finally, it includes the debate phase, where the importance of preparing the case well in advance and the preparation of the evidence, especially the testimonial evidence, which includes the victim or victims so that they understand the scope of the hearing, the mechanics of the proceedings, their rights and the importance of their testimony before the Criminal Court, is recalled. The above,

in accordance with the framework of the rights of the offended person to be informed.

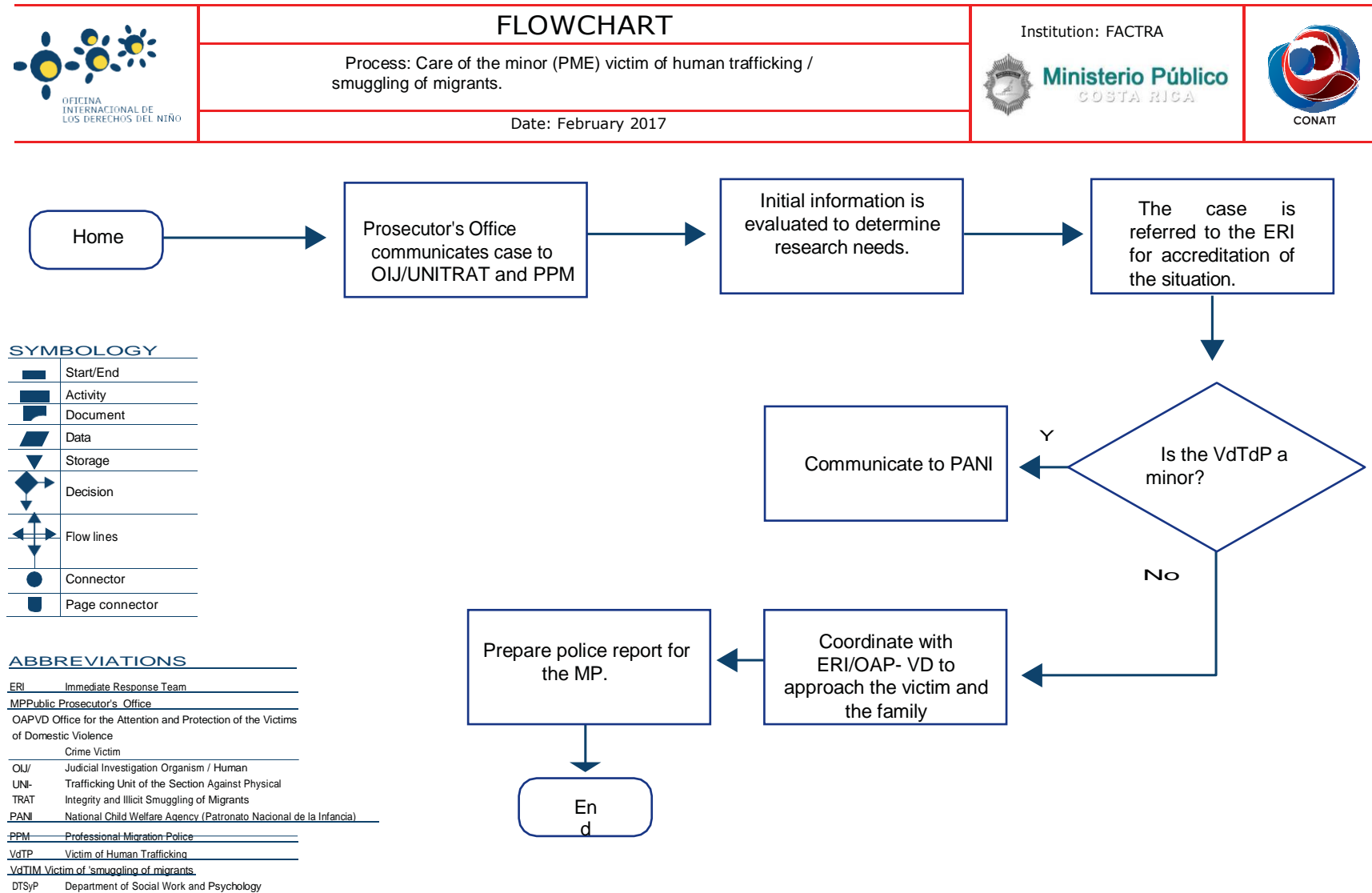
It is important to point out the need for prosecutors to prepare their actions in this procedural phase, which is none other than the moment when all the work of the preparatory and interim stages must bear fruit; this is not only the responsibility of the jurisdictional body, which ultimately decides, but also of the criminal plaintiff, who must present his case in the best possible way to obtain a just result.




#### 4.1 SIPOC diagram (*Suppliers Inputs Process Outputs Customers*)

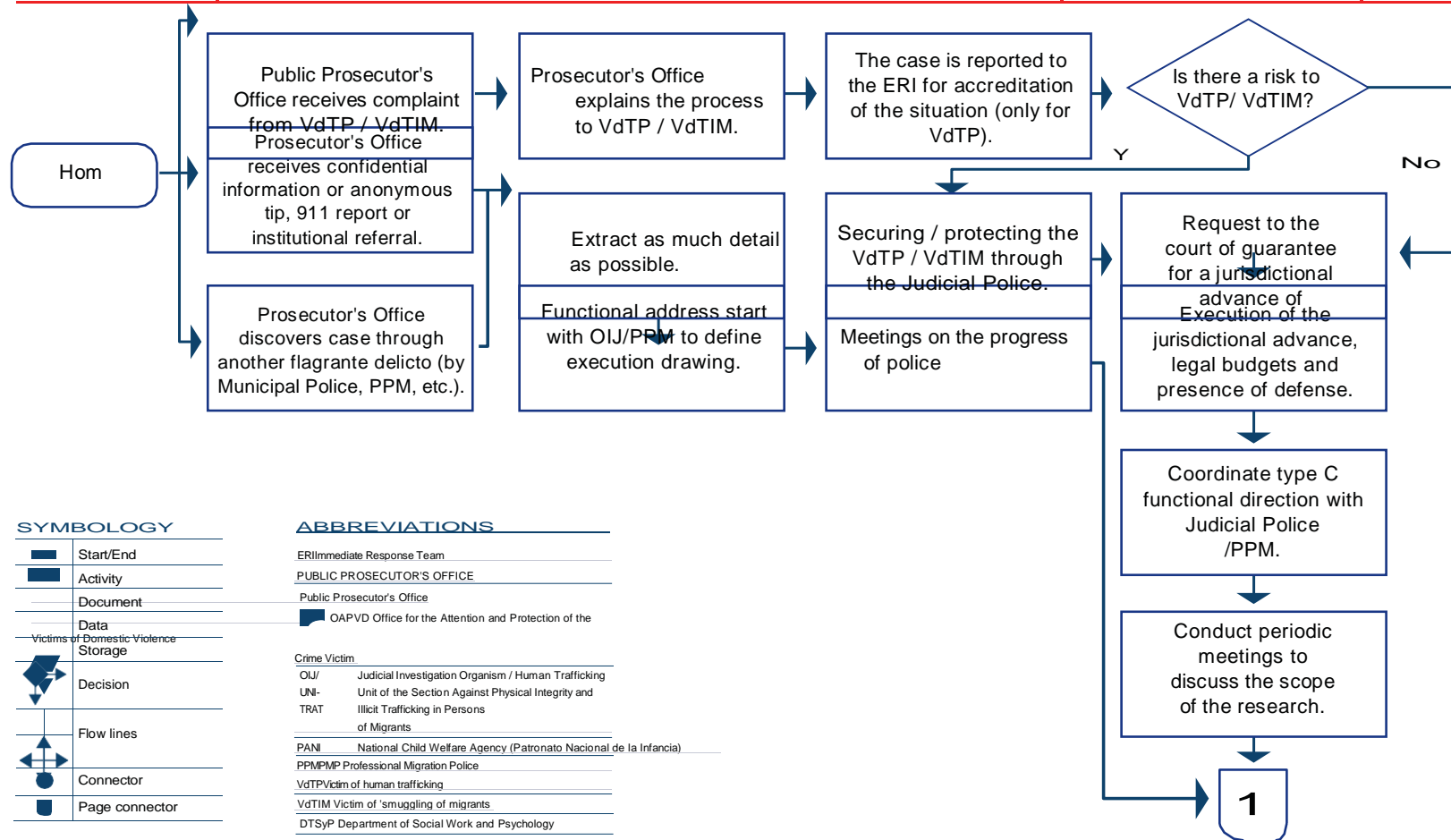
 OFICINA INTERNACIONAL DE LOS DERECHOS DEL NIÑO	SIPOC		 Institution: FACTRA  <b>Ministerio Público</b> COSTA RICA	 CONATT
	Process: Preparatory stage on FACTRA's administrative proceedings against the crime of trafficking in persons and smuggling of migrants.			
	Date: February 2017			



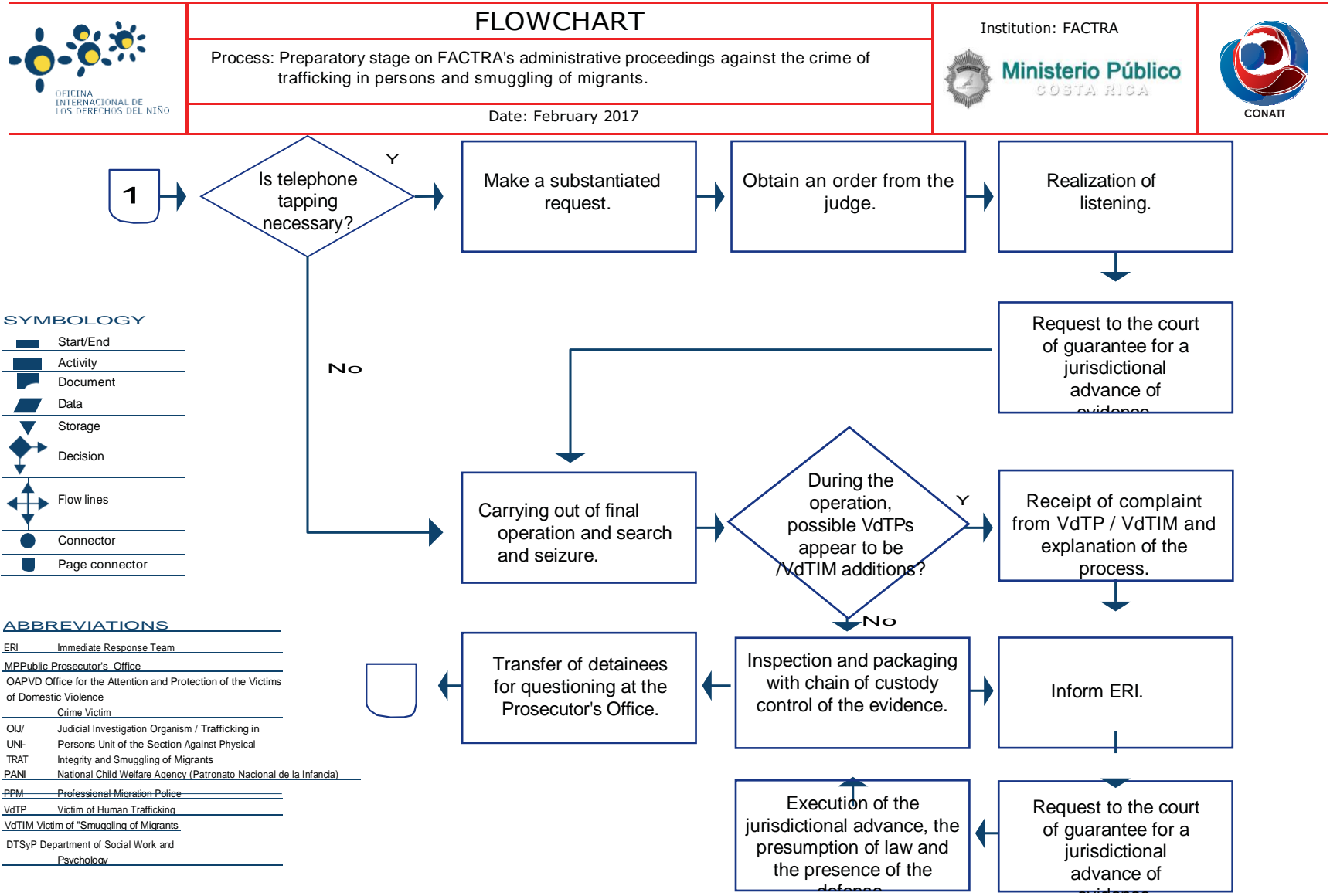
## 4.2 Preparatory stage flowchart



	<b>FLOWCHART</b>		Institution: FACTRA  <b>Ministerio Público</b> COSTA RICA	
	Process: Preparatory stage on FACTRA's administrative proceedings against the crime of trafficking in persons and smuggling of migrants.			
	Date: February 2017			







## FLOWCHART

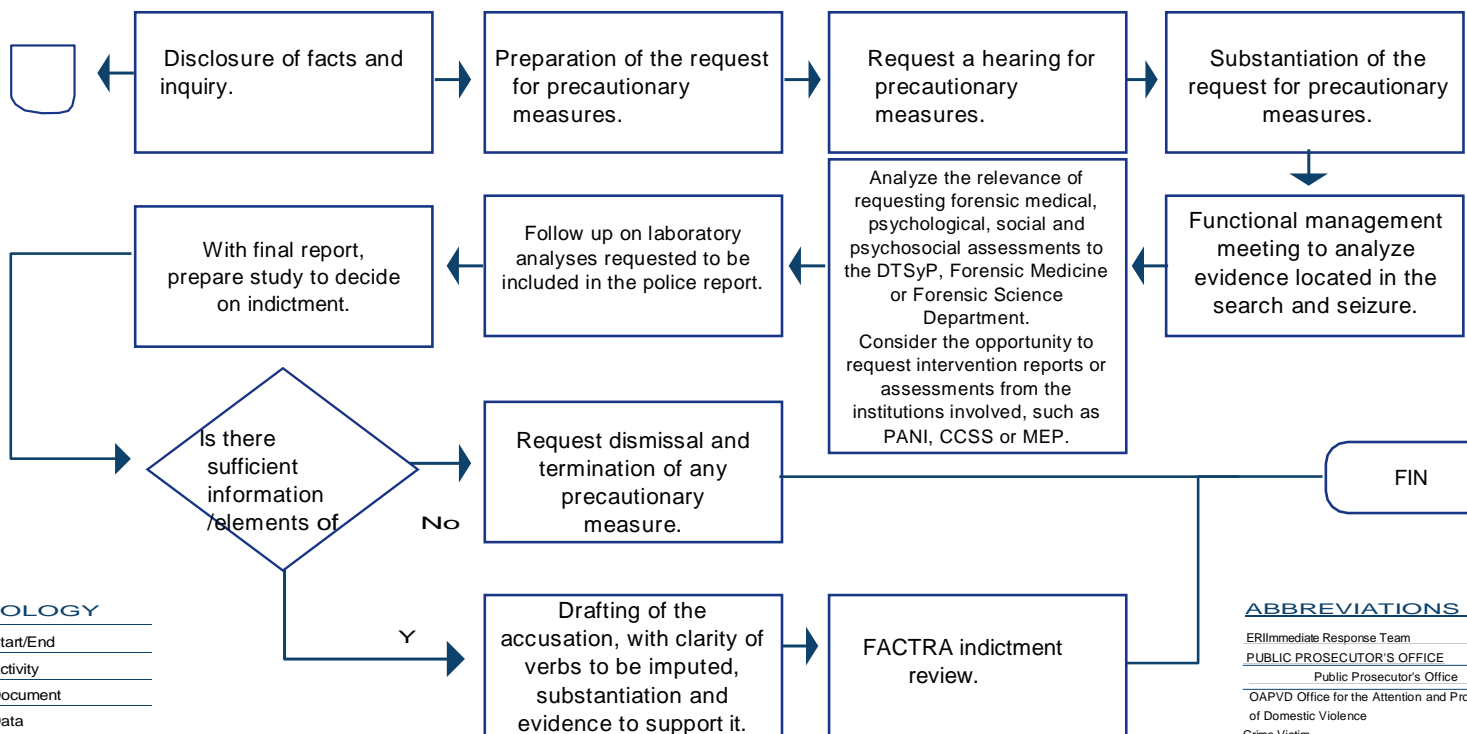
Process: Preparatory stage on FACTRA's administrative proceedings against the crime of trafficking in persons and smuggling of migrants.

Date: February 2017

Institution: FACTRA



Ministerio Público  
COSTA RICA






### SYMBOLOLOGY

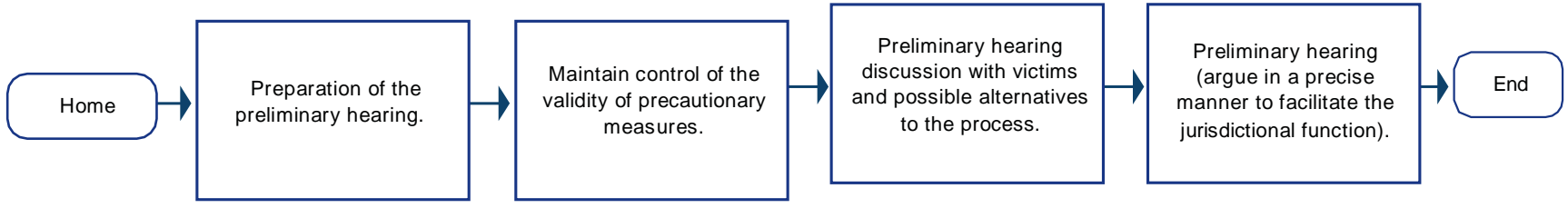
	Start/End
	Activity
	Document
	Data
	Storage
	Decision
	Flow lines
	Connector
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### ABBREVIATIONS

ER	Immediate Response Team
PUBLIC PROSECUTOR'S OFFICE	Public Prosecutor's Office
OAPVD	Office for the Attention and Protection of the Victims of Domestic Violence
Crime Victim	
OIJ	Judicial Investigation Organism / Trafficking in
UNI-	Persons Unit of the Section Against Physical
TRAT	Integrity and Smuggling of Migrants
PANI	National Child Welfare Agency (Patronato Nacional de la Infancia)
PPMP	Professional Migration Police
VdTP	Victim of human trafficking
	VdTIM Victim of 'smuggling of migrants
DTSyP	Department of Social Work and Psychology

4.3 Intermediate stage flowchart

	<b>FLOWCHART</b>		<p>Institution: FACTRA</p>  <p><b>Ministerio Público</b> COSTA RICA</p> 
	Process: Stage discussion on FACTRA's administrative proceedings against the crime of trafficking in persons and smuggling of migrants		
	Date: February 2017		

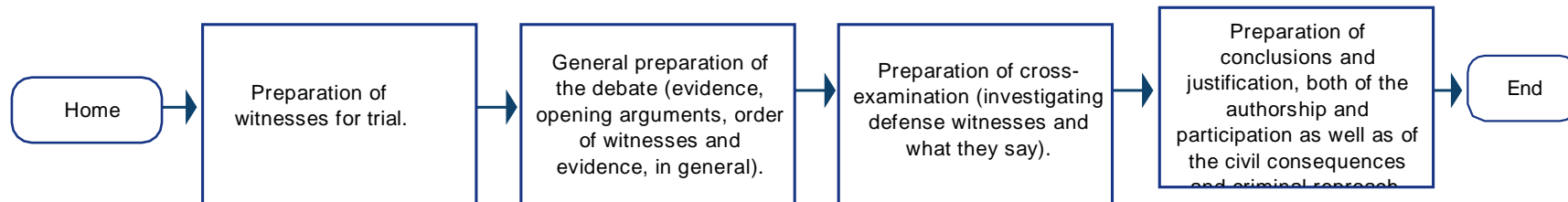
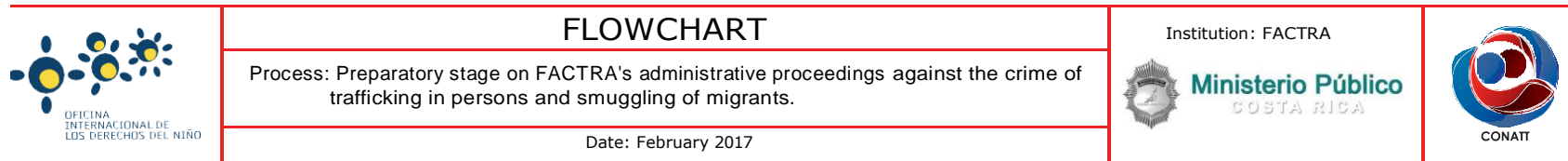


SYMBOLOLOGY	
	Start/End
	Activity
	Document
	Data
	Storage
	Decision
	Flow lines
	Connector
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ABBREVIATIONS	
ERI	Immediate Response Team
MPP	Public Prosecutor's Office
OAPVD	Office for the Attention and Protection
CV	Crime Victim
OUJ	Judicial Investigation Organism / Trafficking in
UNI-	Persons Unit of the Section Against Physical
TRAT	Integrity and Smuggling of Migrants
PANI	National Child Welfare Agency (Patronato Nacional de la Infancia)
PPM	Professional Migration Police
VdTP	Victim of Human Trafficking
VdTIM	Victim of 'smuggling of migrants
DTSyP	Department of Social Work and Psychology



#### 4.4 Flowchart of the discussion stage



#### SYMBOLOLOGY

	Start/End
	Activity
	Document of the Victims of Domestic Violence Data
	Storage
	Decision
	Flow lines
	Connector
	Page connector

#### ABBREVIATIONS

ERI	Immediate Response Team
MPP	Public Prosecutor's Office
OAPVD	Office for the Attention and Protection of the Victims of Domestic Violence
CV	Crime Victim
OIJ	Judicial Investigation Organism / Human
UNI	Trafficking Unit of the Section Against Physical Integrity and Illicit Smuggling of Migrants
TRAT	Integrity and Illicit Smuggling of Migrants
PANI	National Child Welfare Agency (Patronato Nacional de la Infancia)
PPM	Professional Migration Police
VdTP	Victim of Human Trafficking
VdTIM	Victim of 'smuggling of migrants'
DTSyP	Department of Social Work and Psychology

# **Annex 1**



**DELEGATION IS REQUESTED FOR THE SEARCH, EXTRACTION,  
BACKUP AND ANALYSIS OF PRIVATE DOCUMENTS SEIZED IN  
THE RAIDS.**

According to the provisions of article 2 of the Law on Search, Seizure and Examination of Private Documents and Intervention of Communications, the judge shall personally carry out the search, seizure and examination of private documents, except in exceptional cases, in which, at his or her discretion, it may be delegated to members of the Judicial Investigation Agency or the Public Prosecutor's Office, who shall inform him or her of the result of the procedure. Accordingly, I request that the examination of the documents contained in the computer devices seized in the present case be delegated to the experts of the Computer Crimes Section of the Judicial Investigation Organism, since it is materially impossible for the jurisdictional authority to directly examine all the computer devices and entries containing digital information seized in the present case.

Regarding the examination of data contained in a computer storage device, there are different variables that complicate the processes of analysis of forensic images, among them we can mention: applications to encrypt or protect information, different operating systems such as Microsoft, Linux, Unix, Solaris, OS X, a great variety of applications such as Office, Open Office, Outlook, Lotus, different types of databases such as Oracle, Sybase, My SQL, SQL Server, many programming software including Visual Basic, C, C+, .Net, Delphi, Developer, Power Builder. Additionally, it should be noted that the software area is very dynamic and constantly updating applications or creating new ones, with different characteristics. Therefore, depending on the information that needs to be obtained from a forensic image, it is sometimes necessary to consult certain companies, search for information on the Internet or download certain applications from the Internet in order to have access to the required information, which can take a considerable amount of time, which is not available to the jurisdictional authority. In addition, forensic image analysis processes may take days, weeks or even longer, depending on the number and type of files contained, the protection mechanisms that the files have (password, encryption, etc.) and the information that needs to be obtained from the backups.



**It is also common to find files with passwords and it is through the use of specialized software that runs automatic processes that are able to identify these passwords, processes that can eventually take up to weeks. Likewise, there are cases in which information processed by certain computer systems is sought, so restoration processes, virtualization (recreating in a virtual environment the environment that would be obtained by running the computer that appears as evidence), password detection or coordination with entities outside the Judiciary to try to put the systems to work, which can take several weeks or even months, must be carried out. In addition, for the analysis of forensic images, computer experts generally use the internationally recognized forensic software Encase and FTK. With FTK, an initial indexing process must be performed, which can take several days, and with Encase the indexing process is optional; however, for certain cases it is important to apply it and this can also take several days. It should be clarified that although forensic software, through search parameters, helps experts to identify files containing information that may be of interest to the investigation, in many cases the Computer Crime Section officer must verify the content of the information to establish whether it is related to the required information. To give an example, in cases of child pornography, the software helps to identify the files corresponding to images and videos, but only by verifying their content can it be established whether they contain child pornography, and sometimes thousands of such files must be verified. It should also be taken into account that both Encase and FTK are software that require for their execution computers with a large processing and storage capacity, so that the equipment used by the experts are not portable computers and the transfer from one place to another, which demands that the examination process is carried out in the computer laboratories of the judicial police. If the analyses were to be carried out in the judges' offices, the equipment could be damaged.**

**The above scenario highlights the material impossibility for its authority to participate directly in the analysis of the relevant computer data and the need to delegate the task to the computer experts of the Judicial Investigation Organism. In this sense, just as the judge "cannot see everything" and therefore needs the witnesses, so the judge cannot "know everything" and therefore needs the experts, as the Third Chamber of the Supreme Court of Justice has pointed out. For example, in Vote No. 2007-00747 (15:20 hrs. of 07/23/2007), where it held that "the jurisdictional organs cannot act themselves as experts (...) they are not allowed to usurp the practice of technical or scientific evidence".**

Now, in order to be an "expert witness" in criminal proceedings, the requirement of "qualification" is established, which is nothing more than having capacity or competence in the matter in question; it is required that he/she be a true expert and specialized in the matter. Consequently, the person who appears as an expert must demonstrate that he or she has a qualifying title, provided that the science, art or technique is regulated. If it is not regulated, "manifest competence" is required.

Unlike the investigator who performs a holistic work, making different correlations of tangible and intangible elements, the work performed by the expert witness is completely different. The expert focuses directly or primarily on the "physical evidence". In this sense, Marvin Salas Zúñiga (Salas et al. 2011. Manual de Ciencias Forenses. Heredia, vol. 1, p. 13), indicates that "the stages of the forensic science process are the same as those of the physical evidence". 13), indicates "the stages that physical evidence goes through, from the moment it is detected and collected at the crime scene, until it is presented to the Court, is to reach the hands of a specialist in Forensic Sciences, who must examine and analyze it, to provide scientific results that provide useful information about the case, which in turn, allows supporting or rejecting the hypothesis of investigation by the Police or the investigating body. These scientific results will be communicated in writing (expert report) and orally (trial attendance). This interpretation of the physical evidence within the context of the case by a forensic scientist makes it scientific evidence and, therefore, must have an inherent sense of certainty associated with its value.

In view of this situation, I respectfully request, in accordance with the provisions of Articles 1, 2 and 3 of Law 7425 of August 2, 1994, Law on Search, Seizure and Examination of Private Documents and Intervention of Communications, to authorize the search, examination and seizure of all digital or computer evidence located at the site of the raid, since it is preliminarily estimated that in this investigation the improper use of devices and computer systems that could have served as an end or as a means for the commission of the facts denounced is being investigated.

Among the useful and relevant digital evidence to be seized are: a) Office documents (Word, Excel, PDF, PowerPoint presentations, etc.); b) historical digital communications - not in real time - such as e-mails, SMS messages, Whatsapp, Fax; c) digital images such as photos or videos; d) databases and e) activity log files (LOGS), stored in any computer memory support device.





**Likewise, your Authority is requested that once the seizure of the digital or computer evidence has been ordered and executed by the competent authorities, it should be delivered and placed at the disposal of the professional technical personnel of the Computer Crimes Section of the Judicial Investigation Organism, so that they proceed - according to their protocols - to the preservation of the original evidence, the establishment and maintenance of the chain of custody, as well as the documentation of all the aspects of relevance according to the nature of such evidence, for the rendering of the corresponding expert opinions, according to articles 213 and 218 of the Criminal Procedural Code.**

**Finally, this delegation of the analysis of the information supports by the Information Technology Section of the Judicial Investigation Organism, with due respect to the chain of custody, will allow the enforcement of a constitutional right such as Prompt and Complying Justice, contained in Article 41 of the Political Constitution, as well as in article**

**8.1 of the American Convention on Human Rights, thus complying with the obligation of the bodies in charge of administering justice to process criminal cases with due diligence, based on the principle of probity, celerity, efficiency, continuity, objectivity, respect for the fundamental rights of the accused and, above all, establishing the obligation of the Public Prosecutor's Office to adapt the acts and techniques of investigation so that they are as agile as possible and less burdensome for the rights of the persons subject to criminal proceedings.**

This guide is the one that has been used when requesting the opening of evidence and many judges have shared the prosecutor's criteria and others have not; however, they always agree to the opening of evidence, but without delegating it to the officials of the Crime Section.

The Investigation Agency's Computer Systems Department. Once the judges order the opening, arrangements must be made with the corresponding section to provide a date to proceed with the opening of the evidence.

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