

Suffering that Defies Borders: Human Exploitation Under the United States-Mexico-Canada Agreement

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I chose this topic for three reasons: first, because I am a professor of criminal law and a defender of human rights, and I believe that the protection of the rights of children who are victims of any crime (especially one that violates their dignity) should concern us every day.¹ Secondly, this is a common problem among our countries: the US, Mexico, and Canada. That is, it is a North American problem. Thirdly, I am convinced that the United States-Mexico-Canada Agreement (USMCA) is a very powerful tool against crime.

Let me clarify: this is not just a free trade agreement; it is clearly a criminal law and human rights agreement. As we will see, the USMCA contains very important provisions, which have hardly been discussed, relating to fundamental movements such as preventing crime, implementing criminal investigation strategies within companies to prevent forced labor, combating corruption, investigating environmental crimes, protecting the dignity of workers, and designing and implementing criminal compliance programs not only in companies but also in state institutions.²

We are talking about the USMCA contemplating the foundations of what, I have no doubt, will be a common system of protection, security, and criminal justice for the three countries. And what does all this mean? It means that we are moving towards common standards for police action, the prosecution of crime, and the punishment of those responsible for serious human rights violations. I do not want to advance topics or conclusions but let us ask ourselves: Would any one of us say no to a joint effort between the three countries to prosecute child sex exploiters or to implement measures against organized crime that exports fentanyl to the United States, killing thousands of young people? Our problems are common and that is why I believe that solutions must also be common.

In 2018, the US, Mexico, and Canada signed the USMCA with the objective to eliminate barriers and open doors for commercial exchange.³ This was quite reasonable, as statistics show that the trade relationship between Mexico and the United States is the largest in the world.⁴ Mexico is the first

trading partner of the United States with our economies being fully linked.⁵ Furthermore, excluding Mexico City, the city with the most Mexicans in the world is Los Angeles, California.⁶ Canada is not far behind, as it is the third country with most Mexicans in the world, only after Mexico and USA.⁷

And what does all this have to do with human exploitation? In addition to the many provisions relating to trade between the three countries, the USMCA includes guiding principles of criminal policy, public safety, and justice.⁸ The most important of these principles is the prosecution and eradication of human trafficking, smuggling, and exploitation. In summary, the three axes of the fight against crime contemplated in the agreement are human trafficking, corruption, and environmental crimes.

What do these three types of crimes have in common and why were they included in the agreement? Let me venture an answer. These three types of crimes have three factors in common:

1. They are committed by organized crime.
2. They are committed by both individuals and corporations.
3. All three violate the fundamental interests of our societies concerning our financial system and the human right and dignity to a healthy environment.

To answer the question of why they were included in the agreement, it is very clear that these three criminal modalities are linked to trade and the exchange of products. For example, several companies have been accused of corrupting public officers to obtain contracts or win very expensive construction projects.⁹ The existence of the Foreign Corrupt Practices Act (FCPA) shows this corruption has been an issue and has an international scope, involving companies and organizations from all three countries. Consider the Canadian mining industry, American tobacco and medical equipment companies, or Mexican pharmaceutical companies as a few examples. These same companies are the ones that damage the environment by dumping pollutants into our rivers and seas or falsify their reports to the authorities.¹⁰

However, of the three types of crime, the one of greatest concern is the exploitation of the human person. Pollution, corruption, and exploitation can occur at any level, though I am talking about small, medium, and large companies that engage in the various forms of exploitation to which I referred to earlier. This exploitation was rightly detected by those who drafted the USMCA, and it has been forecasted that these crimes will not decrease but rather increase between 2025 and 2026. This increase is due to the World Cup which, in 2026, will be hosted precisely by the three countries that signed the agreement: the United States, Mexico and Canada.¹¹

This should not surprise anyone. During the 2022 World Cup in Qatar, not only was a network of labor exploitation exposed, one that victimized hundreds of workers who were hired for the construction of the soccer stadiums, but also security employees were subjected to slavery-like conditions while others died without returning to their country.¹²

Within the framework of the celebrations that will take place next year in North America, not only will the cases of labor exploitation increase, but shamefully, due to the high degree of impunity that exists in Mexico, the most serious cases of human exploitation will multiply.¹³ These cases include child sex tourism, the production and sale of child pornography, and the slavery and sexual exploitation of children.

I do not want to detail more here with what I am referring to. A little intuition is enough to understand what will happen next year among us and to the detriment of hundreds of sexually exploited children. How many people will travel to our countries in the context of a world cup for the most popular sport in the world, and how many thousands of them will want to consume children in our countries?

Let me better define human exploitation. According to the protocol against trafficking in persons derived from the Palermo Convention against organized crime, human exploitation is a very serious crime which affects the dignity of the victims and derives from human trafficking.¹⁴ Whoever exploits a person objectifies her or him, treating them as commodities that can be sold or exchanged.

So, what is human trafficking? Human trafficking is a crime that is committed through three elements: the recruitment of the victim, how the victim is recruited, and the purpose of the recruitment in exploiting the victim. Recruitment includes the actions of procuring a victim, which then leads to recruiting, transferring, transporting, retaining, delivering, receiving or harboring that victim. The way traffickers recruit victims includes several means such as violence, threats, deception, abuse of power, taking advantage of a vulnerability, or coercion.

As for the purpose of exploiting the victim, this is the element that has the closest relation to the issue we are addressing today. Traffickers have the aim of exploiting the victim for any of the following activities: slavery, servitude, sexual exploitation, sexual exploitation of children, forced labor or service, the use of children in criminal acts, the use of children as soldiers, pregnancy of a woman and the sale of the future child, forced marriage, removal of organs, and biomedical experimentation on human beings.¹⁵

Human exploitation is a consequence of human trafficking. In other words, we are dealing with two very serious crimes: the recruitment of the victim with the purpose of being exploited and the exploitation itself in any of the modalities I mentioned previously. And who are the most recurrent victims of these crimes? It all depends on the type of exploitation, but regardless, girls and women will always be at the top of the list. For example, international organizations such as UNICEF and ILO point out that girls are the main victims of child sex tourism.¹⁶ That is, they are offered by travel agencies as a product for consumption. And why do I mention this? Because this happens among the countries that signed the USMCA. Indeed, not only Mexican, but also American citizens, cross the border between San Diego and Tijuana (the most traveled border in the world), to engage in illegal sexual activities. The most known

place where this happens is known as “*las paraditas*” (the standing girls), which is where girls under 18 are exploited in Tijuana, Baja California.¹⁷

In December and January when it is very cold in Canada and the Northern part of the US, tourism hubs like Acapulco, Mazatlán, or Puerto Vallarta are very alluring for Canadian citizens who stay two or three months in apartments (owned or leased) to live with very young girls that are actually rented out by their parents with the intermediation of travel agencies.¹⁸ This is one of the most appalling forms of exploitation of the human person; the abuse of children is something we cannot allow.

Alongside this form of exploitation is an equally reprehensible one: child pornography. There are all kinds, whether it be real, simulated or elaborated with artificial intelligence. There is great demand for the sexual images of girls and boys. Fortunately, the FBI has set up highly specialized methodology to detect creators of child pornography who travel from one country to another.¹⁹

Due to time constraints, I can't list all the forms of human exploitation, but I will not fail to mention two more that directly affect children in our countries, which are the removal of organs and the exploitation of child soldiers.

We have discovered more and more cases of children deprived of their freedom through violence in having their organs illegally extracted. The most demanded organs are eye corneas and blood.²⁰ Unlike adults (who also illegally sell their blood to buy alcohol or drugs), children are forced to do so. With this, they are violated by the loss of blood or even of their eyesight.

Finally, another modality of great concern is the use of children as soldiers. Two types of recruitment tend to be used, depending on the geographical area. In Latin America, criminal organizations entice children with money, while at other times parents use them as “self-defense fighters,” meaning they equip them with weapons and basic training to serve as security guards in the community.²¹ In Africa, they are usually recruited through mass abductions from schools. The children are then forcibly sent to the front lines of battle between guerrillas and regular armies.²²

I will leave the rest of the modalities of exploitation for another occasion. Now that we have approached, in a very basic way, the phenomenon of trafficking in persons and human exploitation, I want to move on to the third part of this subject.

We should now address what I consider to be the appropriate way to face and solve our common challenges. I am referring to the challenges facing organized crime, the drug cartels, and the thousands of deaths from fentanyl in the United States of America, which clearly affect the children and youth of that great nation just as we in Mexico are affected by sexual exploitation and the death of children due to this modern slavery.²³²⁴ I believe that the USMCA will continue to be a free trade agreement. But I also believe that it will expand its horizons towards a trilateral agreement against organized crime with a focus

on protecting the human rights of the victims: the thousands of victims that you have in America because of fentanyl and the thousands of victims of sexual exploitation that we have in Mexico.

What I am proposing here and now is the creation of a common system for protection, security, and justice for North America. It means that, based on the USMCA, we draft a common criminal policy applicable to the three countries. The pillars would be the following:

1. Harmonized protection of the rights of victims with special attention to the children and youth of North America.
2. A common strategy on security and the fight against organized crime for North America.
3. The harmonization of criminal legislation to punish criminal organizations in the three countries.

But, is a common system of protection, security, and justice for North America possible? It is not easy, but it is viable. In fact, the three countries have taken significant steps in this area. All three countries have implemented comprehensive victim protection plans and are systematically fighting for their recovery.²⁵ This movement is because among USA, Canada, and Mexico, there is a common belief in the protection of human rights of people (with special attention to girls, boys, young people, and women) who are the main victims of human exploitation and consumption of fentanyl and other deadly drugs.²⁶ The three countries are also States Parties to various international treaties on combating organized crime and human trafficking. In fact, the State Department has invested millions of dollars to train Mexican authorities in this area for years.²⁷ Inspired by the principles of the adversarial system, the three countries have similar criminal procedural systems; we have models of corporate criminal liability active in all three countries and models of criminal compliance programs in place to enforce the law.²⁸

I firmly believe that, between us, there are more similarities than differences and that the USMCA can be the foundation for agreement, and later operation, of a common system of protection, security, and justice for North America. In this regard, the European experience can serve as a mirror for us; the origin of the European Union is the European Economic Community, which later evolved towards common policies against several crimes including corruption, money laundering and subsidy, and tax fraud.²⁹ It seems that our route is similar, as we also started with a trade agreement, which may now evolve into a broader union that integrates victim protection, security, and common justice. How can this harmonized model of criminal justice be configured? Here are just a couple of ideas to consider:

1. In the year 2026, the systematic review of the USMCA will take place.³⁰ The same year in which we will celebrate the World Cup. This is an excellent opportunity to include in the USMCA a legal-criminal annex and to lay the foundations for the common space of protection, security, and justice (PROJUS).

2. Project Justice (PROJUS) would be the section of the USMCA dedicated to establishing common strategies for the protection of crime victims, which would implement common strategies for public safety, crime prevention, investigation, and the administration of justice in our courts.
3. Our Senators could agree to structure tools to fight organized crime. Consider, for example, the design of the North American Crimes (NAC), the North American Police (NAP) and the North American Detention Order (NADO). These would be powerful instruments for joint action against crime.

The question of whether harmonized criminal justice is possible can only be answered if we face the challenge and try. However, there are encouraging facts that, I believe, tip the scales toward a positive answer. Agreements already exist among our nations to implement harmonized anti-crime policies. Just think of the Merida Initiative, which established fundamental pillars to prevent and eradicate corruption.³¹

This exchange of strategies against crime has been so important that, like the rest of Latin America, Mexico implemented an adversarial system with strong support and direction from the United States of America in a definitive manner and throughout the country.³² In sum, the time has come to design a common space for victim protection, security, and justice for the three countries.

The implementation of the system discussed in this article has some challenges that need to be addressed, however it is not possible to answer all of the questions raised by these challenges here. What does seem important is to outline some ideas to consider so that if someone takes up the challenge, he or she will also be aware of its consequences. These ideas are what I will address below:

1. Consider the following title: “Imagining a Common North American System of Protection, Security, and Justice for Mexico, The United States and Canada”. The first question is whether it is worth the time and effort to imagine such a system.
2. The second question is whether such a system is possible?
3. If it is possible, is such a system necessary?
4. What would it be useful for?
5. What would be the pillars on which such a system could be built for the three North American countries?
6. What problems would its construction face from the legal and operational dimensions?
7. Would the USMCA really serve as a basis or would it be necessary to think of a specific trilateral treaty on the matter?
8. What profiles of specialists should be part of its construction and how long would it take?
9. Does the current U.S. Presidency really mean a problem for joint work or, on the contrary, does it translate into an opportunity?

10. Canada, USA and Mexico have new leaders in their executive powers: can this help in the construction of the system?

Technical Questions

1. Can we construct common crimes with NAC with equal penalties for the three countries?
2. Which crimes would be the first to be unified out of these examples: human trafficking and smuggling, terrorism, drug and arms trafficking, money laundering, corruption, and environmental crimes?
3. What would be the pros and cons of creating a NAP that could cross borders between the three countries for the prosecution or execution of arrest warrants?
4. Can we think of a North American model of police training?
5. Can we unify our prosecutor training schemes?
6. What model of intelligence sharing for the fight against crime can we implement?
7. Would the design of a North American Prosecutor's Office be useful?
8. Does all this mean that we can think of a Model Penal Code for North America?

Operational Questions

1. What kind of political and financial support is required to create such a system?
2. What kind of leadership would be needed in North America?
3. What profile of Senators in the USA, Canada and Mexico would support this project?
4. Which institutions could finance the design of the system?
5. Could the 2026 revision of the USMCA play a role in promoting this system?

NOTES

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