

III ASSESSMENT OF THE IMPLEMENTATION OF POLICIES TO COMBAT TRAFFICKING IN COLOMBIA AND GUATEMALA



III Assessment of the implementation of policies to combat trafficking in Colombia and Guatemala Executive Summary

Year 2018

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Prepared by Corporación Espacios de Mujer, in Colombia, and ECPAT in Guatemala in
collaboration with the Global Alliance Against Traffic in Women - GAATW

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Project description

The Global Alliance Against Traffic in Women (GAATW) and its members have long shared the concern as to whether anti-trafficking initiatives are truly able to protect and promote the rights of trafficked persons. Evidence of this concern emerged in the Collateral Damage report which showed the systematic failure of anti-trafficking actions to protect the human rights of persons subjected to trafficking.¹ Likewise, Feeling Good about Feeling Bad² highlights the need to monitor and evaluate initiatives against human trafficking and include the participation of key stakeholders in a way that ensures accountability.

In this regard, it is crucial to properly evaluate anti-trafficking initiatives implemented by government entities. Throughout 2016 and 2017, GAATW supported the La Paz Foundation, the Corporación Espacios de Mujer, and ECPAT-Guatemala in carrying out an assessment of the implementation of anti-trafficking policies in Bolivia, Colombia, and Guatemala respectively.

To develop this Assessment, authorities analysed the specific responsibilities assigned to State institutions with regard to crime prevention, assistance to and protection of trafficked persons, and crime prosecution. This allowed them to identify

the major developments and most significant gaps in the implementation of the law.

In 2018, the Corporación Espacios de Mujer and ECPAT Guatemala re-evaluated anti-trafficking legislation in Colombia and Guatemala in order to identify the gap between what the legislation says and the actual services that are provided.

The assessments aim to inspire the government to guarantee the rights of trafficked persons through the efficient provision of services and assistance programs.

The Assessment is based on information provided by various State institutions that are responsible for implementing the legislation. The information collected has been analysed to better understand the reasons for this gap and to provide clear recommendations to the government to reduce it.

The final objective of these assessments is to inspire the government to strengthen public policies aimed at dealing with human trafficking and to guarantee the rights of trafficked persons through the efficient provision of services and assistance programs.

¹ Global Alliance Against Traffic in Women, COLLATERAL DAMAGE. The Impact of Anti-Trafficking Measures on Human Rights around the World, 2007 http://www.gaatw.org/Collateral%20Damage_Final/singl efile_CollateralDamagefinal.pdf

² Global Alliance Against Traffic in Women, Feeling good about feeling bad... A global review of evaluation in anti-trafficking initiative, 2010 http://www.gaatw.org/publications/GAATW_Global_Review.FeelingGood.AboutFeelingBad.pdf

Colombia

The *III Assessment of the implementation of policies to combat trafficking in Colombia 2017* was carried out by the Corporación Espacios de Mujer, in coordination with Corporación Tamar. The information has been checked against data handled by the Latin American Observatory on Migrant Smuggling and Human Trafficking (ObservaLATrata) Colombian Chapter and the Colombian Alliance of Civil Society Organisations (CSOs) against human trafficking.

The document analyses the data and evaluates the progress and challenges in implementing the 2016-2018 national strategy for the fight against human trafficking during 2017.

2018 is a crucial year for the fight against trafficking in Colombia since a new national strategy is expected to be developed in order to guide the efforts of the State during the coming years.

In this analysis, three strategic cornerstones³ have been considered: crime prevention, protection and assistance to trafficked persons, and the prosecution of criminals. The Assessment also presents an analysis of

the budget which each involved sector has assigned specifically to the fight against trafficking.

Since 2005, Colombia has been developing an important regulatory framework on trafficking. Without a doubt, the regulation of Law no. 985 of 2005 by Decree 1069 of 2014 was an important step in the institutionalisation of the fight against this crime. This was further supported through the adoption of Decree 1036 of 2016, which defines the national strategy during the two-year period of 2016-2018. In recent years, the incorporation of Ministries that have explicit competencies in this matter into the Interinstitutional Committee of the Fight Against Human Trafficking has been positively highlighted.

In the two previous assessments, it was evident that the State prioritised strengthening the regulatory aspects of human trafficking as a crime; however, the lack of a specific budget and specialised human resources were obstacles preventing the full protection of the rights of trafficked persons.

This III Assessment supports the adoption of initiatives including sectorial and inter-disciplinary protocols, rules, and regulations that seek to address the issue of human trafficking in state policy.

³ The strategy is organised around six *approaches (Rights, Gender, Generational/Life Cycle, Differential, Territorial and Fight Against Crime)*, which constitute the pillars, and seven cornerstones (*Prevention, Assistance and Protection, Research and Prosecution, Generation and Knowledge Management, International Cooperation, Monitoring and Evaluation, and Coordination and Sustainability*) that draw up the lines of action. Each approach intersects with the others so that the interventions defined in each axis must be made with respect to the others.

Findings and recommendations

The State is aware of the existence and seriousness of human trafficking. Civil servants are more committed, better coordinated, and the crime is approached from a civil insecurity point of view. The citizens monitor public administration and local governments are aware and committed to finding effective solutions.

The cornerstone that continues to yield the most activity is prevention, with efforts and workshops focused on training and awareness. The protection and assistance of trafficked persons continues to generate the least amount of state action and, regarding prosecution of the crime, there are still discrepancies among the various registries.

The budget that the Colombian State has allocated to this fight is insufficient with regard to the commitment it has made. Despite requirements outlined in the Transparency Act, there remains to be limited access to the budget and a low level of accountability relating to the topic. Official records indicate a perception that trafficking occurs less than other crimes; this has resulted in annual decreases in resources that are allocated to combat trafficking and to care for the people affected.

The 2017 Trafficking in Persons (TIP) Report stated that the Colombian government opened several cases of alleged official complicity as reported by the Public Prosecutor's office. However, it does not mention open cases against officials for complicity in the crime. We would also like to emphasise that the absence of disciplinary proceedings against the civil service does not

automatically imply that everything is being implemented and accomplished as it should.

We should point out that, in general, human trafficking occurs in other sectors of labour and activities beyond sex work. Therefore, organisations dedicated to preventing or prosecuting this crime or assisting trafficked persons should broaden the scope of their activities.

It is our duty as a civil society to openly and transparently point out to the State that it is obliged to protect its citizens from the problem and become involved in the solution.

This III Assessment confirms the recommendations already suggested in previous years and restates them with the expectation that competent organisations will take the necessary steps to implement them.

PREVENTION	
Findings	Recommendations
<p>The main actions are training and campaigns. However, there is no tangible data on the number and type of population that benefits from such activities. Numbers and estimates have been reported that lack a clear foundation and provide no details about the tools used to measure the level of influence or the impact.</p>	<p>Establish tools with qualitative indicators that allow an effective assessment of the impact of public policy around this issue.</p>
PROTECTION OF AND ASSISTANCE TO TRAFFICKED PERSONS	
Findings	Recommendations
<p>The work of regional committees in building the path for immediate and measured assistance to trafficked persons is significant. Regional committees have made an articulated and organised effort possible among relevant entities, in addition to providing appropriate care to affected individuals.</p> <p>A tangible example is the development of the "Protocol regarding the care of victims of human trafficking" and the "Interdisciplinary route to identify and care for victims" which aims to avoid re-victimisation. These protocols were provided on behalf of the District Committee for the Fight Against Human Trafficking in Bogota.</p> <p>However, it is not clear whether the care routes implemented are <i>flexible and adapted</i> to the true needs of each individual.</p> <p>Taking into account that the lack of a dignified job is one of the primary factors behind the crime of trafficking, the availability of work and human development training is extremely inadequate.</p> <p>Many of the consulted entities are assisted by international agencies (UNODC, Red Cross), which <i>outsource support services</i> to NGOs present in the territories.</p>	<p>Improve mechanisms to identify persons subject to trafficking.</p> <p>Strengthen coordination among committees to provide effective responses to trafficked persons.</p> <p>Establish a follow-up plan for actions taken to assist and protect trafficked persons, in order to ensure their full recovery and the restoration of their rights.</p> <p>Have as a principle "action without harm": the protection and assistance routes have several negative results and the State cannot allow re-victimisation by its institutions and officials.</p> <p>Increase specialised services available to trafficked persons, in collaboration with civil society.</p>

PERSECUTION OF THE CRIME	
Findings	Recommendations
<p>The prosecution, investigation and sentencing of the crime of trafficking are great challenges that operators in the judicial sector must face during the fight against the high levels of impunity in Colombia.</p> <p>A positive element is the training of specialised public prosecutors to classify and prosecute the crime correctly; although the number of these prosecutors is declining annually.</p> <p>No immigration officer has been trained in human trafficking even though the institution speaks about the thousands of irregular migrants who pass through the country and who can easily become trafficked.</p> <p>The number of criminal reports/complaints filed is almost twice the number of reported trafficked persons; however, there is no single registration system for both the police and prosecutors.</p>	<p>Strengthen training for the civil service of the judicial sector, public prosecution, and migration office, in terms of both identifying and prosecuting crime, and protecting and guaranteeing human rights.</p> <p>Improve data collection and disaggregation, starting with finalising and implementing the national system of information about trafficking.</p> <p>Have as a principle "action without harm": there are several negative results and the State cannot allow re-victimisation by institutions and officials.</p>
BUDGET	
Findings	Recommendations
<p>Key governmental stakeholders in the fight against crime and impunity do not have a stable budget allowing them to plan activities and/or fulfil the responsibilities assigned to them at the national level.</p> <p>There are fewer and fewer entities with a specific or clear budget defined for fighting trafficking.</p>	<p>Fund the national strategy against trafficking.</p> <p>Submit a specific budget to combat trafficking allowing civil society to assess the implementation of the strategy and analyse the efficiency of the State in public spending.</p> <p>Increase specialised services through specifically funding national and local governments.</p>

Guatemala

ECPAT/Guatemala conducts periodical analyses on the situation of human trafficking in the country particularly focusing on the protection and provision of care to trafficked persons.

During 2017, ECPAT/Guatemala conducted several investigations that revealed absences in the State's actions to address and deal with the structural, social, economic, political and cultural factors that make people vulnerable to trafficking.

To develop the III Assessment, ECPAT/Guatemala analysed reports prepared by entities and social stakeholders that examined legal frameworks, legislative implementation, and the situation concerning human trafficking.

Legislative progress is evident through the existence of an Act against Sexual Violence, Exploitation and Human Trafficking; a Public Policy against Human Trafficking and the Comprehensive Protection of Victims 2014-2024; an Interinstitutional Coordination Protocol for the Care of Victims of Human Trafficking; and a Special Public Prosecutor's Office against Human Trafficking. The State has also ratified international documents concerning the protection of children and adolescents.

The Public Prosecutor's Office Against Human Trafficking has been strengthened with the approval of instructions 03 and 04 (2017) to enhance trafficked persons care and support effective research. Instruction 03 contains the Mechanism for assistance,

coordination and intervention for the assistance to trafficked persons and the strategical criminal prosecution of human trafficking. Instruction 04 contains the guidelines for comprehensive assistance to trafficked persons.

Despite the above, there are still challenges in achieving an effective approach to preventing the crime of human trafficking and ensuring comprehensive protection of trafficked persons.

Factors such as the increase in poverty rates, marginalisation, discrimination, unequal opportunities, deficiencies in education, health, access to justice, and the dysfunction or inefficiency of State agencies increase the populations risk to becoming trafficked.

During 2017 and the first half of 2018, the political situation of the country, the financial crisis, and corruption have prevented the country from facing the structural causes, addressing the institutional deficiencies, and implementing the specialised action protocols towards trafficked persons.

In general, it can be said that the State of Guatemala has barely made any progress in meeting the challenges identified in previous assessments.

Findings and recommendations

The State has not addressed either the structural causes or the social, economic, political, and cultural factors that make people vulnerable to trafficking. Examples of these factors include: inequality, poverty, lack of opportunities, lack of access to education and to dignified employment, the patriarchal culture, the objectification of women, unequal power relations, impunity, and corruption.

There is an evident lack of qualified staff and financial resources to ensure personalised assistance in developing plans for a dignified life.

There is a worrying lack of commitment and responsibility in taking practical budgetary decisions so that institutions can guarantee specialised quality services. There is an evident lack of qualified staff and financial resources to ensure personalised assistance in developing plans for a dignified life. Although a few specialised shelters for trafficked persons exist, they present serious deficiencies in the care they provide. The shelters do not implement models of specialised care for crises, there are delays in biopsychosocial assessments, and there are long periods of institutionalisation.

Although the State speaks of a victim protection system, it is essentially non-existent since the necessary coordination among various institutions does not exist. There is also a governmental disinterest in implementing the Public Policy against Human Trafficking, the Interinstitutional

Coordination Protocol for the Care of Victims of Human Trafficking, and the Act against Sexual Violence, Exploitation and Human Trafficking.

The Interinstitutional Coordination Protocol for the Care of Victims of Human Trafficking is not a binding document; it only calls on all public institutions and civil society organisations to disclose and implement these provisions.

There is a governmental disinterest in implementing the policies against human trafficking and protecting the trafficked persons.

The Protocol is not well known by institutions whose mandate is to adopt a comprehensive approach to the crime of human trafficking. These same entities are therefore also unfamiliar with the strategies developed to achieve the protocols institutionalisation and use.

GENERAL	
Findings	Recommendations
Some purposes underlying the crime of human trafficking remains unclassified. Examples include: forced work or services, any kind of exploitation of labour, begging, any form of slavery, servitude, the selling of persons, the recruitment of minors by organised criminal groups, forced pregnancy, and servile or forced marriage.	The purposes behind the crime of trafficking must be classified as the precise description of actions or omissions considered a crime allows for a penalty or sanction to be assigned. It is also necessary that trafficked persons have access to compensation and payment for damages and injuries.
INTERINSTITUTIONAL COMMITTEE AGAINST HUMAN TRAFFICKING	
Findings	Recommendations
The Policy Against Human Trafficking has no National Plan of Action and therefore no one is responsible for executing plans, projects, and actions, or for setting deadlines and indicators.	The Interinstitutional Committee Against Human Trafficking is prioritising developing a Plan of Action for the Public Policy Against Human Trafficking and Victim Protection 2014-2024. This plan includes designating institutions responsible for executing strategic actions and meeting goals, as well as appointing and establishing the budget required to implement the policy and make it sustainable over time.
THE MINISTRY AGAINST SEXUAL VIOLENCE, EXPLOITATION, AND HUMAN TRAFFICKING	
Findings	Recommendations
An information and registration system that can classify and quantify cases of trafficking, including trends and behaviour, has not been developed. This registry would help guide the decisions and actions aimed at eradicating this problem.	The budget should include the necessary funds to implement the information and registration system for cases of trafficking and to make it sustainable over time. It should also serve as a guiding principle for decision making and for creating comprehensive care and protection services for trafficked persons. At minimum, it should contain data broken down by sex, gender identity, ethnicity, place of origin/residence, and age. This is necessary to enable classification, quantification, and an estimation of trafficking cases, as well as determining tendencies and behaviours, which can be used to guide future actions aimed at eradicating human trafficking.

<p>There is no social communication system, although it is established in the Public Policy Against Human Trafficking and Comprehensive Victim Protection 2014-2024.</p>	<p>The ministry should manage the resources necessary to design and implement a communication strategy. This strategy should then be shared with government agencies and civil society organisations that comprise the Interinstitutional Committee Against Human Trafficking in order to unify efforts and avoid the duplication of messages.</p>
<p>The ministry has not created a fund to compensate trafficked persons, as outlined by the Law against Sexual Violence, Exploitation and Human Trafficking.</p>	<p>The ministry needs to manage the necessary resources to create this fund.</p>
<p>THE MINISTRY OF SOCIAL WELFARE OF THE PRESIDENCY OF THE REPUBLIC</p>	
<p>Findings</p>	<p>Recommendations</p>
<p>Care for trafficked persons continues to be looked after by civil society organisations, given the inability of the Ministry of Social Welfare of the Presidency of the Republic. To date, the ministry has not established any protocols for action or comprehensive care and protection for trafficked persons.</p>	<p>As a matter of urgency, the Ministry of Social Welfare of the Presidency of the Republic must develop and implement a protocol focused on gender and generational rights, with cultural relevance, for the specialised care and protection of trafficked persons. We recommend that the protocol provide training and that staff be hired based on their specialty and experience, as well as their ability to ensure efficient and effective care.</p>



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