



Critical Assessment of the Implementation of Anti-Trafficking Policy in Bolivia, Colombia and Guatemala

Executive Summary



Global Alliance Against Traffic in Women

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Introduction

The project ‘Critical Assessment of the Implementation of Anti-Trafficking Policy in Bolivia, Colombia and Guatemala’ is included within the thematic area of accountability of the Global Alliance Against Traffic in Women (GAATW) and has been developed by Fundación La Paz in Bolivia, Corporación Espacios de Mujer in Colombia and ECPAT in Guatemala, with the support of the International Secretariat of GAATW and Capital humano y social - Alternativo, Peruvian NGO specialising in sensitising and informing society about human trafficking from the perspective of protecting and promoting human rights.

The main objectives of Critical Assessment are to identify the gaps that exist between what the legislation against human trafficking says and the reality of services provided by government agencies and to provide clear recommendations to the government for improvement.

GAATW is a network of non-governmental organisations from the Americas, Africa, Asia and Europe that understands the phenomenon of human trafficking as intrinsically rooted in the context of migration. Furthermore, GAATW promotes and defends the human rights of migrants and their families, against the growing threat of a globalised labour market and advocates for safety conditions for migrant workers in the migration process and in all employment sectors in which slavery-like conditions exist.

Fundación La Paz is a Bolivian private non-profit organisation that contributes to the formation and strengthening of spaces for reflection and participation to allow the development of public policy and advocacy to claim and assert the rights of children, young people and women in excluded sectors. At the same time, it promotes alternative spaces in the community for protection, promotion, and comprehensive development and social action of children and young people to exercise their rights.

Corporación Espacios de Mujer is an NGO working for the prevention of trafficking in persons, with attention to women in prostitution, Colombian migrants returning to their home country, and victims and survivors of human trafficking. It implements processes that promote and empower, through the lens of gender and protection of human rights, so that the target group can restore and claim their rights.

ECPAT Guatemala is a non-governmental non-profit organisation, born to contribute to the prevention, combating, and punishment of human trafficking for any purposes and the prevention of different forms of violence, including sexual and domestic violence and armed conflict. It is part of the network ECPAT International which operates globally to help children and adolescents live lives free from violence and abuse and ensure that their rights are respected.



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GAATW and its members have questioned whether anti-trafficking initiatives are truly able to protect and promote the rights of victims: the report ‘Collateral Damage’¹ demonstrates the systematic failure of anti-trafficking measures to protect the human rights of trafficked persons. At the same time, the report ‘Feeling Good about Feeling Bad’² stresses the need to monitor and evaluate initiatives against trafficking and include the participation of key stakeholders, so that there is mutual accountability. In this respect, it is considered crucial to correctly assess the anti-trafficking initiatives implemented by governmental institutions.

To this end, an analysis was carried out in Bolivia, Colombia and Guatemala on the specific responsibilities of public institutions to assist and protect victims and prosecute traffickers, which allows for the identification of the main successes and gaps in the implementation of anti-trafficking legislation in the three countries.

To perform the analysis, the project used as its main source of information the data submitted by public institutions responsible for the implementation of anti-trafficking measures in each country, according to the national law and according to their respective laws on transparency and access to information. Secondary and complementary information was obtained from various national and international reports and other information available online and through other sources.

This Assessment is intended to serve as an **advocacy document** to use both on a national and regional level, for the **development or improvement of laws, policies and programmes** designated to assist and protect victims and survivors of human trafficking.

Since the design, implementation and evaluation of the public policies are the responsibility of public authorities and civil society, each national assessment provides tools for analysis (from the perspective of the latter) and formulation of anti-trafficking policy.

This project is also an opportunity for governments to evaluate their respective policies in order to improve their implementation and serve the needs of the people who have been trafficked.

¹ http://www.gaatw.org/Collateral%20Damage_Final/singlefile_CollateralDamagefinal.pdf

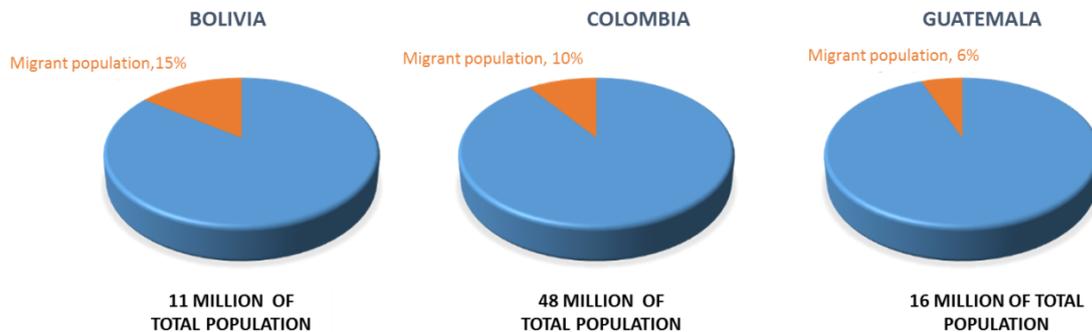
² http://www.gaatw.org/publications/GAATW_Global_Review.FeelingGood.AboutFeelingBad.pdf



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Overview



Bolivia has approximately 1.6 million emigrants, meaning that one in every ten Bolivians is a migrant. 47.6% of this population are women.

In terms of international trafficking, Bolivia is mainly a country of origin and transit. However, it is also a destination country for women from Argentina, Paraguay, Brazil, Chile and Colombia for sexual exploitation. Internal trafficking of children has been detected for sexual exploitation, domestic servitude and forced labour in mining and agricultural sectors.

The specific crime of human trafficking was established in the Bolivian Penal Code in 1996. Law No. 3325 against trafficking in persons, adopted in 2006, was replaced by *Law No. 263 - Comprehensive Law against trafficking in persons and smuggling of migrants and related crimes* - drafted with the participation of civil society and implemented since 2012. It is necessary to highlight that while the Penal Code defines and classifies in a differentiated manner the crimes of trafficking and smuggling, they are used under the law as if they were a single crime.

Law No. 263 responds to the international standards established in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and incorporates fourteen concrete situations as purposes of trafficking. A notable aspect of this law, unlike the laws in Colombia and Guatemala, is that it defines the concept of exploitation in its Article 6.³

In April 2015, the National Plan to Combat Trafficking in Persons and Smuggling of Migrants 2015 - 2019 was approved. This Plan oversees the implementation of public policies adopted by the different institutions that compose the Plurinational Council to Combat Trafficking in Persons and Smuggling of Migrants. It is important to note that the present Assessment has been conducted during the first phase of the implementation of this plan, which is focused on the development and adjustment of operational tools of intervention.

³ Article 6.2 Exploitation: The economic or other profit through the forced participation of another person in: acts of prostitution, sexual and/or labour exploitation, worst forms of child labour, forms of debt bondage and others, forced labour, illegal extraction and sale of fluids, tissues, cells or other organs of the human being.



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Colombia has approximately 4.7 million nationals living abroad: one in every ten people. Given that the population is approximately 48 million inhabitants, it is the country with the highest number of migrants in Latin America.

It is a country of origin, transit and destination for people trafficked for sexual and labour exploitation. Its geographical location makes it a transit country for victims coming from other South American countries and Africa, on the way to Europe and the United States.

The crime of human trafficking was established in Colombia in 2002 and *Law 985* - through which measures against trafficking in persons and standards for care and protection of victims were adopted - was passed in 2005. Colombian legislation also complies with international standards, although in this case it is worth mentioning that, to define a situation as human trafficking, the consent of the victim is irrelevant. That law created the Interinstitutional Committee to Combat Trafficking in Persons which functions as the advisory body and coordinator for anti-trafficking in Colombia.

In June 2016, during the preparation of this report and two years after it was developed, the National Strategy to Combat Trafficking in Colombia was approved. For the first time, various strategies for the prevention of trafficking in the context of armed conflict were specifically introduced.

In **Guatemala** the migrant population is one million or 5.86% of the total population. This country experiences the common causes of migration in Central America: political instability, natural disasters and lack of economic opportunities.

It is a country of origin, transit and destination for people trafficked for sexual exploitation and forced labour. Because of its geographical position, the country plays a key role as a door to the migration route from Mexico to the United States and, as with other countries in the region, trafficking occurs primarily in border areas.

Guatemala has a specific law against human trafficking since 2009, the *Law against sexual violence, exploitation and trafficking in persons*, which was drafted in collaboration with civil society organisations. This law complies with the international standards of the Palermo Protocol, but unlike it, in order to prosecute the crime it is sufficient to prove the action of recruitment, transportation, transfer, and harbouring or receipt of persons for exploitation. It is important to note that, like in Colombian legislation, consent of the victim is considered irrelevant.

One of the principle limitations identified in Guatemala's legislation is that in the Penal Code there is no definition of the following types of trafficking:

- forced labour or services,
- any form of labour exploitation,
- (forced) begging,
- any form of slavery,



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- servitude,
- sale of persons,
- forced recruitment of minors for criminal organisations,
- forced pregnancy, and
- forced or servile marriage.

Under this law, the Secretariat against Sexual Violence, Exploitation and Trafficking (SVET) was created. SVET is responsible for overseeing and complying with the law and policies and plans related to it, as well as coordinating the actions of the different state agencies responsible for the implementation of the law.

With regard to the concepts of forced labour, labour exploitation or any form of slavery and servitude, international agreements do not give a clear definition, allowing for a legal vacuum in national legislation. However, Law 263 in Bolivia defines not only the concept of exploitation but also the abuse of a position of vulnerability, exploitation, servitude, debt bondage, servile marriage, illegal guardianship and adoption, forced labour, threat, sex tourism and forced begging.

Gaps in implementation and recommendations

States are directly responsible for combating human trafficking and protecting and assisting victims, so they must assume this responsibility to fulfil their mandates efficiently without relying on civil society and aid organisations. However, in the current framework it is obvious that civil social organisations play a fundamental role in the fight against trafficking and should be recognised by states as allies and partners.

Based on the analysis of the information collected and according to the gaps identified between the implementation of anti-trafficking legislation and the actual services provided, governments should fulfil the following specific recommendations in order to improve the implementation of anti-trafficking laws and policies.

The concept of human trafficking and its classification as a crime

After analysing the information received by the institutions involved in the implementation of anti-trafficking laws, we can say that the concept of human trafficking is not clear for all parties responsible for implementing the laws. In the case of Bolivia, all of the regulatory instruments treat trafficking in persons and the smuggling of migrants as if they were a single crime. This causes confusion and makes impossible to know the real magnitude of human trafficking.

To improve the effectiveness and efficiency of the State's response, **it is fundamental to differentiate the concept of human trafficking from other crimes, classify it correctly and address it separately.**



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In line with this confusion, we can affirm that trafficking in persons is an invisible crime, not only to citizens but also to administrative, law enforcement, and judicial authorities. This leads to victims not receiving proper attention. This invisibility is caused by three main factors:

- Lack of information and knowledge among the authorities about the reality of trafficking in persons.
- Normalisation of exploitation within certain traditional practices, such as *padrinazgo*.
- Social stigma and prejudice about the experiences of the victims of this crime.

Furthermore, the frequent change of government officials in key positions affects negatively the professional implementation of anti-trafficking measures.

To remedy this, countries should develop **regular training and qualification courses for civil servants responsible for the implementation of anti-trafficking measures and assistance to victims**. These training courses will lead to better understanding of crime, respect for the human rights of trafficked persons and prevent re-victimisation.

Structural causes of human trafficking

The National Plan of Bolivia identifies structural factors that increase the risk of trafficking: poverty that disproportionately affects women, girls and adolescents, conditions of inequality, irregular migration, family disintegration and domestic violence (National Plan to Combat Trafficking in Persons and Smuggling of Migrants, 2015, p. 20 and 21). However, none of the analysed policies addresses these structural causes or the social, economic, political, or cultural factors that make people vulnerable to trafficking. It is therefore of paramount importance **to focus on addressing the causes that exacerbate the vulnerability to human trafficking and implement economic and social measures that can decrease it**.

Public information about human trafficking

There is a notable lack of clear and systematic data collection on human trafficking. In Colombia, for example, trafficking is not specifically distinguished from broader issues like gender-based violence or sexual violence against children and adolescents. In Guatemala the data collection system does not generate disaggregated data based on sex, age, or location of origin, which affects the development of effective policies.

This affects the reliability and relevance of official information and hinders the creation of appropriate evidence-based plans and policies. In order to strengthen information gathering and guarantee quality, it is necessary **to promote a coordinated and continuous cooperation between government and non-government stakeholders**.

During the information gathering phase in Bolivia, there were severe restrictions on the access to public information in general and human trafficking in particular. The majority of the institutions provided insufficient and inaccurate information and sometimes unrelated to the areas of consultation. Several institutions required more than ten telephone calls or visits to obtain the requested information. The Ministry of Justice and the Ministry of Foreign



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Affairs refused to provide additional information for the content of the report from the *Plurinational Council Against Trafficking in Persons and Smuggling of migrants*⁴ (CPCTTP in Spanish) 2015, a document that in several parts presents information in a poor, imprecise and incorrect ways.

In Colombia, most of the requests were answered promptly and exhaustively. However, a lot of confusion on the subject was identified.

In Guatemala, most of the institutions responded to the information request, although some of them very succinctly. It is worth mentioning that the responses had no indication of gender or age of the victims, making it necessary to conduct direct interviews with victims and gather information from other sources.

There were huge barriers to obtaining the information about the allocated budget for anti-trafficking work. This was a challenge in all three analysed countries. The information available on the websites or government reports was insufficient and unsubstantial. In most cases there were very few details and those given were nothing more than general data.

Therefore, governments have an urgent task to **implement the laws on transparency and access to information, in order to guarantee citizens' access to public information, so that they can make proactive contributions to the design and implementation of policies.** The responsible institutions have to adjust and regularly update their record and data systems to include demographic information about victims of trafficking.

Participation of the actors not included in the National Plan

In Bolivia, the collection of information from different entities involved in the fight against human trafficking pointed to the fact that some of them should be incorporated in the Annual Operating Plan (AOP) of CPCTTP 2015: without be part of it, they had developed relevant actions that contributed to the implementation of policies and programmes directed to the protection of victims and the prosecution and punishment of the crime. Noteworthy is the Directorate General of Migration (DIGEMIG) dependent on the Minister of Interior, which was the only entity that provided comprehensive and adequate information about their work in relation to combating trafficking in persons and smuggling of migrants.

In the case of Colombia, taking into account the importance of the exploitation that occurs in the tourist sector, it would be advisable that the Ministry of Trade, Tourism and Industry became an effective member of the *Interinstitutional Committee to Combat Trafficking in Persons*⁵. The Ministry of Transport and Communications could also be given responsibilities to identify and assist victims of trafficking and prevent the crime at border points.

⁴ It is the highest body of coordination which formulates, adopts and implements the Plurinational Policy to Combat Trafficking in Persons, Smuggling and Related Crimes.

⁵ The Interinstitutional Committee to Combat Trafficking in Persons is a combined effort of the National Government which coordinates the actions and developments of the state in the National Strategy to Combat Trafficking in Persons.



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Meanwhile, in Guatemala it is necessary to include the governmental institutions that are responsible for the implementation of activities established by the Public Policy against Trafficking in Persons and Comprehensive Protection of Victims.

ASSISTANCE AND PROTECTION

In order to achieve real progress with regard to the reintegration of victims of trafficking, **it is necessary to develop a comprehensive approach based on respect and recognition of their human rights and individual needs.** These can range from psychological recovery and other basic services to access to justice and remedies.

In Guatemala there is a specialised assistance protocol, however, on a practical level, in all three countries system of assistance and protection is not efficient since there is no link between the services that different institutions offer. In the same way, there are no specialised models of care and there are insufficient safe spaces and shelters for victims of human trafficking where they can receive adequate care.

Protection measures should be concerned primarily with victims' rights and should leave out strictly criminal matters. In this respect **it is important that the powers and responsibilities of different state actors are clearly articulated and established.** A positive aspect of the Annual Operating Plan 2015 of Bolivia is that it provides for the development of a national strategy to protect victims of trafficking by the Ministry of Justice, however, this has not yet been created.

Lack of employment, and therefore income, is one of the main causes of trafficking. Given the importance of this factor, there is a noticeable the lack of coordination between employment and training services and care for victims. In the case of Bolivia there is no referral of trafficking victims to the Plurinational Employment Services and in Colombia, there are neither education nor employment programmes that can benefit the reintegration of victims of trafficking.

To guarantee the rights of trafficked persons to comprehensive and specialised assistance and protection, enabling them to overcome the trauma and rebuild their lives, it is necessary to (1) strengthen the communication and coordination among the different state sectors and (2) allocate the human, technical and financial resources to assist victims and survivors with efficiency and quality.

CRIME AND JUDICIAL PROSECUTION

In Colombia a positive development is the creation, within the national police, of a research group on sex crimes and human trafficking and the designation from the Attorney General of ten special prosecutors to conduct investigations related to internal trafficking, who will join the 15 prosecutors composing the Joint Group for Combating Trafficking in Persons and Related Crimes created by the same agency in 2014.



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The Trafficking in Persons (TIP) Report of the US Department of State affirmed that in 2015 Colombia improved its efforts to combat trafficking internally and externally. However, based on the information obtained in this Assessment it can be said that these efforts are still insufficient and that the impunity for this crime is alarming.

In Bolivia too there are an insufficient number of police officers and prosecutors assigned to trafficking investigations, causing a delay in the administration of justice. This affects the right of the victims and their families to access prompt and effective justice.

In the case of Guatemala, the creation of a Special Prosecutor for Trafficking in Persons was an advance in terms of prosecution of the crime, but the centralisation of the services and the lack of specialised personnel in the separate prosecutor's offices contributed to inadequate investigations and put the burden of proof on the victims. The lack of guidelines related to the criminal investigation of all forms of trafficking, as well as the lack of an effective referral system for victims and survivors, cause serious impacts in terms of re-victimisation and contribute to the inefficient prosecution of the crime.

Other problems were evident too, such as lack of knowledge about human trafficking by the responsible personnel, lack of institutional capacities to identify victims and difficulties in applying the correct classification of the crime, which result in weak investigation and poor prosecution.

In this regard, in 2015 Bolivia planned for the elaboration of Guidelines for the prosecution of the crime of trafficking in persons; however, this has not yet been created.

Another positive development in Bolivia is the Integrated Management of Public Prosecutions in each Departmental Prosecution System promoted by the Ministry of Justice. This system allows for the monitoring and control of cases of trafficking, ensuring an effective investigative process. It is noteworthy that this result was not planned in the POA of CPCTTP in 2015, and instead of the planned 45 agency operatives for the identification of potential victims of trafficking, only 18 were operational as according to the CPCTTP 2015 report.

Additionally, although national laws provide proposals to strengthen the process of investigation and prosecution, they usually do not materialise, often due to lack of budget allocation. Added to this, programmes and laws still suffer from serious gaps in resources to make diligent and effective investigations.

Undoubtedly, the investigation, prosecution and punishment of the crime of trafficking require states to **allocate sufficient budgets for specialised human and technical resources to ensure an effective response in the investigation and prosecution of trafficking.** Similarly, it is necessary that **the staff** responsible for the identification, investigation and prosecution of the crime receive regular and efficient training.



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ALLOCATION OF RESOURCES AND BUDGET

In all three countries there was great difficulty to access the information about the budgetary resources allocated for anti-trafficking work of each institution. Overall, the institutions responsible for the implementation of anti-trafficking laws do not have a clear and specific budget to do so.

In Colombia only the Ministry of the Interior and the Ministry of Foreign Affairs had a specific budget in 2015 of COP 2,109,332,683 (711,802 USD) and COP 200 million (59,441 USD) respectively. In 2016, the Colombian budget designated to prevent, assist, protect and prosecute human trafficking is COP 2,193,705,990 (740,274 USD), or 0.001% of the total state budget.

In Guatemala no specific financial resources have been designated either, despite efforts from civil society organisations and international cooperation. In fact, in the Public Policy against the Trafficking in Persons there is no specific budget to develop the actions established in it, and so most of the companies have not provided this information, indicating that funds are not allocated directly. Only two institutions gave information about the specific budgets assigned: the Ombudsman of Victims of Trafficking, Q 117,400 (15,315 USD) in 2015 and the Secretariat against Sexual Violence, Exploitation and Trafficking, whose budget in 2015 was Q 18,000,000 (2,348,210 USD).

It is important to note that one of the main challenges identified in Guatemala refers precisely to the compensation fund for victims of crime, which is established in the law but has no corresponding budget.

In Bolivia, the amount of Bs. 15,057 (2,130 USD) designated for the fight against both trafficking in persons and smuggling of migrants, represents 0.03% of the total 2016 budget of the state, demonstrating in budgetary terms that the state practically does not allocate sufficient funds for combating trafficking and the implementation of public policy.

In all three countries, the Assessment found that many actions defined in policy documents are not undertaken or carried out due to the lack of available budget, or to insufficient resources to meet the objectives set out in policy documents. **It is therefore necessary to define the issue of trafficking in persons within the competences of each institution responsible for prevention, assistance or prosecution and allocate sufficient budget so that they can provide effective and specialised services.**

