

# Stepping Stones

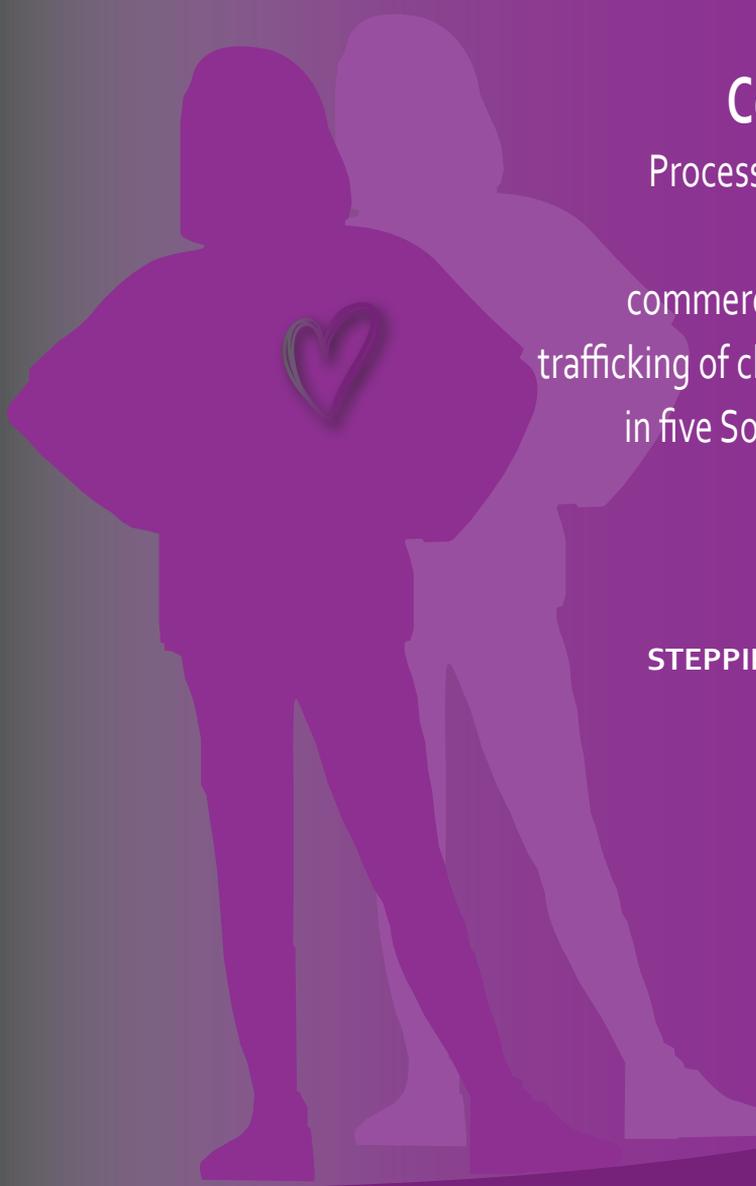
## Comparative Study

Processes for national policies,  
planning and laws on  
commercial sexual violence and  
trafficking of children and adolescents  
in five South American countries

**BOLIVIA 2015**





The image features a purple gradient background. On the left side, there are two silhouettes of people. The front silhouette is a darker shade of purple and has a white heart shape on its chest. The second silhouette is a lighter shade of purple and is positioned slightly behind and to the right of the first. The overall composition is minimalist and symbolic.

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**STEPPING STONES PROGRAMS**

## CREDITS

**ICCO Cooperation / AIDS FONDS  
Stepping Stones Program**

**South American Coordination**  
Ximena Machicao Barbery

### **Authors**

Stepping Stones Program Partner Organizations  
Bolivia: Fundacion La Paz  
Brazil: CHAME  
Colombia: Fundacion Renacer  
Paraguay: BASE-IS and Grupo Luna Nueva  
Peru: CHS/Alternativo

**Analysis, systematization, text editing and design**  
Comunicadores Asociados S.R.L

### **Translation**

Pedro Albornoz Camacho

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## INTRODUCTION

Currently, approximately 2.5 million people are currently subjected to forced labor as a result of human trafficking. Between 22% and 50% of these people are children<sup>1</sup>.

Human trafficking is an international crime against humanity that violates the human rights of the most vulnerable populations. Also known as the “Slavery of the 21<sup>st</sup> century”, this issue is one of the most complex challenges of our time.

Faced with an ever increasing and highly complex phenomenon, the global response to this crime was *The Convention on Transnational Organized Crime*, signed in Palermo, Italy, in the year 2000, and, further, two complementary protocols: the *Protocol Against the Smuggling of Migrants by Land, Sea and Air*, and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, especially women and children.

The purpose of this study, carried out in the framework of the Stepping Stones Program for the International Dutch Development cooperation organization, Interchurch Cooperative for Development cooperation (ICCO is to provide an overview of the advances in the institutional legislative issues in five South American countries: Bolivia, Brazil, Colombia, Paraguay and Peru, as well as the strategies, plans and programs currently being executed in these governments in order to address the trafficking and smuggling of children and adolescents.

Following the same methodology, during a preliminary stage, five national studies were executed in each of the target countries, where the legislations drafted and in effect were analyzed and identified, as well as the conceptual definitions guiding these processes. The levels of application of these legislations and their translation in specific public policies and plans were also studied but, what was even more important, an analysis of the scope of the legislations was analyzed together

.....  
<sup>1</sup> Status of children around the world. Children in an urban world (2012). UNICEF, New York, page 31.

with the set of public policies in effect. In this process, the challenges, lessons learned, limitations and tasks to be performed in the future were also identified.

The document gathers these studies and presents its findings in a comprehensive manner; thus, it is a significant contribution and instrument useful for future initiatives as well as, hopefully, concurrent actions in the region to stop this phenomenon and especially to rescue, repair and reintegrate the victims into society.

Though there are many advances in regards to legislation and institutional issues, the study shows that there is still a ways to go. The truth of this problem forces all of us to mobilize what little resources we have – which are always scarce - in order to face a multimillion dollar business that is cruel and affects millions of human beings, specifically children and adolescents around the world.



## ON LEGISLATION

### 1.1 Political moments and the international legislation framework

Two central factors have to be taken into account when analyzing the context in which a series of specific laws were promoted to fight trafficking and smuggling of people in general and children and adolescents in particular. On one hand, the fact that this phenomenon is expanding around the world as well as in South America and, on the other, that the signing of international agreements and protocols countersigned in the legislative framework of all the countries belonging to multilateral organisms, such as United Nations (UN), the International Labor Organization (ILO) and the Organization of American States (OAS), among others.

Though the national analyses comprehended in our study set different points of departure, they all identify the period between the middle of the nineties and beginning of the twenty-first century as the moment in which a greater thrust was given to the enactment of legislation specifically addressing the topic of trafficking and smuggling of children and adolescents. This period corresponds to the signing of diverse international treaties and agreements that projected the legislative framework on which the national level legislations developed on.

Indirectly, the region was also very influenced during these years by a wave of structural reforms that not only looked to change the socioeconomic model, focused on modernizing the State and, in many cases, decentralization and de-concentration reforms and implementing strategic planning processes, after many decades of military and dictatorial governments that, in many cases, systematically violated citizens' human rights and liberties.

This wave of democratization and modernization of the government and the drive the topic received from the international institutional platforms contributed

to adopt many precepts that constituted the basis for the legislation currently in effect within the region.

Below, we highlight the main conventions and agreements and classify these according to international organism; this is an important reference on whose basis the countries in the study have developed their legislation on the topic.



Besides the Universal Declaration of Human Rights, in effect since 1948, which constitutes the main basis for the subsequent legislative developments addressing rights in modern constitutions, there are some agreements that specifically promoted and became the platform of the legislation framework for cases of trafficking and smuggling of children and adolescents. Among the main precedents, the following are worthy of note:

**Convention on the Elimination of All Forms of  
Discrimination Against Women  
(Signed in 1979 and in effect since 1981)**

In general terms, this convention protects the human rights of girls and women. Its approach is novel, however, since, it initiated an approach that transcended the traditional one, limited to the public sphere, since it acknowledges and condemns multiple violations of rights occurring also in the private sphere, as well as discrimination towards women in different spheres of social life (employment, health, education, credit, justice, etc.) It also established that the partner states had to assume policies promoting cultural changes and take measures to suppress forms of trafficking of women and exploitation of women who work in prostitution.

**Convention on the Rights of the Child  
(Signed in 1994) and in effect since 1995)**

This convention is a legally binding international instrument protecting the Rights of the Child, establishing the compulsory enforcement of the series of rights it stipulates. Besides compelling the signatory states to commit to protect the rights of children against all forms of exploitation and sexual abuse, it also stipulates that

they must take the necessary measures, whether enforced at the national sphere or bilateral or multilateral, to stop kidnapping, commercialization or trafficking of children for any purpose and in any way.

**Facultative Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).**

The purpose of this document is to frontally address the sale of children, child prostitution and exploitation of children for pornography, demanding punishment not just for whoever offers the minors but also “johns” or claimants. The states are obviously compelled to punish these crimes.

It also compels governments to criminalize and punish the activities related with these crimes.

**Facultative Protocol of the Convention on the Rights of the Child on the involvement of Children in Armed Conflicts (2000).**

This protocol was created in order to avoid the participation of any member of the Armed Forces under 18 years to participate directly in any form of armed conflict. It established that the partner states adopt all measures necessary to protect children in armed conflicts.

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, complementing the United Nations Convention against Organized Transnational Crime (signed in 2000 and in effect since 2003).**

The United Nations Office on Drugs and Crime (UNODC) is in charge of enforcing this protocol. Its ratification forces the states to strengthen their national legislation and to provide international support for coordinating law enforcement to fight human trafficking.

The states that sign this agreement commit to:

- a) Prevent and combat the human smuggling, paying special attention to women and children;

- b) Protect and help the victims of said trafficking, fully respecting their human rights; and
- c) Promote cooperation among signing states to achieve these ends.

## **International Labor Organization (ILO)**

Convention N°. 182: Concerning the Prohibition Immediate Action for the Elimination of the Worst forms of Child Labor (1999) and General Recommendation N°. 190 regulating five aspects of special significance regarding child labor.

In the first place, this convention, defines the expression “the worst forms of child labor” and includes all the similar forms of slavery, sale and traffic in children, debt bondage or forced or obligatory labor, forced recruitment for pornography or armed conflicts, participation in drug trafficking and any other work that constitutes a hazard for their health, safety or morals.

Recommendation 190 prompts the design of necessary action mechanisms for the elimination of these, including criminal measures.

## **Organization of American States**

**Interamerican Convention on International Traffic in Minors (Signed in 1994, in effect since 1997)**

Its main purpose is to guarantee and protect the fundamental rights of children and adolescents and the best interests of minors preventing and punishing international traffic in minors, and to regulate its civil and penal aspects.

### **Protocol of San Salvador (1995)**

This protocol acknowledges the rights of children and provides protective measures.

Commitment for a Strategy Against Commercial Sexual Exploitation and Other forms of Sexual Violence against Children and Adolescents in the Latin American Region (2001)

Signed in Uruguay, it acknowledges and reaffirms the importance of all international instruments and platforms and establishes elements for a strategy to fight against this form of commercial sexual exploitation and sexual violence. This

calls for cooperation between states, the institution of prevention and protective measures, an approach centered on victims and their recovery and reintegration, as well as the need to have monitoring and investigation systems in place.

## 1.2 Conceptual definitions

### 1.2.1 Trafficking and smuggling from legislative definitions

The review of the history and chronology of the processes required to enact laws and design public policies to fight trafficking and smuggling of children and adolescents shows that clear definitions regarding the issue in general and the crime in particular are key to achieve progressive success in the legal processing of the cases.

Even though the different countries considered already had some kind of legal criminal classification for crimes related to trafficking and smuggling of children and adolescents, the conceptual definitions were unified as recently as the first decade of the twenty-first century, through the Palermo Protocols<sup>2</sup>, acknowledged worldwide as the conceptual parameter on the topic.

As the subscribing countries ratified the Protocol in their corresponding judicial systems, the conceptual definitions became clearer and, finally, the signing of the Palermo Protocol constitutes one of the most important foundations for the reform of Criminal codes and the acknowledging of the specific crime, which helps the struggle to focus more efficiently.

In any way, it is important to mention that in all of the countries studied, the process of acknowledging and the gradual adjustment of its treatment at the level of legislation have been evidently promoted by international platforms, such as the Declaration of human rights and conventions and agreements

Another interesting element highlighted in the national level analyses is that the approach has also changed in the last years and now considers children and adolescents as not mere the objects of segregated tutelage and protection but, further, subjects who must be acknowledged as being in full possession of their rights and, as such, whose rights and liberties must be guaranteed.

Article 3 of the Palermo Protocol defines: "*The recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or*

.....  
<sup>2</sup> The Protocol to prevent trafficking in people was enacted on December 25, 2003. It was ratified by 159 states as of February 2012 and, by then, reentered the Rights of Children.

*other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of 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. 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”.*

This Protocol compels the States to reform their legislation and adapt to the new definitions provided therein. This, meant, in many cases for the first time, the acknowledgement of trafficking and smuggling of underage people and males

Based on the concepts defined in the document, each country also has its own legislation and complementary definitions, such as the one addressing children and adolescents and legislation. These were also developed for topics related to trafficking and smuggling of people in other levels.

Another important international policy that constitutes a milestone is the Convention on the Rights of the Child enacted in 1990.

Even though the countries adopted the bases of this protocol’s conceptual framework, the inconsistency of their definitions was one of the main weaknesses observed. In some cases, at the constitutional level and, in others, there were incongruences between the constitution or the convention used as legislative framework and the definitions adopted by organic laws. Thus, it is absolutely crucial to carefully review the conceptual frameworks.

For example, in the case of Brazil, there is no conceptual agreement on sexual exploitation and trafficking. In Paraguay, there is a conceptual confusion between sexual exploitation and sexual abuse of children and adolescents. In Peru, there is no exact definition regarding the motives of the crime of trafficking in persons.

### **1.2.2 Philosophy of conception**

As for the philosophy of the conception of the law, it is important to analyze if the legislative systems give priority to the victim, his/her recovery, reparation and reintegration within society or if they rather focus on the persecution of the crime.

Even though the many World congresses, protocols and international legislative platforms have promoted a more comprehensive approach in organic laws addressing trafficking and smuggling of people and the results have been positive, there is still no system that gives priority to the victims.

In general terms, there has been significant progressing legislation and it is evident that the classification of crimes is ever more detailed. The countries are in the process of working out any legal voids hindering the prosecution of these crimes focusing on the trader but also on the “john” or client. In some cases, these cases will be reviewed in greater detail throughout the study. Furthermore, exemplary measures have been approved for these crimes. However, even if the endorsement of the aforementioned international legislation framework does indeed focus on the victims, this has not happened in practice.

It is evident that there is not only a lack of budget but a total lack of specialized centers to receive and provide treatment to victims, as well as deficiencies in providing them with due attention. It is clear that there is still much to do.

Though many countries have enacted protocols to provide attention to victims in their health care systems, the results of the research show that these processes also have many flaws.

### **1.3 Trafficking and smuggling of children and adolescents at the constitutional level**

The Political Constitution is the highest law of any State with sovereign rights and rules supreme above all other organic laws dictated by the legislative organ. Thus, this study reviewed the constitutions of the five partner countries contemplated here studied to determine the measure they promote rights and State driven actions to specifically address the topic.

Some conclusions can be drawn from reviewing the legislation found at a constitutional level. First, that, naturally, all include articles addressing human rights, and this is an important initial platform.

Another important conclusion is that the five constitutions highlight the importance of equal rights between men and women. Further, they all explicitly contemplate provisions for special protection for the rights of children and adolescents as well as a framework found within their family codes aimed at protecting minors

Likewise, all the constitutions establish labor regulations in some degree and expressly forbid slavery in all its forms, ensuring dignity, liberty, comprehensive and safety for all.

It is plain most recently enacted constitutions or those reformed in the last few years have updated their wording and formulation in their constitutional guarantees and rights with a gender-based approach.

It is also important to note that four out of the five constitutions reviewed, excepting that of Paraguay, expressly and literally forbid human trafficking; this is important progress for the possibilities of legislative development.

However, in the case of the constitution of Paraguay, article 104 states "the exploitation of man by man is forbidden. Criminal law will punish any form of slavery or personal dependency not compatible with human dignity as a crime". Though the clearest definitions are important and, as it was possible to analyze during the study, these move policy enactment forward. In general terms, at the constitutional level of the countries in consideration we have found there a basic starting point to address the issue.

One of the final important elements is that all the constitutions include articles addressing the validity and effect of international agreements and conventions signed by the countries. This mechanism allows using international legislative platforms that possibly contain a thematic development that is more precise for developing policies, planning and other organic or subnational legislation.



## Vuela Libre Movement for a childhood free from Commercial Sexual Violence

**Chart 1 Advances at the constitutional level**

| Legislation on trafficking and smuggling of children and adolescents                         |                               |   |
|--|-------------------------------|---|
| Country  | Elements in the Constitution  |   |
|  | Article                       | Contents  |
| <br>Bolivia | Articles 15, I, II, III and V | Every person has the right to life and physical, psychological and sexual integrity.<br>Every person, particularly women, have the right to not suffer physical sexual or psychological violence, within their family as well as in society.<br>The State will adopt the necessary measures to prevent, eliminate and punish gender and generational violence, as well as every act or omission whose purpose is to degrade the human condition, cause death, pain and physical, sexual or psychological suffering, whether in the public or private sphere.<br>No person shall be subjected to serfdom or slavery. The trafficking and smuggling of persons is prohibited. |
|  | Article 22                    | A person's dignity and liberty are inviolable.  |
|  | Article 23                    | Everyone has the right to freedom and personal safety.  |
|  | Article 256, I and II         | I. The international treaties and instruments addressing human rights signed, ratified or those to which the State has adhered, that have been declared as giving priority to the contents in the Constitution will be applied with preference over the latter.<br>II. The rights acknowledged in the Constitution shall be interpreted according to the international human rights treaties when these foresee legislation that is more favorable.   |

## Legislation on trafficking and smuggling of children and adolescents

| Country   | Elements in the Constitution |   |
|---|------------------------------|---|
|   | Article                      | Contents  |
| <br><br>Brazil | Article 1, III               | (Foundations) of the dignity of the human person.   |
|   | Article 4, II                | (Principles) prevalence of human rights.  |
|   | Article 5, LXX-VII, 2        | The rights and guarantees expressed in this Constitution do not exclude others derived from the regime and principles it has adopted or the international treaties of which the Federal Republic of Brazil is a part of.  |
|   | Article 5, I, II, III, X     | Men and women have equal rights and obligations in the terms set forth in this Constitution;<br>No one shall be subjected to torture or to inhuman or degrading treatment;<br>Intimacy, private life, honor and person's image are inviolable, and the right to indemnization for the material or moral damage of their violation is guaranteed.  |
|   | Article 7, XXXIII            | Night work, work that is dangerous or hazardous to minors under eighteen years is prohibited as well as any type of labor to girls under fourteen years, unless they are undergoing apprenticeship.   |
|   | Article 203, I and II        | (Purposes of social assistance) the protection of the family, maternity, childhood, adolescence and old age; the protection of children and adolescents in a situation of vulnerability;  |
|   | Article 227                  | It is the duty of the family, of society and the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life; further, they must protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression. |
|   | Article 227, 4               | The law shall severely punish sexual abuse, violence and exploitation of children and adolescents.  |

## Legislation on trafficking and smuggling of children and adolescents

| Country   | Elements in the Constitution |   |
|---|------------------------------|---|
|   | Article                      | Contents  |
| <br>Colombia | Article 1                    | Colombia is a social State under the rule of law, organized as a unitary Republic ... founded on the respect of human dignity, work and solidarity of its people and in the priority of the needs of the many.  |
|   | Article 12                   | No one shall be subjected to torture or to inhuman and/or cruel and degrading treatment and/or punishment.  |
|   | Article 13                   | All people are born free and are equal under the law, and shall enjoy the same rights, liberties and opportunities without any discrimination whatsoever based on sex, race, national or family origin, language or religion.   |
|   | Article 17                   | All forms of human slavery, serfdom and trafficking are prohibited.   |
|   | Article 43                   | Men and women have equal rights and opportunities. Women may not be subjected to any form of discrimination. (...)  |
|   | Article 44                   | The fundamental rights of children are: The right to life, physical integrity, health and social security, balanced nutrition, the right to possess a name and nationality, to have a family and not be separated from it, the right to affection and love, education and culture, leisure and the free expression of their opinion.<br>They must be protected against any form of abandonment, physical or moral violence, kidnapping, traffic, sexual abuse, labor or economic exploitation and hazardous labor. They must also enjoy all the rights consecrated in the Constitution, the laws and international treaties ratified by Colombia. |



"Fight the human trafficking; ensure the fundamental rights of victims and criminal punishment for these crimes"

## Legislation on trafficking and smuggling of children and adolescents

| Country   | Elements in the Constitution |  |
|---|------------------------------|--|
|   | Article                      | Contents   |
| <br>Paraguay | Article 50                   | Every person has the right to be protected by the State, which must protect their life, physical integrity, their freedom, their safety, their property, their honor and reputation.   |
|   | Article 51                   | This Constitution holds sacred the civil and political rights of men and women. (...)  |
|   | Article 85                   | The necessary measures will be decreed to ensure that all children, without any discrimination, will receive total protection from the moment of their conception.   |
|   | Article 87                   | The defense and protection of minors will be the object of special legislation that will comprise the creation of specialized organisms and tribunals. (...)   |
|   | Article 104                  | The exploitation of man by man is prohibited. Criminal law will sanction as a crime any form of slavery or personal dependency not compatible with human dignity.  |
|   | Article 106                  | The work conditions of women will be particularly regulated to preserve their rights related to maternity; the same applies to minors, to ensure their normal physical, intellectual and moral development.                                      |
|   | Article 141                  | International treaties celebrated with validity, approved by the law of the Congress and whose instruments of ratification have been traded or deposited are part of the internal legal ordinance with the hierarchy established in article 137. |

## Legislation on trafficking and smuggling of children and adolescents

| Country   | Elements in the Constitution |  |
|---|------------------------------|--|
|   | Article                      | Contents   |
| <br>Peru | Article 1                    | The defense of the human person and the respect of their dignity are the highest purpose of society and the State.   |
|   | Article 2, 22                | [The right to] Peace, tranquility, leisure and rest as well as the right to enjoy a balanced environment adequate to the development of their lives.   |
|   | Article 2.24, B              | No form of restriction to personal freedom is allowed, except for the cases foreseen by law. All forms of slavery, serfdom and trafficking of human beings are prohibited. (...)   |
|   | Article 4                    | The community and the State protect especially abandoned children, adolescents, mothers and elderly people.  |
|   | Final dispositions: Fourth   | The legislation related to the rights and liberties acknowledged by the Constitution are interpreted according to the Universal Declaration of human rights and the international treaties and agreements on these topics that have been ratified by Peru. |



La Slavery still exists;  
it is called human trafficking.

## 1.4 Main laws and legislation in effect regarding the trafficking and smuggling of children and adolescents

The study of these five countries focused on organic legislation shows there has been substantial progress in the enactment of specific laws to better address the issue in every sense. In terms of classification, the most relevant legislation is divided in three groups: on one hand, there are codes addressing children and adolescents; on the other, legislation regulating activities or topics directly related to the issue, and, finally and specifically, there are laws against smuggling and trafficking per sé. Furthermore, the study reviewed the current state of the Criminal codes in place. These normally suffer modifications when legislation of this nature is approved, and their classification and punishments are correspondingly adapted.

The following chart shows the main laws directly relevant with the problem in the five countries studied, arranged by topic.



If you close your eyes... the problem won't disappear.  
If you close your eyes... you are part of the problem.

## Chart 2 Legislative framework

| Legislation on the trafficking and smuggling of children and adolescents      |  |   |  |  |   |
|---|--|---|--|--|---|
| Topic   | Bolivia                                      | Brazil  | Colombia   | Paraguay                                   | Peru  |
| Children and Adolescents  | Law N° 548 Code for Children and Adolescents | Law N° 8.069 Statute for Children and adolescents                           | Law N°1098 Code of Childhood and Adolescence   | Law 1680 Code of Childhood and Adolescence | Law N° 27337 Code for Children and Adolescents (2000) |
| Laws regulating related topics and that mention or are pertinent to the issue |  | Law N° 10.097 Law for Education   | Law N° 1448 for Victims  |  | Law 30077 Law Against Organized Crime                 |
|   |  | Law N° 12.015 of August 7 of 2009 for the modification of the Criminal Code | Law N° 919 prohibiting the sale of human anatomical components   |  | General Law for Tourism, N° 29408-2009                |
|   |  |   | Law N°1257 of 2008 for the reform of the Criminal Code, Criminal Proceedings, Law 294 and other dispositions |  |   |

### Legislation on the trafficking and smuggling of children and adolescents

| Topic  | Bolivia   | Brazil | Colombia | Paraguay  | Peru  |
|--|---|--------|----------|---|---|
| Laws on sexual and reproductive rights           | Law N° 810, Framework Legislation on sexual and reproductive rights       |        |          |   |   |
| Laws on violence                                 | Law N° 348 comprehensive Law to guarantee women a Life Free from Violence |        |          |   |   |
| Specific laws on human trafficking and smuggling | Ley N° 263 Integral Law against trafficking and smuggling of persons      |        |          | Ley N° 4788/112 Integral Law against trafficking and smuggling of persons | Law N° 28950 Law against trafficking and smuggling of persons and Illegal Traffic of Migrants |

In the case of Bolivia, Article 322 of the Criminal Code punishes the crime of commercial sexual violence sanctioning the “john” or sexual aggressor with eight to twenty years of incarceration. In regards to criminal prosecution, the punishment for the crime of trafficking of persons is incarceration from ten to fifteen years for the perpetrators; this punishment can be increased to fifteen to twenty years of prison if the victim is a child or adolescent. In the case of commercial sexual violence, the sexual aggressor is punished with incarceration ranging from eight to twelve years; the punishment is increased by two thirds when the victim is a child less than 14 years of age. The law also created the figure of the undercover agent for investigating crimes linked to illegal trafficking of controlled substances and human trafficking and smuggling. Further, it establishes that the complaint may be by writing or verbally by the victims or third parties, without the formal procedural requirements and that the crimes of trafficking and smuggling of persons has no statutory limitation<sup>3</sup>.

Brazil’s Criminal Code also establishes punitive action for “sexual crimes”. Law Nº 8.072 stipulates that rape and violent sexual assault are crimes against humanity and thus their penalty is increased. The authors of these crimes have no right to bail, pardon or reduction of their punishment for good behavior<sup>4</sup>.

What is even more important, in the case of sexual violence against children and adolescents, the Criminal Code was reformed in 2009, to further the conceptualization of rape, since any libidinous act is classified as such, according to article 213, and the punishment is increased with three compounding factors: if the crime is committed against a minor under the age of 14 years; if the crime is against a minor under the age of 18 years and if it results in serious wounds or death. Articles 217-A, 218, 218-A and 218-B were also expanded; these refer, respectively, to the crimes of rape of vulnerable minors and corruption of minors, to the satisfaction of lascivious urges through the presence of a child or adolescents, and the enablement of prostitution or other form of sexual exploitation of the victim.

In the case of this crime, the punishment is increased if the criminal is a public officer, if there are relations of domesticity, cohabitation or hospitality or a kinship of up to third degree. Furthermore, the Federal Law created the criminal classification of “sexual exploitation”, punishable with incarceration of four to ten years. In article Nº 250, the punishment is expanded to include facilities that commit administrative infringement regarding the harboring of minors. Considering other crimes related to children and adolescents, it is important to consider another article of the Criminal

.....  
<sup>3</sup> Estudio Comparativo. Procesos de Políticas, Planes y Leyes Nacionales sobre Violencia sexual Comercial y Trata de Niñas, Niños y Adolescentes en Cinco Países de Sudamérica (2015). Stepping Stones Program, Pag. 20

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Code referred to the analogous condition of slavery; it states that subjecting others to this condition, forcing them to perform forced labor or exhaustive workdays, to degrading work conditions, restricting their movement in any way, due to a debt contracted with the employer or leader will be punished with incarceration ranging from 2 to 8 years and a fine, together with the punishment corresponding to the degree of violence committed.

The punishment is increased by half if the crime is committed against children or adolescents.

In the case of Colombia, most criminal behaviors related with the dynamics of commercial sexual exploitation and trafficking are included in the Criminal Code with exemplary punishments for these dynamics of infringement of rights.

An important item in the Colombian legislation is that it also states the rights of the victims by defining issues such as humane and dignified treatment during the entire procedural process, ensuring protections and guarantees for the victim, family and witnesses, as well as complete compensation for the damages incurred; the right to information and assistance and even the services of an interpreter in case the victim does not speak the official language.

One can observe this set of criminal laws referred to the trafficking of persons protects the legal rights of freedom among others. However, the peculiarity of the crime of trafficking of persons is that it is a multi-offensive crime against human dignity that can simultaneously damage or threaten multiple legal rights, such as the right to liberty, autonomy and sexual freedom, among others. It also has a hybrid criminal classification.

In Paraguay, in the year 2008, the criminal classification for trafficking was modified during the reforms for criminal proceedings. The new criminal classification contemplated diverse modes (those with purposes of sexual, persons and labor exploitation) and increased the framework of criminal punishment, assigning the basic classification of human trafficking with purposes of sexual exploitation (article 129b) with incarceration of up to eight years. For victims who are children and adolescents, this crime is considered to have compounding factors and a punishment expectation of up to twelve years. Since the comprehensive Law against the trafficking of persons was enacted, other reforms were included explicitly classifying internal trafficking of persons and, furthermore, establish measures to prevent, punish and provide compensation for the victims of trafficking. The new criminal classification establishes special compounding factors for cases in which the victims are minors, enhancing the Criminal framework to have a maximum expected jail time of 20 years of incarceration. Additionally, it established the punishment of those who benefit from the trafficking of people.

In Peru, the new Criminal procedural code came into effect in July, 2004. However, it was considered necessary to be executed progressively; in other words, in the beginning, it was put into effect in only a few judicial districts and, gradually, its application was to be expanded to the national level. This new model allows for the execution of transparent and timely criminal proceedings, ensuring the rights of the parts therein involved and in which the role of the judges, attorneys, police officers and lawyers is clearly defined and duly differentiated.

The single interview performed in the Gesell dome for victims of trafficking of persons for sexual exploitations and other crimes is one of the main reforms. On the other hand, it sets the institutionalization of the Protection Unit for Victims and Witnesses (UDAVIT for its acronym in Spanish) in order to provide psychological, social, medical and legal services to the victims and witnesses of these crime, to aid in the procurement of truth and justice.

With the passing of Law 30251 in 2014, that further develops the concept of the crime of human trafficking, the Criminal Code typifying trafficking was again reformed, and the classified as the sale of children and adolescents, prostitution, slavery or any form of sexual exploitation or labor exploitation, begging, the extraction and/or traffic of somatic organs or tissue with purposes of exploitation.

#### 1.4.2 Codes on Children and Adolescents

Once the legislation was reviewed, some helpful coincidences were found. By endorsing the International Convention on the Rights of the Child (approved by the General Assembly of United Nations on November 20, 1989), all the countries set legal codes for children and adolescents and, thus, it became the first universal law. In all these cases, the partner states ensure the protection of minors and their rights.

In Bolivia, the code was approved in 1999 in the framework of the process for decentralization and, thus, the offices known as Ombudsman's office for the defense of children and Adolescents (*Defensoría de la niñez y la adolescencia*) at the municipal level. That same year, the law for the protection of the Victims of Crimes Against Sexual Liberty (*Ley de Protección a las Víctimas de Delitos contra la Libertad Sexual*), which modifies and aggravates the punishment for certain crimes, protects the life, physical and psychological integrity, safety and sexual freedom, and includes other illegal acts in the catalog of crimes, and classifies the rape of children or adolescents as a crime without the right to pardon.

A legislative framework to fight against sexual violence was created in Brazil, during the nineties, because the civil society wanted a more active involvement in the debate addressing the issue. This was possible thanks to the passing of the new Federal Constitution of 1988 and of the law Nº.8.069 known as the Statute for Children and Adolescents (*Estatuto del Niño/a y Adolescente*). This norm was a milestone and the first of its kind worldwide in the way it adhered to the guidelines set forth in the International Convention for the Rights of Children.

To discuss and control the policies for the promotion, defense and assurances of the rights of children and adolescents, the National Council for the Rights of Children and Adolescents (CONANDA for its acronym in Spanish, *Consejo Nacional de los Derechos de las Niñas, Niños y Adolescentes*) was created in 1991. Among CONANDA's main concerns is the fight against sexual violence and exploitation, the prevention and eradication of child labor and the support of bills referred to the rights of children and adolescents.

CONANDA'S impacts were very positive and, from this level, other public policies and legislation to fight against the trafficking and smuggling of children and adolescents in the country was promoted.

In Colombia, similarly, the Code for Childhood and Adolescence (*Código de Infancia y Adolescencia*) stipulates special rights for victimized children and adolescents, stating that they have the right to have their opinion be taken into consideration, that their dignity and intimacy be respected as well as other rights. Further they have the right to not be stigmatized and to not be further victimized again. The code also states that children and adolescents have the right to be assisted by a lawyer during the trial and the proceedings for comprehensive compensation, even if they do not have the endorsement of their parents; in such a case, the legal assistance will be designated by the Ombudsman's Office.

Unfortunately, even though the Code for Childhood and Adolescence compels mayors and governors to prioritize victimized children and adolescents in development plans, based on territorial diagnoses. This obligation was duly controlled by the General Procurement Office of Development. However, in most departments and municipalities of the country there are no such diagnoses or specific plans to prevent and eradicate these crimes.

Paraguay endorsed this convention in 1990 and, from then on, the country has performed diverse actions to comply with its commitment to adapt its national legislation to the principles and norms of this international treaty. In the year 2001, it enacted the Code for Childhood and Adolescence (*Código la Niñez y la Adolescencia*) and this resulted in one of the most important legislative changes in the entire

national legal structure. Its article 31 prohibits the use of children or adolescents in sexual trade and in the making, production or distribution of pornographic publications. It also expressly forbids providing or tolerating the exhibition of pornographic publication or shows to children and adolescents.

In Peru, the Code for Children and Adolescents (*Código de los Niños y Adolescentes*) passed in the year 2000 establishes their right to personal integrity in its article 4. The child and the adolescent have the right to have their moral, psychic and physical integrity be respected, and the right to freely develop and to their wellbeing. They may not be subjected to torture or cruel or degrading treatment. Forced labor and economic exploitation, as well as forced recruitment, prostitution, trafficking, trade and traffic of children and adolescents and other forms of exploitation are considered extreme forms of crimes that affect their personal integrity. Furthermore, article 5 states that *“the child and the adolescent have the right to be free. No child or adolescent may be detained or deprived of liberty. An exception is made in the cases of detainment through judicial decree or due to flagrant infringement to criminal law”*.

### 1.4.3 Related legislation

The study clearly shows the five countries studied invested a great deal of efforts during recent years to develop a legislation to combat human trafficking and smuggling and provide special protection to children and adolescents. Thus, laws have been approved on many other topics, but these have considered the specific issue in their contents.

It is important to note that, in some cases, there is similar content, but in the manner of national plans and they also state a strategic temporal scope. The legislative development also varies from country to country because they have different systems and different decentralization levels. In this heading we review the most important related laws or those that have the greatest pertinence with the topic, and those that were highlighted by the national level studies. However, we think we can find more legislation at the level of decrees as well as at the subnational level. It is also clear law enactment on one issue or the other depends on the sociopolitical and economic context in each country, which also varies accordingly. This analysis will be complemented with the analysis of public policies in the following chapter.



## Laws on sexual and reproductive rights

Sexual and reproductive rights are protected by international legislation referred to human rights and other documents from the United Nations, such as the Universal Declaration of Human Rights (1948), The International Pact of Civil and Political Rights (1976), the International Convention for the Elimination of all Forms of Discrimination Against Women (1981), the Convention on the Rights of the Child (1990) and the Plan of Action for the International conference on Population and Development in El Cairo (1994) and the Plan of Action of the World Conference on Women, Beijing (1995).

Though all the political constitutions acknowledge international right by endorsing international conventions and – as we observed at the constitutional level – even if all countries have their own precepts, definitions and rights regarding this issue, no laws have been passed regarding sexual and reproductive rights.

This may be due partly due to the enormous influence churches still have in the region; these are against the legalization of abortion, a controversial topic affecting enactment of related legislation. In the case of Bolivia, even if there is a law enacted by Congress in the year 2004 (Framework Legislation for sexual and reproductive rights, *Ley marco de Derechos Sexuales y Reproductivos*), the acting president of the period, Carlos Mesa, returned the project, with the observation that a greater public debate had to be addressed since it touched upon fundamental human values; thus, there is still no law to protect victims. This could have been an interesting platform for defense of victims of commercial sexual violence who lack health protection. However, with the enactment of the new Political Constitution of the State in 2009, the guarantees to exercise sexual and reproductive rights were elevated to a constitutional level.



## Gender-based violence

There is a greater amount of legislation regarding violence. Even if all countries have laws referred to preventing violence against women, Bolivia and Brazil are good examples of very recent legislation with a comprehensive and complete approach on the issue.

In Bolivia, the Comprehensive Law to Guarantee Women a Life Free from Violence (*Ley Integral para garantizar a las Mujeres una Vida Libre de Violencia*), passed in 2013, sets new criminal classifications: femicide, sexual harassment, family or domestic

violence, forced sterilization, neglect of duties, sexual subjection and abusive sexual acts. The legislation includes economic violence, patrimonial violence and theft of the earnings derived from domestic economic activities, and is the most complete legislation on the issue in all five countries.

Crimes against women and girls are crimes requiring public action. This means that, once the State has received a report regarding such a crime, it has the obligation to investigate until the very end, even if the victim has not filed a complaint or withdraws it. Furthermore, conciliation regarding any act of violence against women is prohibited when said act compromises her life and sexual integrity.

In Brazil, in the year 2015, a new law was enacted, making it the first country to adapt the Latin American Model Protocol for the Investigation of gender-related killings of women promoted by UN Women and ACNUDH. This Law classifies femicide as the killing of women for gender related reasons. Further, it sets harsher punishments for those responsible of this crime: between 12 to 30 years of prison and longer punishments for crimes committed against pregnant women, girls under 14 years of age, women over 60 years and women and girls with disabilities.



According to the World Tourism Organization, sexual tourism is defined as travels organized in the tourist sector or in other sectors that use their structures and networks with the main purpose of enabling tourist to practice commercial sexual relations with the residents of the destination<sup>5</sup>. According to this definition, “sexual tourism” is a legal mode practice by uncountable people around the world who seek this type of tourism in specific places, such as hedonist hotels or hotels of another type in which children and adolescents are not allowed, and which offer the possibility of meeting other adults for this exclusive purpose.

In and of itself, this cannot be considered a crime, since it is not defined as exploitation. However, in some specific countries, sexual tourism is a conditioning factor for trafficking and smuggling children and adolescents. In this sense, all the countries studied have considered the issue of sexual tourism with children and adolescents as victims at some level of their legislative development, though only Peru has explicitly included it in its general Law for Tourism No. 29408-2009.

According to the findings of the national study, there are a growing number of cases of sexual exploitation of children and adolescents, especially in provinces with an increasing amount of national and international tourism.

<sup>5</sup> IBID, Pag. 58

The Peruvian Law on tourism stipulates, in article 44, on the prevention of commercial sexual exploitation of children and adolescents; the Ministry of Foreign Commerce and Tourism has the competence to coordinate, draft and propose the issue of legislation required to prevent and fight commercial exploitation of children and adolescents in the domain of tourism. Furthermore, the Ministry of Foreign Commerce and Tourism will develop and execute, together with the Ministry for Women and Social Development and other sectors involved, those programs and projects with national scope related to this issue. It is clear that the issue is explicitly described in the Criminal Code and it is punished with up to 10 years of incarceration.

The Code of Conduct for the Protection of Children from Sexual Exploitation in Tourism and the Travel Industry (1997) was created by a number of tourist operators and ECPAT Sweden, with the support of the World Tourism Organization. Its purpose is to compel tourism and travel companies to commit to the code of conduct in order to assume responsibility in the face of the sexual exploitation of children and adolescents in tourist destinations where they work and are active. In Peru, the Women's Association of Tourism Company Executives (*Asociacion Femenina de Ejecutivas de Empresas de Turismo*, AFEET Peru) adhered to this certification in the year 2013.

In Bolivia, for example, the issue of sexual tourism is addressed in Law N° 263, the Comprehensive Law against the trafficking of persons and connected crimes as one of the purposes of trafficking, but there is no further development on the topic.

In Colombia, article 219 of the Criminal Code refers to sexual tourism as a crime involving people who direct, organize or promotes tourist activities which include the sexual use of minors, with a compounding factor if they are under the age of 12. The final amendment of the article also addresses the use of the media to offer these services.

Since in this country tourism is an important part in its national economy, this issue must be addressed in the fight against trafficking and smuggling of children and adolescents. Colombia has many laws that more precisely expand and define sexual tourism, such as Law 679 passed in 2001. This law allowed the enactment of a statute to prevent and counteract exploitation, pornography and sexual tourism. It also expands Article 44 of the Constitution and Law 1336 of 2009 (July 21) which also enhances and strengthens Law 679 of 2001, to fight against exploitation, pornography and tourism with children and adolescents.

In Paraguay there is no specific classification of the crime of sexual tourism. The criminal classification of "sexual tourism" is contemplated under of sexual exploitation. Though the government of Paraguay has informed that sexual tourism is not penalized, its premises are contemplated in sexual procurement and sexual abuse in children and adolescents.

The revision of the five countries and their legislation also revealed a troublesome link between economic activities of mainly the extraction industry and the increase in the cases of trafficking and smuggling of minors; however, these are directly faced with specific public policies and thus they will be addressed in the following chapter.

 **Law for Victims**

The case of Colombia's Law for Victims, enacted in 2011, is very particular because it is mainly related with the need for the Colombian state to acknowledge, compensate and retribute the rights of the victims of the armed conflict that has been going on for many decades in its territory. As stated by a publication of UNDP, *"The United Nations celebrates this political commitment promoted by the Colombian government. There are many aspects that must be highlighted in the new law, but two of them are significant and must be noted: The broad definition it provides for victim allows the full acknowledgement of their rights and the process of restitution of land to peasants displaced and stripped of their land, grounded on the principle of the inversion of the burden of proof. Especially considering that almost four million people - men, women and children - in other words, 10% of the population of Colombia are victims of the armed conflict. It is not a perfect law, and surely some of its aspects could be improved to better comply with the international standards and guarantees of participation of the victims. But it is a law that supposes a decisive step for Colombia. The new challenge is its phase of implementation to ensure it is adapted to the needs, interests and rights of the victims"*<sup>6</sup>.

This Law visibilizes the problem of sexual violence against children and adolescents in the armed conflict and ensures the restitution of their rights and their protection, as well as their preferential status in cases of judicial proceedings.

 **Health**

Health is another topic with which there is related legislation. For example, in Colombia, Law 1146 determines that the National Superintendence of Health will be able to impose fines to those who deny immediate attention to a medical urgency related to children and adolescents who have been victims of sexual abuse, or if during the provision of medical attention they are not provided with the proper physical and psychological evaluation and evidence is not preserved with care.

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<sup>6</sup> Hechos de Paz Año 7, N° 61 (2011). PNUD, Bogotá

Law 1257 also establishes protective measures in the domain of health for victims, especially children and adolescents.

In 2010, the Ministry of Health and social protection, together with the United Nations Population Fund (UNFPA) issued the Comprehensive Attention Model for Health for Victims of Sexual Violence<sup>7</sup>, which aims to provide the health sector with different tools to comprehensively address sexual violence from the health sector, so that it includes not only medical attention, different types of social abilities to treat victims, in order to contribute with their recovery and avoid being victimized once more. This model acknowledges the commercial sexual exploitation of children and adolescents as one of the forms of sexual violence and it emphasizes on the need of approaching it in a differential manner, since each one of these types of violence have different dynamics and consequences.

In Paraguay, the National Plan for the Promotion of the Quality of Life and Health with Equity for Adolescence 2010-2015 (Plan for Adolescence) (*Plan Nacional de Promoción de la Calidad de Vida y Salud con Equidad de la Adolescencia 2010-2015 (Plan Adolescencia)*) states that the strategies to support adolescents must address the specific needs of different groups of people, including “*people in a situation of commercial sexual exploitation*”. *It acknowledges that the efforts must be oriented towards expanding the coverage of clinical, family and interventions “in the most vulnerable populations”.* Among these populations “*adolescents who are being sexually exploited or are the victims of trafficking*” are specified. Further, it establishes goals of zero indifference towards sexual exploitation. Unfortunately, it does not explicitly state what the goal of “zero indifference” is in these cases.

It is interesting to note Peru has developed a series of protocols and guides in diverse sectors which directly impact the issue. On the topic of health, there is a Legal medical guide for the Physical Evaluation of Sexual Integrity and a Procedural Guide for the Psychological Evaluation of assumed victims of sexual abuse and violence who are given attention. Though these are not specific guides, they do help during the moment victims are provided with care in the health centers.

#### 1.4.4 Specific laws on human trafficking and smuggling

The five countries included in the study have legislated the prevention, criminal punishment and restitution of the rights of the victims of trafficking and smuggling of persons, though each did so in their own way.

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<sup>7</sup> Colombia Ministry of Health Ministerio de Salud de Colombia. [www.minsalud.gov.co](http://www.minsalud.gov.co)

It is possible to initially state that having a specific law on the issue does not in any way ensure a greater efficiency fighting these criminal activities; however, having specific legislation can provide advantages, especially in procedural terms.

During the research, we found that three out of the five countries have specific organic laws related to human trafficking and smuggling: Bolivia, Paraguay and Peru.

In the case of Bolivia, after enacting Law N° 3325 in 2006, which introduced the crime of human trafficking and smuggling into the Criminal Code, many national and international organizations executed different actions to make this crime more visible and pressure government authorities to enact law that addressing comprehensively the issue of the trafficking. Finally, on July 31<sup>st</sup> of 2012, Law N° 263 for Comprehensive Fight against trafficking and smuggling of persons (*Ley N° 263 Integral contra la trata y tráfico de personas*) was enacted. Its purpose was to combat human trafficking and smuggling and connected crimes, to ensure the fundamental rights of the victims by consolidating measures and mechanisms for prevention, protection, attention, persecution and legal punishment for these crimes. The Law applies to all the residents and inhabitants in the national territory and the places under its jurisdiction as well as national citizens in a foreign territory.

The Law aims to establish prevention measures, to implement public protection, attention and reintegration policies for the victims of the crimes of human trafficking and smuggling and connected crimes; it aims to enhance the response of the judicial system towards these crimes, promote and enable national and international cooperation to achieve the purpose specified in the law.

The Law establishes fourteen (14) purposes of trafficking, such as the selling of human beings with or without lucrative purpose; extraction, sale or illegal disposition of bodily fluids or liquids; subjection to slavery; labor exploitation; forced labor or any form of slavery; slavery by custom and tradition; commercial sexual exploitation; forced pregnancy; sexual tourism; harboring or adoption; forced begging; servile marriage; recruitment of people for armed conflicts or religious sects; their use in delinquent activities; illegal use in biomedical research and other related crimes, such as procurement, pornography and commercial sexual violence, among others. It established prevention mechanisms in four domains: educational, communicational, labor and citizen safety. As for mechanisms addressing protection, attention and reintegration of the victims, the Law states necessary measures will be adopted to prevent people previously subjected to trafficking and smuggling and connected crimes from becoming victims. Furthermore, it proposes the adoption of Gesell domes for investigation proceedings to protect the identity and safeguard the dignity of victims.

In the case of Paraguay, Law 4788/112, for “comprehensive measures against the trafficking of persons” (*Ley 4788/112 Integral contra la trata de personas*) replaces the criminal classification of human trafficking established in law 3440/08 that modifies the Criminal Code. The new criminal classification explicitly establishes internal trafficking and elevates criminal punishment frameworks to ensure incarceration of up to 20 years, including special cases with compounding factors that might include children and adolescents up to 13 years of age. On the other hand, the law establishes policies for prevention and reparation with a marked emphasis on the protection of the victim and reconstruction of their life project.

Though this legislation constitutes an important advance in the matter, the national studies found its application still faces significant limitations. These include the lack of budget and protocols, an observation that was also made from the civil society.

In the case of Peru, Law N° 28950 against the trafficking of persons and the Illicit Traffic of Migrants (*Ley N° 28950 contra la Trata de Personas y el Tráfico Ilícito de Migrantes*) and its Regulatory Decree 007-2008-IN provides a protective approach favoring children and establishes measures for prevention, actions for prosecution, protection and assistance to victims. The regulation establishes the principle of the best interests of children and adolescents should be considered in the actions adopted by government and non-government organisms in fighting human trafficking. Further they must give priority to the interest and rights of the child and adolescent in those cases in which they are the victims. There is also a law modifying the Criminal Code further developing the concept of the crime of human trafficking. It also considers the sale of children and adolescents, prostitution, slavery or any form of sexual or labor exploitation, of begging, the extraction or traffic of organs or somatic tissue with purposes of exploitation as human trafficking.

## PUBLIC POLICIES



The study showed the greatest significant progress was made in the area of public policies. The effort carried out by the five countries to design plans, policies and, gradually, for crime prevention, prosecution of criminals and the treatment of the victims is evident.

As was previously explained, depending on their political and legislative system, each country addressed the issue implementing different mechanisms. Here, we briefly review the progress made in each country and the policies and planning designed.

As an element of continuity, we acknowledge once more the importance endorsing international conventions to promote the development of public policies for this issue. The matrix of human rights weighs much and it is also probable that the gender approach promoted in the region during the decade of the 90s from multiple international organisms has also left a foundation on which progress was made in the fight against violence.

At the regional level, there are important plans, such as the "Plan of Action to Combat Trafficking in Persons" (*Plan de acción para la lucha contra la Trata de personas entre los Estados Parte del Mercosur y los Estados asociados*) among the partner states of Mercosur and Associated States (MERCOSUR/RMIO/ACUERDO N°1/2006, signed in 2006. this plan's purpose is to be an operative instrument for cooperation, coordination and follow up against the trafficking of persons, and seeks to satisfy the demands found in the partner countries. These are: Brazil, Argentina, Uruguay, Paraguay, Chile, Bolivia, Peru, Ecuador, Colombia and Venezuela.

This work focuses on executing campaigns to clarify issues regarding the trafficking of persons and is executed through informational bulletins distributed in the frontiers between these countries, as well as through posters, television and radio, toll free line to provide orientation for victims, data bases, electronic page; 2

a broad campaign for simultaneous dissemination of information in all the countries in the region. The purpose of this campaign is to inform the citizens and promote the filing of reports and claims regarding the issue (Portal MJ).

The campaign related to this initiative specifically aimed at preventing the trafficking in women, and was accompanied with a Mercosur Guide to provide attention to women victims of trafficking for sexual exploitation purposes. Further, posters and flyers were printed by the Conference of Ministers and Highest Authorities for Women of MERCOSUL-RMAAM in 2012, to warn and alert on trafficking for the sexual exploitation of women.

## **2.1 Plans for fighting the traffic and smuggling of children and adolescents**

In this section we will briefly review the process and state of the art of the planning and policies put into effect by the five states considered in this study. The following chart shows the policies, plans and programs executed addressing the issue in the five countries contemplated in the study.

**Chart 3. Plans, policies, programs and strategies**

| Legislation on the trafficking and smuggling of children and adolescents  |   |   |   |  |
|---|---|---|---|--|
| Country   |   |   |   |  |
| Bolivia   | Brazil  | Colombia  | Paraguay  | Peru   |
| National development plan ( <i>Plan Nacional de Desarrollo, PND</i> ) 2006-2011   | National plan to combat sexual violence against children and adolescents and Ten year Plan ( <i>Plan Nacional de Enfrentamiento de la Violencia Sexual Infanto-juvenil y Plan Decenal</i> )             | Comprehensive National Strategy against the trafficking of persons Decree N° 4786) ( <i>Estrategia nacional integral contra la trata de personas, Decreto N° 4786</i> ) | National policy for childhood and adolescence – POLNA (2014-2024) ( <i>Política Nacional de la Niñez y la Adolescencia – POLNA</i> (2014-2024)) | National Plan of Action against trafficking in persons 2011-2016 (Supreme Decree N° 004- 2011-MININTER 10/18/2011 ( <i>Plan Nacional de Acción contra la Trata de Personas</i> 2011-2016 ( <i>Decreto Supremo N° 004- 2011-IN MININTER 18/10/2011</i> ) PNAT |
| National Plan for Equal Opportunities “omen building the New Bolivia to Live Well” ( <i>Plan Nacional para la Igualdad de Oportunidades “Mujeres construyendo la nueva Bolivia para vivir bien”</i> ) | National Program to Combat Sexual Violence against Children and Adolescents (PNEVSCA) ( <i>Programa Nacional de Enfrentamiento de la Violencia Sexual contra Niñas, Niños y Adolescentes PNEVSCA</i> ). | National Plan of Action 2006-2011 ( <i>Plan Nacional de Acción, 2006-2011</i> )   | National Plan for Children and Adolescents –PNA 2014-2018 ( <i>Plan Nacional de Niñez y Adolescencia - PNA</i> 2014-2018)                       | Supreme decree N° 001-2012 approving the National Plan of Action for Children and Adolescents (PNAIA) - MIMP   |

## Legislation on the trafficking and smuggling of children and adolescents

| Country  |  |  |   |  |
|--|--|--|---|--|
| Bolivia  | Brazil   | Colombia   | Paraguay  | Peru   |
| National Plan of Action for Human Rights, A Dignified to Live Well (PNA-DH) 2009-2013 - ( <i>Plan Nacional de Acción de Derechos Humanos, Bolivia Digna para Vivir Bien</i> (PNADH) 2009-2013) | Policy to fight the trafficking of persons.  | National system for human rights and International Humanitarian Law ( <i>Sistema Nacional de Derechos Humanos y Derecho Internacional Humanitario</i> , SNDDHI)  | National Plan for the Prevention and Eradication of Sexual Exploitation of children and adolescents in Paraguay (2012 – 2017) - ( <i>Plan Nacional de Prevención y Erradicación de la Explotación Sexual de Niñas, Niños y Adolescentes en Paraguay</i> (2012 – 2017))  | National Strategy against Illegal Mining (Estrategia Nacional para la Minería ilegal)  |
| National Plan of Action for Human Rights 2014-2018 ( <i>Plan Nacional de Acción de Derechos Humanos</i> , 2014-2018)   | National Plan I and II to Combat the trafficking of persons ( <i>I y II Plan Nacional de Enfrentamiento a la Trata de Personas</i> ) (PNETP)   | National strategy against the trafficking of persons ( <i>Estrategia Nacional contra la Trata de Personas</i> )  | National plan for the Promotion of the Quality of Life and Health with Equity for adolescence 2010-2015 (Plan for Adolescence) ( <i>Plan Nacional de Promoción de la Calidad de Vida y Salud con Equidad de la Adolescencia</i> 2010-2015) ( <i>Plan Adolescencia</i> ) | National Plan for Citizen Safety 2013-2018 ( <i>Plan Nacional de Seguridad Ciudadana</i> 2013-2018)  |
| Plurinational Policy for fighting trafficking and smuggling of persons 2013-2017 ( <i>Política plurinacional de lucha contra la trata y tráfico de personas</i> 2013 – 2017)                   | Plan of Action to combat Trafficking in Persons among the States of Mercosur and Partner States ( <i>Plan de acción para la lucha contra la Trata de personas entre los Estados Parte del Mercosur y los Estados asociados</i> ) | Guidelines for Public policies for the development (of children and adolescents in the Departments and Municipalities (2012) ( <i>Lineamientos de Política Pública para el desarrollo de niñas, niños y adolescentes en los departamentos y municipios</i> (2012)) | National plan for the Promotion of the Quality of Life and Health with Equity for children 2010-2015 (Plan for Adolescence) ( <i>Plan Nacional de Promoción de la Calidad de Vida y Salud con Equidad de la Niñez</i> 2010-2015)  | National Action Plan of Action for childhood and adolescence 2002-2010 ( <i>Plan Nacional de Acción por la Infancia y la Adolescencia</i> 2002-2010) |

## Legislation on the trafficking and smuggling of children and adolescents

| Country   |   |  |   |   |
|---|---|--|---|---|
| Bolivia   | Brazil  | Colombia   | Paraguay  | Peru  |
| National Plan to combat trafficking and smuggling of persons ( <i>Plan nacional de lucha contra la trata y tráfico de personas</i> ) 2014   | Hubs to Confront the trafficking of persons - NETP ( <i>Núcleos de Enfrentamiento a la Trata de Personas - NETP</i> )                         | Model for Comprehensive Health Care for Victims of sexual violence ( <i>Modelo de Atención Integral en Salud para Víctimas de Violencia Sexual</i> ) | National Plan for Comprehensive Development of the First Infancy 2011-2020 ( <i>Plan Nacional de Desarrollo Integral de la Primera Infancia</i> 2011-2020)  | Diverse protocols for multiple instances of the state addressing the issue. |
| Three year plan of comprehensive and intercultural fight against human trafficking and smuggling -2014-2016, developed by the general office to combat human trafficking and smuggling. | National Committee to Combat trafficking in persons - CONATRAP ( <i>Comité Nacional de Enfrentamiento a la Trata de Personas – CONATRAP</i> ) | National Plan for Children and Adolescents 2009-2019 ( <i>Plan Nacional de Niñez y Adolescencia – 2009-2019</i> )                                    | National Policy to Prevent and Combat trafficking in persons 2010-2019 ( <i>Política Nacional de Prevención y Combate a la Trata de Personas</i> 2010-2019) |   |
| Communication strategy against trafficking and smuggling of persons, designed by the Ministry of Communication  | Parliamentary Research Commission (CPI) of the Senate on National and International Trafficking of Persons                                    |  |   |   |

Source: Compiled by authors



In Bolivia, the research valued and identified, as a first step, the importance of approving the New Political Constitution of the State in the year 2009. This allowed including the explicit prohibition against the trafficking and smuggling of persons at the constitutional level as well as, naturally, many other articles against discrimination.

One of the precedents to the enactment of Law N° 263 for Comprehensive Fight against trafficking and smuggling of persons (*Ley N° 263 Integral contra la Trata y Tráfico de Personas*) is that the Bolivian state, starting on 2006, has implemented development plans with components addressing this issue. Between the years 2006 and 2011, the National Development Plan (PND for its acronym in Spanish) became the central pillar of all government planning.

An important characteristic is that the PND had a certain level of citizen participation that was promoted by the government; this, possibly, gave it greater legitimacy. It had 4 pillars: Evo Morales' government plan for his corresponding term, *Bolivia Digna, Democrática, Productiva y Soberana* (A Dignified, Democratic, Productive and Sovereign Bolivia), aimed at important great State reforms and in its diagnosis established that, faced with a justice system that does not acknowledge women, specific age groups and others, as subjects with rights and the right to develop, that it is a system that discriminates and devalues the human being, infringes rights in a manner expressed in the mistreatment and/or neglect of children, child labor, trafficking and smuggling of persons, commercial sexual exploitation of children and adolescents, femicide and violence against women; thus, it was necessary to build "a justice system that is plural, participative, transparent, essentially restorative, with equity and equality", seeking to decolonize justice.

With this intention, in the year 2011, the government called for elections through a universal vote to elect the authorities of the judicial system and, thus, to reinforce the legitimacy and institutionality of the institution. Unfortunately, the study demonstrates, and the authorities themselves have publicly acknowledged<sup>8</sup> - was not achieved. Regarding the results foreseen by the PND and the information regarding the trafficking of persons, the scarce number of sentences for cases of trafficking, not even one for commercial sexual violence, show the weakness of the justice system in this aspect.

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<sup>8</sup> The authorities have publicly admitted that even with the general elections to elect authorities, the problems in the judicial system have not been resolved. As an example, please read the following article: <http://eju.tv/2015/04/evo-admite-fracaso-con-la-eleccin-de-magistrados-y-dice-que-la-justicia-retrocedi/>

In the frame of the PND, the National Plan for Equal Opportunities “Women building the New Bolivia to Live Well” (*Plan Nacional para la Igualdad de Oportunidades “Mujeres construyendo la nueva Bolivia para vivir bien”*) is one of the main precedents of the National Plan against the trafficking and smuggling of persons, (*Plan Nacional contra la Trata y Tráfico de Personas*) approved in the year 2014.

The plan acknowledges the situation of structural violence of which the victims are, specifically, women, adolescents and children. The plan also points out the weaknesses of the statistics due to underreporting derived from institutional flaws but also stemming from cultural stereotypes and erroneous concepts. Within this plan’s activities, campaigns to raise awareness among the population on trafficking and smuggling of persons were carried out, but there is no assessment of their impact. This is a generalized weakness in the plans and policies of the Bolivian state.

Two plans addressing human rights were also executed in the last few years: National Plan of Action for Human Rights, Bolivia with Dignity to Live Well (PNADH, *Plan Nacional de Acción de Derechos Humanos, Bolivia Digna para Vivir Bien*) 2009-2013 and the National Plan of Action for human rights 2014-2018 (*Plan Nacional de Acción de Derechos Humanos*).

The PNADH’s proposed objective regarding human trafficking and smuggling is to “*reduce the incidence of cases of trafficking and smuggling, and to provide adequate measures for the rehabilitation and therapy for the victims*”, based on 18 actions that were generally executed with the approval of the Law, but, to date, it is clear that this objective was not met.

Regarding trafficking and smuggling of persons, this new PNADH contemplates as its national legislative framework Law Nº 389 declares that September 23 of every year will be the “National Day against trafficking, and smuggling of persons”; also, Law 370 and Law 263, the Comprehensive Law against trafficking and smuggling of persons; also, Law 251 for the Protection of Refugees and its regulatory Supreme Decree is Nº 1440.

An assessment performed by the Ministry of Justice on the 558 actions considered in the PNADH 2009-2013 revealed that “*the actions that achieved their goal reached 56%; those in process of achieving their goals was 34%, and the actions that did not achieved their goal were 9% (sic)*” (PNADH 2014:18). The PNADH 2014-2018 has the particularity of collecting the recommendations of the Organs of Treaties and recommendation from the Periodic Universal Evaluation (PEU) 2010 as part of the obligations that the international community has assumed in regards to human rights.

The second plan is framed in the new instrument for the Bolivian State's strategic planning, the Patriotic Agenda 2025. According to the research carried out, the idea is that the plan will set the bases for a state policy to give priority to human rights and which will become for its citizens into a sort of "guide to claim their rights". The plan follows the same lines as the PNADH and is currently being disseminated among public entities and organizations among the civil society.

With these important precedents in place, in the year 2012, Law 263 against trafficking and smuggling of persons was passed; thus, the policy guidelines had been clearly set. The law expressly adapts itself to the parameters and recommendations set forth by international platforms, especially the Palermo Protocols.

Another important policy, which was actually designed to address this issue and was developed within the frame of Law 263, is the Plurinational Policy to Fight human trafficking and smuggling 2013-2017 (*Política Plurinacional de lucha contra la trata y tráfico de personas*). This law was developed by the Plurinational Council to Fight human trafficking and smuggling (*Consejo Plurinacional de Lucha contra la Trata y Tráfico de Personas*), also created by law, and which establishes that the crimes of this nature are social phenomena whose causes stem from the deeply ingrained patterns of economic and social and cultural inequalities. Thus its responses must be comprehensive and structural in nature. Unlike other policies developed by the government, this policy did not include the participation of civil society.

Its strategic purpose is to "*Ensure the right of the Bolivian people to live a life free from trafficking and smuggling of persons and related crimes*". It is based on 5 strategic lines<sup>9</sup>:

Prevention, protection, Attention and comprehensive reintegration, rights of the victims to access justice promptly, in time and effectively; the promotion and consolidation of international cooperation agreements (bilateral, multilateral and regional) in the fight against and the guidelines to establish a coordinated, interinstitutional work among different government levels.

An important aspect that is related with the reforms initiated by the Bolivian State in general is that this policy must be implemented at all subnational levels.

There are other complementary instruments, such as the National Plan to fight Trafficking and Smuggling of Persons, 2014, which is an instrument that serves for multiannual planning of actions to fight against trafficking and smuggling of persons", , and is composed of eight programs that seek to resolve the problems identified in the situation analysis:

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<sup>9</sup> <http://saludpublica.bvsp.org.bo/cc/bo40.1/documentos/588.pdf>

- Program 1: Sensitizing, raising awareness and educating against trafficking and smuggling of persons;
- Program 2: Generating conditions for the reintegration of victims;
- Program 3: Ensuring the enforcement of rights;
- Program 4: Training the operators and managers of justice;
- Program 5: Prompt and effective justice when adder trafficking and smuggling of persons;
- Program 6: Promoting mechanisms of international coordination against trafficking and smuggling of persons;
- Program 7: Production and management of knowledge;
- Program 8: Construction of an institutional environment that is favorable to fight trafficking and smuggling of persons and connected crimes.

Furthermore, the Three Year Comprehensive and Intercultural Plan to Combat Human Trafficking and Smuggling of Persons (*plan trienal de lucha integral e intercultural contra la trata y tráfico de personas*), 2014 – 2016 was passed. This was developed by the General Office for the Fight against trafficking and smuggling of persons, dependent on the Vice ministry of Citizen's Safety. Its purpose is to reduce trafficking and smuggling of persons carried out by national and international criminal organizations, whose activities affect human development and citizen's safety. The fight is carried out by implementing strategic mechanisms for prevention, protection, attention, reintegration, the prosecution and punishment of the perpetrators, with interinstitutional coordination. It is oriented towards building a peaceful society, with respect towards the Fundamental Human Rights<sup>10</sup>. The Plan's goal is to "*reduce the incidence of cases of trafficking and smuggling of persons by 20% through effective action in processes for prevention, attention, criminal prosecution and the reincorporation of the victims of trafficking and smuggling of persons into society*"<sup>11</sup>.

Finally, in the area of Communications, the government has designed a communicational strategy whose objectives are to move the population inhabiting the country's borders to take the first steps and the population within the country's central axis to inform themselves on the crime of trafficking and smuggling of persons; the strategy also aims to inform and create sensibility regarding the

<sup>10</sup> Estudio Comparativo en Cinco Países, PNUD, Pag. 23

<sup>11</sup> Three-Year Plan (2014) Bolivian government. Pag. 45

causes and consequences and modes of this crime. This communicational strategy's message works on three ideas: The first one is prevention. Its slogan is "not all that glitters is gold"; the second one is protection: "I want to stay in my Bolivia" and the third one is aimed at the victims: "I want to return to my Bolivia"<sup>12</sup>.



As we stated in a previous analysis in the heading of Organic Legislation, in Brazil, the passing of the Statute on Children and Adolescents ECA (*Estatuto de la Niñez y Adolescencia*)<sup>13</sup> promoted a series of Public policies to fight sexual violence against children and adolescents, with the creation of CONANDA.

The first National Plan to Fight Sexual Violence against Children and Adolescents (*Plan Nacional de enfrentamiento de la violencia sexual infanto-juvenil*) was created in the year 2000, commemorating the 10<sup>th</sup> year of creation of ECA. Developed with the participation of NGOs belonging to the movement in defense of the rights of children and adolescents, the document became a reference for the organized civil society and for the three domains of the country's government. It includes guidelines for a methodological synthesis to restructure the policies, programs and services related to the issue.

In the year 2010, the Ten Year Plan for human rights of children and adolescents (*Plan Decenal de Derechos Humanos de Niños, Niñas y Adolescentes*) was created. This document is also considered a significant frame of reference for drafting public policies and is made up by sectorial issues that converge in a single document. All the plans, whether at the national or subnational level, are founded on the groundwork set by this document. The Ten-Year Plan is composed of 8 Principles and 5 axes, as well as 9 guidelines from the National Policy. It also includes 32 strategic objectives and 90 goals that will provide a common aim for drafting of Multiannual Plans (PPAs for its acronym in Spanish) and the National Plan. These will state actions that will be developed up to the year 2020.

At the program level, in the year 2003, the Republic's Office for human rights was provided with a specific area to address the issue of sexual violence against minors. National Program to Confront Sexual Violence Against Children and Adolescents (PNEVSCA) (*Programa Nacional de Enfrentamiento de la Violencia Sexual contra Niñas, Niños y Adolescentes*) promoted actions such as Dial 100 [Disque 100], a service to file reports, that was created by non-government organizations; however,

12 Press release issued by the Ministry of Communications, on date November 24, 2014

13 ECA for its acronym in Portuguese (Estatuto da Criança e do Adolescente)

at a later stage, the Federal government took charge of this service and currently it set the groundwork for the Intersectorial Matrix to Confront sexual exploitation of children and adolescents (*Matriz Intersectorial de Enfrentamiento de la Explotación Sexual contra Niños, Niñas y Adolescentes*), drafted in 2011, and the Plan of Integrated and Referential Actions to Fight Sexual Violence against Children and Adolescents in the Brazilian Territory (*Programa de Acciones Integradas y Referenciales de Enfrentamiento a la Violencia Sexual Infanto-juvenil en el Territorio Brasileño*)(PAIR and PAIR MERCOSUL). This is a network project to fight the trafficking in children for sexual exploitation purposes within the regions of the border territories of the countries of Brazil, Argentina, Paraguay and Uruguay.

The Policy to Combat human trafficking (*Política de Enfrentamiento a la Trata de Personas*) was created in 2006; this policy set the guidelines and prevention and suppression actions against the trafficking of persons and to provide attention for victims. This policy had 12 specific actions and gave special emphasis on the area regarding human rights. Here, it set definite actions aimed at the target population, such as the introduction of the topic of Trafficking in the trainings provided to the Councils for the Rights of children and adolescents, and the Tutelary Councils, or the articulation of joint actions to fight trafficking in the border regions and areas of tourism, and promoted trainings that were aimed at the productive chain related to tourism<sup>14</sup>.

As foreseen in the policy for the year 2006, the National Plan to Combat Trafficking of People (*Plan Nacional de Enfrentamiento a la Trata de Personas*) (PNETP) was executed between 2008 and 2010, and it aimed at fighting against the violations of rights resulting from trafficking. The plan was divided in three strategic axes: Prevention, suppression of the crime and attention to victims.

PNETP was enacted with the participation of representatives from civil society, state and institutional organizations, as well as UNODC, and NGOs. In the year 2010, and as part of the assessment of the plan, the Meeting of the National Network for Combating Trafficking in Person took place in Belo Horizonte. It was composed of representatives from ministries, civil society and national as well as international NGOs. The Charter of Belo Horizonte was drafted during this event; this document is made up of specific recommendations to address trafficking and sexual exploitation of children and adolescents.

In the year 2011, after its assessment, the second part of PNETP was started. Plan II explicitly states the country's commitment to prevent and suppress the trafficking

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<sup>14</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2006/Decreto/D5948.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/Decreto/D5948.htm) Acesso em 14/03/2015

of persons as well as to guarantee the necessary support in order to protect the victims and to advocate for their rights.

This plan is made up of 115 goals. The foreseen operative lines of action specifically include goals aimed at children and adolescents, even though the text does not specify the age range of the target population. Furthermore, when in its section dedicated to the fight against trafficking, it establishes the training of the operators of the system to ensure the rights of children and adolescents.

An important piece of information for the Brazilian case is that many different instances have been created for action and coordination from the State level. With the approval of Plan II, the Inter Ministry Group for Monitoring and Assessing PMETP II was created, in order to monitor and assess the actions of National Plan II and, thus, to propose technical adjustments and disseminate information among the society. Furthermore, Hubs to Fight the trafficking of persons (NETP – Nucleos de Enfrentamiento a la Trata de Personas) in order to articulate and implement state policies and plans in order to develop further actions with civil entities and public entities addressing the trafficking of persons. The CONATRAP – National Committee to Combat Human Trafficking (*Comité Nacional de Enfrentamiento a la Trata de Personas*) – was created, together with the Senate Parliamentary Research Commission – CPI – against national and International trafficking of persons. The institutional spaces to fight trafficking and smuggling of persons and children and adolescents in particular will be reviewed in greater detail in heading 2.2, which deals on state mechanisms.



In the year 2006, the Colombian government, together with the support of UNICEF and ILO, drafted the National Plan of Action to Prevent and Eradicate commercial sexual exploitation of children and adolescents under the age of 18 years (ESCNNA, *Plan de Acción Nacional para la Prevención y Erradicación de la Explotación Sexual Comercial de Niñas, Niños y Adolescentes*) 2006 - 2011. Among its positive aspects, it is necessary to state that the plan was the Colombian government's first effort to, in the first place, carry out a diagnosis of the issue and, further, to consider local plans in 12 cities, many of which had no instrument to fight against commercial sexual exploitation of children and adolescents.

The research revealed that, unfortunately, the plan has had no mechanisms to provide assessment and monitoring of its results to evaluate its impact. Further, the data indicates the plan was not as successful as was intended. Also, a new plan of

action has not been drafted to, on one hand, gather the recommendations made in 2010 by the Committee for the rights of the Child, and, on the other, to adapt to the social, political and economic changes suffered by the country in the past years and that has extended throughout its regions.

According to the study, the country has some sectorial plans that indirectly address the prevention and eradication of the commercial sexual exploitation of children and adolescents. One example is the National System for Human Rights, which is the national government's main strategy to provide protection, to promote and ensure human rights and International humanitarian law. Its purpose is to support national and territorial level entities and to coordinate their actions in order to promote the respect and assurance of human rights as well as the application of International Humanitarian law through the design, implementation, follow up and assessment of the comprehensive policies for human rights and International Humanitarian Law, as well as the design and consolidation of sectorial public policies with a focus on rights and a differentiated approach. Though the plan intends to promote nondiscrimination of all vulnerable populations, it does not mention sexual exploitation explicitly, and this is a weakness.

The main policy directly related to the issue is the national strategy to fight the trafficking of persons<sup>15</sup>, which resulted as a product from a participative process of joint construction. It stimulates the guidelines for action regarding the fight against the trafficking of persons in Colombia for the period of 2013-2018. Its purpose is to *"fight the trafficking of persons, assure the fundamental rights of the victims through the consolidation of measures and mechanisms for prevention, protection, attention, personal and criminal punishment of this crime"*<sup>16</sup>. Further, it consolidates diverse approaches including rights, gender, differentiated, territorial and crime prevention approaches. This strategy includes seven axes for action:

1. Coordination and sustainability
2. Prevention
3. Assistance and protection for victims
4. Investigation and legislation
5. International cooperation
6. Knowledge generation and management
7. Follow up and evaluation

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<sup>15</sup> Ministerio del Interior (2013, 17 y 18 de Octubre). Proceso de validación del proyecto de Estrategia Nacional de lucha contra la trata de personas

<sup>16</sup> Estudio Comparativo en Cinco Países (2015), Pág. 122

Another interesting program is the Program for Education on Sexuality and the Construction of Citizenry (*Educación para la Sexualidad y Construcción de Ciudadanía*) which, in terms of prevention, intends to have and between 6 and 19 years of age in educational institutions include in their daily lives the exercise of their sexual and reproductive and human rights, as well as a perspective of gender sensibility and the experience of their sexuality in order to enrich their life project and that of others through the construction and updating of manuals to promote the cohabitation with others and assuming three approaches:

1. Human rights,
2. Differentiated approach, and
3. Gender sensitivity.

In many places it mentions, “even if not precisely”, the issue of commercial sexual exploitation is one of the manifestations of sexual violence and violence and gender inequality, issues that must be prevented through the creation of citizen skills.

In the domain of health, the Ministry for Health and Social Protection published, in 2012, the guidelines for the public policies for the development of children and adolescents in the departments and municipalities in order to orient a coordinated action articulated to the vision of the country required to promote comprehensive protection of the fundamental rights of children and adolescents, acknowledging the fundamental role of the family, the education system, the community and the territory as real scenarios where they carry out and develop their lives.

Two purposes are set for policies directly related to commercial sexual exploitation in the category of the right to receive protection: 1) No one should be involved in hazardous activities: the scope of this objective is that no one should be subjected to child labor, labor exploitation, begging or sexual exploitation and 2) No one should be the victim of personal violence; this means that nobody should be subjected to mistreatment, abuse or sexual violence<sup>17</sup>.

Even though commercial sexual exploitation is confused with the broader category of hazardous activities (equivalent to the worst forms of child labor), when addressing crimes of sexual violence and exploitation, it is important to explicitly state this as a top priority objective in the municipal, district and departmental public policies.

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17 Ministerio de Salud y Protección Social (2012). Lineamientos de política pública para el desarrollo de niñas, niños y adolescentes en los departamentos y municipios. Bogotá. Page 19.

This ministry, in joint alliance with the United Nations Population Fund, issued the Model for Comprehensive health Care for Victims of Sexual Violence (*Modelo de Atención Integral en Salud para Víctimas de Violencia Sexual*) in the year 2010. It sought to provide the health sector with different tools to ensure a comprehensive approach towards sexual violence in Colombia that includes, besides medical attention, different types of social skills to attend victims, aiming to contribute to their recovery and avoid revictimization. This model acknowledges the commercial sexual exploitation of children and adolescents as one of the forms of sexual violence and it emphasizes the need to approach it in a differential manner, since each one of these types of violence have different dynamics and consequences.

Finally, the National Plan for Childhood and Adolescence 2009-2019<sup>18</sup>: Happy Children and Adolescents with Equal Opportunity, which aims at ensuring the target population will have basic guarantees for their rights and better opportunities.

Among its objectives it states that no child should be subjected to mistreatment or abuse and that none should be victimized or participates in any damaging activity. Though this plan is set in the Perspective for the Eradication of child labor, it refers to the national plan to eradicate commercial sexual exploitation of children and adolescents. Though the plan has been drafted, it is still not in effect.



Paraguay has many plans in place addressing the issue. First, there is the National Policy for Children and Adolescents POLNA (*Política Nacional de la Niñez y Adolescencia*) 2014-2024, which acknowledges that "when the State's universal policies have not fully satisfied human rights completely, and, thus, children and adolescents live in exclusion or without opportunities or in poverty, the State must guarantee policies for Social Welfare, furthermore, when other conditions such as labor exploitation, trafficking and any other form of violence appear, the State must ensure the execution of Special Protection Policies (...)".<sup>19</sup> Unfortunately, it does not explicitly mention sexual exploitation.

There is also the National Plan for Children and Adolescents (*Plan Nacional de Niñez y Adolescencia* PNA) 2014-2018, whose objectives include "Promoting focused actions in situations of high social vulnerability for the restitution of rights". Within this objective, two results are proposed that bear relationship with sexual exploitation and trafficking:

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<sup>18</sup> Estudio Comparativo en Cinco Países (2015), Page 124.

<sup>19</sup> IBID, pág. 152

The programs focusing on situations of high social vulnerability are managed in a transparent, effective and efficient manner.

To develop and implement the National Strategy for the Eradication of Sexual Exploitation of Children and Adolescents (*Estrategia Nacional de Erradicación de la Explotación Sexual de Niñas, Niños y Adolescentes*).

Along this line, the National Plan for Prevention and Eradication of Sexual Exploitation of Children and Adolescents in Paraguay (*Plan Nacional de Prevención y Erradicación de la Explotación Sexual de Niñas, Niños y Adolescentes*) (2012 – 2017) is the most important plan related to the prevention and Eradication of Sexual Exploitation of Children and Adolescents (ESNNA for its acronym in Spanish), and it was enacted at the end of the year 2011. Many social sectors participated in its drafting, both from the public as well as civil society. In its theoretical framework, this plan establishes that commercial sexual exploitation of children and adolescents is one of the multiple forms in which sexual violence is manifested. It includes sexual abuse and remuneration whether in money or in kind, and specifies children and adolescents being treated as sexual and commercial objects.

According to the research, it is necessary to highlight that the conception of the plan differs from the Facultative Protocol of the Convention on the Rights of the Child related to the sale of children, child prostitution and the use of children in pornography, since it uses the term “traditional sexual exploitation” instead of “child prostitution”, because it stems from the idea that in prostitution there is an element of willingness that is nonexistent when addressing the case of children and adolescents.

The Plan establishes its general strategic objective as in the following terms:

***“To define, develop and articulate institutional strategies for the prevention, protection, punishment and comprehensive attention for children and adolescents in order to contribute to eradicate exploitation in Paraguay, in the framework of the doctrine of comprehensive protection”.***

Further, it establishes specific objectives for prevention, comprehensive attention and institutional strengthening.

Paraguay also has a National Plan for the Promotion of the Quality of Life and Health with Equity for Adolescence 2010-2015 (Plan for Adolescence) (*Plan Nacional*

*de Promoción de la Calidad de Vida y Salud con Equidad de la Adolescencia*), that states government strategies to support adolescents must address the specific needs of different groups of people, including “people in situation of commercial sexual exploitation”.<sup>20</sup> Further, it acknowledges that efforts should be aimed at improving coverage in clinical interventions, as well as the intervention of families and communities in the most vulnerable populations, among which it highlights “adolescents who are the object of sexual exploitation and/or trafficking”<sup>21</sup>. Further, it sets goals of zero indifference to sexual exploitation. Unfortunately, it does not explicitly state what the goal of “zero indifference” is in these cases. Though there were specific goals that had to be met up to 2012, it is evident that there are still weaknesses regarding the cultural perceptions of these cases as well as a scarcity of centers for differentiated attention that are friendly towards adolescents.

Analogously, there is also a National Plan for the Promotion of the Quality of Life and Health with Equity for children 2010-2015 whose general purpose is to “*elevate the quality of life and health of children under ten years by promoting family and community spaces that are nurturing and the access to services that are of equal access, comprehensive and of good quality*”.<sup>22</sup> Even though it establishes goals of zero indifference towards sexual exploitation, as does the Plan for Adolescence, it does not explicitly state what these zero indifference goals are.

From the point of view of its approach, the plan very fittingly intends to carry out comprehensive interventions that also aim towards a change in behavior and the information dissemination in communities, but the research has identified there are still many weaknesses in this sense. Furthermore, there is no information regarding assessment and impact of the activities executed in the framework of the plan.

In an interinstitutional coordination effort, the National Plan for Comprehensive Development of the First Stage of Childhood (*Plan Nacional de Desarrollo Integral de la Primera Infancia*) 2011-2020 was also developed. It was created in the year 2011 thanks to the coordinated efforts between MEC, MSPBS and SNNA. In its description of the target population, it acknowledges that in the age between 5 and 8 years “*More responsibilities are undertaken derived from their participation in their own personal development and socialization (Right to health, right to education, right to read and culture, the right to look for and receive information, the right to play and free association, the right to stay in the family group and the group of origin, the right to social and legal protection against abuse, sexual and labor exploitation)*”. The rest of the Plan’s document, however, does not mention the way in which these three

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20 Plan document, page 15.

21 Estudio Comparativo en Cinco Países (2015), Page 154

22 IBID, Page 155

institutions will articulate in order to meet the objective regarding the sexual and commercial trafficking and exploitation of children and adolescents.

An important part of the plan was that it noted the lack of identification and documentation for children was a relevant factor, as it was related to impunity in cases of trafficking and commercial sexual exploitation.

Finally, in the framework of Law N° 4788 the National Policy for the Prevention and Fight against the trafficking of persons (*Política Nacional de Prevención y Combate a la Trata de Personas*) 2010-2019 was enacted. This policy visibilizes topics such as internal trafficking, the custom of “*criadazgo*”, which is very common in Paraguay, and the trafficking of native indigenous minors. The National Policy for the prevention and Fight against the trafficking of persons in Paraguay is structured according to dimensions translated in lines of action and strategic axes.<sup>23</sup>

It contemplates prevention, protection and comprehensive attention for people who have been the victims of these crimes, and also investigation, prosecution and trial and punishment against criminals. Further, it includes local, national and international cooperation. The strategic axes are institutional strengthening and public investment, adaptation of legislation, monitoring the implementation of the policy and citizen’s participation.<sup>24</sup>



Peru has diverse strategies, both national and regional, addressing the issue of trafficking of persons.

The National Strategy for the Prevention and Eradication of child labor (*Estrategia Nacional para la Prevención y Erradicación del Trabajo Infantil*) 2012-2021 sets forth the conceptual framework and legislation in effect regarding the issue. It also provides a diagnosis of the situation of child labor in the country and sets forth strategy action axes, goals and indicators. Finally, it describes the strategy’s system for monitoring and follow up. Also addressing the issue on labor, the National Plan to Fight against Forced Labor (*Plan Nacional para la Lucha contra el Trabajo Forzoso*) 2013-2017 approved the conceptual framework and also the international and national legislations applicable to forced labor. This plan offers a diagnosis for forced labor in the country. Furthermore, it specifies the principles, objectives and actions of the plan and strategy for monitoring. Finally, it addresses the funding required to implement the plan. In conceptual terms, it establishes the difference

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23 IBID, Page 156

24 Document of the plan, page 56

between forced labor and trafficking of persons: “Unlike the absence of consent as a central element essential to the definition of forced labor, the trafficking of persons has, as its fundamental constitutive component, the displacement or transportation of the person who is the victim of exploitation”. Action 2.3.a. of strategic objective 2 includes the design of the system of records, follow-up and monitoring of forced labor, which must contemplate its integration with existing sources of information and others yet to be developed, among which are those of the RETA-PNP system

In the frame of the National Plan of Action for Childhood (*Plan Nacional de Acción por la Infancia*), the issue of sexual exploitation of children and adolescents was developed through work groups. However, until this date these groups are still working on the issue or just starting to do so, as is the case of the work Group in charge of Result 17, which aims to seek protection for children and adolescents to ensure they are protected from trafficking. This will be finished by November.

Other plans influencing the approach and impulse given by the Peruvian government to its policies on the issue are the National Plan for Human Rights (*Plan Nacional de Derechos Humanos*) 2014-2016, whose central objective is as follows: “to suffuse public policy with a human rights approach in such a way that every action of the state will be oriented to preserve the dignity of the human person; thus, the National Plan of Citizen’s Safety (*Plan Nacional de Seguridad Ciudadana*) 2013 – 2018, conceived as an answer to insecurity, violence and crime, issues that must be treated comprehensively as well as by proposing mid and long term processes and plans referring to gender, such as the National Plan for Gender Equality (*Plan Nacional de Igualdad de Género*) (2012-2017) and the National Plan Against Violence towards Women (*Plan Nacional contra la Violencia a la Mujer*) 2009-2015; the latter was signed by 7 minister and states the continuity of the State’s policy towards eliminating diverse expressions of violence against women, such as: Domestic violence, sexual violence, psychological violence, femicide, trafficking of women, sexual harassment and homophobia.

Peru also addresses the issue from plans and sectorial strategies such as the National Strategy for Illegal Mining, since it was demonstrated that these spaces propitiate criminal activities related to trafficking and smuggling of persons and commercial sexual exploitation.

An element that must be noted in Peru’s research is that, aside from its plans, the country has a diverse number of protocols regulating and guiding actions in terms of attention and services provided to the citizens. In the frame of the research, the following protocols and guides with relevance to the issue were identified:

- ♥ National Police Force of Peru's Protocol for providing attention and assistance to victims and witnesses of the crime of human trafficking (*Protocolo para la atención y protección de víctimas y testigos del delito de trata de personas por parte de la Policía Nacional del Perú* (PNP))
- ♥ The National Police Force of Peru's Orientation Guide for the Protocol to Provide Attention and Protection of Victims and witnesses of the crime of Human Trafficking (*Guía de orientación para el Protocolo para la atención y protección de víctimas y testigos del delito de trata de personas por parte de la PNP* (Abril de 2014))
- ♥ The Ministry for Women and Vulnerable Populations' Intrasectorial Protocol to Provide Attention to Victims of Human Trafficking, (*Protocolo Intrasectorial para la atención a Víctimas de Trata de Personas en el Ministerio de la Mujer y Poblaciones Vulnerables*)
- ♥ Protocol of the Public Ministry to Provide Attention to Victims of the Crime of Trafficking (*Protocolo del Ministerio Público para la atención de las víctimas del delito de trata*)
- ♥ Procedural Guide for the Single Interview to Children and Adolescent Victims of sexual abuse, sexual exploitation and trafficking for purposes of sexual exploitation (*Guía de Procedimiento para la Entrevista Única de Niños, niñas y adolescentes víctimas de abuso sexual, explotación sexual y trata con fines de explotación sexual*)
- ♥ Legal Medical Guide for performing the Physical Assessment of Sexual Integrity (*Guía Médico Legal Evaluación Física de la Integridad sexual*)  
Procedural Guide for Psychological Evaluation of Presumed Victims of Sexual Abuse and Violence given attention in Medical Offices (*Guía de Procedimiento para la Evaluación*)
- ♥ Intervention Manual CAR151 (Manual de intervención CAR151). (It sets the main guidelines, theoretical approach, general methodology, processes and proceedings these Centers must follow in their interventions to provide comprehensive and quality care to their target population, to enable their reintegration into their family, adoption or social reinsertion)
- ♥ Guide for Detection and Assignment of Victims of Sexual Exploitation of Children and Adolescents (MIMP/ Civil Society 2015) (*Guía de Detección y Derivación de las víctimas de ESNNA* (MIMP/ Sociedad Civil 2015))

Likewise, the Peruvian state has developed national and regional channels for addressing human, trafficking. We identified three:

The Single Channel to Provide Attention to children and adolescents who have been Victims of family and sexual violence (*La Ruta única de atención a niños, niñas y adolescentes víctimas de violencia familiar y sexual*),



The Channel to Provide Attention to children and adolescents of Loreto who have been Victimized (*La Ruta de Atención a niños, niñas y adolescentes víctimas de violencia de Loreto*) and

The Channel to Provide Comprehensive Attention to children and adolescents of Huanuco who have been victims of sexual Abuse (*La Ruta de Atención Integral a Niñas, Niños y Adolescentes víctimas de Abuso Sexual, Huánuco*).

What is interesting to note in these advances is that these specific instruments aim at enabling the proper performance of public officer, especially in the areas of health and justice, to treat victims of trafficking and smuggling of persons as well as sexual and commercial exploitation.

## 2.2 State mechanisms and institutional spaces for action and coordination

Since all five countries show advances on the issue, at least in terms of legislation and development of Public policies and programs related to the topic, it was seen that there are many institutional spaces and action mechanisms and activity coordination at the state level of these countries. In this section we briefly review these in order to have an idea of the instruments found at the level of institutional structures in place.

As an initial observation, we can say that there are many and diverse state mechanisms in place, and this is due to a significant amount of public policies. However, this does not mean that the existence of institutional spaces ensures success, follow up activities or assessment of those activities proposed at the level of state planning.

The following chart summarizes these instances by country

| Bolivia  | Brazil  | Colombia  | Paraguay  | Peru  |
|--|---|---|---|---|
| Plurinational Council to Fight Trafficking and Smuggling of persons ( <i>Consejo Plurinacional de Lucha contra la Trata y el Tráfico de Personas</i> )                   | National Council for the Rights of children and adolescents ( <i>Consejo nacional de los derechos del niño y del adolescente</i> )<br>CONANDA   | Interinstitutional Committee  | National Council for Childhood and Adolescence ( <i>Consejo Nacional de la Niñez y la Adolescencia</i> )  | Permanent Multisectorial Work Group Against Trafficking of Persons ( <i>Grupo de Trabajo Multisectorial Permanente contra la Trata de Personas</i> )    |
| Departmental councils  | Intersectorial Commission to Fight Sexual Abuse and Exploitation of Children and Adolescents ( <i>Comisión Intersectorial de Enfrentamiento al Abuso y a la Explotación Sexual de niñas, niños y adolescentes</i> ) | National systems of human rights and dignity International Law ( <i>Sistema Nacional de Derechos Humanos y Derecho Internacional Humanitario</i> ) (SNDDHI) | Interinstitutional Workgroup for Prevention and Fighting the trafficking of persons ( <i>Mesa Interinstitucional para la Prevención y el Combate a la Trata de personas</i> ) | Central Unit for Protection and Assistance for Victims and Witnesses ( <i>Unidad Central de Protección y Asistencia a Víctimas y Testigos</i> ) UDAVIT) |
| General Office for fighting against trafficking and smuggling of persons (DGLCTTP) ( <i>Dirección General de Lucha contra la Trata y Tráfico de Personas</i> ) (DGLCTTP) | Network to Fight Human Trafficking  |   |   |   |
|  | National Committee to Fight the trafficking of persons ( <i>Comité Nacional de Enfrentamiento a la Trata de Personas</i> – CONATRAP)  |   |   |   |
|  | Hubs to Fight the trafficking of persons  |   |   |   |
|  | Parliamentary Research Commission (CPI) on Trafficking  |   |   | Observatory for Criminality   |

In the case of the Bolivian government, three levels were created within the frame of the policies reviewed: The Plurinational Council to Fight Against Human Trafficking and Smuggling (*Consejo Plurinacional de Lucha contra la Trata y el Tráfico de personas*), which is the highest level of coordination and for representation: it is in charge of formulating, passing and executing the Plurinational Policy to Fight trafficking and smuggling of persons and connected Crimes (*Política Plurinacional de Lucha contra la Trata y Tráfico de Personas, y delitos conexos*). It is made up by a representative of each ministry (nine, in total): one from the Ministry of Public Affairs, one from the People's Ombudsman, and two representatives from the organized civil society. The Plurinational council is Presided by the Minister of Justice. At the subnational level there are also Departmental Councils against trafficking and smuggling of persons. Finally, the Vice ministry for Citizen's Safety, a branch of the Ministry for State Affairs, created its General Office to Fight Trafficking and Smuggling of Persons (*Dirección General de Lucha contra la Trata y Tráfico de Personas*, DGLCTTP for its acronym in Spanish).

In Brazil, the first key institutional level is the National council for the Rights of Children and Adolescents (CONANDA), which promotes many of the policies currently in effect in the country. This council is a permanent official body, deliberative in nature and it possesses a joint composition; it makes up the basic structure of the Office for Human Rights of the Presidency of the Republic (SDH/PR). The joint composition refers to its structure, which ensures equal representation among its members. Thus, 50% of its members belong to civil society and 50% to public organs. Brazil is one of the few countries whose constitution legally establishes joint composition and deliberative councils in the area related to developing policies for children and adolescents; it also establishes the creation and structure of tutelary councils elected by the communities themselves. Among CONANDA's main statements is the fight against sexual violence and exploitation against children and adolescents, prevention and eradication of child labor and monitoring bills in development that are related to their rights.

There is also the Intersectorial Commission to Fight Abuse and Sexual Exploitation of children and adolescents (*Comisión Intersectorial de Enfrentamiento al Abuso y a la Explotación Sexual de niñas, niños y adolescentes*), created by the Federal Government in 2007 to ensure a greater integration of the policies aimed at fighting sexual violence. Along this line, the Interministry Monitoring and Assessment Group of PMETP II (*Grupo Interministerial de Monitoreo y Evaluación del II PMETP*) was instituted, in order to monitor and assess the actions of the II National Plan to Fight the trafficking in persons, propose technical adjustments and disseminate information for the society.

The Network to Fight the trafficking of persons is another interesting entity (*Red de Enfrentamiento a la Trata de Personas*). This network is made up by representatives from the Ministries, the civil society, national and international non-government organizations, and other sectors.

The CONATRAP was created by a presidential decree. It is composed by representatives from the government and civil society, at the level of the Ministry of Justice. One of CONATRAP's competences is the promotion of strategies to implement actions for the National Policy to Fight the trafficking of persons.

The Hubs to Fight the trafficking of persons (*Nucleos de enfrentamiento a la trata de personas*, NETP) were created to articulate and implement state policies and plans in order to develop actions with civil entities and public organs involved in addressing the trafficking of persons. They take victims to shelters, help victims to return to their place of origin, they execute action to fight trafficking; they have the capacity to carry out investigations and implement training and sensitization workshops to public entities regarding the issue. The NETP also draw on the support provided by federal and civil policies and, thus, provides important data. Currently, 14 states from Brazil have these Hubs. These are: Acre (2), Alagoas, Amazonas, Amapá, Bahia, Ceará, Distrito Federal, Minas Gerais, Pará, Pernambuco, Paraná, Rio de Janeiro, Rio Grande do Sul and São Paulo.

Finally, in order to investigate national and international trafficking of people in Brazil, as well as its causes and effects, routes and people in charge during the period between 2003 and 2011, and with the establishment of the Palermo Convention, the CPI, Parliamentary Investigation Commission on Trafficking was set in place in March of 2011.

In Colombia, the Law N° 1336, aimed at expanding and enhancing the Law to Fight Exploitation, Pornography and sexual Tourism involving children and adolescents (*Ley de lucha contra la explotación, pornografía y turismo sexual con niños, niñas y adolescentes*), created the Interinstitutional Committee to act as an entity of coordination and articulation of strategic actions to fight sexual and commercial exploitation of children and adolescents. Our research shows it has not had an effective leadership to assess the National Action Plan 2006-2011 or to draft and implement a new one.

Furthermore, there is also the National System for Human Rights and International Humanitarian Law (SNDDHI, *Sistema Nacional de Derechos Humanos y Derecho Internacional Humanitario*), which is the government's main strategy to protect, promote and ensure human rights and international humanitarian law. It was designed to act as an organism to coordinate entities and organisms within

the national and territorial levels in order to promote the respect and guarantee of Human Rights and International Humanitarian Law. This is done through the design, implementation monitoring and assessment of the Comprehensive Policy for Human Rights and International Humanitarian Law, as well as consolidating sectorial public policies with an approach on rights and a differentiated focus.

Its objectives include the use of a rights-based approach and a differentiated focus for sectorial public policies and comprehensive public policies. However, it must be brought to attention that the Colombian Institute for Family Wellbeing (*Instituto Colombiano de Bienestar Familiar*), the most important entity in charge of providing protection for children, adolescents and family, has not been explicitly included or assigned specific responsibilities for this issue. The SNDDHI is composed of 8 subsystems.

In Paraguay, the ruling organism of the National Policy for Children and Adolescents is the National Council for Childhood and Adolescence (*Consejo Nacional de la Niñez y la Adolescencia*). It is composed by a representative of the National Office for Children and Adolescents, the Ministry of Public Health and Social Wellbeing, the Ministry of Education and Culture, not for profit public welfare non-government organizations, the Ministry of Justice, the Ministry for Public Affairs, the Ministry for Public Defense and departmental councils.

The Comprehensive Law against Trafficking of persons, Law N° 4788 (*Ley N° 4788 Integral contra la Trata de personas*), created the Interinstitutional Workgroup for Preventing and Fighting the trafficking of persons, under the coordination of the Ministry of Foreign Affairs, composed by: The Ministry for Public Affairs, the Supreme Court of Justice, the Ministry for Internal Affairs, the Ministry of Justice, the Ministry of Education and Culture, the Ministry of Public Health and Social Welfare, the Ministry of Industry and Commerce, the Ministry of Women's Issues and the National Office for Childhood and Adolescence, among others.

Our research also identified one of Paraguay's weaknesses: that, even though there are definitions on the articulation and coordination between different Ministries and State organisms for trafficking as well as sexual and commercial exploitation, the procedure manuals are not well known by the aforementioned organism's officials, specifically on the issue of sexual exploitation.

Peru also has many state institutions related to the issue. First, there is the Permanent Multisectorial Workgroup against Human Trafficking, (*Grupo de Trabajo Multisectorial Permanente contra la Trata de Personas*), made up by the following members: one representative each from the Ministry of Internal Affairs, from the Ministry of Women's Issues and Social Development, from the Ministry of Health,

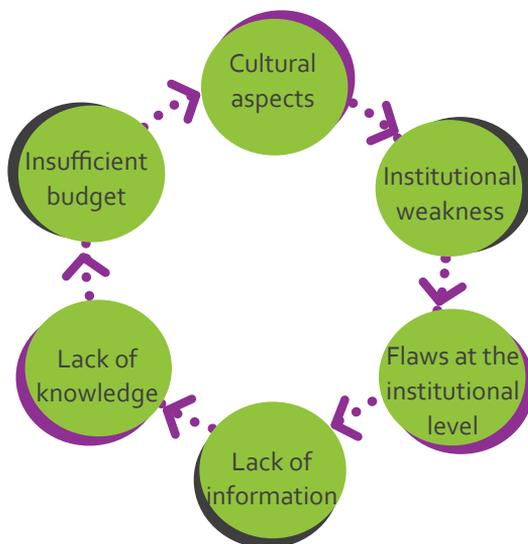
from the Ministry of Justice, from the Ministry of Education, from the Ministry of Labor and Job Promotion, from the Ministry for Foreign Affairs and two from civil society institutions specialized on the issue.

Central Unit for Protection and Assistance for Victims and Witnesses (UDAVIT, *Unidad Central de Protección y Asistencia a Víctimas y Testigos*) is within the Ministry for Public Affairs and its purpose is to provide services of psychological, social, medical and legal care to victims and witnesses of these crimes, and to look for truth and justice. The unit has a protocol to provide attention to victims of trafficking of persons. The Ministry for Public Affairs also has the Observatory for Criminality, and it processes and provides statistics and data on crimes and trafficking of persons in particular.

### 2.3 Main limitations

The studies performed in the five countries demonstrate that even if there is much progress especially regarding the development of legislation and public policies, there are still great weaknesses in the application of the legislation and the plans.

Among the main limitations, which are shared in all the cases studies in varying degrees of incidence, we can find the following.





## The normalization of violence and persistence of cultural taboos

Once and again, the studies highlight that one of the main limitations in the fight against trafficking and smuggling and sexual and commercial exploitation of children and adolescents is the fact that there is a persistent culture of violence in the region, and it is characterized by its normalization at all levels, starting in the family space

In the first place, there is a high degree of male chauvinism (*machismo*) in the societies studied, and this makes the adoption of the comprehensive approach within policies a huge challenge. This culture also favors the normalization of violence against women as well as children. The studies also revealed that societies are highly centered on adults and though there are efforts being done to change this perspective and see children and adolescents as subjects fully entitled to their own rights, cultural preconceptions still hold much sway when implementing policies.

Furthermore, sexuality continues being regarded as a taboo in most Latin American societies. Churches have much influence in the culture and politics of the region and, as it was seen, though the countries have signed on Human Rights as a whole, there is only one law on and, but it is still not in effect. The difficulty of discussing the topic of sexuality openly and without hesitation also translates into difficulties at the moment of providing attention for the victims, especially in health and legal services, especially when this first level of attention depends on elements such as the provision of evidence which, at a later time, plays a role in bringing the perpetrator to justice.



## Weak judicial system and underreporting

All the studies carried out within the countries agree that though there are many important advances in legislation, there are many weaknesses in terms of the judicial systems in many ways. On one hand, in some cases, it was evident that there are imprecisions in legislation. For example, the classification of crimes is not clearly delineated or there are multiple complications in legal proceedings, such as the work overload of the legal officials, a lack of understanding of the legislation, a lack of support regarding sensitization on the issue to provide comprehensive support to the victims, etc.

A recurring data found in the studies is the systematic underreporting of cases due to many reasons: the crimes are wrongly classified; the evidential framework is

not built properly; there is a lack of necessary resources to support victims during the reporting proceedings and the trial and, finally, the number of cases that finally receive a sentence is still too low.

This is compounded by the fact that, even though on a general level an increased number of reports was observed, the cases not reported due to social and cultural issues is still even greater. Our research shows that even though the increasing number of reports can be regarded as a positive impact resulting in greater visibilization of the problem, as an effect of the groundwork laid by campaigns and policies, while the judicial systems are not properly strengthened, victims will not find the motivation required to opt to seek justice through the formal paths set out by the system.



### **Scarce information and real statistics**

This is a very marked problem that was observed in all five countries. There are no reliable databases or precise and reliable information on the topic and this makes it difficult to carry out diagnoses but also to design successful public policies.

The topic of information is also related with the fact that state institutions in general show weakness in implementing their plans when executing the follow up, monitoring and evaluation of their activities. This situation has also occurred in all five countries and which seems to be an immediate necessity.



### **The public officials' lack of knowledge or sensitization on proceedings**

This is directly related to the aforementioned problems. In many cases, the failure of some plans and policies has to do, simply and plainly, with the officials' lack of knowledge of proper legislation or proceedings to treat cases of trafficking and smuggling of persons or commercial sexual exploitation.

This weakness is particularly troublesome at the entry levels that provide attention to victims because, if the officials ignore the legislation and proceedings or they lack the proper training to deal with the victims, it is probable that the cases will not prosper and the victims will not receive the support, treatment and assistance they need.

There is also great risk that these will once again become victims. Our research shows that this happens even when there are laws and protocols in place that explicitly try to avoid revictimization.

## **Institutional weakness**

Even though institutional weakness has been addressed from the judicial level as well as the health care and information system, in general terms we have also observed a level of institutional weakness in the capacity of the state, at both the national and subnational levels, to execute the plans and policies they propose and design.

The experiences reviewed detail problems encountered at the bureaucratic level, lack of coordination at the interinstitutional level and, in many cases, a lack of participation and protagonism from the civil society in general and non-government organizations in particular, which is worrisome since these entities, in many cases, have a greater amount of information, resources and know how than the governments themselves due to their closeness and experience with the issue.

There are many mechanisms, committees, units and instances created for the fight against trafficking and smuggling of persons, sexual exploitation and protection for children and adolescents, but this institutional complexity has no correlation with the success, efficiency and efficacy with which the plans and policies are being implemented. In other words, there is much legislation, many plans and policies and many levels and organisms with responsibility, but very little results in relation to the efforts involved in planning and execution.

A key, central issue in this institutional weakness is related to the fact that many ambitious goals and objectives are set that are in agreement with the international treaties, conventions and protocols subscribed by the countries; however neither the necessary financial nor human resources necessary to achieve these purposes and goals are ever assigned. The topic of funding will be reviewed in greater detail in the next chapter, which deals on the scope of application.

## **Budgets: Limitations and coherence with the objectives**

A fundamental aspect highlighted in all the national studies is the lack of available budget assigned to fight trafficking and smuggling of children and adolescents.

In Bolivia, Law N° 263 considers the following factors for funding: Assignment of progressive funding by the Executive organ; the request of financial funds from international organisms by the Plurinational Council; the assignation of funds from the confiscation of goods from crimes of trafficking and smuggling of persons and the annual assignation of necessary and sufficient economic resources from the central territorial autonomous organisms and entities and decentralized institutions. According to the data, however, the funding of the budget assigned at the national, departmental and municipal levels destined to fighting violence, to provide social attention, defense and protection for children and family are minimal; it scarcely covers the operational costs of the services and payment of the professionals working in the area<sup>25</sup>. The amounts assigned for the spheres of justice, work and municipal expenses oscillate between 0.56% and 1.4% of the budget<sup>26</sup>.

In Brazil, the national study also concludes that even though there are important advances in terms of legislation and policies, there is an evident lack of funding proportional to the dimension and specificity of the problem to implement plans and policies that directly benefit the target population.

In the case of Colombia, was previously analyzed, one of the main weaknesses is that the country does not have a national plan of action to articulate public policy instruments with specific actions and budgets in the different cities and regions where commercial sexual exploitation of children and adolescents takes place. The study indicates that, in the year 2006, the Plan to Prevent and Eradicate National Plan of Action to Prevent and Eradicate commercial sexual exploitation of children and adolescents was carried out at the national level, and was supposed to be in effect up until in the year 2011; however, it lacked the human, technical and financial resources required to provide the capacity to coordinate the necessary activities to ensure the exercise, enjoyment and guarantee of the rights of children and adolescents and families were victims of these crimes and , especially in areas far away from the cities, and within rural territories or places affected by armed conflict<sup>27</sup>.

In the case of Paraguay, the budgeting issue is also troublesome. Initially, the funding came mostly from international cooperation provided with the commitment that the government of Paraguay had to take charge and ensure the sustainability of the projects with its public budget. However, the study has found that this commitment has not been complied with as required and many projects

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25 Estudio Comparativo en Cinco Países, Page 33

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and plans have been interrupted due to lack of public funding. The lack of funding mainly affects the provision of attention to victims.

Cording to the findings of the study, the lack of funding to apply policies is seen as a grave lack of action effected by civil society organizations as well as by the state, which has acknowledged that the lack of public funding is the greatest obstacle to apply their policies on this matter. Furthermore, it was stated that the institution in charge of carrying out and requesting the budget – The Ministry for Women’s Issues – has still not fulfilled this obligation<sup>28</sup>.

Civil society organizations have also stated that one of the greatest problems for execution of the policies is the lack of public funding, since most of the job carried out in the spheres of prevention and attention is carried out currently through contributions provided from international cooperation entities. This demonstrates a weak commitment from the part of the state with the issues under discussion.

In general terms, it is seen that there is a greater budget for the crime of trafficking than for structural violence issues related to sexual exploitation. Even so, there is an agreement that both budgets are still insufficient. <sup>28</sup> Interview with civil society organizations and attorney specialized in criminal prosecution of trafficking and Sexual Exploitation of Children and Adolescents.

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<sup>28</sup> Interview with civil society organizations and specialized attorney in criminal prosecution of trafficking and sexual exploitation of children and adolescents.



## SCOPE OF APPLICATION

### 3.1 Context: Social, political, economic and cultural elements

The study's methodology contemplated to execute an analysis of the context in which these five countries are implementing policies related to the trafficking and smuggling of children and adolescents. In general terms, the results are similar. There are social, economic and political factors influencing the issue. Furthermore, 3 topics have been identified as affecting specific contexts and that will also be reviewed: The custom of "criadazgo" in Paraguay; the armed conflict in Colombia and tourist activity as a conditioning factor, especially in Colombia, Peru and Brazil.

The statistic data can be consulted in the national studies. However, in this section we list the main conclusions derived from the research.



**Population data: Many Young people and a great deal of structural poverty.**

All the studies consistently demonstrate the existence of a two-fold reality. On one hand, the populations from the general region are young. This means there is a high percentage of children and adolescents and birth rates that are even higher than in industrialized countries. If we add to this data the fact that there are still great levels of structural poverty and one of the highest levels of inequality in the world, the result is that the youngest populations are driven into the labor market, in many cases, in conditions of high vulnerability.

Criminal networks take advantage of this situation and cause trafficking and smuggling of children and adolescents to be too complex an issue to treat in a comprehensive manner. Prostitution is still a form of survival for many people,

especially teenage women and young women who can find no other means for survival and, thus, fall prey to circles of sexual abuse and exploitation.

According to the studies carried out, poverty also increases the level of violence within families which takes an overwhelming toll among women, adolescents and children. The data collected from at least 3 countries show that violence against girls between 15 and 17 years has dramatically increased.

### Culturally ingrained violence

Violence is closely related to the problem of structural poverty, as shown by the study. This issue, as we analyzed previously in other sections, is deeply rooted in culture and very related to the patriarchal and adultcentric mentality.

The data show in general terms that an overwhelming majority of women will fall prey to violence at some moment of their lives and that a great percentage of their aggressors will come from their closest family and social circle. It is important to consider the figures in data bases on the issue are quite conservative as to the true magnitude of the problem because one of the main weaknesses in all cases is still the lack of reliable information and statistical data that would allow assessing the situation with greater precision.

All the institutions specializing on the topic agree that the reality of the issue is considerably larger than what we can determine through data such as the reports filed on violence or statistics on femicide.

The lack of confidence in the institutions and the inefficiency in processing cases of violence, especially gender-related, results in a large number of victims who prefer to stay silent. This is true even if these problems are now much more visible and many more victims resort to the system in place.

A related topic identified in Colombia is servile marriage or forced cohabitation. In this regard, the study reveals that in certain rural areas and marginal urban areas there are parents who permit an older man, a neighbor from their own community belonging to a high economic and social level, to take their daughter, much younger than the aforementioned man, to establish sexual and emotional relations with him and perform domestic chores. Sometimes this transaction is executed through a legal marriage<sup>29</sup>.

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29 Ministry for Social Protection ICBF, UNICEF, OIT, Fundación Renacer (2006). Plan Nacional de Acción para prevenir y erradicar la explotación sexual comercial de niños, niñas y adolescentes menores de 18 años, 2006-2011. Bogotá.

In some rural or native indigenous communities, such as the Wayuu, this practice has an ancestral cultural background. However, studies carried out by civil society institutions revealed a direct relationship between servile marriage and National Plan of Action to Prevent and Eradicate commercial sexual exploitation of children and adolescents in semi-rural communities<sup>30</sup>. The normalization of violence, with all its implications, is still one of the most complex tasks to be dealt with in the entire region.



## Sexuality: Cultural obstacles for public debate

The studies carried out reveal that the topic of sexuality is still a taboo. Our research reveals this problem presents itself at many levels. On one hand, it is an obstacle when reporting a crime, because many victims prefer to stay silent for shame and fear of stigmatization and the response of their social environment. There is a strong tendency to blame the victim, especially in cases related to sexual abuse.

On the other hand, there is also a conflict of interests at the moment of implementing initiatives related, for example, to sexual education. The political power of conservative groups and organized religious groups makes these processes difficult and, in many cases mentioned in national level studies, impedes the passing of legislation or the execution of policies in this regard.

Finally, the lack of information on sexual and reproductive health increases the degree of vulnerability of children and adolescents since, if they had more information, they would have also more resources to defend themselves or at least know their rights and know clearly when these are being violated and, thus, ask for help.



## The “criadazgo” in Paraguay

The topic of the custom of “*criadazgo*” is a finding that has taken front and center stage in the specific case of the study on Paraguay. The study revealed that, first, even if the country has a problem of internal trafficking of persons, it tends to be overlooked. Organizations within the civil society started to draw attention on this invisibilization and its corresponding lack of classification. Furthermore, it has been pointed out that this invisibility covers up cases such as the custom of “*criadazgo*”<sup>31</sup>.

<sup>30</sup> Fundación Antonio Restrepo Barco, Fundación Renacer y Fundación Plan (2009). Escenarios de la infamia. Explotación Sexual Comercial de Niños, Niñas y Adolescentes. Bogotá.

<sup>31</sup> Duré et al: 2009

*The Special Rapporteur for the United Nations' report on the sale of children, child prostitution and the use of children in pornography*, Juan Manuel Petit, drafted after his visit to Paraguay in 2004 pointed out that "in the context of poverty and social inequality that defines the region and Paraguay, the sexual exploitation of children and adolescents is concrete. Problems related to sexual exploitation such as sexual abuse, child abuse and 'criadazgo' bear significant dimensions"<sup>32</sup>. This reality is still currently in effect.

The *criadazgo* is a practice that is still widespread in Paraguay. It consists of the inclusion of a boy or girl into a family, in many cases since they are very small, under the guise of providing them with shelter. They perform domestic activities in exchange for lodging, food, clothing and, in some cases, education, without receiving any money in compensation. According to the study, even if it is not necessarily a form of sexual exploitation, in many cases it does favor sexual and commercial exploitation of children and adolescents. In the words of the attorney Teresa Martínez, of the Specialized Unit against Trafficking and Sexual Exploitation of Children and Adolescents (Unidad Especializada en Trata y ESNNA), the "criadazgo is an entryway to Sexual Exploitation of Children and Adolescents because the families expel the child if he or she does not satisfy the family's demands; thus, they throw the child out and they are exposed to Sexual Exploitation of Children and Adolescents"<sup>33</sup>.



## The armed conflict in Colombia

One of the most worrisome issues in the frame of the research is Colombia's armed conflict, which directly affects millions of people, particularly children and adolescents. The following description is extracted from the national study<sup>34</sup>:

*"For over 50 years, Colombia has suffered an armed conflict between the forces of State Security and insurgent groups. This conflict has affected millions of people and particularly children and adolescents, especially those in rural areas and belonging to indigenous and afrodescendant communities. One of the damages befalling children has been their sexual abuse by part of all the actors in the armed conflict."*

32 Informe del Relator Especial de Naciones Unidas sobre la venta de niños, la prostitución infantil y la utilización de niños en la pornografía, Juan Manuel Petit

33 Estudio Comparado en Cinco Países, Page. 151

34 IBID, Pág. 115

Even if there is no consensus regarding the number of children and teens that have been recruited, international organisms such as UNICEF and Human Rights Watch considered that, in 2003, there were more than 11,000 children and adolescents fighting in Colombia. However, the High Commissioner of the United Nations for Human Rights considered that the figure could really reach 14,000<sup>35</sup>. According to Human Rights Watch (2000): "At least one of four armed combatants is under 18 years"<sup>35</sup>.

According to the Unit for the Comprehensive Reparation and Attention to Victims (Unidad para la Reparación y Atención Integral a las Víctimas), by the year 2011, 49,950 girls and 52,824 boys had been victims of the armed conflict; by 2012, 34,155 girls and 36,219 boys; and by 2013, the estimates say 10,561 girls and 11,204 boys. The main causes for this type of victimization were, among others, the forced displacement, threats and terrorist acts.<sup>36</sup>

Sexual violence has been present consistently in the armed conflict but has not been much acknowledged. Between 2008 and 2012, at least 48,915 minors were victims of different forms of sexual violence: 41,313 girls and 7,602 boys. The age range in which girls suffered sexual abuse with greatest frequency is between 10 and 14 years, while the range for boys was between 5 and 9<sup>37</sup>.

*"Among the activities children and adolescents victims of forced recruitment are, among others: armed fighting, sexual slaves, spies; all these forms of violence are grave violations of the rights of the Child, Human Rights and Humanitarian International Law".*



## The problem of tourism and mining as factors enabling traffic

According to the findings of our study, economic activities such as tourism and mining can be factors that enable human trafficking and smuggling.

In the case of tourism in two countries in particular, Peru and Colombia, it was noted that tourist activity enables situations for commercial sexual exploitation. In the study for Peru, for example, it was discovered that ever since 2008 the numbers

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35 Human Rights Watch (2000). Aprenderás a no llorar. Page 20.

36 Alianza por la Niñez Colombiana (2014). Complementary report to fourth and fifth periodic report from the Republic of Colombia to the Committee for the Rights of Children, corresponding to the period of 2006-2010. Page 44

37 Campaña -Violaciones y otras formas de violencia (2014). Quedejan de cazar a niños y niñas. Informe sobre violencia sexual contra niñas, niños y adolescentes en el conflicto armado en Colombia.

state 10,000 children and adolescents suffer from sexual exploitation. The data was provided by the Ministry for Women's Issues. However, it is estimated that the real number is much higher, and this is sustained by the field work carried out by CHS as well as different newspaper articles as well as information circulating and collected through the experiences of other organizations working on the issue. The information leads to conclude that there is a large amount of child and adolescent sexual exploitation in the regions and provinces in Peru, especially those with a growing national and international tourist industry.<sup>38</sup>

In the Colombian case, the national study indicates that one of the places of risk enabling the sexual exploitation of children and adolescents is Internet. The proliferation of social networks has enabled the contact and recruitment of children by perpetrators. During the period of 2010-2013, the flow of foreign tourists in Colombia was 4,341,950. One of the most visited cities was Bogota, with 44%; Cartagena followed, with 15%, then Medellin with 11%, Cali with 8% and San Andres with 4%.

Other economic activities, such as mining or oil drilling and industry, in general, constitute risks. Besides tourism, Colombia has large agrarian complexes and many mining and oil projects distributed throughout their country, which promotes an internal labor migration that is mostly made up by men who spend long periods of time at their work place and whose sole contact are their colleagues, a risk factor favoring commercial sexual exploitation and violence against women, adolescents and children around the work area<sup>39</sup>.

In Peru, the study shows that the limited statistics available indicate that younger women are trafficked mainly for sexual exploitation. However, frequently there are great difficulties to reach people who are victims of trafficking in persons for other ends, such as forced slavery in mining and lumber activities, and illegal drug trafficking, among others. The Peruvian government estimates that women make up 94% of the victims in the cases processed. "False job offers are the main means used to recruit victims. People in situations of poverty are attracted by their chances to improve their income and they are willing to take the risk of accepting a job far away from home. Children and adolescents are transported without their parent's authorization or the government's supervision, since there are few, if any, control stations. And when there are control stations, bribes ensure the trafficker's impunity. In Madre de Dios, the victims come from the highland provinces from Cusco and the Andean and Amazon regions nearby. The victims from the highlands are called

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38 Estudio Comparativo en Cinco Países, Page. 186

39 Ibid, Page 115

“ojotitas”<sup>40</sup> and they have a “lower price” than the women from the Amazon regions of Loreto, Ucayali y Huanuco. Even though the connection between mining and trafficking of persons is well known, especially in Madre de Dios, the state has not been able to act, neither in the criminal investigations against traffickers or rescuing the victims”.<sup>41</sup>

## 3.2 Institutional framework

In this research, we were able to review the mechanisms in place in each country at the institutional level, from where they are promoting actions, policies and programs to fight against trafficking of children and adolescents.

A recurring element in all the studies is that many of the advances and achievements on the issue stem from the participation, commitment and efforts of international as well as non-government organizations. Thus, it is necessary to emphasize the role these institutions among those that have been identified as providing significant support in the five countries studied.

### 3.2.1 International Scope

Throughout the research we have been able to demonstrate the important role of international organisms in addressing this issue. A large quantity of organic legislation, policies, plans and programs related to trafficking and smuggling of children and adolescents has been promoted thanks to signing and subscribing to international conventions and also thanks to the logistic and financial support provided by international organisms.

It is clear that all levels of the United Nations, specifically those addressing issues related to the rights of children and adolescents, such as UNICEF, have a significant impact in the action framework of this issue.

The International Labor Organization (ILO) has also stood out as an important framework institution, especially since it generates the guidelines to regulate the issue of child labor. Likewise, the Organization of American States also promotes reforms and legislative development building on binding conventions and protocols for their member states.

<sup>40</sup> The word is a diminutive of the Quechua word *Jotas* for the native, hand-made sandals used by the peasants in Peru and their descendants in Andean zones. *Ojotitas* is the Word used to refer to the peasant girls who wear these sandals.

<sup>41</sup> Estudio Comparativo en Cinco Países, Page 187

End Child Prostitution, Child Pornography And Trafficking Of Children For Sexual Purposes (ECPAT International) is a global network of organizations working together to eliminate child prostitution, child pornography and trafficking of children and adolescents. It has had an important impact thanks to its scope and has also supported the development of legislation. It aims to ensure children everywhere enjoy their fundamental rights, free and safe from all forms of commercial sexual exploitation.

The network is made up by 85 partner groups in 77 countries. Every group has a coalition of NGOs and, in some cases, social movements.

In this organization's framework of activities, three world congresses have been celebrated, with the participation of institutions such as the UN. It stands out because of its achievements and the number of involved in the specific issue<sup>42</sup>.

### 3.2.2 National Scope

A topic which has been underlined emphatically in this research is that, among the main weaknesses faced by the country are institutional weakness and, particularly, the lack of information and base lines that would improve the way the issues are approached. In this regard, it was seen time and again that NGOs working in the five countries studied have been one of the state's main sources of support. These organizations, in many cases, have more information and procedural knowledge thanks to their experience in the field. Many of the successful experiences in the passing of legislation has been, precisely, the result of pressure, lobby and the work carried out by NGOs, and this is due to many reasons, mainly because their work is more focused, because they do not have to undergo heavy bureaucratic proceedings that, as we were able to see in this research, can turn into bottlenecks; however, their success is also mainly due to the fact their activity budgets are assured.

It seems the formula is not reduced to a scheme that only aims at non-government organizations or only state organisms but rather to strategic alliances that would allow the governments to overcome their deficiencies or support and use the accumulated knowledge from these institutions to optimize their actions.

The participation of the greatest possible number of actors has also worked because one of the main lessons we learned from this study is that the issue of trafficking and smuggling of children and adolescents is a topic that is related to many other structural, social, cultural and political issues. The degree of complexity of the issue also requires a greater scale of effort.

<sup>42</sup> For more information, please go to <http://www.ecpat.net/>

The second element directly related to this is the fundamental nature of civil society participation. Once again, the research shows that those initiatives that were legitimated with citizen participation had more success due to obvious reasons. The more a country's citizens are involved, the chances for them to make the initiatives their own, whether the latter come from the governments or not.

Along this line, it seems that a fundamental element is to enhance the change of focus existing on this topic, which consists in considering the children and adolescents themselves as subjects fully entitled with rights but, furthermore, as central agents of the structural social changes required to revert the situation.

### 3.2.3 Subnational Scope

An important element that can be gathered from the research is that the subnational levels can be important spaces for action. Many of the cases analyzed demonstrate there are zones where the problem of trafficking and smuggling of minors has greater incidence. This can be the result of many factors: Greater levels of poverty, important economic activities such as tourism or mining, oil and extractive industrial activities in general, a greater presence of criminal networks and organizations, the proximity to country borders and deficient extent government control at all levels – police force, resources to provide attention to victims or legal services or, in Colombia's case, the regions of armed conflict.

This demonstrates the need to have a differentiated regional perspective because the issue can have very different characteristics.

Further, the study has shown there are subnational institutional levels that can have greater access, operational possibilities and resources to reach the population.



## SHARED TASKS

The research has shed much light on the state of the art of the issue on trafficking and smuggling of children and adolescents, especially for the purpose of sexual and commercial exploitation. The review of the five countries analyzed - Bolivia, Brazil, Colombia, Paraguay and Peru – allows us to highlight and summarize certain positive aspects.

There are advances in the enactment of legislation and this is clear and stands out in all the cases, though some countries show more progress than others. Thus, it can be concluded that at least the states have carried out real efforts to legislate the issue, classify the crimes and develop, building on this legislation, a great number of public policies aimed at fighting trafficking and smuggling of children and adolescents.

The importance of the international legislative frame is clear, as well as the subscription of conventions. These have been the fundamental bases of the legislative development we have observed.

Furthermore, a positive aspect of all this is the outstanding role of the international network of entities and non-government organizations. These are a fundamental support to address the issue in all the countries.

In order to promote improvements and make progress, some urgent tasks have been identified in order to improve processes and actions in areas that most need it and, thus, alleviate the weaknesses wherever these have been identified:

### 1) Specify the existing legislation

All the studies highlight the importance of adjusting legislation and, fundamentally, specify two things: the conceptual framework and proper classification of the cases.

Though once more an important advance has been seen in terms of the legislation currently in place, it is important to correct imprecisions and in certain cases contradictions within the legislation. Further, it is necessary to finish classifying all criminal activities related to the issue and to assign proportional punishments.

## **2) Develop protocols to provide attention to victims and execute procedures**

A recurring topic is the lack of protocols and clear planning of proceedings, especially in the judicial and medical domains. The critical protocols and routes in legal proceedings should be very clear from the initial stage, the filing of reports. Further, they must consider at all times the provision of necessary support and assessment required by the victims to withstand the entire proceedings. In the case of healthcare, it is crucial to establish protocols to provide attention to victims. These must provide a dignified, respectful and considerate treatment that demonstrates the proper empathy for their situation. Further, care must be taken constantly to avoid them from falling prey to revictimization, as this is a current concern. Establishing a clear set of rules to provide attention to the victims is one of the key factors to ensure the attention provided is more efficient. Further, these should also consider the provision of proper care, reparations and social reintegration of the victims.

## **3) Systems to generate information, data bases and statistics**

The Achilles heel in all countries is the lack of information. They all agree that a single system to register cases would be very useful. Furthermore, it is important to start building systems to generate statistical information and data bases that are more complete and precise.

These instruments are fundamentally aimed not only to adjust the planning of designs, programs and public policies in general and, thus, to have a greater impact and achieve objectives, but also to do something that is fundamental: Evaluate the actions executed. Without a doubt, this is a top priority.

## **4) Training of officials**

It is fundamental to provide training and sensitization workshops on the issue to public officials. The quality of the service provided to the citizens who resort to the

state in order to defend their rights is a key factor for the population to recover their trust in institutions and, thus, to gradually approach them in order to seek help, report cases and overcome the situations of violence they are confronted with.

We were able to observe two problems in this regard. First, in many cases the officials, especially in legal spheres, still lack full knowledge of the legislation, thus it is very difficult to enforce it. It makes no sense to have laws protecting the rights of children and adolescents if the people in charge of enforcing them do not know them.

Second, we have also observed that some cases were not successful because the evidential framework was not processed correctly. This is a clear example of the lack of training and information of public officials.

## **5) Budgets proportional to the problem**

All countries are faced with the problem that, even if they do have concrete plans, policies, objectives and goals in place, they lack the necessary and sufficient resources to enforce them. The problem is not only a result of a weakness of the public sectors which generally have a heavy workload: the budgets assigned to these sectors are not enough to address the magnitude of the issue.

In many cases, the studies demonstrate that the budget is enough to pay the salaries of the officials in the area but they are not enough to execute what the public policies stipulate. In other cases, there are bureaucratic problems or coordination problems that result in blocking the assignment of budget.

## **6) Intersectoriality and interinstitutional coordination**

One of the topics that has become clear with the research is that the issue's complexity is very high. Thus, only a comprehensive approach that incorporates all levels and approaches can be truly successful.

The important tasks, in this sense, are the review and improvement of intersectoriality. This is absolutely necessary, since the legislation and policies we have reviewed are designed to work in this manner. It is important that interinstitutional coordination mechanisms be improved and adjusted in order to achieve greater and better results at the state level. Intersectoriality and interinstitutional coordination should, further, reach subnational levels, since these have a greater chance of reaching the population and, in many cases, they are

responsible for providing the first level of attention in the legal sphere as well as in the medical domain.

Another very important factor is that the interinstitutional approach must also include non-government organizations that are specialized in the issue, because it was clearly demonstrated these constitute a fundamental network to provide support in the task of fighting trafficking and smuggling of children and adolescents.

## **7) Follow-up, monitoring and assessment**

An underlying problem that needs to be worked upon is the lack of systems to follow up and monitor the plans and policies being implemented, because, in order to advance, it is necessary to evaluate the results and impact of our actions.

The lack of evaluation of plans has been a recurrent element in all countries and it is a necessary and important task, especially in all countries where there is the need to develop new plans.

## **8) The participation of civil society in general and children and adolescents in particular**

Finally, the recommendation regarding the participation of civil society is of absolute importance. Citizen participation can provide greater assurance of success to policies because it imbues more these with greater legitimacy, promoting their adoption by members of society.

A way of channeling the participation of civil society is through its institutions and organizations as well as NGOs working in the issue and which already have an organized network. The other path is to use state institutional structures already in place at the subnational level, optimizing interinstitutional coordination. Just to give an example, the Departmental councils, in the Bolivian case, or the hubs to fight the trafficking of persons, In the case of Brazil, are spaces that can move the population to get involved.

## **9) Work the topics of violence and commercial sexual exploitation with greater depth**

A last element that needs to be highlighted is that much more progress was observed at the legislative and conceptual levels referred to the topic of trafficking

and smuggling of persons but the same is not true of the issues of violence and commercial sexual exploitation.

The national studies have identified that a great part of the challenge in the fight on these issues is precisely due to a cultural normalization of violence and to an unresolved situation of structural poverty that leaves children and adolescents in a vulnerable position. There are many victims of commercial sexual exploitation, especially teenage women, but the legislation in this regard is not sufficiently developed either at a conceptual or legislative level; further, the structural factors have a great influence in the problem at the general level.

This is a topic that must be considered. In this context, it cannot be overlooked just because the victims are not in a situation and condition of sexual slavery.

The final recommendation, thus, is the need to evaluate the actions and forms of making visible the issue among the society; it is also necessary to work on the issue at the conceptual level and have incidence on judicial systems in the five countries to optimize and enhance the legislation addressing these issues.



## ANALYSIS OF STRENGTHS, OPPORTUNITIES, WEAKNESSES AND THREATS

| Legislation on trafficking and smuggling children and adolescents<br>CONSTITUTIONAL LEVEL  |  |
|--|--|
| Strengths  | Opportunities  |
| All constitutions include articles addressing the validity and effect of the international treaties and conventions the countries have subscribed to.            | Since the constitutions acknowledge international legislation, the latter is a powerful instrument to pressure the governments and lobby for the enactment of the corresponding legislation. |
| All constitutions consecrate human rights and 4 of them expressly forbid the trafficking of persons.   | The international visibilization of the crime favors and motivates national systems to develop legislation and enforce the constitution as well as the conventions they have subscribed to.  |
| All constitutions contain special provisions for children and adolescents.   | Gender equality is an issue that has been moving to the forefront and can help and influence political good will to enforce the constitution as well as international legislation.           |
| Weaknesses   | Threats  |
| There are no internal mechanisms that oversee the compliance of international legislation.   | There is no international entity with the power to enforce international treaties and conventions. International law cannot be enforced.   |
| In occasions, the control of constitutional power fails and legislation that contradicts constitutional articles is sometimes enacted.                           |  |
| Institutional weakness, specifically at the level of the judicial levels, implies that even if the constitutions hold rights sacred, they cannot guarantee them. |  |

## Legislation on trafficking and smuggling children and adolescents

### POLICIES AND PLANS

| Weaknesses  | Threats  |
|---|--|
| General institutional weakness results in unsuccessful execution of plans and policies.   | Male chauvinist culture, high levels of corruption and inefficiency, the normalization of violence and adultcentric conceptions make the issue and its approach highly complex.  |
| The assigned budgets are clearly insufficient.  | The weak state presence throughout its territory is a problem.   |
| Public officers are not sufficiently trained to address the issue, not only in terms of knowledge of legislation and proceedings for the provision of attention but also in terms of sensitization for a dignified, humane and proper treatment of the victims. | Even if the networks of trafficking and smuggling operate at the national level, they also do this largely at the international level. However, the level of joint coordination and action between neighboring countries is very scarce. |
| The channels created for citizen participation are precarious.  | Political instability results, for example, in constant changes of officials or problems related to governance affect the chance of the policies to be successful.   |
| There are no baselines that enable the design of policies, plans and programs or feasible objectives and goals coherent with the issue and its complexity.  |  |
| There are no real and efficient mechanisms for follow up and monitoring of policies and plans.  | Health care systems still lack the capacity to provide and ensure the attention victims need. Further, there are not enough centers that can provide support to adolescents when they need it.   |
| Currently, there are no operating single registry registries for cases.   |  |
| There is no reliable statistical information available. Structural weaknesses from the systems and the lack of knowledge from the officials result in underreporting.   |  |
| There are many plans in place but interinstitutional coordination is flawed.  |  |
| What is required is a comprehensive, multi/intersectorial outlook in policies in order to address the issues so as to have real chances of success.   |  |

| Legislation on trafficking and smuggling children and adolescents<br>POLICIES AND PLANS   |  |
|---|--|
| Opportunities   | Strengths  |
| A network of NGOs can support processes, especially since they have more information than the government and know how   | All states have varying degrees of policies and plans on the issue   |
| There is a gradually increasing visibilization on the topic and a growing awareness among the population.   | Though first steps to generate real intersectorial and subnational institutional mechanisms are being taken, these are still precarious. |
| Though in varying degrees, there are processes of decentralization and institutionalization at the subnational level that may result in important platforms to implement policies that bridge the gap with civil society.   |  |
| There are cooperation resources that could be channeled if there were the political goodwill to do so. It is possible to work on an approach based on strategic alliances to strengthen the work the state is carrying out on the issue in those aspects where it is weak.          |  |
| It is also possible to develop a scheme for strategic alliances with the private sector where companies may commit with principles and values regarding child labor and the prevention of commercial sexual exploitation. There are successful experiences that should be explored. |  |
| Communication media are very powerful instruments that, however, are not taken into consideration in a scheme of strategic alliances with private and public entities.  |  |

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## Online resources

[www.minsalud.gov.co](http://www.minsalud.gov.co)

<http://www.ohchr.org>

<http://eju.tv/2015>

<http://saludpublica.bvsp.org.bo>

[www.comunicacion.gob.bo](http://www.comunicacion.gob.bo)

[www.planalto.gov.br](http://www.planalto.gov.br)

<https://www.mininterior.gov.co>

<http://www.ecpat.net>



