

# Legal Framework Against Trafficking in Persons in Colombia

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## LEGAL FRAMEWORK AGAINST TRAFFICKING IN PERSONS IN COLOMBIA

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### INTRODUCTION

Colombia has been identified as a source and destination country where men, women, and children are exploited for the purpose of sex and labor trafficking. Both types of trafficking occur outside and within the country. In particular, women and children are trafficked to countries in Latin America, the Caribbean, and Asia. Recently, child prostitution has increased in zones with tourism or large extractive industries.

Labor trafficking victims are usually found within mining, agriculture and domestic service.

The populations at higher risk for trafficking include internally forced displaced persons by the armed conflict, Afro-Colombians, Colombians with disabilities, indigenous Colombians and Transgender Colombians<sup>1</sup>.

The departments<sup>2</sup> that report the highest number of victims are Valle del Cauca, Risaralda, Cauca, Antioquia and Quindío<sup>3</sup> Particularly, for 2015 the International Organization for Migrations (IOM) registered 55 cases of human trafficking, 48 exploited abroad and 7 internally. In 6 of the total

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<sup>1</sup> Department of State. (2015). *Trafficking in Persons Report*. Washington D.C., pp. 125, 126.

<sup>2</sup> The Republic of Colombia is a democratic unitary State. Its territory is divided into departments and municipalities. The first ones are bigger extensions of territory, which are governed by the departmental governor and the departmental assembly. Within the departments the municipalities are the next level of territorial organization. Municipalities are governed by the mayor and the municipal council. The local authorities are democratically elected by the citizens residing in those territories.

<sup>3</sup> In 2014 Valle del Cauca (26%), Risaralda (16%), Cauca (13%), Antioquia (12%) and Quindío (8%) Interior Ministry. (2015). Protection to victims. Retrieved March 30, 2016, from <http://tratadepersonas.mininterior.gov.co/estrategia/eje-de-proteccion-y-asistencia-las-victimas#sthash.1D0NFidP.dpuf>

cases the victims were men and 49 were women. While the most frequent type of human trafficking was sex trafficking (42 cases), 9 cases of forced labor and 4 of servile marriage were reported<sup>4</sup>.

For the year 2014 the same organization reported 62 cases. 53 were external cases, and in 9 cases the victims remained in the country. 28 cases out of the total 62 were reported as sexual exploitation, 22 as labor trafficking and 3 as servile marriage<sup>5</sup>.

Comparatively the data shows that there has been a decrease in cases reported during the past three years<sup>6</sup>. Nevertheless, this situation responds more to the lack of an adequate procedure to identify and report human trafficking cases rather than an objective reduction of the number of victims<sup>7</sup>.

Some other factors that contribute to the underreporting of Human Trafficking cases are the fact that the crimes take place in several locations, lack of an effective victim's protection program, the inexistence of a centralized data collection system, as well as trafficker's threats to the victims or to her/his family. Also, some victims do not identify themselves as victims. They may also feel ashamed by the fact they were victims, or by the type of activity that they were forced into, and they may distrust the authorities<sup>8</sup>.

This is evidence of the complexity and human suffering caused by trafficking in persons, the difficulties that victims face, and the challenges for the State to overcome in order to prevent and assist victims. In this regard, it is important to consider that offering effective remedies to

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<sup>4</sup> International Organization for Migrations. (2015). Assistance to presumed trafficking victims. Retrieved March 25, 2016, from <http://www.oim.org.co/programas/contra-la-trata-de-personas/la-trata-de-personas-hechos-y-cifras.html>

<sup>5</sup> Ibid.

<sup>6</sup> For the year 2013, 62 cases of Colombian victims were identified abroad. Interior Ministry. (2015). Protection to victims. Retrieved March 30, 2016, from <http://tratadepersonas.mininterior.gov.co/estrategia/eje-de-proteccion-y-asistencia-las-victimas#sthash.1D0NFidP.dpuf>

<sup>7</sup> Department of State. (2015). *Trafficking in Persons Report*. Washington D.C., p. 124.

<sup>8</sup> Interior Ministry. (2015). Protection to victims. Retrieved March 30, 2016, from <http://tratadepersonas.mininterior.gov.co/estrategia/eje-de-proteccion-y-asistencia-las-victimas#sthash.1D0NFidP.dpuf>

the victims contributes to the recognition of their dignity, the guarantee of their fundamental rights as human beings and prevents the occurrence of new cases.

Therefore, analyzing the remedies available under Colombian legislation for victims of trafficking in persons is relevant. Hence, this paper will focus on determining the compliance of Colombian legislation to the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons -A/HRC/26/18- (Hereinafter the Principles).

First, this paper will describe the anti-trafficking legal framework that is currently in place. Next it will analyze the definition of trafficking in persons provided in the law. Third, it will examine the legislation compliance with the Principles and underline the main obstacles for implementing the legal framework. Lastly, it will present some conclusions.

## **ANTI-TRAFFICKING LEGAL FRAMEWORK IN COLOMBIA**

In the year 2002 the National Congress of Colombia approved Act 747<sup>9</sup>, which reformed the Penal Code. Particularly, it modified existing crimes and added new ones to the Code.

Hence, article 188, which included the prohibition of trafficking in persons (hereinafter TIP), was modified to criminalize trafficking of migrants (Art. 188), trafficking in persons (Art. 188A) and to include circumstances that aggravated the crime (Art. 188B). The new provisions (Arts 188A and 188B) were introduced in order to harmonize domestic legislation with international

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<sup>9</sup> "Throughout some amendments and additions to the Criminal Code (Act 599 of 2000) are made, the crime of trafficking in persons is created and other provisions are ordered" (Original text in Spanish "Por medio de la cual se hacen unas reformas y adiciones al Código Penal (Ley 599 de 2000), se crea el tipo penal de trata de personas y se dictan otras disposiciones")

law and create an effective criminal framework to fight human trafficking, which, until that time, had not been in place in the domestic law<sup>10</sup>.

Particularly, article 188A included some elements of Art. 3 of Palermo Protocol and set the punishment for perpetrators between 10 and 15 years of imprisonment<sup>11</sup> and fines that could range from 600 to 1000 times the minimum wage.

Later on, in 2003, Colombia domesticated the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter Palermo Protocol). The Protocol created the obligations for the State to comply with and adjust its legislation to prevent, provide effective remedies to the victims, sanction those responsible for the crime and look for cooperation within and between Colombia and other States.

As a consequence, in 2005 the National Congress enacted Act 985 in order to adopt specific measures to combat human trafficking and provide a mechanism for assistance and protection of human trafficking victims, including child victims.

Specifically, the Act established that the National Government shall design and create a National Anti-Trafficking in Persons Strategy, which shall regulate the provisions included on the Act. Therefore, the main objectives for the Strategy are to: 1) gather and develop information, 2) prevent and assist victims of human trafficking, 3) strengthen law enforcement and 4) procure cooperation, domestic and internationally, to fight this crime (Art. 4). According to the Act, this Strategy shall be reviewed and define every four years.

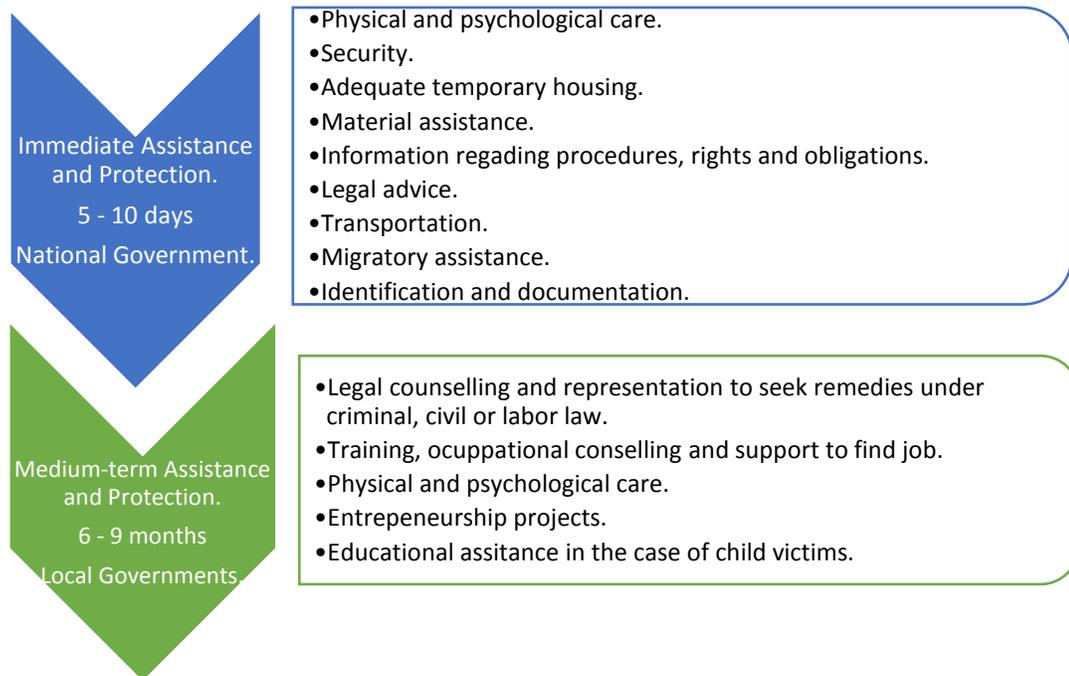
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<sup>10</sup> Bill 173 de 2001, Chamber of Representatives. Reasoning. Congress Gazzette No. 113, 2001.

<sup>11</sup> It is important to take into consideration that according to Colombian law the highest imprisonment sentence for a simple crime is 50 years. If the crime is aggravated it can be increased up to 60 years. As for fines, currently the highest fine is set up in 10,446,272 USD. (Act 599/2000 Arts. 31, 37 and 39)

Furthermore, Act 985/2005 created the Interagency Anti-Trafficking Committee<sup>12</sup>, which is composed by representatives from fourteen National Agencies<sup>13</sup>, and established that it would coordinate the local authorities<sup>14</sup> (departments and municipalities) and all the private actors in order to implement the National Anti-Trafficking in Persons Strategy.

According to Act 985/2005, the National Anti-Trafficking Strategy and Decree 1069/2014, which regulates Act 985, the assistance and protection program for victims of human trafficking shall provide immediate and medium-term assistance.



<sup>12</sup> Prior to the Interagency Anti-Trafficking Committee there was the Interagency Committee Against Trafficking in women, girls and boys. It was created by the Decree 1974, 1996. However, the Interagency Anti-Trafficking Committee replaced it in 2005.

<sup>13</sup> Those Agencies are: Ministry of Interior, Ministry of Justice, Ministry of International Relations, Ministry of Social Protection, Ministry of Education, Administrative Department of Security, National Police, National Prosecutor, Ombudsman Office, Interpol, National Institution of Family Welfare, National Adviser for Women Equality, Fondelibertad and Administrative Unit for Information and Financial analysis.

<sup>14</sup> See note 2.

## **DEFINITION OF HUMAN TRAFFICKING**

In 2004 Colombia ratified<sup>15</sup> the Convention against Transnational Organized Crime and some Congressmen started raising awareness of the seriousness problem that trafficking in persons represented to the country. In that context, Act 985/2005 was enacted to create a legal framework to provide the appropriate tools for authorities to combat this crime and provide remedies to victims.

Article 3 of Act 985/2005 defines trafficking in persons as:

Anyone who detains, translate, harbors or receives a person within the national territory or abroad for the purpose of exploitation. [And establishes that she or he] will be liable to imprisonment of thirteen (13) to twenty (23) years and a fine of eight hundred (800) to in 1500 (1,500) minimum monthly wage.

For purposes of this Article exploitation would be understood as the economic benefit obtained or any other benefit for himself or for another person, through the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or similar practices to slavery, servitude, exploitation of begging of others, servile marriage, organ removal, sexual tourism or other forms of exploitation<sup>16</sup>.

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<sup>15</sup> Colombian State ratified the Protocol with the following reservation: In accordance with article 15, paragraph 3, of the Protocol, Colombia declares that it does not consider itself bound by paragraph 2 of that article. "Art. 15. 2.: Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court." Palermo Protocol

<sup>16</sup> Original text in Spanish. "Art. 188A. Trata de Personas: El que capte, traslade, acoja o reciba a una persona, dentro del territorio nacional o hacia el exterior, con fines de explotación, incurrirá en prisión de trece (13) a veintitrés (23) años y una multa de ochocientos (800) a mil quinientos (1.500) salarios mínimos legales mensuales vigentes. Para efectos de este artículo se entenderá por explotación el obtener provecho económico o cualquier otro beneficio para sí o para otra persona, mediante la explotación de la prostitución ajena u otras formas de explotación sexual, los

This definition of Trafficking in Persons is in line with the Palermo Protocol<sup>17</sup> now that it determines the actions (recruitment, transportation, transfer, harbouring or receipt of persons) and the purpose (exploitation). However, it does not establish the specific means<sup>18</sup> by which the persons might be exploited. That is, the law does not state the actions that must be in place in order to exploit the persons (threat or use of force or 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<sup>19</sup>).

At first sight it might indicate that Congress did not consider it important to address the means used for the exploitation because the relevant factors would be the actions needed and the exploitation of the person. This situation might create difficulties because the prosecution would rely just on two factors, one of them highly personal or subjective, the knowledge and desire to exploit the person. If the definition of trafficking would require certain means (coercion, fraud, abduction, etc.), the existence of any of those could be taken as an indication for the exploitation.

However, some constitutional case law has determined the existence of trafficking in person by analyzing not just the actions and the purpose, but also the means used to traffick the person.

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trabajos o servicios forzados, la esclavitud o las prácticas análogas a la esclavitud, la servidumbre, la explotación de la mendicidad ajena, el matrimonio servil, la extracción de órganos, el turismo sexual u otras formas de explotación.”

<sup>17</sup> Palermo Protocol. Art. 3: "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or 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 labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (...)

<sup>18</sup> Means: threat or use of force or 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.

<sup>19</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. General Assembly resolution 55/25, 15 November 2000.

In 2012, the Colombian Constitutional Court reviewed, as part of the certiorari revision, an “*acción de tutela*”<sup>20</sup> filed by a woman who was trafficked when she was underage<sup>21</sup>. She was kept in involuntary servitude for 7 months by a family that took advantage of her due to her peasant origin and her age (6 years old). Before the lower courts the plaintiff was seeking the recognition of the violation of her rights to identity, family, justice, truth, reparations, liberty, personal and sexual integrity and human dignity but the claim was denied on the grounds of lack of immediacy of the violations argued. In this particular case, the Constitutional Court stroke down the decisions of the lower courts, recognized the violations of fundamental rights as claimed by the plaintiff and determined the existence of a right to remedy for the victims of human trafficking. To establish the violations of the fundamental rights the Court determined the occurrence of trafficking in persons by studying the Art. 3 of the Palermo Protocol. It considered the actions, the purpose and the means that the family used to exploit the victim. Particularly, the Court mentioned that due to the vulnerability and helplessness of the victim it was possible to force her into servitude. With that the Constitutional Court addressed the particular conditions necessary for a person to be considered trafficked.

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<sup>20</sup> “*acción de tutela*, a petition procedure which allows individuals to seek protection of fundamental human rights in the courts. A *tutela* is a complaint that any citizen can bring before any judge in order to seek an immediate judicial injunction against actions or omissions of any public authority or private party that they claim violates their constitutional fundamental rights. Courts must hand down a ruling within ten days of receiving a petition. More and more citizens are using the *tutela* in defense of civil liberties, social rights and indigenous peoples’ collective rights. In 1992 a total of 8,060 *tutela* judicial decisions reached the Court for discretionary review but by 2005 there were 221,348. Since 1992, the Constitutional Court, to whom all *tutela* judicial decisions must be sent for certiorari selection, has received about 1,400,000 *tutela* decisions.” Cepeda-Espinosa, Manuel José. How far may Colombia’s Constitutional Court go to protect IDP rights? Retrieved from <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/BrookingsSpecial/13.pdf>

<sup>21</sup> Colombian Constitutional Court. T-1078 Dec. 12, 2012. MP: Jorge Ignacio Pretelt Chaljub.

In general, the definition provided by Colombian law is similar to the international standards,. Nevertheless, it is important not to ignore that the lack of specification about the means might create difficulties for gathering evidence and sanctioning the traffickers.

**LEGISLATION COMPLIANCE WITH PRINCIPLES ON THE RIGHT TO EFFECTIVE REMEDY FOR VICTIMS OF TRAFFICKING IN PERSONS**

Taking into consideration the development of the legal framework and the current state of the Anti-Trafficking legislation (Act 985/2005 and Decree 1069/2014), this section will determine its compliance with the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons (A/HRC/26/18). Also, other legal provisions, such as the National Constitution, the Penal Code, Criminal Procedural Code, the Civil and the Labor Code, are going to be analyzed.

The following chart presents rights and obligations, the conditions for accessing the remedies and the remedies provided by the Colombian State to adults and child victims of human trafficking in light of the guidelines offered by the Principles.

Principles A/HRC/26/18	Colombian Anti-Trafficking Legislation Act 985/2005 and Decree 1069/2014
<b>I. Rights and Obligations</b>	<p><b>Colombian Anti-Trafficking Law creates the right to an effective remedy for the victims of human trafficking, hence it establishes obligations for the State to prevent, protect and guarantee the human rights of those at risk of or those who has been trafficked. Therefore, it complies with the rights and obligations, as follows:</b></p> <ol style="list-style-type: none"> <li><b>1.</b> According to Arts. 1, 2.4, 4.4 and 7 of Act 985/2005 (hereinafter the Act) the National State has the obligation to create a National Strategic Plan, which shall provide effective remedies to victims. Those should include economical, legal, social, physical and psychological. Also, victims may use criminal (Art. 188 Colombian Criminal Code), civil (Arts. 2341 and et seq. Colombian Civil Code), labor (Arts. 65 and 149 Colombian Labor Code), constitutional (Art. 86 Colombian Constitution) or administrative (Arts. 7 Act 985/2005) legal procedures to ask for remedies.</li> <li><b>2.</b> Colombian State provides remedies to nationals who are abroad and to both citizens and non-citizens who are in Colombian territory and have been victims of human trafficking. Also, the remedies provided by the Anti-Trafficking</li> </ol>

	<p>legislation include measures for restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.</p> <ol style="list-style-type: none"> <li>3. As part of the assistance provided, the State facilitates access for victims to the remedies through free legal counseling and representation.</li> <li>4. According to Art. 2.3, the Act should be interpreted according to the Palermo Protocol and must protect the dignity and human rights of the persons trafficked. Even though this is a broad provision it considers the prohibition of discrimination on any ground. Also, the National Constitution (Art. 13) and the Anti-Discrimination law (Act 1482/2011) prohibit the discrimination based in any ground.</li> <li>5. According to the Anti-trafficking law and the rules that regulates it, there is a substantial right to remedies for victims. Also as it was mentioned in item No. 3, there are several legal procedures by which victims are able to claim those remedies.</li> </ol> <p>The main objective of the Act is to “put in place the necessary measures of prevention, protection and assistance to ensure respect for human rights of victims and potential victims of trafficking, both resident in or brought into the country, as the Colombians abroad, and to strengthen State action against this crime.”</p> <p>Regardless the main objective of the Law, it does not literally state that the right to remedies is human rights-based. However, it is possible to argue that it has this approach due to the kind of measures that it provides for the victims e.g. psychological care and guarantees of non-repetition.</p> <ol style="list-style-type: none"> <li>6. Art. 11 of the Act establishes that the National Government is required to identify the countries where Colombian nationals are being trafficked, those which are transit place or destination for TIP and those who actively work against this crime, in order to seek international cooperation in this field.</li> </ol>
<p style="text-align: center;"><b>II. Access to the right to a remedy</b></p>	<ol style="list-style-type: none"> <li>7. Colombian Anti-Trafficking legislation partially complies with the International standards for accessing to the right to remedies due to the following reasons:       <ol style="list-style-type: none"> <li>a) Colombian law has legally forcible rights to remedies. Act 985/2005 and the regulation that develops it create an administrative procedure that victims are able to use in order to get remedies. Also, the Ombudsman Office provides legal advice for the victims to have access to criminal, labor, and civil or constitutional proceedings.</li> </ol> <p>Through the criminal proceeding the perpetrator will be punished and victims might claim compensation from the defendant as <i>parte civil</i>. The compensation could cover the harm suffered (material and moral harms, and all the profits lost due to the harm suffered) (Art. 188 Colombian Criminal Code). The same kind of compensation can be claimed by the victim against the defendant in a civil lawsuit. (Arts. 2341 and et seq Colombian Civil Code)</p> <p>In cases where there was intended to exist a labor relationship between the victim and the perpetrator, the victim can claim the wages that were not received. (Arts. 65 and 149 Colombian Labor Code)</p> <p>Also, victims, when no other legal resource is available, are able to file a constitutional action (accion de tutela) in order to avoid or to seek redress for the violation of constitutional rights. In trafficking cases this includes</p> </li> </ol>

the rights to an effective remedy, dignity, identity, to be free of cruel and inhuman treatment, to be free of slavery and servitude, and autonomy (Arts. 13, 16, 17, 25, 86 Colombian Constitution).

- b)** Arts. 6.3 and 10 from the Act determined that the Interagency Anti-Trafficking Committee would constantly develop guidelines and training for State officials to successfully identify possible victims of human trafficking.
- c)** Principle 8 from Decree 1069/2014 established that information shall be provided any time during the assistance process, taking into consideration the individual characteristics of the victim (language, mental conditions, education level and some others). Also, Art. 5 on the same Decree determines that authorities must provide information to the victims regarding their rights as part of the first meetings they have with them. Art. 7 of the Anti-Trafficking law created the obligation for State Officials and the right for victims to be informed about the remedies that they are entitled as victims of Human Trafficking and the way in which they can claim those.
- d)** *Art. 35 Decree 1069/2014 creates time limits for the immediate (5 days, maximum 10 days) and medium-term (6 months with a maximum of 9 months) assistance measures that would be provided to the victims. These time periods might be really rigid and might not take into consideration the particularities or complexities of each case. Therefore, it is possible to say that the legislation provides a reflection and recovery period but it might be insufficient.*
- e)** Both, the Decree 1069/2014 (Art. 6) and the Act 985/2005 (Art. 7) state that the access to remedies shall be provided regardless of the migratory status of the victim and include access to medical, psychological, social and legal assistance. Also the Ombudsman Office will provide free legal advice to the victims.
- f)** *Within the legal framework there are no provisions that explicitly state that victims should not be “detained, charged or prosecuted for activities that are a direct consequence of their situation as victims of trafficking in persons”. Consequently, it is not clear if a victim can be prosecuted for any crime -for example, theft or assault- committed while trafficked.*  
In the particular case of prostitution and immigration law violations, neither of those are criminal offences under Colombian legislation, and therefore cannot be used against the victims.
- g)** According to Art. 9 Decree 1069/2014 the non-citizen victims have the right to remain in the country if he/she decides to. Colombian authorities will notify the applicable embassy or consulate and will provide advice to the victim on how to regularize his/her immigration status in Colombia.
- h)** According to principle 9 of Decree 1069/2014 all victims shall be treated equally, without any kind of discrimination on the ground of gender, age, sexual orientation, or socio-economic status, among others. Also, state officials have the obligation to avoid any kind of behavior that has as objective or that might offend, humiliate or intimidate victims.  
All of the above reinforces the constitutional and statutorily provision against discrimination.

	<p><b>i)</b> Art. 7.1 Act 985/2005 and Art. 6 Decree 1069/2014 provide the immediate assistance to victim, which is not conditioned on the cooperation with authorities. However, the access to medium-term assistance is granted just to those victims that file a criminal complaint (Art. 7.2 Act 985/2005 and Art. 17 Decree 1069/2014).</p> <p><b>j)</b> Security is one of the elements considered in the assistance measures established in the Law. Therefore, victims and their families will be provided with security and they can enter into the Victims and Witnesses Protection Program, which is managed by the National Prosecutor Office (Art.8 Act 985/205).</p>
<p><b>III. Forms of the right to remedy</b></p>	<p><b>A. Restitution</b></p> <p>The Anti-Trafficking legislation partially complies with the principles for restitution because of the following reasons:</p> <p><b>8.</b> The assistance and protection program for victims includes measures that are intended to place the victim in the original situation she or he was before being trafficked, unless it puts the victim at risk of any violation of human rights. Art. 7.</p> <p><b>9.</b> Restitution measures on the Anti-Trafficking legislation include the subsequent:</p> <ul style="list-style-type: none"> <li><b>a.</b> Under statutory law there is not a specific provision that guarantees the restoration of liberty, including release of the victim from detention.</li> <li><b>b.</b> The law does not explicitly provide that authorities will procure family reunification. However, Arts. 7 and 8 of the Act 985/2005 and Art. 8 Decree 1069/2014 give a right to the victim to decide if she/he wants to go back to his/her place of origin. Also, the victim's family is considered for purposes of the Victims and Witnesses Protection Program during criminal investigations and for the security measures in general.</li> <li><b>c.</b> Art. 7.1 and 7.3 specifically state that authorities, in country and all Colombian consulates around the world, must provide support in the country where the victims are located and guarantee, if that is the desire of the victim, the return to her/his place of origin.</li> <li><b>d.</b> Migratory advice is part of the support that authorities shall provide to victims. In all cases (Colombian citizen abroad or non-citizens in Colombian territory) authorities shall provide guidance and assist the procedure for the victims to get the proper documentation so they can leave or stay in their country of residence. (Decree 1069/2014, Art. 8, 9, 10)</li> <li><b>e.</b> Art. 11 Decree 1069/2014 establishes, as one of the priorities on the assistance program, to determine victim's identity and provide the appropriate documentation.</li> <li><b>f.</b> As part of the medium-term assistance, the Department of Labor, the National Service Learning and the Interagency Anti-Trafficking Committee shall provide victims access to training programs on employable skills and provide occupational advice. Also, in partnership with private organizations and NGO's, the Government shall promote entrepreneurship initiatives for victims. (Decree 1069/2005 Art. 24, 25)</li> </ul>

- g.** As part of the immediate and medium-term assistance, medical, psychological and material support must be provided to victims. (Decree 1069/2005 Art. 15, 20)
- h.** As it was mentioned before, Decree 1069/2014 contemplates the importance of issuing identification documents. The National Government shall cover travel expenses for victims. Return of property must be part of the claims on the lawsuits.

## **B. Compensation**

The Anti-Trafficking legislation complies partially with the principles now that it takes into consideration:

**10.** *Art. 7 of Act 985/2005 establishes that victims must be provided with the adequate legal advice to pursue the required lawsuits necessary to obtain adequate compensation for the damages suffered. However, the Act does not contemplate the scenario where the victim does not succeed on the legal claims and the defendant is not obliged to pay damages.*

### **11.** Forms of compensation:

- a.** Damages for physical and mental harm (physical or psychological injury, emotional distress, pain or suffering) can be claimed under criminal and civil law. Also, the right to a remedy can be claimed before the constitutional judges.
- b.** Damages for lost opportunities, including employment, education and social benefits, can be claimed under civil or criminal lawsuits. The Ombudsman Office shall provide the required legal advice and an attorney to represent the victim.
- c.** *The Act 985/2005 does not contemplate the reimbursement of costs; instead it creates the obligation for the Government to provide transportation and temporary housing. However, it has not established any provision related to child care.*
- d.** Material damages and loss of earnings, including loss of earning potential and lost income, can be claimed by a victim under the criminal or civil procedure. Also, due wages might be claimed under a labor lawsuit.
- e.** Non-material damages, such as physical or psychological injury, emotional distress, or pain or suffering, can be claimed through civil or criminal lawsuits. (Criminal Code Arts. 188 et seq. Criminal Procedural Code, Arts. 102. Arts. 2341 et seq. Colombian Civil Code)
- f.** *The reimbursement of legal fees and other costs is not contemplated in the Anti-Trafficking legislation.*  
Under Colombian law, the party defeated in trial is required to pay the costs and expenses of the process, which can be beneficial to the victim in the case of an adverse decision to the victimizer.
- g.** The legislation does not determine that reimbursements are going to be made. Nevertheless, according to Art. 21 Decree 1069/2014 a public attorney shall be assigned to the victim in order to pursue the required lawsuits. Also, the law contemplates physical and psychological assistance to the victim at least for six months.

**h.** Non-reimbursement is considered by the legislation. All the losses and costs incurred by the victims need to be claimed under civil or criminal lawsuits.

**12.** States shall ensure that laws are in place to enable victims of trafficking in persons to have access to compensation, including:

- a.** According to the Anti-Trafficking legislation, victims can sue offenders for civil and labor damages. The Government shall provide legal advice for victims to advance in those legal proceedings.
- b.** As part of the criminal procedure, victims can claim damages, which if proved, will be part of the sentencing. The defendant must pay that compensation to the victim independently from any fines.
- c.** *Anti-Trafficking legislation does not provide the creation of a fund for compensating the victims. Instead, it creates an Anti-Trafficking National Fund, which exclusively provides transportation expenses to the victims. (Decree 1069/20014 Art. 13).*
- d.** The Anti-Trafficking legislation does not specify the confiscation of instruments from defendants. However, that is a possibility under Colombian criminal procedure.
- e.** There is no specific provision regarding enforcing reparation judgments. Nevertheless, under the criminal procedure there is a specialized judge to supervise the implementation and compliance of the sentence.

### **C. Rehabilitation and recovery**

With respect to rehabilitation and recovery:

- 13.** Art. 7 of Act 985/2005 and Arts. 10 to 25 of Decree 1069/2014 create the obligation for the State to provide rehabilitation through physical, psychological, labor, social and legal assistance. Therefore, in different stages the assistance program shall provide adequate housing, medical and psychological therapy, occupational guidance and training in a particular occupation or profession as well as legal advice.
- 14.** *Anti-Trafficking legislation states that immediate assistance is not conditioned on cooperation with authorities. Although medium-term assistance is directly conditioned to the criminal complaint done by the victim before the authorities (Police or Prosecutor).*

### **D. Satisfaction**

- 15.** Anti-Trafficking legislation does not literally include satisfaction measures, however, the compensation of the damages to the dignity and reputation of the victim are part of the remedies that victims are entitled to. Also, dignity is established as a principle of interpretation, which means that all assistance actions have to guarantee the respect of the victim's dignity.
- 16.** Satisfaction measures include:
  - a.** The Law determines that as soon as authorities obtain information related to a victim or a probable victim of human trafficking they shall coordinate to provide immediate assistance and protection. (Decree 1069/2014 Arts. 6 and 7)

- b. According to Arts. 7.1 and 8 of Act 985/2005, victims and their families will be provided with security, and if any danger or risk is raised due to their participation on the criminal investigation, they can be part of the Victims and Witnesses Protection Program.
- c. *Neither the Act nor the Decree 1069/2014 provides any requirement regarding an official declaration or a judicial decision restoring the dignity, reputation and the rights of the victim.*
- d. *There is not any provision related to public apologies, acknowledgement or and acceptance of responsibility.*
- e. Particularly, those responsible for trafficking in persons can be sanctioned under criminal, civil and/or labor law.

#### **E. Guarantees of non-repetition**

17. According to the Anti-Trafficking legislation several measures need to be developed in order to prevent new violations and protect victims.

- a. Act 985/2005 (Art. 3) modified Colombian Criminal Code in order to provide a better definition of the crime, therefore better tools to investigate, prosecute and sanction. *However, statutory and regulatory laws do not provide further details on how effective investigations might be conducted.*
- b. As part of the criminal process it is possible for the victim and some relatives to be included on the Victims and Witnesses Protection Program offered by the National Prosecutor's Office. Also, the law contemplates security programs, which will guarantee the prevention of any physical or psychological harm to the victim. The program will be coordinated by the National Police. (Art. 14 Decree 1069/2014)
- c. According to Art. 10 of Act 985/2005, the Interagency Anti-Trafficking Committee shall permanently develop activities and programs to strengthen criminal investigation and police action, as well as build capacity in the national and local governmental institutions and civil society organizations in order to prevent future cases.
- d. There's not a particular provision addressing strengthening the independence of the judiciary.
- e. *The Act or other legal provisions do not consider the actions in order to modify legal, social and cultural practices that cause trafficking in persons.*
- f. Art. 17 of Act 985/2005 creates the National Information System on Trafficking in Person, which would collect, process and analyze the statistical and academic information regarding causes, characteristics and dimensions of domestic and international Human Trafficking. It also will be the foundation for the design of policies, strategic plans and programs, and for the goals of the National Strategy.
- g. According to Art. 17 of the Act, the Interinstitutional Anti-Trafficking Committee shall create a national campaign against human trafficking in order to inform, educate, communicate and mobilize society around the causes and ways to prevent Human Trafficking.

	<p><i>h. Under the statutory law there are not programs intended to protect legal, medical, healthcare and other related professionals and human rights defenders who assist victims of trafficking in persons.</i></p>
<p><b>IV. Right to Remedy for Child Victims of Trafficking</b></p>	<p><b>18.</b> Additionally, in the case of children, Colombian Anti-Trafficking law has established the following:</p> <p><b>a)</b> “The best interest of the child” is one of the principles of Decree 1069/2014, which means that when the victims are persons under 18 they have to be treated according to their particular needs and conditions. This is harmonic with Colombian legislation, especially the Childhood and Adolescence Code (Art. 2), and constitutional law, where the “best interest of the child” have a central role.</p> <p><b>b)</b> The Act determines that children who have been victims of trafficking shall participate in a particular program for the reestablishment of their rights. This program is administered by the National Family Welfare Institute. As part of this program, children with the proper advice and support are able to obtain information regarding the remedies they are entitled to. (Arts 29, 30 Decree 1069/2014)</p> <p>Regarding child soldiers the National Family Welfare Institute and Administrative Unit for Assistance and Reparation of Victims of the Armed Conflict created and are implementing a specific program for the assistance and reparation of all children victims of the armed conflict, including child soldiers. There is a particular program directed to the reestablishment of the rights of children who have been forced to take action in the armed conflict. Therefore, they do not access to remedies as part of the anti-trafficking legislation but as part of the programs for reparations of the victims of the armed conflict<sup>22</sup>.</p> <p><b>c)</b> As part of the program for the reestablishment of their rights, children and their legal guardians are entitled to obtain legal advice regarding remedies. (Art 31 Decree 1069/2014)</p> <p><b>d)</b> As part of the emergency assistance children, citizens and non-citizens shall be provided with adequate housing, psychosocial, physical, and legal support. Also, they are encouraged and supported to go back to school.</p> <p><b>e)</b> Even though the Act does not create a program for adequate and appropriate training for persons working with child victims; that function is already executed by the National Family Welfare Institute.</p>

<sup>22</sup> On this regards see Administrative Unit for Assistance and Reparation of Victims of the Armed Conflict. (2015). Girls, Boys and Adolescents. Their rights prevail. Retrieved from <http://rni.unidadvictimas.gov.co/sites/default/files/Documentos/LINEAMIENTO%20ENFOQUE%20DIFERENCIAL%20NINEZ%20Y%20ADOLESCENCIA.pdf> International Center for Transitional Justice (2014) Integral reparations for girls, boys and adolescents victims of forced recruitment in Colombia. Retrieved from <https://www.ictj.org/sites/default/files/ICTJ-Informe-Colombia-Reparacion-reclutamiento-ilegal-2014.pdf>

## **CHALLENGES AND OBSTACLES FOR AN EFFECTIVE IMPLEMENTATION OF THE NATIONAL STRATEGY ANTI- TRAFFICKING**

Colombian Anti-Trafficking law complies partially with the Principles due to the gaps that were identified and analyzed on the chart in the previous section. Additionally, it is important to mention some problems when implementing the current provisions, particularly the assistance and protection programs, because they constitute serious barriers to the guarantee of the right to effective remedies to victims of human trafficking.

One of the main problems implementing the prevention and the assistance and protection programs is the lack of progress in identifying victims from vulnerable populations. There is not a particular and specific procedure for the authorities to implement and identify at-risk populations or the victims of trafficking,<sup>23</sup> which restricts the effective access to remedies and decreases the efficacy of prevention initiatives.

Once the victims are included in the program the access to specialized services and effective protection programs are not guaranteed to the victims. Particularly, concerns have been raised regarding the deficiency in providing adequate shelter and health services, guaranteeing the return of the victims to their places of origin, and creating employment assistance for them<sup>24</sup>.

Also, it is important to mention that the medium-term assistance and protection is conditioned to the cooperation of the victims with the authorities through the requirement of filing a criminal complaint. That means that when the immediate assistance is over (5 to 10 days), victims must file a criminal complaint and sign a document where they agree to comply with

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<sup>23</sup> Department of State. (2015). *Trafficking in Persons Report*. Washington D.C., p. 123.

<sup>24</sup> Global Alliance Against Trafficking in Women (GAATW). (2015) *Regional Report*. pp. 75, 78, 79, 84.

the obligations imposed on them. Besides the criminal complaint, the law is not clear about the kind of “obligations” that victims have to agree on.

Additionally, it is important to highlight that conditioning victims’ access to some remedies on cooperating with authorities, especially those related to criminal prosecutions, prioritizes State’s interests, denies the relevance of the harm suffered by the victim and violates their dignity as human beings.

This situation is aggravated due to the distrust in the judiciary and the lack of proper legal counseling and representation. Hence, victims do not want to file complaints nor take part in any judicial process, which ultimately translates into victims not having access to remedies (recovery and rehabilitation, satisfaction and criminal prosecution)<sup>25</sup>.

Adding to that, the lack of prosecutions is another main obstacle for preventing the crime and providing access to remedies. Among other factors mentioned, such as distrust in the judiciary, the inexistence of a specialized prosecutorial unit for trafficking in persons contributes to it. At the same time, not having a specialized group of prosecutors on trafficking in persons makes evident the lack of technical expertise and generates trafficking cases to be prosecuted under other types of crimes, such as rape, assault and fraud<sup>26</sup>.

Finally, it is important to mention that poor funding in both the departmental and national levels, as well as limited interagency coordination, has contributed to inadequate access to medium-term assistance services to victims.

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<sup>25</sup> Ibid., pp. 75, 82

<sup>26</sup> Department of State. (2015). *Trafficking in Persons Report*. Washington D.C., p. 123.

## CONCLUSIONS

Colombian State complies partially with the Principles on the Right to Effective Remedy for Victims of Trafficking in Persons (A/HRC/26/18) due to gaps in the legislation and problems in the implementation of the regulations that are already in place.

Regarding gaps, the conditioned access to medium-term assistance is critical now that it puts the victim in a more vulnerable situation and denies her or his dignity.

On the other hand, related to the implementation of the current programs, it is relevant for the State to increase the technical expertise of the authorities and state officials who have functions related to prevention of TIP and assistance or protection of victims. Besides, it should provide proper funding for the implementation of the programs created in 2005 and developed in recent years.

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