

12. Colombia¹

1 Legislation

In June 2002 Colombia introduced a new law against human trafficking which stipulates that "anyone who promotes, induces, constrains, enables, finances, co-operates or participates in a person's transfer within the national territory or abroad by resorting to any form of violence, ruse or deception, for exploitation purposes, to lead such person to work in prostitution, pornography, debt bondage, begging, forced labour, servile marriage, slavery for purposes of obtaining financial profit or any other benefit either for himself [sic] or for another person, shall incur 10 to 15 years' imprisonment and a fine..."² This wide-ranging law replaced the previous 'trafficking' law (article 215 of Law 599 and 600 of 2000), which focused only on cross border movement into prostitution. As the research was carried out before the new law was in effect, all the case studies in this research were under the previous trafficking provision, and it remains to be seen how the new law will be implemented. Offences are aggravated if committed against someone with temporary or permanent physical or psychological injury, causing temporary or permanent physical or psychological injury, trafficking of minors, trafficking of family members or if the offender is a public servant.³ Penalties thereby increase by one third to one half. The new law also criminalises facilitation of illegal migration for the purpose of profit.⁴ It additionally has a provision regarding money laundering, and obtaining profit or property from trafficking or smuggling (amongst other crimes) punishable by six to eight years' imprisonment.⁵

II General analysis and investigation of cases

1. Investigation and prosecution of traffickers

Carla

Carla was trafficked from Colombia to Germany. Upon arrival in Germany, Carla's documents and plane ticket were taken from her, and she was told that she had to work as a prostitute and repay her 'debt'. When Carla refused to do so, her traffickers let her starve until she was finally willing to work in a club. Carla was constantly watched and observed by cameras and she had no opportunity to contact her family.

She was finally found in a police raid. Carla failed to tell the German police that she had been trafficked and was deported back to Colombia, where she also did not tell the police what had happened to her. It was only later, when her traffickers contacted her to take her to Germany again, that she became afraid and told her story to the Colombian police. The authorities succeeded in collecting evidence against Carla's traffickers, who belonged to an organised trafficking ring operating throughout Latin America. However, none of Carla's traffickers could be located and the case was suspended (effectively dropped) after several months.

Alma

Alma arranged to travel from Colombia to Spain by borrowing money from a recruitment agency. Alma was supposed to work off her 'debt' in Spain. Together with 11 other women Alma was initially brought from a provincial town to Bogota. When she arrived in Bogota, Alma and the other women were forced to stay together in an apartment. They were prevented from leaving and escorted if they made a trip outside. When Alma finally received a forged passport she became afraid and escaped. She told her story to the Colombian police who were then able to collect evidence against the agency and discovered it had been deceiving women and forcing them into prostitution in Spain. Due to a joint operation between Colombian and Spanish law enforcement officials, the traffickers were finally arrested and sentenced to five years' imprisonment under the old trafficking law (Law 360, article 311 of Colombia's Penal Code).

According to the Attorney General's Office, between 1992 and 2000, 99 cases were taken up under the offence of trafficking in persons. A total of 75 perpetrators were arrested, of whom 55 per cent were women. Female traffickers were generally recruiters, agents or involved in managing the trafficking process, while male traffickers tended to organise the actual movement across borders. Only seven of the 99 cases went to trial, with an average sentence imposed of between two and five years' imprisonment for the trafficker. Under the Colombian legal system, individuals sentenced to two years in prison are allowed to go free, as this is the minimum sentence. In two of the cases, the traffickers were sentenced to 5 years imprisonment, but their attorneys applied for anticipated sentences, which lowered prison

terms and granted the offenders domiciliary detention (i.e. at home).

Individuals convicted of trafficking usually receive only a minimum sentence. This does not encourage trafficked women to testify. According to Interpol, it is frustrating to see that, after months or years of extensive investigation, traffickers receive only short sentences or are released on bail and continue with their criminal activities after paying a fine.⁶

All of the 99 cases dealt with trafficking into prostitution, since the law at that time excluded other forms of trafficking. It is widely acknowledged that Colombian nationals are trafficked for purposes other than prostitution: "We discovered cases of servile marriage. It is easy to detect the sale of forged visas and work contracts. There are many ways in which Colombian citizens are being exploited".⁷ Fundación Esperanza⁸ reports being aware of cases of trafficking into domestic labour and forced labour, but so far have not had any such cases referred to them.

Investigation procedures can take from a few months up to several years. According to a prosecutor, some cases have been pending for more than seven years due to lack of evidence: "We have legal proceedings here dating back to 1999, we have some dating back to 1995, but unless we have evidence there's nothing we can do. The cases come to a standstill".⁹ Prosecutors, police, lawyers and service providers all agreed that lack of evidence is the main problem. The same prosecutor explained that in many cases the information provided by the trafficked person was not sufficient even to start the investigation.¹⁰ Apart from witness testimonies, other forms of evidence used include international police (Interpol) reports, photos, telephone taps, monitoring of financial transactions or confiscated forged documents. Alma's case showed a combination of different forms of evidence (telephone taps, raids, forged documents) and international co-operation resulting in a successful prosecution.

Judicial police (or criminal investigative department police) agree that the obstacles to prosecution are long delays during the investigation process due to lack of evidence and also lack of resources, "We don't have an allocated budget, costs are high, particularly investigation costs. We often have to share our staff with other departments. Ideally, there should be a well-equipped team in terms of technical means, infrastructure and budget, which would be able to operate in an autonomous way. Sometimes our

operations in the past have failed because we didn't have staff to send out or there was no transportation available during surveillance activities".¹¹ A lawyer interviewed agreed that cases are delayed due to a lack of resources at court and traffickers not being arrested.¹²

A local prosecutor summarised the unwillingness of trafficked persons to report: "There are many reasons. One of them is the lack of harsh legislation to punish traffickers; another is that victims are afraid. They are scared and don't want their families to find out that they were abroad working in prostitution. They are not willing to talk and since they are not obliged to do so, they basically refuse to tell who the trafficker is."¹³

Mia

Mia was offered a job as a domestic worker in Japan but instead was trafficked into prostitution on the street. She was constantly beaten and threatened. Seeing her situation, another Colombian sex worker provided Mia with their embassy's contact number. Mia contacted the Colombian Embassy and submitted an informal statement. She was provided with a place in a shelter where she awaited her repatriation to Colombia. After Mia returned to Colombia, she disappeared. Police and prosecution were unable to trace her, and wanted her to participate in the investigation procedure. Information Mia had previously given to the authorities was not sufficient to prosecute the traffickers. Japanese law enforcement officials were unwilling to cooperate with the Colombian authorities. Due to lack of evidence, the criminal case was closed after a few months.

Patricia

Patricia was trafficked from Colombia to Japan by her aunt and forced into prostitution. Her aunt watched her constantly in Japan and threatened to hurt Patricia's children. Before Patricia escaped, her aunt beat Patricia and threatened that if she told her story to anyone, she and her children would be killed. After she recovered from the injuries, Patricia reported her aunt to the Colombian police. Interpol was contacted and two years later her aunt was arrested upon arrival at a Colombian airport. Patricia and her parents filed statements and took part in the prosecution procedure. Patricia also filed a compensation claim for damages. Her aunt was charged under the old trafficking law. The aunt spent seven months in detention awaiting trial

until she was released due to her pregnancy. The aunt fled Colombia immediately so the trial could not be completed, it is still pending.

According to DAS,¹⁴ Interpol, local Colombian authorities and authorities in countries of destination such as Ecuador, Japan, Netherlands, Spain and United States carried out 11 raids at an international level, resulting in the arrest of 79 suspects and the rescue of 140 trafficked women. However, the judicial police criticize the "lack of co-operation between public and private institutions. In one case, for example, the telephone company didn't have the technical means to tap telephone calls. Sometimes it is the embassies that refuse to co-operate. Very often they don't provide us with the information we ask them for."¹⁵ The prosecutor in Patricia's case called for stronger co-operation between the various law enforcement agencies such as the Prosecutor's Office, the Ministry of Justice and the Technical Investigation Corps (CTI).¹⁶ This was reinforced by the judicial police, who stated ideally, a specialised team should be established, which would work together closely with Interpol, under common objectives and shared ways of investigating and prosecuting.¹⁷

Most trafficked persons refuse to make a statement to the police. They are reluctant to report their trafficker to the police out of fear for their own safety and their reputation: "The victims choose to say nothing either out of shame or out of fear, and some of them are intimidated to such a degree that they go back to the trafficker."¹⁸ Of the 99 trafficking cases recorded by the Attorney General's Office in the 1990's, 42 were reported by relatives of the trafficked person, five were reported by the trafficked persons themselves and the remaining 52 reports came from the DAS, CTI or police. Fundación Esperanza noted that: "Out of the 80 trafficked women that we have assisted between 1997 and 2000, only four have filed a formal report with the authorities. These women reported directly and on their own initiative. We advise them on which person to contact when filing the report, but they take care of all the formalities by themselves".¹⁹

Trafficked persons may report what has happened to them to the Colombian police, to DAS, to the Prosecutor's Office or directly to Interpol. The interview is long, usually taking two to five hours to make a statement, and the trafficked person must report several times to various different officials before the information she has given is evaluated and finally filed as a crime

report. In almost all of the cases it is only after the trafficked woman has made her third statement that she will be formally questioned. In most formal sessions the language used by officials is of a technical nature, which makes it difficult for the individual to understand the procedure. Apart from that, the trafficked women are usually under great pressure and the interrogation procedure seems to give no priority to their privacy. The situation tends to be worse if the trafficked woman is on her own and not accompanied by the representative of an institution or organization. Patricia recounts, "I felt badly in dealing with the authorities, having to tell the story to a stranger, and then to another, and my papers were going from hand to hand, and I would tell my story again and again".²⁰

2. Procedures affecting trafficked persons and measures of protection

a) Residency rights

Not covered here, since Colombia is a country of origin.

b) Protection from reprisals and police protection

Carla

Carla went to the authorities only because the traffickers contacted her again and wanted her to return to Germany. After reporting the traffickers, out of fear of reprisals, Carla fled her hometown and has not returned since.

Alma

When Alma reported the trafficker she was not offered any kind of protection. The traffickers contacted Alma several times by telephone saying she had to make payments to them, and making other threats. She was too scared to tell anyone, because she thought the risk would be greater if people knew.

No police protection was offered to Carla and Alma when they reported information about the traffickers to the police. Patricia's lawyer summarised the difficulties caused by the absence of witness protection measures in Colombia: "Investigation is very difficult and reporting is also very difficult due to the seriousness of the situation. The State doesn't protect witnesses of trafficking. Patricia reported her trafficker and now that her trafficker is

free she has to fear for her life and for her personal safety and that of her daughters. The State does not protect her and she put herself at risk when she reported".²¹

Colombia's police witness protection system is currently only granted to witnesses in kidnapping, terrorism and drug trafficking cases. According to the Ministry of Justice, Colombia has three types of witness protection available upon application to the Attorney General's Office. The first consists of providing witnesses with information and recommendations for their own safety. The second involves monitoring their situation to a certain degree, the third involves a change of identity. Although these could be offered to trafficked persons, so far no trafficked person has been protected under this programme.²² A DAS representative admitted: "We have not been able to provide any sort of support to the victim who reported her traffickers. The country's condition does not allow us to protect witnesses of trafficking. Our job is to provide protection to political leaders, human rights advocates, labour union leaders and presidential candidates. Unfortunately, Colombia is a country where a large number of citizens are being threatened. We do not have the resources or staff to provide protection."²³

c) In-court evidentiary protection

Alma

Alma was not asked to give evidence at trial. There was sufficient alternative evidence, including confessions from the traffickers who pleaded guilty in anticipation of a lower sentence.

Like Belgium, in Colombia the procedure tends to be a written one, and victim witnesses do not usually give evidence in court, due to the existence of other forms of evidence used at the trial. Trafficked persons must repeat their statement many times in the investigation, but not at trial itself.

DAS state that it is possible to change a witness' name in court documents to protect privacy and ensure that personal details are kept confidential.²⁴ This is the only witness protection measure used in some trafficking cases. The application of this procedure to witnesses in trafficking cases is dependent on random and individual decisions of officials in each case.

d) Right to information regarding court proceedings

There is no specific right to information on court proceedings in Colombia. The long delays in the course of pre-trial investigations mean trafficked persons are rarely kept well informed about court proceedings. This is also because trafficked persons tend to be untraceable after their first contact with police. In over 80 per cent of the cases the trafficked person had either moved residency after her first contact with police, authorities were unaware of her whereabouts, or she had left the country again. Officials reported that they were generally unable to contact the trafficked woman for further statements or testimonies. Interpol commented: "If victims of trafficking do report, they disappear afterwards and don't come back to complete their reports. It is one thing to report and another to have the case prosecuted. Once the authorities have been informed about a case and want to start with the prosecution procedure, the [trafficked] women disappear. This happens in almost all of the cases".²⁵

3. Support and assistance to trafficked persons**a) Right to a lawyer/ legal advocate in criminal proceedings**

Patricia had a lawyer in the criminal proceedings, because he was representing her civil claim joined to the criminal proceedings. There is no free access to lawyers to act in this capacity. Although Fundación Esperanza can find lawyers to provide free legal assistance to trafficked persons, this is not common practice.

b) Right to recovery (assistance measures)**Alma**

The police told Alma about Fundación Esperanza in Bogota, an organisation that could help, but Bogota was too far from her hometown. She was also scared about talking to anyone about what had happened.

None of the four trafficked women in our study received formal assistance from any institutional service agency. An integrated system for supporting victims of sexual abuse, rape, physical abuse or domestic violence exists, but no support services for trafficked persons who return to Colombia, apart from those provided by Fundación Esperanza. There are no State shelters for

women in Colombia. Fundación Esperanza explains: "When a trafficked woman returns to Colombia she has many needs, particularly of a financial nature. In most cases this was the reason why she left Colombia in the first place and, when she returns, her situation is often worse than when she left. Unfortunately, Fundación Esperanza only provides returning trafficked women with emergency assistance. Our work regarding reintegration is very limited."²⁶ Although it is widely acknowledged by NGOs, lawyers and DAS that Colombia is in need of an official victim protection and support scheme for victims of trafficking, this has not been established so far, and there are no signs of one being prepared. DAS explained, "Victim protection and support is necessary so that trafficked persons feel encouraged to report to the police. It would also make the victims feel that their situation is recognised and that those responsible for trafficking pay for their actions." The trafficked women in our case studies received no assistance in terms of reintegration into Colombian society, their home communities or into the job market. Patricia did manage to find a temporary job through her own initiative and with the help of some friends.

4. Legal redress and compensation

As in other civil law jurisdictions, it is possible to have legal representation in the criminal case as an "injured party" and in order to link a claim for compensation to the prosecution. Due to the lack of success of criminal prosecutions, payment of compensation is extremely rare. Up until now, Patricia's case is the only known case in which a trafficked person has filed a claim for compensation. Her case is still pending, since her trafficker absconded.

III Conclusions and recommendations

Colombia lacks basic schemes for protection and support services for victims of trafficking, reintegration of victims and witness protection mechanisms for those who agree to act as witnesses in trafficking cases. This is mainly due to a lack of resources in terms of staff and budget and concerns not only NGOs but also Colombian government agencies such as DAS, CTI, judicial police and the Ministry of Justice. There are also difficulties in regard to trafficking cases during investigation and prosecution procedures. Again, this is due to a lack of resources, implemented structures and specialised agencies, services or groups. Colombia's trafficking legislation was weak and failed to

cover all aspects of trafficking in persons. The new legislation will broaden and strengthen the law. However, it remains to be seen how the law will actually be implemented, particularly as no new resources are being provided to law enforcement agencies. In Colombia, the political will to improve the situation of trafficked persons and prosecute traffickers more firmly and with stronger sentences seems to exist throughout the different institutions and authorities concerned with the issue of trafficking. This is a good and promising start for changing what has until now been a rather bleak reality for victims of trafficking in Colombia.

Recommendations to the Colombian Government

- Encourage an international funder to provide money to a local non-governmental organisation to inform all relevant authorities, NGOs and Colombian society at large about the new trafficking law and existing mechanisms to access the law.
- Ensure trafficking is made a priority for different national institutions and authorities, especially the judiciary.
- Strengthen co-operation between countries of origin, transit and destination. Ministry of Justice and police should establish guidelines and working practices.
- Exchange expertise and technical advice between Colombia and countries with greater experience in fighting trafficking in human beings, as well as co-operation with international organizations. International assistance should be provided to Colombia for this purpose.
- Train officials who are in charge of receiving reports from trafficked persons in different skills e.g. interviewing techniques, collecting evidence etc.
- Law enforcement officials should introduce a standard way of recording information about trafficking cases. This should emphasise the need to maintain the privacy and anonymity of victims of trafficking. Repeated questioning and interrogations should not occur and reports should be coded to guarantee confidentiality.
- Judicial police should establish specialised regional teams and units for investigating and prosecuting trafficking cases. Team members should receive special training on the issue of trafficking and be provided with the necessary resources and equipment and include women.

- The Ministry of Justice should develop and implement a legal assistance system for victims of trafficking through which trafficked persons can be provided with information on procedures and receive free legal services. Lawyers should be specialized in the issue of trafficking in persons and in compensation claims against traffickers.
- The Ministry of Justice and police should develop and implement victim and witness protection and support measures. These measures should include free legal assistance (see above), psychological counselling, relocation of trafficked person and family members if necessary, social support and assistance with reintegration into Colombian society.
- Develop and strengthen NGOs working on the issue of trafficking in persons.

Endnotes

¹ In Colombia, Fanny Polania Molina conducted the research and prepared a report. This chapter is based on the information included in that report.

² Article 188A of Penal Code (Bill no 190-S/01 173-C/01, signed 19 July 2002).

³ Article 188B.

⁴ Article 188.

⁵ See article 8 of Bill No. 190-S/01 173-C/01.

⁶ Interview by Fanny Polania Molina, Interpol, Bogota, 4 December 2001.

⁷ Interview, Ministry of Foreign Affairs, Ipiales, 23 November 2001.

⁸ Fundación Esperanza is an NGO based in Colombia that works on the issue of trafficking in Colombian women. In 2000, it provided assistance to 57 trafficked women who returned to Colombia.

⁹ Interview by Fanny Polania Molina, Prosecutor's Office, Bogota, 14 November 2001

¹⁰ *Ibid.*

¹¹ Interview by Fanny Polania Molina, judicial police, Cali, 3 December 2001.

¹² Interview by Fanny Polania Molina, Patricia's lawyer, Bogota, 16 November 2001.

¹³ Interview by Fanny Polania Molina, prosecutor, Bogota, 14 November 2001.

¹⁴ Administrative Department of Security.

¹⁵ Interview by Fanny Polania Molina, judicial police, Cali, 3 December 2001.

¹⁶ CTI is a department attached to the Prosecutor's Office.

¹⁷ Interview by Fanny Polania Molina, judicial police, Cali, 3 December 2001.

¹⁸ Interview by Fanny Polania Molina, Ministry of Justice, Bogota, 28 November 2001.

¹⁹ Interview by Fanny Polania Molina, Fundación Esperanza, Bogota, 19 November 2001.

²⁰ Interview by Fanny Polania Molina, Patricia, Bogota, 14 November 2001.

²¹ Interview by Fanny Polania Molina, Patricia's lawyer, Bogota, 16 November 2001.

²² Interview by Fanny Polania Molina, Ministry of Justice, Bogota, 28 November 2001.

²³ Interview by Fanny Polania Molina, DAS, Cali, 11 December 2001.

²⁴ *Ibid.*

²⁵ Interview by Fanny Polania Molina, Interpol, Bogota, 4 December 2001.

²⁶ Interview by Fanny Polania Molina, Fundación Esperanza, Bogota, 19 November 2001.