

Fondation Scelles

Connaître, Comprendre, Combattre  
l'Exploitation Sexuelle

### Excerpt from the book:

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**Cautionary note:** The terms 'child prostitution' and 'prostituted children' are used in this text to denote children that are sexually exploited and sexually trafficked. The connotative manner in which these definitions are perceived and analyzed may differ due to linguistic, cultural, and perceptual differences.

## COLOMBIA

	<b>POPULATION</b> 49,1 million		<b>GDP PER CAPITA</b> 6,301.6 USD
	<b>POLITICAL SYSTEM</b> Presidential Regime		<b>HUMAN DEVELOPMENT INDEX</b> 95 <sup>th</sup> rank among 187 countries
	<b>GENDER INEQUALITY INDEX</b> 89 <sup>th</sup> rank among 147 countries		<b>CORRUPTION PERCEPTIONS INDEX</b> 96 <sup>th</sup> rank among 180 countries

On the November 24<sup>th</sup>, 2016, a peace treaty was signed between the Colombian government and the *Fuerzas Armadas Revolucionarias de Colombia (FARC)* armed group. Officially putting an end to a 50 year civil war, this treaty among other things, established an amnesty procedure for crimes committed by the various guerrillas. Nevertheless, the most serious crimes are not concerned by this amnesty procedure, being crimes of sexual violence and deprivation of liberty (article 29). Crimes under the Special Act on forced prostitution, sex slavery and human trafficking for sexual exploitation purposes within the context of the armed conflict of June 18<sup>th</sup>, 2014 (*Ley 1719 de 2014, acceso a la justicia de las víctimas de violencia sexual, en especial la violencia sexual con ocasión del conflicto armado*) are, therefore, still condemnable. This suggests an increase in judicial proceedings, in the coming years, against former belligerents reintegrating civilian life. Conditions of the most

vulnerable (women, children, ethnic minorities) have drastically deteriorated during the past 50 years.

The 2015 Venezuelan crisis has triggered major migratory flows towards Colombia, who according to *International Organization for Migration (IOM)*, receives the majority of migrants (*Observatorio del Delito Trata de Personas (b)*, 2018). In July 2017, more than 870,000 Venezuelans were in Colombia, of which 240,000 in the capital Bogotá (*Ministerio de relaciones exteriores*, July 18, 2017). The situation of these persons results in an increased vulnerability to human trafficking and sexual exploitation. It has lead local authorities to have grave concerns, despite only 10 cases of trafficking of Venezuelan persons being recorded between 2015 and 2017 (*Observatorio del Delito Trata de Personas (b)*, 2018).

Human trafficking, sexual exploitation and prostitution in Colombia are due to factors inherent to these phenomena

(poverty, social exclusion and psychological factors). Poverty is most probably the most significant factor, with 6% of the population living below the poverty line with less than EUR 1.6 (USD 1.79) per day. In addition, corruption is deeply rooted throughout the country, as it connects the sex buyers system with large criminal organizations involved in drug trafficking and human trafficking. Corruption is sanctioned in the Penal Code.

Prostitution is covered under the Penal Code on one hand to penalize activities linked to human trafficking and sexual exploitation, and under the National Police Code (*Código Nacional de Policía y Convivencia*) on the other to supervise regulated prostitution activities.

### **Legislative framework relative to human trafficking and sexual exploitation**

The Colombian legislation pertaining to human trafficking and sexual exploitation can be found in a number of articles of the Penal Code, which illustrates the willingness to fight against the phenomenon.

Human trafficking (recruitment, transfer, receipt) of a person for exploitation purposes (sex, labor, slavery, servitude, begging, arranged marriages, organ trafficking, sex tourism), even in cases where there is consent, is punished by article 188A of the Penal Code through terms of imprisonment ranging from 13 to 23 years, and a fine ranging between 800 and 1,500 times the statutory minimum monthly wage. These sentences have a dissuasive purpose, as the minimum wage on January 1<sup>st</sup>, 2018 was 781,242 pesos (COP) (USD 234), the fine is therefore between COP 625 million and more than COP 1 billion (between USD 187,500 and USD 300,000).

Activities related to prostitution and the sex trade punishable under criminal law are mentioned from article 213 to article

219 of the Penal Code. Incitement and enforced prostitution (articles 213 and 214) are punished with sentences ranging from 9 to 22 years of imprisonment and fines between 66 and 750 times the minimum wage. The remaining articles specifically refer to the sexual exploitation of minors.

Procuring (organization, facilitation, involvement) and activities related to a prostitution establishment exploiting minors are punishable under articles 213A and 217.

Sex buyers of underage prostituted persons are condemned to sentences ranging from 14 to 25 years imprisonment under article 217A, even with the victim's consent. The prison sentence is increased by a third if the perpetrator of the crime is a tourist (from another region of the country) or a foreigner.

Regarding sex tourism, the management or the promotion of prostitution are also condemned (article 219). The publication (posters, information networks, means of communication) for the offer or the search of sexual activities with minors is sentenced in article 219A between 10 to 14 years' imprisonment and 67 to 750 times the minimum wage.

Child pornography is condemned by article 218 and encompasses the entirety of activities, media and means of diffusion that may be used.

The Penal Code goes further by penalizing the failure to report crimes involving the sexual exploitation of minors with fines ranging from 13.33 to 75 times the minimum wage (article 219B).

Article 216 gathers all aggravating circumstances relating to articles 213, 213A and 214. The majority are common to the existing legislation in many countries (age of the victim, relation to the victim, human trafficking abroad). Several elements, however, are specific to

Colombia. The legislation takes into consideration ethnic origins in situations of vulnerability to exploitation, as well as in situations where a member of an organization (social, community or political) is sexually exploited to retaliate, repress or silence (which can be explained in a civil war context).

### **The framework around prostitution**

Prostitution is not considered a public order offence (article 42). Thus, prostitution, establishments and solicitation are regulated by articles 42 to 46 of the *Código Nacional de Policía y Convivencia* of July 2016. This legislation was upheld by the Constitutional Court's decision T-594/16 on October 31<sup>st</sup>, 2016, enforcing the development of laws protecting the activities of the "sex workers". However, prostitution can only take place in demarcated areas at certain times, both designated by the municipality. Only solicitation is authorized on public roads. Certain rules must also be upheld (health, means of protection and possession of identification documents). In the event of a breach of these rules, the prostituted person is temporarily or permanently suspended from it (article 44).

Prostitution establishments are regulated by article 43. This notably includes health standards, free availability of condoms and access to health services. Measures are in place to ensure the rights of prostituted persons, such as the intervention of the manager in the case of a conflict between a prostituted person and a sex buyer.

The behavior of the sex buyer is also subject to certain restrictions. They must not display disrespectful, violent or abusive behavior towards prostituted persons. They cannot compel prostituted persons to perform a sexual act against their will (article 45).

The initial overview of the framework of prostitution highlights the legislator's desire to protect and ensure the rights of prostituted persons. Nevertheless, the penalties are very low for the crimes committed. As proof, in the case of rape, the sex buyer is only liable to participate in community programs or educational activities. With regards to the managers of prostitution establishments, article 46 stipulates that they must comply with the preceding articles, under penalty of a permanent suspension of their activities.

As a result, the line between manager and procurer is very thin, the latter being able to use his position of authority to force prostituted persons to increase his profits, given the low penalties incurred. This may be compounded with the corruption of local officials. Prostituted persons are *de facto* in an exploitative situation.

In August 2017, Constitutional Court decision T-073/17 confirmed the position in favor of recognizing prostitution as a "work". Yet, it opposes article 42, which highlights the vulnerable situation of prostituted persons who are victims of a system of violence and the desire to regulate this system of violence as "work" rather than to abolish it.

### **The reality of the situation in Bogotá**

There are reportedly 26,000 prostituted persons in the Colombian capital as well as 500 prostitution establishments (*Jimenez Martin, Obregon Cubillos, 2017*), located in delimited areas (Zonas Especial de Servicios de Alto Impacto), the largest of which is the Santa Fe district (*Valencia, 2010*). They are tolerance zones, where prostitution is restricted to in order not to have a negative impact on the rest of the city.

The line between legal and illegal activities is often blurred in these neighborhoods, where prostitution, sexual exploitation, human trafficking and drug

trafficking are intertwined. In 2010, the Constitutional Court had already issued a decision stating that prostitution is a “profession”, thus integrating it into labor laws. Yet, in a study published in 2017, it was reported that 80% of the people questioned in these neighborhoods did not have an employment contract (written or oral), and the majority of them did not have access to a system of social security (Jimenez Martin, Obregon Cubillos, 2017).

Despite legal obligations, prostituted persons remain marginalized, and lack the economic, educational or social conditions needed to leave prostitution. They are thus vulnerable to trafficking and sexual exploitation (Quiroga et al., 2013), a phenomenon that is all the more present as Venezuelan migrants seem to be forced into prostitution in these neighborhoods since the crisis (Redmas, November 22, 2018).

Between 2002 and 2010, the group *Asovegas*, consisting of prominent owners of prostitution establishments in the Santa Fe neighborhood, expanded. It functions as a lobby group to the public authorities, seeking to increase its influence and control over the various special tolerance areas of the capital and to expand its activities at a national level. One of its members, Hernando Cardona González, participated in the creation of a tolerance zone in Santa Fe. Thereby, it is probable that *Asovegas* was one of the influential groups that participated in the promotion of prostitution as “work” in front of the Constitutional Court, as well as the promotion of the regulation of prostitution in the *Código Nacional de Policía y Convivencia*. For example, the provision in section 43 offering a mediator position to the manager of the prostitution establishment in the event of a dispute between a prostituted person and a sex buyer can be seen as a measure promoted by the lobby,

as can the low penalties for offences committed.

Although the group formally puts the rights of prostituted persons first, the application of the labor law shows that the circumstances of prostituted persons are those of sexual exploitation (Valencia, 2010). It is probable that the regulation of prostitution by the *Código Nacional de Policía y Convivencia* and the decisions of the Constitutional Court will also be poorly enforced. This includes health and hygiene standards (although the majority of prostituted persons use condoms), but also the rights of prostituted persons in relation to their sex buyers (Vargas Ramírez, 2014). It is also clear that this cannot be done without significant corruption of law enforcement in these neighborhoods. The weak enforcement of the law is also illustrated by the prevalence of the prostitution of minors in Santa Fe. In a 2014 investigation, 46% of people questioned stated having entered into prostitution between the ages of 10 and 18 (49% between the ages of 19 and 25) (Vargas Ramírez, 2014). The city of Bogotá, in partnership with the United Nations Office on Drugs and Crime (UNODC), implemented an awareness campaign in 2017, *Hagamos un trato: Bogotá sin trata*. The objective is to prevent trafficking and the various forms of exploitation that result from it (Gobierno Bogota, July 31, 2017). In November 2018, a police operation led to the arrests of 146 people for the trafficking and prostitution of minors (Bluradio, November 22, 2018).

### **The phenomenon of forced displacement of populations**

Forced displacements of populations due to armed conflicts affected more than 12% of the country’s population; around 6 million people. Among these victims, members of ethnic minorities are

particularly vulnerable, notably indigenous groups, among whom 10% were forced to leave their environment (145,000 out of 1.4 million people), while they represent only 1.2% of the total population (*Hernández Sabogal et al.*, 2015). The majority of these groups were subjected to significant amounts of violence (massacres, trafficking, exploitation, etc.) and a 2009 study already highlighted that there was an over-representation of these individuals among victims exploited in prostitution (16% of victims are indigenous) (*Meertens et al.*, February 2009). The Constitutional Court considers that a third of these 90 existing indigenous groups could disappear (*ACNUR/UNCHR*, 2013).

The armed conflict is not, however, the only factor in the forced displacements of these populations. The occupation and exploitation (legal and illegal) of land by mining, forestry and agricultural industries also lead to their expulsion from their territories. The end of the civil war will not necessarily lead to a return of these populations, especially given the number of anti-personnel mines buried by the guerrillas (*Meertens et al.*, February 2009).

Other populations are also affected. The limited data available on the situation of LGBTI victims of sexual exploitation in Colombia does not allow for the impact to be measured, nor does it allow for the determination of its causes and consequences. However, these people are affected by the numerous forced displacements (often due to their sexual orientation or their gender), which leads to situations similar to those of the rest of the population (*Hernández Sabogal et al.*, 2015).

A Venezuelan population in exodus finds itself in precarious circumstances. Although the same language is spoken in both countries, which allows, for example, for migrants to know their rights, trafficking of

migrants occurs for those who want to transit through Colombia to another destination. These migrants are thus vulnerable to different forms of exploitation and trafficking.

### **Victims of trafficking and sexual exploitation**

The armed conflict has resulted in an increase in sexual violence against women and children. They are used as “war booty” by military groups to satisfy the *guerilleros*. Along with arms and narcotics trafficking, human trafficking, prostitution and sexual exploitation are among the main means of financing these groups (*Meertens et al.*, February 2009). However, only 422 cases of trafficking have been recorded by the anti-trafficking group (*Grupo de Lucha contra la Trata de Personas*) between 2013 and 2018, of which 254 were cases of trafficking for sexual exploitation purposes. The majority of identified victims were between 18 and 30 years of age (60%), and were primarily from China, Mexico or Argentina (*Observatorio del Delito Trata de Personas (a)*, 2018). This can be explained by the context, as the different groups behind these crimes are out of reach of the authorities.

Among these victims, 90% to 96% are women and young girls, of whom 72% were also victims of the armed conflict of 2003 (*Journal of Trauma Practice*, 2003). Between 1985 and 2015, around 70,000 women were reported missing in Colombia, due to trafficking, sexual exploitation and the sexual violence within the conflict (*Fundación Nydia Erika Bautista para los Derechos Humanos*, May 2015).

Although prostitution is legal and regulated, discrimination, poverty and social exclusion are inherent to the activity. Prostituted persons in prostitution establishments are excluded from citizenship as they cannot exercise their civil

and political rights. Moreover, while they should have priority access to medical and

social services under the law, they are discriminated against and socially excluded (Vargas Ramírez, 2014). The phenomenon is all the more serious as conflict-related forced displacements have led to large population flows to major urban centers far from conflict areas (*Nueva Sociedad*, May-June 2016). Thus, 55% of prostituted persons in Bogotá are originally from another region of the country (Vargas Ramírez, 2014). These people find themselves in situation of vulnerability to prostitution and sexual exploitation. The precariousness of a significant portion of the population facilitates underground economies (drug trafficking, illegal mining, prostitution, etc.). For example, women are regularly brought into prostitution establishments in mining zones on weekends (*Nueva Sociedad*, May-June 2016).

### Prostitution of Minors

According to *ECPAT International*, the sexual exploitation of children in prostitution is significant, and 5 to 10% of victims have been identified. In reference to figures from the police and the *Instituto Colombiano de Bienestar Familiar* (ICBF), there were between 4,320 and 7,750 children exploited in prostitution in 2014 (*Fundación Renacer/ECPAT Colombia, ECPAT International*, September 27, 2017). The NGO *Children Change Colombia* estimates however that there were 35,000 children exploited in the country in 2017 (*Children Change Colombia*, 2017). The trafficking of children for sexual exploitation purposes is significant in tourist areas, large mining zones and military camps of revolutionary armed groups.

Since the official end of the conflict, Colombia has seen a strong growth of its tourist industry, which has inevitably led to

an increase in sex tourism involving minors. This is particularly the case along the border with Brazil where, according to the NGO *Fundación Renacer*, there are a number of places where sexual exploitation of minors is occurring (*ECPAT International*, 2016). This situation is likely similar along the borders with other countries (Venezuela, Panama, Ecuador, Peru). It is thus possible to see the development of sex tourism linked to the professional activities of businessmen because, according to *Fundación Renacer*, it seems as if the sexual exploitation of children in Bogotá is more common between Monday and Thursday, the period when foreign businessmen are in the capital (*Fundación Renacer et al.*, June 2011). This phenomenon is also present within the mining industry, where the vulnerability of children tends to increase with the arrival of rich foreigners for business reasons (*ECPAT International*, 2016). Mine workers coming from other regions become sex buyers of prostituted children and adults.

To combat sex tourism, *The Code* was established by *ECPAT International*, the *World Tourism Organization* (WTO), and *UNICEF*. It consists of a certification for tourism businesses that sets standards for child protection. In Colombia, the certification is managed by *Fundación Renacer*, representative of *ECPAT Colombia*. The Ministry of Commerce, Industry and Tourism watches over the implementation of this project in businesses (*Fundación Renacer/ECPAT Colombia, ECPAT International*, September 27, 2017). Thus, in the city of Medellín, a network led by a local drug trafficker who was organizing auctions of underage girls was dismantled (*ECPAT International*, 2016).

In February 2017, 33 sexually exploited minors (5 boys and 25 girls) in the neighborhood of Santa Fe were rescued, in addition to 2 children aged less than 12 years old and 1 pregnant minor. Among

them, the authorities were able to identify 2 adolescents reported as missing. They were placed in the care of the *Colombian Family Welfare Institute* (CFWI), who was charged with their protection (*El Tiempo*, February 13, 2017). The CFWI is specifically charged with the care of minor victims of violence, and attempts to provide them with assistance, have their rights recognized, as well as to raise the awareness of civil society around these issues. For this purpose, it is responsible for the special program *Sistema Unico de Información de la Niñez del Sistema Nacional de Bienestar Familiar* (526 children in 2005, 203 in 2016). To carry out its mission, it has 211 centers throughout the country, as well as a hotline (*línea 141*) implemented to report abuse and threats toward children (maltreatment, sexual violence, child labor, etc.). In case of an emergency, the children's police can also intervene immediately (CFWI website). Police crime statistics show a sharp increase in the number of reports of child pornography and sex tourism. Between 2014 and 2015, the number of crimes reported increased by 385%, most of which were concerning pornography (100 to 463) (*Revista Criminalidad*, 2017).

With regard to child marriages, the 2016 UNICEF report estimated that 6% of minors under the age of 15, and 23% of minors under the age of 18 were married. According to the Civil Code, minors cannot be married without written authorization from their parents (or their legal guardian). In the event of a conflict, the father's will prevails. It is however specified in article 140 of the Civil Code that the marriage is void if the married girl is less than 12 years old, and the boy is less than 14 years old. The Constitutional Court, however, ruled in 2004 that this distinction, based on the age of puberty, is an evident discrimination against young girls. It has therefore

standardized the minimum age of marriage to 14 years old (*Sentencia C-507/04*, May 25, 2004).

In conclusion, Colombia still has some efforts to make to strengthen its fight against trafficking and sexual exploitation, especially through legislation.

Penalties for crimes of trafficking and sexual exploitation in the Penal Code are exemplary. However, in order to allow for a broader application, it is necessary to explicitly incorporate into the law that the consent of a minor does not constitute grounds for exemption from criminal proceedings. Regarding the sexual exploitation of adults, the harmonization of penalties between the different codes would prevent abuses in regulated prostitution. Indeed, there are currently many discrepancies between the Penal Code and the National Police Code. Therefore, while articles 213 and 214 of the Penal Code condemn incitement and coercion to prostitution with a minimum of 9 years' imprisonment, article 46 of the National Police Code condemns the manager of the establishment to an indefinite suspension of his business activities.

The same problem arises with regard to the prostitution of minors. While article 46 of the National Police Code also punishes establishment owners to a suspension of activity, Article 217 of the Criminal Code sentences them to a minimum of 10 years' imprisonment. The sex buyer, who forces a prostituted person to have sexual relations against her will (implied rape), is sentenced to community programs or educational activities instead of harsher sentences relating to rape. All of these provisions would provide better protection for prostituted persons, who would probably be less subject to situations of exploitation. In addition, it would clarify the law and prevent the distinction between legal and

illegal establishments to determine the seriousness of the situation.

The minimum age of marriage could be raised to avoid many abuses against particularly vulnerable minors, notably in the current context. Indeed, some people in precarious circumstances could be lead, for survival, to offer their children for marriage in exchange for money. This would also prevent minors under the age of 14 years old from being sexually exploited under the guise of false marriages.

It should be noted that a bill was introduced in the Chamber of Representatives on August 2<sup>nd</sup>, 2017, with the objective of instating a legislation based on the Nordic Model in Colombia. It highlights the unique situation of Colombia, marked by forced displacement and armed conflict which have promoted the development of prostitution and sexual exploitation by criminal organizations. The fact that the regulation of prostitution does not consist of anything but further marginalization and exploitation of these people to the benefit of their procurers was highlighted in the preliminary debates of May 2018. More than just penalizing sex buyers, the bill provides numerous measures to assist prostituted persons (*Cámara de Representantes*, May 18, 2018). Such legislation would allow for the advancement of the fight against trafficking and sexual exploitation and affirm that human dignity is a fundamental right.

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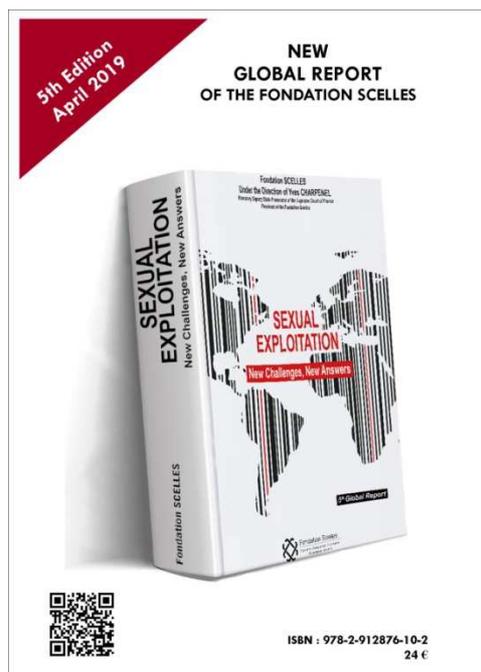
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The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** (Observatoire international de l'exploitation sexuelle) is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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