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## Taking Responsibility under International Law: Human Trafficking and Colombia's Venezuelan Migration Crisis

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# Taking Responsibility under International Law: Human Trafficking and Colombia's Venezuelan Migration Crisis

Luz Estella Nagle<sup>†</sup> and Juan Manuel Zarama<sup>‡</sup>

*For more than six million Venezuelans, crossing international borders has become imperative to ensuring security and a livelihood that their country has failed to assure. These migrants and refugees, particularly young women and children, are vulnerable to many depredations, criminal acts, and the risk of becoming trafficking victims for forced labor and sexual slavery. This article focuses on State responsibility for migrant populations and analyzes conditions in Venezuela that caused a massive migration, the conditions in Colombia as a host State, the uncertain status of*

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*Venezuelan migrants in Colombia, and human trafficking  
and its impact on the migrant population.*

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## INTRODUCTION

Conflict and internal unrest that cause displacement and mass migration intensify the vulnerability of affected populations to human trafficking and related crimes. In 2016, the United Nations Special Rapporteur of the Human Rights Council on Trafficking in Persons called for prioritizing the protection of people, especially women and children, from all forms of human trafficking during conflict and while fleeing unrest, violence, and abuses in their home country.<sup>1</sup> States have individual and shared responsibilities under international law to “act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.”<sup>2</sup> Yet, it has been challenging for States to develop meaningful and effective responses with solid resources, programs, and processes when so many migrants and refugees are involved.

The displacement and migration of more than 1.8 million Venezuelans into Colombia due to the effects of violent crime, human rights abuses, state repression (including mass arrests and extrajudicial killings), and a collapsing economy have created a logistical nightmare for the Colombian State to fulfill its obligations under

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<sup>1</sup> Maria G. Giammarinaro, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, at 4, Art. III, U.N. Doc. A/HRC/32/41 (May 3, 2016).

<sup>2</sup> U.N. Off. High Comm’r for Hum. Rts, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council* at 1, U.N. Doc. E/2002/68/Add.1 (July 2002) [hereinafter *Recommended Principles and Guidelines*].

international law.<sup>3</sup> Specifically, the Colombian State is required “to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies.”<sup>4</sup> The challenge for Colombia to prevent human trafficking and exploitation of Venezuelan migrants and refugees is compounded by the country’s current status as a “post-conflict” State, in which several areas of its national territory remain in conflict.<sup>5</sup> Additionally, the government is struggling to implement the Peace Agreement signed with the FARC–EP<sup>6</sup> insurgent group in 2016,<sup>7</sup> build and strengthen

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<sup>3</sup> *Refugees and migrants from Venezuela*, INTER-AGENCY COORDINATION PLATFORM FOR REFUGEES AND MIGRANTS FROM VENEZUELA, [www.r4v.info/en/refugeeandmigrants](http://www.r4v.info/en/refugeeandmigrants) (last updated Feb. 8, 2022).

<sup>4</sup> G.A. Res. 55/2, Millennium Declaration, ¶ 24 (Sept. 18, 2000).

<sup>5</sup> See M. Panić, *Post-conflict countries: aid effectiveness and permanent peace*, UN (2008), [www.un.org/en/development/desa/policy/wess/wess\\_bg\\_papers/bp\\_wess2008\\_panic.pdf](http://www.un.org/en/development/desa/policy/wess/wess_bg_papers/bp_wess2008_panic.pdf); see also *Colombia/Venezuela: Border Area Abuses by Armed Groups*, HUM. RTS. WATCH (Mar. 28, 2022), [www.hrw.org/news/2022/03/28/colombia/venezuela-border-area-abuses-armed-groups](http://www.hrw.org/news/2022/03/28/colombia/venezuela-border-area-abuses-armed-groups).

<sup>6</sup> Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo, “FARC–EP” (The FARC–EP is the oldest insurgency group in Latin America with roots going back to the early 1950s); see *Colombia: FARC*, INSIGHT CRIME (May 1, 2013), <https://insightcrime.org/colombia-organized-crime-news/farc-profile/>; see also Sibylla Brodzinsky, *Colombia signs historic peace deal with FARC*, GUARDIAN (Nov. 24, 2016), [www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels](http://www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels) (explaining how since the early 1990s, the FARC has steadily transformed into a transnational criminal organization involved in many criminal enterprises, including drug production/trafficking, weapons trafficking, human trafficking, illegal mining and cattle rustling); see also Luz E. Nagle, *The FARC: Doing What Any Multinational Corporation Would Do: Diversify*, 28 NO. 5 INT’L ENF’T L. REP. 178 (2012).

<sup>7</sup> The final agreement was signed in Bogotá, Colombia on November 24, 2016, ending the armed conflict between the FARC–EP rebel group and the Colombian government and building a stable and lasting peace. See *Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera*, JURISDICCIÓN ESPECIAL PARA LA PAZ (Nov. 24, 2016), [www.jep.gov.co/Documents/Acuerdo%20Final/Acuerdo%20Final.pdf](http://www.jep.gov.co/Documents/Acuerdo%20Final/Acuerdo%20Final.pdf) (Three years later, the Peace Agreement was largely in tatters and left many Colombians angry and resentful toward the political actors who brokered the deal); see also Juan Arredondo, *The Slow Death of Colombia’s Peace Movement*, ATLANTIC (Dec. 30, 2019), [www.theatlantic.com/international/archive/2019/12/colombia-peace-farc/604078/](http://www.theatlantic.com/international/archive/2019/12/colombia-peace-farc/604078/) (The Peace Agreement remains a highly controversial issue in Colombian society and politics, and rather than bringing stability the

institutions and communities, quell impunity, fight organized crime, sustain law and order, and suppress animosity and resentment toward the neighboring nation from which migrants emanate.

The human rights impact of the Venezuelan government's actions and omissions has rendered individuals and communities vulnerable to traffickers at home and pushed these individuals to take uncertain and dangerous journeys across a hazardous frontier, into a transforming and unstable "host" nation of Colombia.<sup>8</sup> The risks they face from abuse and exploitation increase at each stage of their journey because their resilience weakens and their vulnerability to criminal victimization and human trafficking intensifies. Instead of protecting individuals from violations of their human rights, Venezuela has created a fertile ground for criminal groups and human traffickers to prey on a large population of citizens at home and migrants and refugees in Colombia.<sup>9</sup>

Human trafficking within the post-conflict context has received little attention. In this article, we analyze the Venezuelan-Colombian migration crisis with a human rights approach that demonstrates that migrants and refugees lack the international mechanisms to protect themselves from becoming victims of human trafficking and exploitation. Although numerous measures have been taken attempting to prevent these human rights violations, important principles of international law—particularly the *Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (known as the "Palermo Protocol")<sup>10</sup>—are absent along the Colombia/Venezuela border. As such, both nations are

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Agreement has caused social anxiety, discontent, and continuing low-intensity conflict in many areas of the national territory).

<sup>8</sup> Anastasia Moloney, *Desperate Venezuelan Migrants Fall Prey to Sex Traffickers in Colombia*, REUTERS (Nov. 28, 2018), [www.reuters.com/article/us-colombia-venezuela-slavery-idUSKCN1NX22X](http://www.reuters.com/article/us-colombia-venezuela-slavery-idUSKCN1NX22X); see also *Venezuela: Events of 2019*, HUM. RTS. WATCH, [www.hrw.org/world-report/2020/country-chapters/venezuela](http://www.hrw.org/world-report/2020/country-chapters/venezuela) (last visited Mar. 1, 2022).

<sup>9</sup> *Venezuelan Migrants High Risk for Trafficking and Abuse*, RELIEFWEB (June 19, 2019), <https://reliefweb.int/report/colombia/venezuelan-migrants-high-risk-trafficking-and-abuse>.

<sup>10</sup> PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, G.A. Res. 55/25 (2000), [www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf](http://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf) [hereinafter *Palermo Protocol*].

failing in their individual and shared responsibility to protect the impacted populations.

The first part of this article provides a description of a State's responsibility under international law to confront human trafficking and protect vulnerable populations from becoming trafficking victims. The second part discusses the conditions in Venezuela that resulted in a mass exodus into Colombia. Turning to conditions in Colombia, this note will analyze the factors that compelled over a million Venezuelans to move there at a time when the country struggled to emerge as a post-conflict State after five decades of internal armed conflict. The note considers how the COVID-19 pandemic worsened the migrant crisis and enabled criminal actors to exploit, abuse, and traffic vulnerable persons among the migrant population. The third part of the article will address Colombia's duty to protect migrants from trafficking and to what extent the nation has succeeded or fallen short in fulfilling its international commitments to them. Lastly, the Note concludes with a discussion on what should be done to improve the protection of vulnerable migrant populations.

#### STATE RESPONSIBILITY FOR HUMAN TRAFFICKING<sup>11</sup>

Under international law, States possess shared and separate responsibilities to their individual societies.<sup>12</sup> Nations are responsible for breaches of international law that can be directly or indirectly attributed to that nation. Breaches result from States' failure to fulfill obligations emerging from ratified treaties<sup>13</sup> and customary

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<sup>11</sup> *Id.* at art. 3(a) (defining human trafficking as 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>12</sup> For a detailed discussion see Anna Stiliz, *Collective Responsibility and the State*, 19 J. POL. PHIL. 190 (2011).

<sup>13</sup> Ratified treaties "define the content of the international obligations, the breach of which gives rise to responsibility." The core human rights treaties include, among many others: (i) International Convention on the Elimination of All

international law.<sup>14</sup> Responsibility applies “to the whole field of the international obligations of States, whether the obligation is owed to

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Forms of Racial Discrimination (ICERD), Dec. 21, 1965, 660 U.N.T.S. 195; (ii) International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171, 173; (iii) International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. E/C.12/2000/13 (Oct. 2, 2000); (iv) International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195; (v) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, (Sept. 3, 1981), 1249 U.N.T.S. 13; (vi) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1465 U.N.T.S. 85; (vii) Convention on the Rights of the Child (CRC), Nov. 20, 1989, 1577 U.N.T.S. 3; (viii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), Dec. 18, 1990, 2220 U.N.T.S. 3; (ix) International Convention for the Protection of All Person from Enforced Disappearance (CPED), Dec. 23, 2010, 2716 U.N.T.S. 3; (x) Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3. Treaty content is subject to interpretation in accordance with the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 31–33. International organizations in carrying out their functions may “take a position on whether a State has breached an international obligation.” Int’l L. Comm’n, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries*, U.N. Doc. A/56/10, at 31 (2001). For instance, there are ten human rights treaty bodies that monitor implementation of the core international human rights treaties: Human Rights Committee (HRCttee); Committee on Economic, Social and Cultural Rights (CESCR); Committee on the Elimination of Racial Discrimination (CERD); Committee on the Elimination of Discrimination Against Women (CEDAW); Committee against Torture (CAT); Committee on the Rights of the Child (CRC); Committee on Migrant Workers (CMW); Committee on the Rights of Persons with Disabilities (CRPD); Committee on Enforced Disappearances (CED); Subcommittee on Prevention of Torture (SPT). For video presentations on each committee, see U.N. Human Rights, Office of the High Comm’r for Human Rights, Human rights treaty bodies, [www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx) (last visited Feb. 3, 2022).

<sup>14</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 13, at 141 (Commentary to Article 56 of the International Law Commission articles on State Responsibility first “preserves the application of the rules of customary international law concerning State responsibility on matters not covered by the articles. Secondly, it preserves other rules concerning the effects of a breach of an international obligation which do not involve issues of State responsibility but stem from the law of treaties or other areas of international law.”).

one or several States, to an individual or group, or to the international community as a whole.”<sup>15</sup>

A State that has ratified an international treaty “must incorporate into its domestic laws the changes required to ensure the implementation of the obligations it has assumed.”<sup>16</sup> But, to guarantee the rights contained in the treaty, “the measures under domestic law must be effective.”<sup>17</sup> States party to the Palermo Protocol and those included in its parent Convention, the United Nations Convention Against Transnational Organized Crime (UNTOC),<sup>18</sup> acquired obligations to adopt legislative measures<sup>19</sup> to criminalize and prosecute human trafficking. Therefore, nations must criminalize human trafficking as well as participation in an organized criminal group, laundering proceeds of crime, corruption, obstruction of justice, and establish administrative, criminal, or civil liability of legal persons. Consequently, training programs for officials and personnel related to the prevention, identification, investigation, and prosecution of human trafficking must also include UNTOC crimes and its related sections such as the necessary measures for care, protection, and assistance of victims and witnesses of crime.<sup>20</sup>

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<sup>15</sup> *Id.* at 32.

<sup>16</sup> *Hacienda Brasil Verde Workers v. Brazil*, Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 3181, ¶ 409 (Oct. 20, 2016), [www.corteidh.or.cr/docs/casos/articulos/seriec\\_318\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_318_ing.pdf).

<sup>17</sup> *Id.*

<sup>18</sup> Convention Against Transactional Organized Crime and the Protocols Thereto, Nov. 15, 2000, 2225 U.N.T.S. 209.

<sup>19</sup> *Rantsev v. Cyprus and Russia*, App. No. 25965/04, ¶¶ 289–292 (May 10, 2010), <https://rm.coe.int/16806ebd5e> (holding that Cyprus immigration policy was inadequate and contradictory to that of human trafficking. The Court noted that legislative shortcoming and absence of policy in the regime of artiste visas encouraged trafficking of women to Cyprus to work as cabaret performers and that requiring the cabaret managers to “make the application for an entry permit for the artiste rendered women dependent on her employer or agent, and therefore increased her risk of falling into the hands of traffickers.”) (To afford practical and effective protection against trafficking and exploitation, the legislative framework must be comprehensive and include other policies such as immigration. Governments must make certain that all the regimes do not contradict the measures taken against trafficking by rendering them ineffective).

<sup>20</sup> See *Palermo Protocol*, *supra* note 10 (States party to the Palermo Protocol assume the following duties: (1) adopt legislative measures to criminalize and prosecute human trafficking (art. 5, as well as those crimes included in UNTOC). This means also criminalizing laundering of proceeds, all forms of corruption,

When developing training, states have a duty to consider the “general backdrop of trafficking issues” in their countries so that law enforcement and relevant officials are “aware of circumstances giving rise to a credible suspicion that” an individual is at “immediate risk of being, a victim of trafficking and exploitation.”<sup>21</sup>

#### ATTRIBUTION OF RESPONSIBILITY

Responsibility is attributed to States when “its organs of government or others who have acted under the direction, instigation, or control of those organs” are agents of the State.<sup>22</sup> An example would be corruption of law enforcement, prosecutors, and the judiciary through bribery of public officials (legislators, ministers, ambassadors) involved in operating sexual or labor recruiting schemes or transporting/transferring through sexual service imposed on the victim. Corrupt officials can be facilitators by transporting victims,

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including liability for natural and legal persons—civil, criminal, or administrative, obstruction of justice, asset confiscation; (2) aid and protection to the victims and witnesses (art. 6.); and (3), allow foreign victims to remain in the country permanently or temporarily); see also LUZ E. NAGLE, UNDERSTANDING HUMAN TRAFFICKING, CORRUPTION, AND THE OPTICS OF MISCONDUCT IN THE PUBLIC, PRIVATE, AND NGO SECTORS: CAUSES, ACTORS, AND SOLUTIONS 42–43 (2017).

<sup>21</sup> *Rantsev v. Cyprus and Russia*, *supra* note 19 (arguing that training must include the distinctive circumstances taking place in each country. Incorporating that uniqueness into the investigations and inquiries provides clear “background of facts” and aids in determining if someone is a victim of trafficking in need of protection. In *Rantsev*, Cyprus had a serious problem involving young foreign women forced to work in the sex industry, and the “authorities were aware that a substantial number of foreign women,” particularly from the former Soviet Union, were being trafficked to Cyprus on artist visas, only to be sexually exploited by cabaret owners and managers. Rantseva, a young Russian girl entered Cyprus with a cabaret artiste visa that allowed her to work in a cabaret for her artistic agent. After a month, she left her employment without warning and moved out of the accommodation provided to her. Her employer had her passport and other documents. The Court held that Cyprus had a “positive obligation to investigate without delay” and protect Rantseva. The police investigation was deficient because it failed to inquire into the “background of facts,” and to take Rantseva’s statements when she “insisted that she be detained.” That information would have aided in determining if she had been trafficked. Instead, she was released to the custody of the trafficker).

<sup>22</sup> ANNE T. GALLAGHER, THE INTERNATIONAL LAW OF HUMAN TRAFFICKING 223 (2010); see also *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 13, at 38.

allowing illegal entries or exits, falsifying documents, ignoring suspicious activities, protecting or patronizing commercial premises using the services of victims of trafficking,<sup>23</sup> obstructing prosecutions, or reducing sentences.<sup>24</sup>

It is also imputed as an act of the State when an individual acts in an apparent official capacity or under color of authority—regardless as to whether the individual possesses ulterior motives or abuses public power.<sup>25</sup> When the violation is carried out by private actors, which is often the case in human trafficking, States may also be responsible for a failure to act with due diligence to prevent, investigate, or prosecute.<sup>26</sup>

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<sup>23</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 13, at 42; *see generally* GALLAGHER, *supra* note 22, at 223–26; *see also* NAGLE, *supra* note 20 (providing an extensive examination of corruption and human trafficking).

<sup>24</sup> *See* U.N. OFFICE ON DRUGS AND CRIME, LEGISLATIVE GUIDES FOR THE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOL THERETO 85 (2004), [www.unodc.org/pdf/crime/legislative\\_guides/Legislative%20guides\\_Full%20version.pdf](http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf); *see also* INTERNATIONAL BAR ASS'N, HUMAN TRAFFICKING AND PUBLIC CORRUPTION: A REPORT BY THE IBA'S PRESIDENTIAL TASK FORCE AGAINST HUMAN TRAFFICKING (2016), [www.ibanet.org/MediaHandler?id=E34FFA1D-8038-4AEC-A631-E0E2A7E0AD86](http://www.ibanet.org/MediaHandler?id=E34FFA1D-8038-4AEC-A631-E0E2A7E0AD86).

<sup>25</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 13, at 42; Gallagher, *supra* note 22, at 226; *see also* Velásquez Rodríguez vs. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, at ¶¶ 170 and 172 (July 29, 1988) (holding that “under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law,” and that “any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State.”).

<sup>26</sup> *See* Hacienda Brasil Verde Workers v. Brazil, *supra* note 16, at ¶¶ 435–508 (The Inter-American Court of Human Rights decided a case against Brazil involving 85 workers, some of them children, in a privately-owned estate “Hacienda Brasil Verde,” who were subjected to slavery practices and human trafficking on that property. Thousands of employees were subjected to forced labor servitude in the Hacienda, and the State was well aware of the existence of these practices but neither adopted measures to prevent the abuses, nor offered any assistance or reparations to protect the rights of the victims. The Court established the test: “At the time of the events, it must be determined whether the State authorities knew or should have known about the existence of a situation that poses a real immediate risk to the life of an individual or a group of individuals, and the

A State's responsibility goes beyond the actions and omissions imputed to state actors and agents. The inability to exercise effective control over "the presence, power, and influence" of non-state actors, such as armed criminal groups and drug traffickers, can render a State responsible for their actions.<sup>27</sup> Responsibility is justified if it can be shown that the State failed to use whatever means it had available to prevent the breach and, if prevention was not possible, the State was unable to punish the culprits appropriately.<sup>28</sup>

In the human rights context, every State party to a treaty "has an obligation to take steps to ensure that everyone in the State can enjoy the rights set out in the treaty."<sup>29</sup> The principle of State responsibility as it operates in this context confirms that the State is held to a certain standard of care—even in situations where it is not the primary agent of harm, but still fails to sanction third parties.

Human trafficking is a violation of the "basic human rights to which all persons are entitled."<sup>30</sup> Therefore, all human rights treaties and customary international law containing such fundamental rights are germane and supplement the Protocol, making States responsible for "their acts and omissions that cause or otherwise contribute to trafficking."<sup>31</sup> The content and interpretation of the UNTOC, Protocol, and each treaty germane to human trafficking also determines

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necessary measures were not applied within the scope of their authority, to prevent or avoid this risk.")

<sup>27</sup> GALLAGHER, *supra* note 22, at 249.

<sup>28</sup> *Id.* at 248–49.

<sup>29</sup> *Human rights treaty bodies*, U.N. HUM. RTS. OFF. HIGH COMM'R, [www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx](http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx) (last visited Feb. 25, 2022).

<sup>30</sup> *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, U.N. HUM. RTS. OFF. HIGH COMM'R, at 3, 16 (2010), [www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf) (the Principles and Guidelines are not per se the basis of legal obligation upon states. However, they contain existing compulsory rules of international law, which are a source of legal responsibility for States. Moreover, Principles and Guidelines create a framework "for State practice that may provide the source for emergent customary international law.").

<sup>31</sup> See GALLAGHER *supra* note 22, at 218; *Cf. Draft Articles on Responsibility of Internationally Wrongful Acts*, *supra* note 13 (according to the International Law Commission, commentary State responsibility for internationally wrongful acts, the term "internationally wrongful act" includes "an omission and extends to conduct consisting of several actions or omissions which together amount to an internationally wrongful act.").

if “a particular obligation is breached upon a failure to act on the part of the responsible State, or whether some further event must occur.”<sup>32</sup>

A nation has a positive obligation<sup>33</sup> “to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.”<sup>34</sup> Since human rights are implicated through the various phases of trafficking and exploitation, States possess a positive obligation to act with due diligence to protect such rights in each stage of trafficking or exploitation. For instance, the right to the highest attainable standard of physical and mental health freedom and security, of association, to an adequate standard of living are relevant to the causes of trafficking—factors that make people defenseless and vulnerable to trafficking.<sup>35</sup> The right not to be submitted to slavery, to servitude, forced labor, or bonded labor is also relevant to the process of trafficking. The right of access to courts, specifically equality before the courts and a fair trial, are relevant to the response.<sup>36</sup>

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<sup>32</sup> *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, *supra* note 13, at 36 (arguing that human trafficking is a crime of a complex nature because it violates multiple rights, including individual liberty and safety, dignity and privacy, freedom of movement and residence, and the prohibition against discrimination); *see also* *Hacienda Brasil Verde Workers v. Brazil*, *supra* note 16, at ¶ 223.

<sup>33</sup> *See Akkoç v. Turkey*, Nos. 22947/93 and 22948/93 Eur. Ct. H.R. ¶ 77 (2000) (the European Court of Human Rights addressed States’ positive obligations and duty to safeguard lives of those within its jurisdiction. A State must take “appropriate steps to safeguard” their lives, and its primary duty is “to secure the right to life by putting into place effective criminal-law provisions to deter the commission of offences” and law-enforcement to prevent, suppress and punish the breaches, that such duty may extend “to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.”).

<sup>34</sup> Recommended Principles and Guidelines, *supra* note 2, at 1.

<sup>35</sup> *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, U.N. OFF. ON DRUGS AND CRIME 2–3 (2008), [www.unodc.org/documents/human-trafficking/An\\_Introduction\\_to\\_Human\\_Trafficking\\_-\\_Background\\_Paper.pdf](http://www.unodc.org/documents/human-trafficking/An_Introduction_to_Human_Trafficking_-_Background_Paper.pdf) (arguing that to prevent human trafficking, states need to reduce the factors that make individuals vulnerable to being trafficked).

<sup>36</sup> *Id.* at 3; *see also* Recommended Principles and Guidelines, *supra* note 2, at 52–56 (providing an expanded list of the rights, obligations, and legal sources most relevant to trafficking).

Finding a State responsible for its obligation to prevent and respond to human trafficking depends on establishing whether the State (1) “failed to secure recognized rights and freedoms” in its domestic law or (2) failed to take “reasonable and appropriate” measures of protection,” and (3) if a breach occurred, that the State failed to sanction the culprits appropriately.<sup>37</sup> In fulfilling their obligation to prevent human trafficking, states must ensure the creation of the conditions required to guarantee that violations of inalienable rights of every person subject to their jurisdiction do not occur.<sup>38</sup> While endeavoring to meet those special duties, it is not sufficient that States simply abstain from violating rights. Instead, they must adopt measures based on individuals’ particular needs as determined by their places in society, such as being migrants and refugees particularly susceptible to exclusion and discrimination.<sup>39</sup> They must also adopt measures based on the specific situation in which individuals find themselves, such as extreme poverty, lack of education, health, and other basic needs, and conditions resulting from marginalization, and structural discrimination.<sup>40</sup> One’s status exposes their particular vulnerabilities, which requires implementing specific protective actions with an intersectional approach, including—among other aspects—immigration status and national origin.<sup>41</sup>

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<sup>37</sup> GALLAGHER, *supra* note 22, at 307.

<sup>38</sup> *Id.* at 248–49; *see also* Joy Ezeilo (Special Rapporteur), *Thematic Report on trafficking in persons, especially women and children*, at ¶ 41, U.N. Doc. A/HRC/26/37 (Apr. 1, 2014) (indicating that poverty is a significant vulnerability factor in human trafficking); *see also* *Hacienda Brasil Verde Workers v. Brazil*, *supra* note 16, at ¶ 317 (holding that “States have the obligation to ensure the creation of the conditions required to guarantee that violations of this inalienable right do not occur and, in particular, the duty to prevent its agents as well as private individuals from violating it.”).

<sup>39</sup> GALLAGHER, *supra* note 22, at 249.

<sup>40</sup> *Hacienda Brasil Verde Workers v. Brazil*, *supra* note 16, at ¶ 25, n.31 (asserting that States must realize their human rights obligations related to sanitation in a non-discriminatory manner. They are obliged to pay special attention to groups particularly vulnerable to exclusion and discrimination in relation to sanitation, including people living in poverty [ . . . ]. Priority should be given to meeting the needs of these groups and, where necessary, positive measures should be adopted to redress existing discrimination and to ensure their access to sanitation. States are obliged to eliminate both de jure and de facto discrimination on [different] grounds.).

<sup>41</sup> *Id.* at ¶ 226, ¶338 (holding that Brazil incurred international responsibility, when it knew about the existence of structural discrimination, but failed to adopt

Furthermore, States have an international obligation to understand the meaning of vulnerability in the human trafficking context and identify it to implement effective preventive measures “before the occurrence of a potential danger, trauma or abuse, thereby lessening its human, economic and social consequences.”<sup>42</sup> In a human trafficking setting, vulnerability “refers to the condition of a person in a specific context”, meaning that a proper response demands the consideration for all the external conditions affecting an individual, as well as “the coping mechanisms that enable the individual to protect him– or herself against a negative impact from those external conditions.”<sup>43</sup> Understanding vulnerability allows the government and local authorities to implement measures “before the occurrence of a potential danger, trauma or abuse, thereby lessening its human, economic and social consequences.”<sup>44</sup>

A State’s responsibility to prevent human trafficking is not limited to its citizens. It includes protection of migrants and non–citizens, regardless of their immigration status. Nations have an obligation “to protect and promote the rights of all persons within their

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specific measures with regard to the particular situation of victimization that reveals the vulnerability of a universe of individualized persons and that the victims of human trafficking in Brasil Verde Workers were Afro–descendant and mulatto, from extremely poor Brazilian states. According to the Court, the State failed to comply with its obligation to remove the obstacles to access to justice based on the victims’ origin, ethnicity, race, and economic status, which permitted the subsistence of factors of structural discrimination”).

<sup>42</sup> See *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, *supra* note 35, at 68; see also *Palermo Protocol*, *supra* note 10 (Article 3 states “abuse of a position of vulnerability” in the human trafficking definition. This precedent establishes that prevention includes preventing a crime and reducing the conditions that make an individual vulnerable to trafficking. States have a duty to understand the meaning of vulnerability to criminalize and prevent human trafficking).

<sup>43</sup> *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, *supra* note 35, at 68 (understanding of and focusing on vulnerability allows governments to implement measures “before the occurrence of a potential danger, trauma or abuse, thereby lessening its human, economic and social consequences.” “Vulnerability refers to the condition of a person in a specific context. A response to vulnerability needs therefore to take into account the external conditions of an individual as well as the coping mechanisms that enable the individual to protect him– or herself against a negative impact from those external conditions.”).

<sup>44</sup> *Id.*

jurisdiction.”<sup>45</sup> Such responsibility emanates from Article 28 of the *Universal Declaration of Human Rights*, which provides that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”<sup>46</sup> Also, under Article 9 of the Palermo Protocol a State party has a shared responsibility to “take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking.”<sup>47</sup> Signatory States also have a shared responsibility “to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”<sup>48</sup> by adopting legislative, educational, social, or cultural measures. Finally, the Palermo Protocol comprises an international cooperation framework—either bilateral or multilateral—to discourage the demand that fosters all forms of exploitation of persons “that would impose obligations on states under their particular place in the trafficking cycle.”<sup>49</sup>

#### VENEZUELA’S SOCIO-POLITICAL MELTDOWN

The political, socio-economic, and human rights situation in Venezuela has been deteriorating from the time Hugo Rafael Chávez Frías came to power in 1999 and worsened during the regime of Chávez’s hand-picked successor, Nicolás Maduro Moros.<sup>50</sup> In

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<sup>45</sup> Sigma Huda, *Special Reporter on Trafficking in Persons statement at the CSW– Beijing + 10 Review*, UN 3 (Mar. 7, 2005), [www.un.org/webcast/csw2005/statements/050307traffickinginpersons-e.pdf](http://www.un.org/webcast/csw2005/statements/050307traffickinginpersons-e.pdf).

<sup>46</sup> G.A. Res. 217 (III) A, art. 28, *Universal Declaration of Human Rights* (Dec. 10, 1948); see also *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*, *supra* note 30, at 3.

<sup>47</sup> *Palermo Protocol*, *supra* note 10, at art. 9 ¶ 4.

<sup>48</sup> *Id.* at art. 9 ¶ 5.

<sup>49</sup> GALLAGHER, *supra* note 22, at 556–82.

<sup>50</sup> See generally *Introduction: Chávez Revolution in Perspective*, BROOKINGS (2016), [www.brookings.edu/wp-content/uploads/2016/07/dragoninthetropics\\_chapter.pdf](http://www.brookings.edu/wp-content/uploads/2016/07/dragoninthetropics_chapter.pdf); see also Robert Plummer, *Hugo Chávez leaves Venezuela in economic muddle*, BBC (Mar. 5, 2013), [www.bbc.com/news/business-20795781](http://www.bbc.com/news/business-20795781); see also Amelia Cheatham & Rocio Cara Labrador, *Venezuela: The Rise and Fall of a Petrostate*, COUNCIL ON FOREIGN RELS. (Jan. 22, 2021 10:30 AM), [www.cfr.org/backgrounder/venezuela-crisis](http://www.cfr.org/backgrounder/venezuela-crisis) (Venezuela owns one of the largest oil reserves in the world and, until Chávez came to power, was considered the

2010, the country's economic conditions reflected the world economic crises impacting many struggling governments. Chávez declared "an economic war" against private businesses and what he called the "cheap bourgeoisie"<sup>51</sup>, which resulted in a collapsing economy and hyperinflation due to state appropriation of private enterprise, systematic violations of human rights against opposition activists, unchecked corruption and crime, and an increasing humanitarian emergency profoundly affecting marginalized and vulnerable groups.<sup>52</sup> The devastated economy and breakdown of the civil society led to more than 5 million Venezuelans leaving the country, making the exodus among the world's major recent displacement crises.<sup>53</sup> Since 2014, Venezuelans seeking refugee status increased 8,000 percent, mainly in the Americas.<sup>54</sup> As of 2019, 64.8 percent of Venezuelan households experienced "multidimensional poverty," the highest proportion in Latin America.<sup>55</sup>

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wealthiest and most stable country in Latin America, with a robust middle class and high living standard); see also *Statistical Review of World Energy*, BP, [www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-full-report.pdf](http://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-full-report.pdf) (last visited Feb. 3, 2022).

<sup>51</sup> Chávez declara "guerra económica" a burguesía en Venezuela, EL UNIVERSO (Jun. 2, 2010 3:53 PM), [www.eluniverso.com/2010/06/02/1/1361/chavez-declara-guerra-economica-burguesia-venezuela.html](http://www.eluniverso.com/2010/06/02/1/1361/chavez-declara-guerra-economica-burguesia-venezuela.html); see also Larry Elliot, *Global financial crisis: five key stages 2007–2011*, GUARDIAN (Aug. 7, 2011 11:49AM), [www.theguardian.com/business/2011/aug/07/global-financial-crisis-key-stages](http://www.theguardian.com/business/2011/aug/07/global-financial-crisis-key-stages).

<sup>52</sup> See generally U.N. Human Rights Council, *Detailed findings of the independent international factfinding mission on the Bolivarian Republic of Venezuela*, U.N. Doc. A/HRC/48/CRP.5 (Sep. 16, 2021), [www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5\\_EN.pdf](http://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/FFMV/A-HRC-48-CRP.5_EN.pdf).

<sup>53</sup> *Venezuela Situation*, U.N. OFF. HIGH COMM'R FOR HUM. RTS., [www.unhcr.org/en-us/venezuela-emergency.html](http://www.unhcr.org/en-us/venezuela-emergency.html) (last visited Mar. 17, 2022) (according to the UN High Commissioner for Human Rights as of 2021, there are 5.4 million Venezuelan refugees, over 800,000 asylum-seekers, 2.5 million living under other legal forms of stay in the Americas, and over 140,000 recognized refugees worldwide).

<sup>54</sup> *Id.*

<sup>55</sup> *There is no wealth to distribute: Venezuela poverty rate surges*, ALJAZEERA (July 8, 2020), [www.aljazeera.com/economy/2020/7/8/there-is-no-wealth-to-distribute-venezuela-poverty-rate-surges](http://www.aljazeera.com/economy/2020/7/8/there-is-no-wealth-to-distribute-venezuela-poverty-rate-surges) (stating that multidimensional poverty considers income as well as access to education and public services.).

Corruption<sup>56</sup> and low government approval ratings became the status quo rather than symptoms of a failing state, with regular polling showing that 80 percent of the population disapproves of the government.<sup>57</sup> Rather than respond to civil instability and dissatisfaction, Nicolás Maduro further entrenched government policies through denial, propaganda, and when necessary, brutal force. Venezuela's constitutional institutions fractured, and encounters with opposition movements and civil unrest led to violence and unprecedented insecurity nationwide.<sup>58</sup> By 2020, Venezuela had become one of the most violent countries in the region, with the United States Department of State reporting alarming rates of 60.3 deaths per 100,000 citizens.<sup>59</sup> The high rate of murders, kidnapping, armed robbery, street gangs, and other organized criminal groups has robbed most Venezuelans of their right to live safely in their own country.<sup>60</sup> For those citizens who remain in Venezuela, most indicate that they no longer feel secure or protected by their

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<sup>56</sup> Gustavo Coronel, *The Corruption of Democracy in Venezuela*, CATO (Mar. 4, 2008), [www.cato.org/commentary/corruption-democracy-venezuela](http://www.cato.org/commentary/corruption-democracy-venezuela) (arguing that prior to the Chávez regime taking power, Venezuela had long struggled with public and private corruption.); *see also* Giulia Saudelli, *How millions of 'dirty dollars' were laundered out of Venezuela*, DW (Mar. 13, 2019), [www.dw.com/en/how-millions-of-dirty-dollars-were-laundered-out-of-venezuela/a-47867313](http://www.dw.com/en/how-millions-of-dirty-dollars-were-laundered-out-of-venezuela/a-47867313) (stating that under Chávez and Maduro, billions of dollars have been embezzled by the “Chavistas” and public officials.); *see also* Nicolás Maduro 2016 Person of the Year in Organized Crime and Corruption, ORGANIZED CRIME & CORRUPTION REPORTING PROJECT, [www.occrp.org/en/poy/2016/](http://www.occrp.org/en/poy/2016/) (last visited Feb. 3, 2022).

<sup>57</sup> *Few Venezuelans say they trust their government*, PEW RSCH. CTR. (Jan. 25, 2019), [www.pewresearch.org/fact-tank/2019/01/25/venezuelans-have-little-trust-in-national-government-say-economy-is-in-poor-shape/](http://www.pewresearch.org/fact-tank/2019/01/25/venezuelans-have-little-trust-in-national-government-say-economy-is-in-poor-shape/).

<sup>58</sup> *Venezuela: Hunger, punishment and fear, the formula for repression used by authorities under Nicolás Maduro*, AMNESTY INT'L (Feb. 20, 2019), [www.amnistia.org/ve/noticias/2019/02/9375/venezuela-hunger-punishment-and-fear-the-formula-for-repression-used-by-authorities-under-nicolas-maduro](http://www.amnistia.org/ve/noticias/2019/02/9375/venezuela-hunger-punishment-and-fear-the-formula-for-repression-used-by-authorities-under-nicolas-maduro).

<sup>59</sup> *Venezuela 2020 Crime & Safety Report*, OVERSEAS SEC. ADVISORY COUNCIL (July 21, 2020), [www.osac.gov/Country/Venezuela/Content/Detail/Report/0e6ed0e0-eb8e-44cc-ab81-1938e6c8d93f](http://www.osac.gov/Country/Venezuela/Content/Detail/Report/0e6ed0e0-eb8e-44cc-ab81-1938e6c8d93f).

<sup>60</sup> U.N. Human Rights Council, *Situation of human rights in the Bolivarian Republic of Venezuela*, at 2, Res. 42/25, U.N. Doc. A/HRC/RES/42/25 (Oct. 8, 2019) (“Violations of the rights to food and health, violence and insecurity, the collapse of basic services, the deterioration of the education system, lack of access to pre- and post-natal care, and insufficient mechanisms for protection from violence and persecution on political grounds.”).

Government, nor are they able to exercise their rights.<sup>61</sup> When such insecurity is “systemic and the result of government enacted policies, it is the responsibility of States to ensure the protection of vulnerable individuals in their midst.”<sup>62</sup> Venezuela has failed in this obligation.

#### PUSH FACTORS DUE TO VENEZUELA’S FAILURES TO FULFILL STATE RESPONSIBILITIES

The relentless nationwide hardship and oppression triggered a mass Venezuelan exodus, and Colombia became the primary receiving State at a time when it was ill-prepared to host nearly two million Venezuelan migrants and refugees. The migrant population comprises a diverse group that includes young people between 18 and 29 years of age, well-educated people, skilled workers,<sup>63</sup> as well as urban and rural poor, political dissidents, indigenous,<sup>64</sup> and individuals whose minority status subjects them to various manifestations of xenophobia and discrimination.<sup>65</sup> Among the migrant population are also many essential workers, healthcare professionals,

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<sup>61</sup> See generally *Venezuela 2019*, AMNESTY INT’L, [www.amnesty.org/en/countries/americas/venezuela/report-venezuela/](http://www.amnesty.org/en/countries/americas/venezuela/report-venezuela/) (last visited Mar. 17, 2022).

<sup>62</sup> *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, *supra* note 35.

<sup>63</sup> A study in Peru, for example, indicated that 42% of Venezuelan migrants are between 18 and 29, come from urban areas, and are well-educated. See *Venezuelan Migration: The 4,500-Kilometer Gap Between Desperation and Opportunity*, THE WORLD BANK (Nov. 26, 2019), [www.worldbank.org/en/news/feature/2019/11/26/migracion-venezolana-4500-kilometros-entre-el-abandono-y-la-oportunidad](http://www.worldbank.org/en/news/feature/2019/11/26/migracion-venezolana-4500-kilometros-entre-el-abandono-y-la-oportunidad).

<sup>64</sup> The indigenous Wayuu occupy a region along the northern Venezuela-Colombia border around La Gajaira. In Venezuela the Wayuu comprise around 57 percent of the country’s indigenous population. Economic instability, lack of resources, especially access to water, and political conflict and violence have compelled many Venezuelan Wayuu to cross into Colombia. See Carlos Salamanca Villamizar, *Colombia-Venezuela: the Wayúu face poverty and violence*, IWGIA (Dec. 2021), [www.iwgia.org/en/colombia/4581-back-and-forth-across-the-colombia%E2%80%93venezuela-border-the-way%C3%BAu-face-poverty,-drought,-dispossession-and-violence.html](http://www.iwgia.org/en/colombia/4581-back-and-forth-across-the-colombia%E2%80%93venezuela-border-the-way%C3%BAu-face-poverty,-drought,-dispossession-and-violence.html).

<sup>65</sup> See John Otis, *Large Venezuelan Migration Sparks Xenophobic Backlash In Colombia*, NPR (Dec. 29, 2020), [www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia](http://www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia).

and teachers, whose decision to flee Venezuela created a vacuum in crucial services.<sup>66</sup>

Venezuelan push factors significantly increase displaced people's vulnerability to organized criminal syndicates and those who take advantage of people to profit from their desperate situations. Displacement makes people particularly vulnerable to exploitation at the beginning, in transit, and end of their journeys.<sup>67</sup> Among the most egregious vulnerabilities is susceptibility to becoming a victim of human trafficking. Yet, because conditions that result in rendering people vulnerable are often "systemic and the result of government enacted policies [or an absence thereof], it is the responsibility of States to ensure the protection of vulnerable individuals in their midst."<sup>68</sup>

Violations and abuses of various rights, including human rights, economic, social, and cultural rights recognized under international law perpetrated by the Venezuelan government are push factors for people to migrate to neighboring countries by any means available.<sup>69</sup> The government's practices and policies that have failed to

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<sup>66</sup> See generally Erica Sánchez & Leah Rodriguez, *4 Ways the Venezuelan Crisis in Affecting Children's Education*, GLOB. CITIZEN (Jun. 14, 2019), [www.globalcitizen.org/en/content/venezuela-crisis-childrens-education/](http://www.globalcitizen.org/en/content/venezuela-crisis-childrens-education/).

<sup>67</sup> There is no agreement on the conditions that lead to vulnerability to human trafficking. However, various reports reflect a consensus on the factors that make individuals vulnerable. Yet, more research is needed to focus on specific benchmarks such as geographical regions, ethnicity, and political orientation. For an in-depth discussion on understanding vulnerability within the context of human trafficking, see *Abuse of a position of vulnerability and other "means" within the definition of trafficking in persons*, U.N. OFFICE ON DRUGS CRIME 13–15 (2013), [www.unodc.org/documents/human-trafficking/2012/UNODC\\_2012\\_Issue\\_Paper\\_-\\_Abuse\\_of\\_a\\_Position\\_of\\_Vulnerability.pdf](http://www.unodc.org/documents/human-trafficking/2012/UNODC_2012_Issue_Paper_-_Abuse_of_a_Position_of_Vulnerability.pdf).

<sup>68</sup> *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, *supra* note 35, at 8.

<sup>69</sup> See generally U.N. Human Rights Council, *Outcomes of the investigation into allegations of possible human rights violations of the human rights to life, liberty, and physical and moral integrity in the Bolivarian Republic of Venezuela Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/44/20 (July 2, 2020) [hereinafter "*Outcomes of the investigation into allegations of possible human rights violations*"] (The United Nations Office of the High Commissioner for Human Rights ("OHCHR") compiled a sobering list of the human rights violations that are primary reasons for migration); see also *Human Rights Violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight*, U.N. OFF. HIGH COMM'R FOR HUM. RTS. (Jun. 2018),

ensure equal access and protection to all members of the Venezuelan society result in conditions of vulnerability for them to be exploited, abused, and trafficked.<sup>70</sup>

Vulnerability is not a static, absolute state, but one that changes according to a particular context and the capacity for individual response.<sup>71</sup> Vulnerability also refers to “a condition resulting from how individuals negatively experience the complex interaction of social, cultural, economic, political and environmental factors that create the context for their communities.”<sup>72</sup> Forced migration and the decision to leave one’s homeland results from several identifiable “push factors.”<sup>73</sup> The primary “push” factors that caused people to flee Venezuela may be summarized in: (i) A progressive decline in the country’s oil-based economy; (ii) Government censorship and suppression; (iii) widespread human rights abuses including repression of political dissidents, arbitrary detentions, extrajudicial killings, torture; (iv) Abuses against indigenous and Afro-Venezuelan populations; (v) Food and water shortages and lack of access to basic services; (vi) Lack of physical and mental health services; and (vii) Excessive use of force, killings, arbitrary detentions, violence, and crime against the civil society. Let’s take a closer look on each factor:

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[www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018\\_EN.pdf](http://www.ohchr.org/Documents/Countries/VE/VenezuelaReport2018_EN.pdf) [hereinafter *Human Rights Violations in Bolivarian Republic*]; see also Vivian Sequera, *Venezuelans report big weight losses in 2017 as hunger hits*, REUTERS (Feb. 21, 2018), [www.reuters.com/article/us-venezuela-food/venezuelans-report-big-weight-losses-in-2017-as-hunger-hits-idUSKCN1G52HA](http://www.reuters.com/article/us-venezuela-food/venezuelans-report-big-weight-losses-in-2017-as-hunger-hits-idUSKCN1G52HA) (A university study on the impact of a devastating economic crisis and food shortages revealed a rapid increase in poverty and hunger.).

<sup>70</sup> *An Introduction to Human Trafficking: Vulnerability, Impact and Actions*, *supra* note 35 (Political, social, cultural, or economic practices and policies that fail to ensure equal access and protection to all members of a society result in conditions of vulnerability.).

<sup>71</sup> *Id.* at 71 (explaining how political, social, cultural, or economic practices and policies that fail to ensure equal access and protection to all members of a society result in conditions of vulnerability).

<sup>72</sup> *Id.* at 8.

<sup>73</sup> *Human Rights Violations in Bolivarian Republic*, *supra* note 69; see generally *Outcomes of the investigation into allegations of possible human rights violations*, *supra* note 69, at 30; see also Sequera, *supra* note 69.

i) *A progressive decline in the country's oil-based economy*<sup>74</sup>

Venezuela's enviable status as a stable, cosmopolitan, oil-producing nation throughout much of the late 20<sup>th</sup> century was squandered when the Chávez government set out to transform Venezuela into a socialist state by nationalizing oil, agriculture, finance, various industries, gold mining, steel manufacturing, power generation, and tourism.<sup>75</sup> The country's mineral and oil wealth throughout the early 2000s was redirected into the pockets of Chávez's cronies, and production capacity floundered as private investment and infrastructure upkeep broke down.<sup>76</sup> The Chávez and Maduro governments retained complete control of the nation's economy by introducing currency and price controls and serving as the exclusive provider of the official currency (bolivars). The transformation into a state-run economy resulted in hyperinflation over the last decade and a rapid increase in poverty. A national survey completed in 2021 suggested that 76.6 percent of Venezuela's 28 million citizens now live in extreme poverty—an 11 percent increase from the prior year.<sup>77</sup> Beginning around 2012, unequal wages compounded by skyrocketing inflation contributed to impoverished conditions for many

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<sup>74</sup> See generally *Statistical Review of World Energy 69th edition*, BRITISH PETROLEUM (Jun. 2020), [www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-full-report.pdf](http://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2020-full-report.pdf).

<sup>75</sup> See generally *Factbox: Venezuela's nationalizations under Chavez*, REUTERS (Oct. 7, 2012), [www.reuters.com/article/us-venezuela-election-nationalizations/factbox-venezuelas-nationalizations-under-chavez-idUSBRE89701X20121008](http://www.reuters.com/article/us-venezuela-election-nationalizations/factbox-venezuelas-nationalizations-under-chavez-idUSBRE89701X20121008).

<sup>76</sup> Marcela Escobari, *Testimony: Made by Maduro: The Humanitarian Crisis in Venezuela and US Policy Responses*, BROOKINGS (Feb. 28, 2019), [www.brookings.edu/testimonies/made-by-maduro-the-humanitarian-crisis-in-venezuela-and-us-policy-responses/](http://www.brookings.edu/testimonies/made-by-maduro-the-humanitarian-crisis-in-venezuela-and-us-policy-responses/) (noting that “[t]he oil boom of 2004–12 was misused to fund consumption through imports while dismantling the productive capacity of the country.”).

<sup>77</sup> Manure Quintero, *Extreme Poverty in Venezuela Rises to 76.6% – Study*, REUTERS (Sep. 29, 2021), [www.reuters.com/world/americas/extreme-poverty-venezuela-rises-766-study-2021-09-29/](http://www.reuters.com/world/americas/extreme-poverty-venezuela-rises-766-study-2021-09-29/).

Venezuelans.<sup>78</sup> Venezuela's inflation rate is the highest in the world and in March 2022 stood at 340.40, down from 472.00 in February 2022.<sup>79</sup>

Such rapid economic decline had a profound impact on the population's universally recognized "right to the enjoyment of the highest attainable standard of physical and mental health and the right to an adequate standard of living, including right to adequate food, related to the collapse of public services."<sup>80</sup> Under the *International Covenant on Economic, Social and Cultural Rights*,<sup>81</sup> Venezuela's obligation to achieve economic, social, and cultural rights exists independently of the nation's capability to increase its resources. It requires an equitable and effective use of and access to the available resources.<sup>82</sup> The reality is that the available resources have not been used equitably and effectively.<sup>83</sup> On the contrary, resources have been depleted due to corruption and mismanagement.<sup>84</sup> Instead of taking adequate measures to realize the people's economic, social and cultural rights, the Venezuelan government uses its resources to pay strategic allies and political elites in exchange for loyalty and heavily subsidized consumables.<sup>85</sup>

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<sup>78</sup> For example, the overall inflation rate increased from 340.40 percent in January 2022 to 472 percent in February 2022. Inflation in Venezuela reached an astounding 344509.50 in February 2019. See *Venezuela Inflation Rate*, TRADING ECONOMICS (Mar. 2022), <https://tradingeconomics.com/venezuela/inflation-cpi>.

<sup>79</sup> *Id.*

<sup>80</sup> *Situation of human rights in the Bolivarian Republic of Venezuela*, *supra* note 60, at 3.

<sup>81</sup> *Status of Ratification: Ratification of 18 International Human Rights Treaties*, U.N. HUM. RTS. OFF. HIGH COMM'R, <https://indicators.ohchr.org/> (last visited Feb. 7, 2022) (Venezuela signed into the International Covenant on Economic, Social and Cultural Rights in 1969 and ratified it in 1978).

<sup>82</sup> Comm. on Econ., Soc. & Cultural Rts, Rep. on Substantive Issues Arising in the Implementations of the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2000/13, at ¶ 23 (Oct. 2, 2000).

<sup>83</sup> See *id.* at ¶ 27.

<sup>84</sup> Escobari, *supra* note 76 (stating that "Maduro has continued to print money, driving up inflation and making products unaffordable for average Venezuelans. He instituted price controls and fixed the exchange rate (giving preferential rates to his allies)").

<sup>85</sup> *Id.* ("[i]nstead of investing in PDVSA, the national oil company, which comprises 95 percent of Venezuelan exports, it used its proceeds to pay its cronies and political elite in exchange for loyalty and subsidize food. The regime uses

ii) *Government censorship and suppression*<sup>86</sup>

Even though online and media censorship began during the Chávez regime,<sup>87</sup> Maduro expanded the government's suppression of information dissemination. In 2013, a special government agency<sup>88</sup> was created to "classify and censor any information it sees as a threat to national security."<sup>89</sup> Television stations were removed from cable networks and social networking services, such that government-run media became the primary source for news and propaganda.<sup>90</sup> The government's censorship apparatus continues targeting media outlets, journalists, and other media workers perceived to represent the opposition.<sup>91</sup>

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stockpiles of food in exchange for political loyalty, but even that is only reaching less than 30 percent of the population.”).

<sup>86</sup> *Venezuela: Ever more authoritarian*, REP. WITHOUT BORDERS, <https://rsf.org/en/venezuela> (last visited Feb. 7, 2022) [hereinafter “Reporters Without Borders”]; see also Comm. on Econ., Soc. & Cultural Rts., Rep. on Concluding Observations on the Third Periodic Report of the Bolivarian Republic of Venezuela, U.N. E/C.12/VEN/CO/3, at ¶ 31 (July 7, 2015) (“The Committee urges that State party to adopt effective measures to remove restrictions on the freedom of expression and information.”).

<sup>87</sup> Marianne Diaz, *Venezuela: Twitterers, Bloggers and Forum Members, in the Eye of the Justice*, GLOBAL VOICES (Jun. 28, 2010, 5:23PM), <https://advox.globalvoices.org/2010/06/28/venezuela-twitterers-bloggers-and-forum-members-in-the-eye-of-the-justice/> (stating that “[V]enezuelan Vice-President, Elias Jaua, declared that President Hugo Chávez ordered the Ministry of Interior and Justice to initiate a thorough and systematic investigation in order to identify the sources of the rumors about the instability of private banking. Jaua stated that generation of rumors is a ‘crime punishable by imprisonment from nine to 11 years’” arising from the interventions to banks in Venezuela between 2009 and 2010); see also Marianne Diaz, *Venezuela: Two people arrested for tweeting about banking rumors*, GLOBAL VOICES (July 12, 2010, 12:24 PM), <https://advox.globalvoices.org/2010/07/12/venezuela-two-people-arrested-for-tweeting-about-banking-rumors/>.

<sup>88</sup> *2019 Country Reports on Human Rights Practices: Venezuela*, U.S. DEP’T STATE (2019), [www.state.gov/reports/2019-country-reports-on-human-rights-practices/venezuela/](http://www.state.gov/reports/2019-country-reports-on-human-rights-practices/venezuela/).

<sup>89</sup> Danny O’Brien, *Venezuela’s Internet Crackdown Escalates into Regional Blackout*, ELECTRONIC FRONTIER FOUND (Feb. 20, 2014), [www.eff.org/deeplinks/2014/02/venezuelas-net-crackdown-escalates](http://www.eff.org/deeplinks/2014/02/venezuelas-net-crackdown-escalates).

<sup>90</sup> *Reporters Without Borders*, *supra* note 86.

<sup>91</sup> See Brian Knight & Ana Tribin, *Opposition Media, State Censorship, and Political Accountability: Evidence from Chavez’s Venezuela*, NBER (Oct. 2019), [www.nber.org/papers/w25916](http://www.nber.org/papers/w25916).

The National Telecommunications Commission (CONATEL) targets Twitter use and identifies IP addresses and other information for the authorities to locate users who are later detained and arrested by the Bolivarian Intelligence Service (SEBIN). Venezuelans have been detained, arrested and subsequently prosecuted for posting comments on social media such as, “A tweet can take away your freedom in this democratic country,” and “People, stop it with the hashtag #subversivetweet because [if] the #CICPC<sup>92</sup> puts us in jail, where are they gonna put so many people?”<sup>93</sup> Such postings are considered destabilizing and are therefore an excuse to monitor social media messages. The government has been creative with the charges some individuals face, including violent outrage, hatred, public incitement, incitement, insulting a public official, fostering unrest among the citizenship, disturbing public order, conspiracy, outrage, and espionage.<sup>94</sup>

Under international law, Venezuela is obliged to facilitate freedom of association,<sup>95</sup> expression,<sup>96</sup> and political rights,<sup>97</sup> as articulated in the *International Covenant on Civil and Political Rights*, to which Venezuela is a party.<sup>98</sup> Yet, the government stigmatization, harassment, and repression of the media violates the Covenant and

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<sup>92</sup> *Cuerpo de Investigaciones Científicas Penales y Criminalísticas (CICPC)*, GOBIERNO BOLIVARIANO DE VENEZUELA, <http://www.cicpc.gob.ve> (last visited Feb. 3, 2022) (Ven.).

<sup>93</sup> Sonia Doglio, *Venezuela: Twitter User Detained for Spreading “Destabilizing” Information*, GLOB. VOICES (Mar. 14, 2013, 11:17 PM), <https://globalvoices.org/2013/03/14/venezuela-twitter-user-detained-for-spreading-destabilizing-information/>.

<sup>94</sup> *Human Rights Violations in Bolivarian Republic*, *supra* note 69, at 39 (asserting that the National Constituent Assembly (NCA) has passed vague and broad laws allowing the government to criminalize dissent.); *see also* Jesus Yajure, *@Conatel Elabore Informer Para el @Sebin\_Oficial Sobre Tuiteros Detenidos*, RUNRUN (July 03, 2015), [https://runrun.es/investigacion/210909/conatel-elabore-informes-para-el-sebin\\_oficial-sobre-tuiteros-detenidos/](https://runrun.es/investigacion/210909/conatel-elabore-informes-para-el-sebin_oficial-sobre-tuiteros-detenidos/) (providing a detailed dossier on various accounts and charges to Twitter users).

<sup>95</sup> International Covenant on Civil and Political Rights, Venez., art. 22, 1966, 99 U.N.T.S. 171, 173.

<sup>96</sup> *Id.* at art. 19.

<sup>97</sup> *Id.* at art. 25.

<sup>98</sup> *Status of Ratification: Ratification of 18 International Human Rights Treaties*, U.N. HUM. RTS., <https://indicators.ohchr.org/> (last visited Feb. 13, 2022) (Venezuela signed the International Covenant on Civil and Political Rights in 1969 and ratified it in 1978).

constitutes an “attack against the freedoms of expression and of access to information, and infringes upon the important contributions by these organizations to expose human rights violations committed by the Venezuelan authorities.”<sup>99</sup> As a result, people have been prevented from reporting on the gravity of the country’s deterioration, leading to widespread uncertainty about the actual state of the country.<sup>100</sup>

iii) *Widespread human rights abuses including repression of political dissidents, arbitrary detentions, extrajudicial killings, torture*<sup>101</sup>

The Venezuelan government has employed ongoing, excessive and, at times, lethal use of force during internal security operations.<sup>102</sup> Extrajudicial killings, torture, arbitrary detentions are often done under the veil of actions carried out nation-wide as a main strategy to fight criminality, referred to as the Operations for the Liberation of the People (OLPs).<sup>103</sup> Security forces have been observed breaking into houses without a judicial warrant and subduing victims before opening fire at close range without any justification.<sup>104</sup> They then “cover up the killings by simulating a [gun]fire exchange, suggesting the victims had opened fire first.”<sup>105</sup> Security forces have also disguised themselves by wearing balaclavas,

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<sup>99</sup> *Venezuela: Attacks Against Freedom of Expression Must Cease Immediately*, HUM. RTS. WATCH (Jan. 14, 2021, 2:36 PM), [www.hrw.org/news/2021/01/14/venezuela-attacks-against-freedom-expression-must-cease-immediately](http://www.hrw.org/news/2021/01/14/venezuela-attacks-against-freedom-expression-must-cease-immediately).

<sup>100</sup> *Venezuela: Ever more authoritarian*, REP. WITHOUT BORDERS, <https://rsf.org/en/venezuela> (last visited Feb. 3, 2022).

<sup>101</sup> U.N. Human Rights Council, *Oral Update on the Human Rights Situation in the Bolivarian Republic of Venezuela* (Sept. 9, 2019), [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24958&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24958&LangID=E) [hereinafter *Oral Update on Hum. Rts. Venezuela*] (There is a “lack of effective protection mechanisms for witnesses and family members of the victims, the majority of whom are women.”).

<sup>102</sup> *Human Rights Violations in the Bolivarian Republic*, *supra* note 69, at 14.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 18.; *see also* International Covenant on Civil and Political Rights, Venez., art. 2(1), 1966, 99 U.N.T.S. 171, 173.

<sup>105</sup> *Human Rights Violations in the Bolivarian Republic*, *supra* note 69, at 17.

helmets, and skeleton masks.<sup>106</sup> During raids, they destroy belongings, seize money and steal food. They are known to cover windows with sheets, lock up other family members in separate rooms and interrogate young men.<sup>107</sup> After victims including women and children are killed, CICPC officers have entered to remove the bodies, taken them to a hospital as if they were injured, and later deposited victims in the morgue.<sup>108</sup> The CICPC, allegedly responsible for most extrajudicial killings, is also in charge of conducting all forensic examinations in cases of violent death.<sup>109</sup>

Members of the Special Action Forces (FAES) of the Bolivarian National Police have also been attributed with repression of political dissidents, extrajudicial executions, and forced disappearances.<sup>110</sup> Actually, the U.N. Human Rights Council's Fact-Finding Mission has documented several cases of arbitrary detentions, torture, and other cruel, inhumane, or degrading treatment.<sup>111</sup> That report found that abuses committed by government actors since 2014 amounted to crimes against humanity.<sup>112</sup>

Impunity exists because the judiciary ceased to be an independent branch of government able to hold the CICPC and other clandestine government forces accountable<sup>113</sup> for abuses committed, not

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<sup>106</sup> See Venezuela is a party to the International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171 (signed in 1969 and ratified in 1978), and its Optional Protocol, <https://indicators.ohchr.org/>.

<sup>107</sup> *Id.* at 14–15.

<sup>108</sup> *Id.* at 18.

<sup>109</sup> *Id.* at 18–19.

<sup>110</sup> *Oral Update on Hum. Rts. Venezuela, supra* note 101 (Members of the Special Actions Forces of the Bolivarian National Police (FAES) committed extrajudicial executions in targeted areas of the country).

<sup>111</sup> *Situation of human rights in the Bolivarian Republic of Venezuela, supra* note 60, at 5 (In 2019, the United Nations Human Rights Council established the Independent International Fact-Finding Mission in Venezuela to assess alleged human rights violations committed since 2014).

<sup>112</sup> *Detailed findings of the independent international factfinding mission on the Bolivarian Republic of Venezuela, supra* note 52.

<sup>113</sup> Concerns with the lack of independence of the justice system have been expressed in various international reports. *see generally* U.N. Off. High Comm'r for Hum. Rts., *Independence of the justice system and access to justice in the Bolivarian Republic of Venezuela, including for violations of economic and social rights, and the situation of human rights in the Arco Minero del Orinoco region*, U.N. Doc. A/HRC/44/54 (Sept. 29, 2020); *see also* Rep. of the U.N. Hum. Rts. Comm., *Concluding observations on the fourth periodic report of the Bolivarian*

to enforce the law or combat crime, but to “punish people for their perceived political views.”<sup>114</sup> According to the United Nations Office of the High Commissioner for Human Rights (OHCHR), political persecution forced increasing numbers of Venezuelans to flee.<sup>115</sup>

iv) *Abuses against indigenous and Afro-Venezuelan populations*

Indigenous peoples face individual and collective challenges, threats, and human rights abuses in Venezuela, including marginalization, forced removal or relocation, and denial of land rights,

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*Republic of Venezuela*, U.N. Doc. CCPR/C/VEN/CO/4\* (Aug. 14, 2015); Rep. of the Hum. Rts. Comm., *Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2203/2012*, U.N. Doc. CCPR/C/121/D/2203/2012 (Feb. 1, 2018); Rep. of the U.N. Comm. against Torture, *Concluding observations on the combined third and fourth periodic reports of the Bolivarian Republic of Venezuela*, U.N. Doc. CAT/C/VEN/CO/3–4 (Dec. 12, 2014).

<sup>114</sup> *Venezuela, the International Criminal Court, and Impunity*, HUM. RTS WATCH (July 21, 2021, 5:45 PM), [www.hrw.org/news/2021/07/21/venezuela-international-criminal-court-and-impunity](http://www.hrw.org/news/2021/07/21/venezuela-international-criminal-court-and-impunity).

<sup>115</sup> Oriana Van Praag, *Understanding the Venezuelan Crisis*, WILSON CTR. (Sept. 13, 2019), [www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis](http://www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis); see also *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, U.N. HIGH COMM’R FOR REFUGEES ¶ 51–52 (Apr. 2019), [www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html](http://www.unhcr.org/en-us/publications/legal/5ddfc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html) (addressing the elements of persecution in determining refugee status: “There is no universally accepted definition of ‘persecution’, and various attempts to formulate such a definition have met with little success. From Article 33 of the 1951 Convention, it may be inferred that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution. Other serious violations of human rights – for the same reasons – would also constitute persecution. Whether other prejudicial actions or threats would amount to persecution will depend on the circumstances of each case, including the subjective element to which reference has been made in the preceding para. graphs. The subjective character of fear of persecution requires an evaluation of the opinions and feelings of the person concerned. It is also in the light of such opinions and feelings that any actual or anticipated measures against him must necessarily be viewed. Due to variations in the psychological make-up of individuals and in the circumstances of each case, interpretations of what amounts to persecution are bound to vary.”).

among others.<sup>116</sup> Their economic and social rights are disproportionately affected by the humanitarian crisis, especially their rights to food and health. According to the U.N. High Commissioner for Human Rights (UNHCR):

Indigenous peoples' collective rights to their traditional lands, territories and resources are being violated. They have lost control of their land, including from militarization by State actors. The presence of State actors has led to violence and insecurity in indigenous peoples' territories in recent years, in addition to the presence of organized criminal gangs and armed groups.<sup>117</sup>

Violations against Venezuela's indigenous and Afro-Venezuelan communities are particularly egregious where Venezuelan and Colombian irregular armed groups exercise control over gold mines in Venezuela's southern state of Bolívar.<sup>118</sup> The armed groups operate there with government acquiescence, and in some cases, active government participation. According to indigenous leaders, state security agents—including a high-ranking official in the Maduro government—routinely visit mining sites to collect bribes and harass the local communities.<sup>119</sup> The armed groups maintain tight control over these vulnerable populations by imposing “abusive working conditions and viciously threatening those accused of theft and other offenses.”<sup>120</sup> In some of the worst cases, alleged offenders have been dismembered and killed in front of co-workers to set an example and instill terror.<sup>121</sup> Similar conditions exist in Southern Colombia where illegal armed groups assert control over illegal mining operations and exact a tax from the miners, who work in some of the harshest conditions.<sup>122</sup>

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<sup>116</sup> *Venezuela: Indigenous peoples face deteriorating human rights situation due to mining, violence and COVID-19 pandemic*, INT'L COMM. JURISTS (Sept. 30, 2020), [www.icj.org/wp-content/uploads/2020/10/Venezuela-COVID19-indigenous-News-Feature-articles-2020-ENG.pdf](http://www.icj.org/wp-content/uploads/2020/10/Venezuela-COVID19-indigenous-News-Feature-articles-2020-ENG.pdf).

<sup>117</sup> U.N. High Comm'n Hum. Rts., *Human Rights in the Bolivarian Republic of Venezuela*, U.N. Doc. A/HRC/41/18, at 12–13 (Oct. 9, 2019).

<sup>118</sup> *Venezuela: Violent Abuses in Illegal Gold Mines*, HUM. RTS. WATCH (Feb. 4, 2020), [www.hrw.org/news/2020/02/04/venezuela-violent-abuses-illegal-gold-mines](http://www.hrw.org/news/2020/02/04/venezuela-violent-abuses-illegal-gold-mines).

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> See Fernando Vergara et al., *Colombia Police, Military Raid Illegal Mining Operation*, APNEWS (Apr. 23, 2021), <https://apnews.com/article/latin-america->

In addition to violations committed by irregular armed groups, the UNHCR is aware of direct involvement by the special forces units (FAES) of the Bolivarian National Police and Bolivarian National Guard (GNB) units in acts of violence and killings in indigenous territories.<sup>123</sup> For instance, the military was accused of the killings of a Curripaco indigenous leader in Amazon state, indigenous Warao youths, a pregnant Warao woman, and a six-year-old Warao girl.<sup>124</sup>

In addition, since 2016, the government mandated mining development in many rural areas, leaving women, children, and the elderly especially vulnerable to exploitation, forced displacement, sexual abuse, labor servitude, and human trafficking. Presidential Decree 2248 established the Orinoco Mining Arc National Strategic Development Zone, opening gold extraction in a territory inhabited by several Afro-Venezuelan and indigenous ethnic groups who were ignored or not consulted before the project was implemented.<sup>125</sup> According to the United Nations Committee on Economic, Social and Cultural Rights (CESCR), Venezuela's failure to consult and obtain informed consent from indigenous communities prior to granting concessions for the exploration and development of natural resources has impeded their "free exercise of their economic, social and cultural rights."<sup>126</sup> Given such actions by the State, indigenous and Afro-Venezuelan populations are left with no choice but to abandon their lands and flee the country, with the primary destination being Colombia.<sup>127</sup>

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environment-and-nature-colombia-business-3cf59910784353df7c2d030c123ad7c7.

<sup>123</sup> *Oral Update on Hum. Rts. Venezuela*, *supra* note 101.

<sup>124</sup> *Id.*

<sup>125</sup> *Informe sobre la situación de los derechos humanos en el Arco Minero y el territorio venezolano ubicado al sur del río Orinoco*, Plataforma contra el Arco Minero del Orinoco, el Centro para la Reflexión y Acción Social (CERLAS) y colaboradores, 2019 (Venez.), [www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf](http://www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf).

<sup>126</sup> Comm. on Econ., Soc. & Cultural Rights, Concluding Observations, ¶ 9, U.N. Doc. E/C.12/VEN/CO/3 (2015).

<sup>127</sup> Roberto Briceño-León and Gloria Perdomo, *Violence against indigenous children and adolescents in Venezuela*, at 6, CADERNOS DE SAÚDE PÚBLICA (CSP), doi: 10.1590/0102-311X00084718 (2019) (Venez.), <https://institulacso.org/wp-content/uploads/2019/10/Brice%C3%B1o-Le%C3%B3n-Perdomo201>

v) *Food and water shortages and lack of access to basic services*

Corruption and the government imposition of austere economic and social policies have undoubtedly affected almost every aspect of the right to basic services. As reported by the U.N. High Commissioner for Human Rights in 2018, “State control over food prices and foreign currency exchange, the mismanagement of confiscated arable land, state monopoly on agricultural supplies, the militarization of food distribution, and the implementation of social programs without clear nutritional objectives . . . has resulted in critical levels of food unavailability and a situation where large segments of the population cannot afford to buy food at market price.”<sup>128</sup>

Due to the dismantlement of the domestic food production system and the increased dependency on food imports, government policies have seriously affected access to food and potable water. Food shortages and scarcity of basic necessities have become widespread and constant<sup>129</sup> to the point that 60 percent of Venezuelans have “involuntarily lost 19 pounds in one year, and 1.3 million people suffer from malnutrition,”<sup>130</sup> a condition Venezuelans pejoratively refer to as the “Maduro Diet.”<sup>131</sup> The figures represent a fourfold increase in undernourishment since 2014, which corresponds with a period of severe recession and hyperinflation<sup>132</sup>—and it has been the working poor and indigenous communities most impacted by chronic malnutrition.<sup>133</sup> In an effort to ease food distribution problems, the

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<sup>128</sup> *Human Rights Violations in Bolivarian Republic*, *supra* note 69, at v.

<sup>129</sup> AMNESTY INT’L, *Amnesty International Report 2020/21*, AI Index POL 10/3202/2021, at 390–95 (2021).

<sup>130</sup> *See generally* Escobari, *supra* note 76. The World Food Programme has estimated that seven million Venezuelans, or about one in three individuals, face acute food insecurity and are currently in need of humanitarian assistance. Office of the U.N High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Bolivarian Republic of Venezuela*, U.N. Doc. A/HRC/45/20, at 2 (Oct. 13, 2020).

<sup>131</sup> Moises Rendon, Commentary, *The Maduro Diet” Food v. Freedom in Venezuela*, CTR. FOR STRATEGIC & INT’L STUDIES (July 9, 2018), [www.csis.org/analysis/maduro-diet-food-v-freedom-venezuela](http://www.csis.org/analysis/maduro-diet-food-v-freedom-venezuela).

<sup>132</sup> U.N. Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2020*, at 28 (2020).

<sup>133</sup> Briceño-León and Perdomo, *supra* note 127, at 6.

Maduro regime initiated “a politically motivated subsidized food distribution system called Local Committees for Supply and Production, or ‘CLAP’ in Spanish.”<sup>134</sup>

The CESCR recommended that the Venezuelan government “increase investment in local agricultural production,” to improve “the productivity of small farmers and their access to local markets,” and to “adopt emergency measures to address the shortage of food and basic necessities.”<sup>135</sup> Such recommendations appear to have been ignored by the Maduro administration. Lack of state relief in response to food shortages and access to drinkable water sources becomes a powerful “push” factor for Venezuelans to leave the country.

vi) *Lack of physical and mental health services*

Preventative health services to the poorest neighborhoods were intended to be covered entirely by oil revenues from *Petróleos de Venezuela, S.A. (PDVSA)*, the Venezuelan state-owned oil and natural gas company.<sup>136</sup> However, during Maduro’s mandate, Venezuela’s policies have adversely affected the basic right of its citizens to health care. In fact, health expenditures and budget allocations in the Ministry of Health dropped drastically during the last decade, causing the health care system to collapse. The U.N. Human Rights Council, in a mandate of its Fact-Finding Mission, expressed “great concern at the severe economic and social crisis” in Venezuela that has led to the ultimate collapse of public services.<sup>137</sup> Moreover, the latest phenomenon has had “a profound effect on the right to the enjoyment of the highest attainable standard of physical and mental health and the right to an adequate standard of living, including the right to adequate food.”<sup>138</sup>

A fundamental human right is the right to health care that is of “sufficient quantity and quality. States must ensure access to

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<sup>134</sup> Rendon, *supra* note 131.

<sup>135</sup> U.N. Comm. on Econ., Soc. & Cultural Rights, Concluding Observations, ¶ 26, U.N. Doc. E/C.12/VEN/CO/3 (2015).

<sup>136</sup> U.N. Comm. on Econ., Soc. & Cultural Rights, General Comment No. 14, U.N. Doc., E/C/2000/4 (Aug. 11, 2000).

<sup>137</sup> U.N. Human Rights Council Res. 45/20, U.N. Doc. A/HRC/RES/45/20, at 2 (Oct. 13, 2020).

<sup>138</sup> *Situation of human rights in the Bolivarian Republic of Venezuela*, *supra* note 60, at 3.

preventive, curative and rehabilitative health services.”<sup>139</sup> However, severe shortages and the irregular supply of basic medicines, vaccination shots, and medical equipment are a constant problem in Venezuela. Patients are often required to buy medicines and medical supplies, including syringes and sterile gloves, in order to be treated in hospitals<sup>140</sup> that are described as being in a “poor state of repair” and dangerously understaffed by medical personnel.<sup>141</sup>

*viii) Excessive use of force, killings, arbitrary detentions, violence, and crime against the civil society*

Venezuela’s constitutional institutions have splintered, and encounters with opposition movements and civil unrest have led to violence and unprecedented insecurity nationwide.<sup>142</sup> By 2020, Venezuela had become one of the most violent countries in the region, with the World Health Organization (WHO) reporting an alarming number of deaths at a rate of 81.4 deaths per every 100,000 citizens.<sup>143</sup> The high rate of murders, kidnapping, armed robbery, street gangs, and other organized criminal groups has robbed most Venezuelans of their right to live safely in their own country.<sup>144</sup> For those

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<sup>139</sup> “One of the essential elements of the right to health is the availability of health care facilities, goods and services in sufficient quantity and quality. States must ensure access to preventive, curative and rehabilitative health services.” General Comment No. 14 of the Committee on Economic, Social and Cultural Rights, op. cit. ¶¶ 12 and 17, *Human Rights Violations in Bolivarian Republic*, *supra* note 69, at 41.

<sup>140</sup> *Id.*

<sup>141</sup> Comm. on Econ., Soc. & Cultural Rights, Concluding Observations (2015), ¶ 27, U.N. Doc. E/C.12/VEN/CO/3; *see also Situation of human rights in the Bolivarian Republic of Venezuela*, *supra* note 60, at 4.

<sup>142</sup> AMNESTY INT’L, *Venezuela: Hunger, Punishment and Fear, the Formula for Repression Used by Authorities under Nicolás Maduro* (Feb. 20, 2019), [www.amnistia.org/ve/noticias/2019/02/9375/venezuela-hunger-punishment-and-fear-the-formula-for-repression-used-by-authorities-under-nicolas-maduro](http://www.amnistia.org/ve/noticias/2019/02/9375/venezuela-hunger-punishment-and-fear-the-formula-for-repression-used-by-authorities-under-nicolas-maduro).

<sup>143</sup> OVERSEAS SEC. ADVISORY COUNCIL (OSAC), VENEZUELA 2019 CRIME & SAFETY REPORT (June 18, 2019), [www.osac.gov/Country/Venezuela/Content/Detail/Report/b0933dac-4154-4dc2-89c1-160ca3b2c4c2](http://www.osac.gov/Country/Venezuela/Content/Detail/Report/b0933dac-4154-4dc2-89c1-160ca3b2c4c2).

<sup>144</sup> “Violations of the rights to food and health, violence and insecurity, the collapse of basic services, the deterioration of the education system, lack of access to pre- and post-natal care, and insufficient mechanisms for protection from violence and persecution on political grounds.” *Situation of human rights in the Bolivarian Republic of Venezuela*, *supra* note 60, at 2.

citizens who remain in Venezuela, most indicate that they no longer feel secure or protected by their Government, nor are they able to exercise their rights.<sup>145</sup>

While Venezuelans from all walks of life and social status are vulnerable to crime and violence due to the socio-political crisis and breakdown of government stability, women and children are particularly at high risk of exploitation and abuse. Too often they are viewed not as subjects entitled to rights, but as “objects” for the State and criminal actors to use, barter, and exchange. In one instance, a 3-year-old boy was kidnapped for a month by GNB soldiers attached to the National Anti-Kidnapping Command (Conas) in order to force the father to surrender for suspected theft of government weapons.<sup>146</sup> Throughout the ordeal, various government agencies and those from the Miraflores Palace ignored the mother’s plea for help. Impunity for criminal actors and corrupt government officials is a serious problem.

Venezuela ratified the *Convention on the Rights of the Child* (CRC) on August 29, 1990.<sup>147</sup> Ten years later, Venezuela adopted the internal norm implementing the CRC’s comprehensive protections by creating the Organic Law for Protection by Children and Adolescents (NNyA).<sup>148</sup> Article 10 refers to children and adolescents as subjects of rights and absolute priority,<sup>149</sup> while Article 8

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<sup>145</sup> AMNESTY INT’L, *supra* note 142.

<sup>146</sup> Members of Conas, General Directorate Against Military Intelligence and Special Action Forces were seeking to arrest Luis (the boy’s father) on suspicion of stealing weapons from a military facility in Caracas. When the soldiers raided the home, they took the boy after his mother insisted that she did not know her husband’s whereabouts. The soldiers left a phone number for Luis to contact them with a warning that “either the weapons appear, or Luis appears.” Vanessa Moreno Losada, *Delsa Solórzano confirma liberación de niño secuestrado por militares del Conas*, EFECTO COCUYO (Sept. 12, 2018, 12:28 PM), <https://efectocucuyo.com/sucesos/delsa-solorzano-confirma-liberacion-de-nino-secuestrado-por-militares-del-conas/>.

<sup>147</sup> Convention on the Rights of the Child, Nov. 20, 1989, U.N. Doc. A/44/49, 1577 U.N.T.S. 3.

<sup>148</sup> Ley Orgánica Para La Protección De Niños, Niñas Y Adolescentes [Organic Law for Protection by Children and Adolescents], G.O. (5.859 Extraordinaria), [www.oas.org/juridico/PDFs/mesicic4\\_ven\\_ley\\_org\\_prot\\_ninos\\_adolc.pdf](http://www.oas.org/juridico/PDFs/mesicic4_ven_ley_org_prot_ninos_adolc.pdf) [hereinafter NNyA].

<sup>149</sup> *Id.* at art. 10. “Todos los niños, niñas y adolescentes son sujetos de derecho; en consecuencia, gozan de todos los derechos y garantías consagrados en favor de las personas en el ordenamiento jurídico, especialmente aquellos consagrados en

establishes the Best Interest of the Child as an essential principle of “mandatory compliance” when taking “decisions concerning children and adolescents.” Children’s interests must prevail when conflict arises between their rights and interests and “other equally legitimate rights and interests.”<sup>150</sup>

In 2014, the U.N. OHCHR’s Committee on the Rights of the Child recommended to Venezuela adopt “all the necessary measures to effectively implement legislation relating to children’s rights in all areas by providing adequate human, financial and technical resources,”<sup>151</sup> to “finalize the National Plan of Action for Children and Adolescents” (2015–2019). Additionally, based on that National Plan of Action, Venezuela was to develop a strategy that “includes mechanisms for its application, monitoring and evaluation.”<sup>152</sup> The Committee stressed that the State should provide “adequate human, technical and financial resources for the strategy.”<sup>153</sup> Moreover, the action plan must “be in full harmony with other sectoral plans in the area of children’s rights,” including “strengthening its technical cooperation with” UNICEF.<sup>154</sup> But in Venezuela, fulfilling duties under international law does not take precedent over controversial domestic policies and agendas, particularly when it comes to exploitation of natural resources and mineral extraction projects in which

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la Convención sobre los Derechos del Niño.” [All children and adolescents are subjects of law; Consequently, they enjoy all the rights and guarantees enshrined in favor of persons in the legal system, especially those enshrined in the Convention on the Rights of the Child].

<sup>150</sup> *Id.* at art. 8. “El Interés Superior del Niños, Niñas y Adolescentes es un principio de interpretación y aplicación de esta Ley, el cual es de obligatorio cumplimiento en la toma de todas las decisiones concernientes a los niños, niñas y adolescentes. Este principio está dirigido a asegurar el desarrollo integral de los niños, niñas y adolescentes, así como el disfrute pleno y efectivo de sus derechos y garantías.” [The Best Interest of Children and Adolescents is a principle of interpretation and application of this Law, which is mandatory in making all decisions concerning children and adolescents. This principle is aimed at ensuring the integral development of children and adolescents, as well as the full and effective enjoyment of their rights and guarantees.]

<sup>151</sup> Comm. on Econ., Soc. & Cultural Rts. Concluding Observations, U.N. Doc. E/C.12/VEN/CO/3–5 at ¶ 9 (2015), [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/VEN/CO/3–5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/VEN/CO/3–5&Lang=En).

<sup>152</sup> *Id.* ¶ 11.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* ¶¶ 11, 18.

the prevalence of child labor<sup>155</sup> threatens the social fabric of the society.

When granting concessions for the exploration and development of natural resources, indigenous peoples and affected communities are not consulted.<sup>156</sup> The criminal gangs and government officials involved in mineral extraction routinely violate workers' rights, particularly with regard to children and adolescents.<sup>157</sup> In southern Venezuela, 45 percent of mine laborers are children and adolescents,<sup>158</sup> while many children are left unattended by their family members who go to the mines to obtain more income. Tragically, children oftentimes lose a parent and become orphaned due to acts of violence promoted by groups in control of the extraction of gold or through frequent mining accidents. When left alone in the mining camps, children—especially young girls—and adolescents are bought and passed around to be raped, beaten, and forced to get involved in criminal activities by corrupt military personnel, miners, and irregular armed groups. Girls and adolescents are often displayed like consumable goods for sale as forced labor or sexual slaves and bartered for between five and ten grams of gold. The youngest go for the highest number of grams, while older women go for less grams and are considered an “economical bargain.”<sup>159</sup>

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<sup>155</sup> In its Concluding Observations in 2015, the Committee on Economic, Social and Cultural Rights recommended the government to improve “the fight against the economic exploitation of children, by ensuring that legislation is vigorously enforced and by strengthening child labour monitoring mechanisms and support measures for poor families.” U.N. Comm. on Econ., Soc. & Cultural Rights United Nations Committee on Economic, Social and Cultural Rights, Concluding Observations (2015), ¶ 22, U.N. Doc. E/C.12/VEN/CO/3–5, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/VEN/CO/3–5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/VEN/CO/3–5&Lang=En).

<sup>156</sup> *Id.* ¶ 9.

<sup>157</sup> *Informe sobre la situación de los derechos humanos en el Arco Minero y el territorio venezolano ubicado al sur del río Orinoco*, Plataforma contra el Arco Minero del Orinoco, el Centro para la Reflexión y Acción Social (CERLAS) y colaboradores, ¶ 65 (2019) (Venez.), [www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf](http://www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf).

<sup>158</sup> Losada, *supra* note 146.

<sup>159</sup> Between 5 and 10 grams of gold. The youngest are more expensive. *Informe sobre la situación de los derechos humanos en el Arco Minero y el territorio venezolano ubicado al sur del río Orinoco*, ¶ 64 Plataforma contra el Arco

Therefore, the Venezuelan government has failed its international responsibility to protect its citizens and maintain public order.<sup>160</sup> Instead, it is committing egregious human rights violations and is unwilling to prevent these atrocities. Human Rights violations and crimes are “highly coordinated pursuant to State policies, and part of a widespread and systematic course of conduct, thus amounting to crimes against humanity.”

#### COLOMBIA’S POST-CONFLICT STATUS AND ITS IMPACT ON HUMAN TRAFFICKING

Like Venezuela, Colombia is afflicted by multidimensional socio-economic and humanitarian challenges related to economic, gender and social inequities, extreme violence, poverty,

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Minero del Orinoco, el Centro para la Reflexión y Acción Social (CERLAS) y colaboradores, 2019, [www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situacion-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r-Orinoco.pdf](http://www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situacion-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r-Orinoco.pdf).

<sup>160</sup> As a party to numerous multilateral and regional human rights instruments, Venezuela is under “international obligations to ensure respect for the promotion and protection of the human rights of all individuals within its territory and subject to its jurisdiction.” *Situation of human rights in the Bolivarian Republic of Venezuela*, *supra* note 60, at 1. Among others, Venezuela accepted obligations from the following international instruments: (i) International Covenant on Civil and Political Rights and the Optional Protocols, ratified 1978; (ii) International Covenant on Economic, Social and Cultural Rights and the Optional Protocol, ratified 1978; (iii) International Convention on the Elimination of All Forms of Racial Discrimination, ratified 1967; (iv) Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, ratified 1983; (v) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified 1991; (vi) Convention on the Rights of the Child, ratified 1990; (vii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2002; (viii) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratified 2003; (ix) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified 2016; and (x) Convention on the Rights of Persons with Disabilities and the Optional Protocol, ratified 2013. A complete list of instruments to which Venezuela is a Party may be found at the UNHCR Status of Ratification Interactive Dashboard, <https://indicators.ohchr.org/>.

discrimination,<sup>161</sup> corruption,<sup>162</sup> impunity,<sup>163</sup> and the unanticipated COVID-19 pandemic and its disastrous effects.<sup>164</sup> Displaced Venezuelans arrive in post-conflict Colombia, a nation facing the challenges that arise from the transition of over five decades of armed conflict to the end of the warfare with former guerrilla FARC-EP as a result of the Peace Agreement signed in 2016. However, during this historical period of socio-political transition, where the

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<sup>161</sup> Emily Y. Massel, *Colombians See Wider Divide Between Rich and Poor*, GALLUP (Dec. 19, 2019), <https://news.gallup.com/poll/272324/colombians-wider-divide-rich-poor.aspx> (discussing Colombia's inequality rates compared to other Western Hemisphere states and how most Colombians struggle to afford the basics); *Poverty & Equity Brief Colombia Latin America & the Caribbean*, WORLD BANK (Apr. 2021), [https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2020/Global\\_POVEQ\\_COL.pdf](https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2020/Global_POVEQ_COL.pdf) (highlighting the increase in poverty from 34.7 percent in 2018 to 35.7 percent in 2019, resulting in an additional 662,000 thousand people falling into poverty); Samira Akbary, *3 Aspects of Inequality in Colombia*, THE BORGES PROJECT (Aug. 2020), <https://borgesproject.org/inequality-in-colombia/> (discussing Colombian inequality in income, land, and for women and children).

<sup>162</sup> Colombia's experience with corruption is roughly average, ranking 92d among the 180 countries catalogued. Colombia received a score of 39/100, where a score of 0 indicates high level of corruption and 100 indicates very low or clean level of corruption. *Corruption Perceptions Index 2020*, TRANSPARENCY INTERNATIONAL (Jan. 2021), [https://images.transparencycdn.org/images/CPI2020\\_Report\\_EN\\_0802-WEB-1.pdf](https://images.transparencycdn.org/images/CPI2020_Report_EN_0802-WEB-1.pdf).

<sup>163</sup> Colombia ranks sixth in America in the Global Impunity Index 2020, behind Costa Rica, U.S.A, Barbados, Panama, and Canada, and forty-ninth in the international arena of the sixty-nine countries measured. Colombia's worst rated area is its justice system obtaining a score of 88.91. Juan Antonio le Clercq Ortega & Gerardo Rodríguez Sánchez Lara, *Índice Global de Impunidad 2020, Escalas de Impunidad en el Mundo*, CENTRO DE ESTUDIOS SOBRE IMPUNIDAD Y JUSTICIA (CESIJ), UNIVERSIDAD DE LAS AMÉRICAS PUEBLA (UDLAP), at 61, 69, 176 (2020), [www.udlap.mx/cesij/files/indices-globales/0-IGI-2020-UDLAP.pdf](http://www.udlap.mx/cesij/files/indices-globales/0-IGI-2020-UDLAP.pdf).

<sup>164</sup> See Gladys Rocio Ariza-Sosa et al., *Crisis humanitaria de emergencia en Colombia por violencia contra las mujeres durante la pandemia de COVID-19* [The Emergency Humanitarian Crisis in Colombia Due to Violence Against Women During the COVID-19 Pandemic], 51 REVISTA DE LA FACULTAD DERECHO Y CIENCIAS POLÍTICAS (UPB), at 125 (Jan. 1, 2021), <https://revistas.upb.edu.co/index.php/derecho/article/view/7006>; Hayley Evans and Prisyll Avoine, *An Intersectional Approach to Colombian Transitional Justice and COVID-19*, NEWSTEX BLOGS (Jan. 15, 2021), <http://opiniojuris.org/2021/01/15/an-intersectional-approach-to-colombian-transitional-justice-and-covid-19/>.

implementation of the peace process mechanisms is crucial, organized crime benefits from institutional instability, as “warlords who profited from arms and other illicit trades during conflict [now] seek out new criminal opportunities.”<sup>165</sup>

Venezuelan refugees and migrants—especially those who are undocumented—have come to join the struggles and fate of internally displaced Colombians (IDPs).<sup>166</sup> Fomenting displacement in Colombia has long been a strategy by armed groups to maintain territorial control.<sup>167</sup> It is also an expression of power among actors fighting for regional hegemony and the accumulation of wealth and resources.<sup>168</sup> Colombian IDPs have been excluded from many opportunities and stigmatized for being displaced.<sup>169</sup> This stigma puts many at risk, especially women and girls who become displaced due

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<sup>165</sup> U.N. Office on Drugs and Crime, *Countering Trafficking in Persons in Conflict Situations*, at 2 (2018), [https://unodc.org/documents/human-trafficking/2018/17-08776\\_ebook-Countering\\_Trafficking\\_in\\_Persons\\_in\\_Conflict\\_Situations.pdf](https://unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf).

<sup>166</sup> The Guiding Principles on Internal Displacement defines internally displaced persons (IDPs) as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.” *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2, at ¶ 2 (on file with the authors).

<sup>167</sup> For a comprehensive analysis of how the Colombian conflict and displacement ignited human trafficking, see Luz E. Nagle, *How Conflict and Displacement Fuel Human Trafficking and Abuse of Vulnerable Groups: The Case of Colombia and Opportunities for Real Action and Innovative Solutions*, 1 GRONINGEN J. INT’L L. 1 (2014).

<sup>168</sup> See National Center for Historical Memory, *Una nación desplazada: informe nacional del desplazamiento forzado en Colombia*, Bogotá, CNMH – UARIV, 2015, [www.centrodememoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/una-nacion-desplazada.pdf](http://www.centrodememoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/una-nacion-desplazada.pdf).

<sup>169</sup> Colombia’s Internally Displaced Persons (IDPs) face great stigmatization. IDP women in urban areas told U.N. Secretary-General Representative that they were reduced to work as house employees and were faced with the particular stigmatization of being IDPs and, thus, considered to be a priori and untrustworthy. See Walter Kälin (Representative of the Secretary-General on the human rights of internally displaced persons), Report on Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”, Addendum: Mission to Colombia, ¶ 64, U.N. Doc. A/HRC/4/38/Add.3 (Jan. 24, 2007) (on file with authors).

to sexual violence. To avoid the stigma, most women neither register as displaced individuals nor report the crime.

Women and children in the *comunas* [informal settlements and neighborhoods] are particularly vulnerable to false opportunities to get out [of the living conditions]. They are coerced, trafficked or forced to become prostitutes in a flourishing domestic sex tourism industry fueled by foreign visitors, or become forced laborers in manufacturing and agriculture production. They are also recruited to become combatants and child soldiers, consorts/concubines, and camp followers for male combatants.<sup>170</sup> Violence against women by abusive male partners is a constant problem, and children are often seen as an impediment to surviving in the urban landscape. Human traffickers exploit all the social conditions rampant in the *comunas*.<sup>171</sup> Now, Venezuelans receive similar unwelcoming treatment and face a similar fate of exploitation and chronic displacement.<sup>172</sup>

Despite signing the Peace Agreement with the FARC-EP in 2016, the factors that contributed to both human and drug trafficking during the conflict did not cease.<sup>173</sup> Perhaps even more concerning

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<sup>170</sup> Even though the recruitment of children into armed groups is an example of trafficking in persons, the Colombian government does not qualify it as such. Instead, the government addresses it as a violation under international humanitarian law. For an analysis on the treatment of child soldiers under Colombian law, see Alarcón-Palacio and Yadira Elena, *Reclutamiento forzado de niños y niñas en el conflicto armado Colombiano: los menores de 18 años como víctimas con protección especial reforzada en el DIH y DIDH*, *Vniversitas*, No. 138, Enero-Junio 2019, <https://revistas.javeriana.edu.co/index.php/vnijuri/article/view/26150>.

<sup>171</sup> *How Conflict and Displacement Fuel Human Trafficking and Abuse of Vulnerable Groups: The Case of Colombia and Opportunities for Real Action and Innovative Solutions*, *supra* note 167, at 10.

<sup>172</sup> Venezuelans are not IDPs because they “have not crossed an internationally recognized State border.” Guiding Principles on Internal Displacement, *supra* note 166, at ¶ 2.

<sup>173</sup> In the Colombian conflict, several factors increased vulnerability to trafficking. Forced displacement, socioeconomic hardship and suffering, humanitarian exigence, impunity, deterioration of the rule of law. For an extensive analysis of human trafficking during the Colombian conflict, see *How Conflict and Displacement Fuel Human Trafficking and Abuse of Vulnerable Groups: The Case of Colombia and Opportunities for Real Action and Innovative Solutions*, *supra* note 167; see also *Estudio Nacional Exploratorio Descriptivo sobre el Fenómeno de Trata de Personas en Colombia* (Feb. 2009), [www.unodc.org/documents](http://www.unodc.org/documents)

is the government's failure to consider lessons learned from the disasters of the de-mobilization by the paramilitary groups, and the subsequent commission of those same mistakes with enhanced ramifications.<sup>174</sup>

Implementation of the Peace Agreement has been slow, uneven, and sparse.<sup>175</sup> Colombia struggles in its post-conflict status to fortify brittle institutions, contend with the persistent conditions that fueled a five-decade conflict that affected over nine million victims,<sup>176</sup> and address instability caused by 8.1 million internally

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/frontpage/Investigacion\_Trata\_CO1.pdf (analyzing a 2009 human trafficking study by the Colombian government including several factors — poverty, violence, internal armed conflict, and drug trafficking and their illicit crop — that created conditions for human trafficking).

<sup>174</sup> In 2005, the Colombian government enacted Ley 975 de 2005, Diario Oficial No. 45.980 de 25 de julio de 2005 [Justice and Peace Law], a peace agreement with the paramilitary groups (AUC) under which the AUC would agree to “total cessation of hostilities and gradual demobilization of its 30,000 members, bring to justice the main leaders, confession of crimes, restitution for victims, and re-integrate AUC members into the society.” Significant lack of resources, inadequate staffing and coordination, and failure to process victims’ claims contributed to the collapse of the process. The demobilization process also triggered the emergence of the criminal gangs called BACRIM. These criminal gangs target displaced people, victims of the conflict in an already vulnerable situation, for exploitative crimes. For more information, see *How Conflict and Displacement Fuel Human Trafficking and Abuse of Vulnerable Groups: The Case of Colombia and Opportunities for Real Action and Innovative Solutions*, supra note 167.

<sup>175</sup> Sibylla Brodzinsky, *Colombia signs historic peace deal with FARC*, GUARDIAN (Nov. 24, 2016, 2:45 PM), [www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels](http://www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels). Three years later, the Peace Agreement was largely in tatters and left many Colombians angry and resentful toward the political actors who brokered the deal. See generally Juan Arredondo, *The Slow Death of Colombia's Peace Movement*, ATLANTIC (Dec. 30, 2019), [www.theatlantic.com/international/archive/2019/12/colombia-peace-farc/604078/](http://www.theatlantic.com/international/archive/2019/12/colombia-peace-farc/604078/).

<sup>176</sup> According to the Victims Unit, five decades of internal conflict produced 9,165,126 victims with 1,069,810 people killed, 8,176,460 people displaced, 187,379 cases of forced disappearances, 33,874 cases of sexual crimes and gender-based violence, and the forced recruitment of 8,833 children and youth. *Unidad para la atención y reparación integral a las víctimas* [Official figures by the Government's Victims Unit], [www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394](http://www.unidadvictimas.gov.co/es/registro-unico-de-victimas-ruv/37394) (last visited Feb. 22, 2022); see also *!Basta ya! Colombia: Memorias de Guerra y Dignidad* [Report by the National Center for Historical Memory] (2013), [www.centrodehistoria.gov.co/descargas/informes/2013/bastaYa/basta-ya-colombia-memorias-de-guerra-y-dignidad-2016.pdf](http://www.centrodehistoria.gov.co/descargas/informes/2013/bastaYa/basta-ya-colombia-memorias-de-guerra-y-dignidad-2016.pdf).

displaced Colombian citizens (IDPs),<sup>177</sup> which is second only to Syria as the highest number of displaced people in the world.<sup>178</sup> Notwithstanding the ongoing transitional process in Colombia, the nation has yet to address many of the psychological, moral, political, and socio-cultural damages caused by decades of violent conflict.<sup>179</sup>

For example, the slow response to human rights violations that have occurred before, during and following forced internal displacement, including acts such as the destruction of homes and communities, the murder of family members, and ongoing discrimination on several levels only intensifies the vulnerabilities of IDPs to abuse and exploitation.<sup>180</sup> IDPs belong to the more marginalized sectors of

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<sup>177</sup> As a consequence of the armed conflict in Colombia, according to the Global Internal Displacement Observatory (IDMC), there were around 5.6 million internally displaced persons (IDPs) as of December 31, 2019. *Más de un millón y medio de víctimas de desplazamiento en Colombia han avanzado hacia soluciones duraderas*, Unidad para la Atención y la Reparación Integral a las Víctimas (Apr. 27, 2020) (citing to report from El Observatorio Global del Desplazamiento Interno (IDMC)), [www.unidadvictimas.gov.co/es/victimas-en-el-exterior/mas-de-un-millon-y-medio-de-victimas-de-desplazamiento-en-colombia-han](http://www.unidadvictimas.gov.co/es/victimas-en-el-exterior/mas-de-un-millon-y-medio-de-victimas-de-desplazamiento-en-colombia-han).

<sup>178</sup> In 2020, Colombia was among the five countries—Afghanistan, Colombia, DRC, Syria, and Yemen—that accounted for more than half the total of IDPs displaced by conflict and violence. Internal Displacement Monitoring Centre, *Global Report on Internal Displacement* at 11, (April 2020), [www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf](http://www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf). Displacement is a plight principally of the more marginalized sectors of society, “predominantly peasants, or campesinos . . . members of the country’s indigenous and Afro-Colombian communities . . . [w]omen and children continue to make up the vast majority—approximately 80 percent—of the displaced.” U.N. Economic and Social Council, Commission on Human Rights, 55th sess., provisional agenda item 14(c), Specific Groups and Individuals: Mass Exoduses and Displaced Persons, *Report of the Representative of the Secretary-General on Internally Displaced Persons Submitted in Accordance with Commission Resolution 1999/47, Addendum: Profiles in Displacement: Follow-Up Mission to Colombia*, U.N. Doc. E/CN.4/2000/83/Add.1 (2000), ¶ 31 (on file with the authors).

<sup>179</sup> The violence has included massacres, forced disappearances, forced displacement, kidnapping, sexual violence, along with impunity for crimes, and social indolence. *!Basta ya Colombia! Memorias de Guerra y Dignidad* [Report by the National Center for Historical Memory] (2013), <http://www.centrodehistoriahistorica.gov.co/descargas/informes2013/bastaYa/basta-ya-colombia-memorias-de-guerra-y-dignidad-2016.pdf>.

<sup>180</sup> Cecilia Jimenez-Damary, Rep. of the Special Rapporteur on the Human Rights of Internally Displaced Persons, *Rights of Internally Displaced Persons*, 6, U.N. Doc. A/73/173 (July 17, 2018) (on file with the authors). As of April 30, 2018, there were 8,679,002 reported victims of the conflict in the Colombian

society—most live in poor rural areas, and many are members of indigenous and Afro-Colombian populations who fled to urban centers like Medellín to settle in peripheral and vulnerable neighborhoods called *comunas*.<sup>181</sup> *Comunas* often lack essential services and have very little consistent law enforcement presence, subjecting IDPs to criminal gangs and paramilitary groups who prey on their defenselessness and recruit, coerce, and force individuals into joining them. Also, adding to the cultural biases they already face,

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Registry of Victims (RUV), the largest known repository of data about victims. Informe de Gobierno, *Política de atención y reparación a víctimas* at 6 (July 2018), [www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/informeadualizado2.pdf](http://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/informeadualizado2.pdf). Under Colombian Law 1448 of 2011, victims are those who have suffered damage due to events that occurred from January 1, 1985, as a consequence of infractions of international humanitarian law or serious and manifest violations of international human rights standards that occurred during internal armed conflict. Among the recognized acts of victimization are forced displacement, threats to life, integrity and personal safety, terrorist acts, crimes against sexual freedom and integrity, homicide, massacre, accident by antipersonnel mines, ammunition without exploding and improvised explosive devices, kidnapping, torture or cruel, inhuman and degrading treatment, and forced recruitment of children. L. 1448 of 2011, Diario Oficial No. 48.096, Jun. 10, 2011, [www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/ley-1448-de-2011.pdf](http://www.unidadvictimas.gov.co/sites/default/files/documentosbiblioteca/ley-1448-de-2011.pdf).

<sup>181</sup> Medellín's official 2020 census indicates 2.569 million residents. *Perfil Demográfico 2016–2020 Total Medellín*, [www.medellin.gov.co/irj/go/km/docs/pccdesign/SubportaldelCiudadano\\_2/PlandeDesarrollo\\_0\\_17/IndicadoresyEstadisticas/Shared%20Content/Documentos/ProyeccionPoblacion2016-2020/Perfil%20Demografico%202016%20-%202020%20Total%20Medellin.pdf](http://www.medellin.gov.co/irj/go/km/docs/pccdesign/SubportaldelCiudadano_2/PlandeDesarrollo_0_17/IndicadoresyEstadisticas/Shared%20Content/Documentos/ProyeccionPoblacion2016-2020/Perfil%20Demografico%202016%20-%202020%20Total%20Medellin.pdf). However, unofficial estimates are in the range of three to four million. Medellín has been a primary destination for IDPs, in part because it is the capital of the department of Antioquia where a great deal of internal armed conflict has occurred. Also, as the second largest city in Colombia and its location in the northwestern part of the country, the city draws IDPs from underdeveloped neighboring departments afflicted by internal armed conflict. “Since the 1970s, Medellín’s population has exploded each decade, with some thirty percent of housing comprising the illegal settlements constructed up in the hillsides above Medellín’s urban centre during the last forty years. These settlements are called *comunas* and began growing when campesinos were forced from their lands.” *How Conflict and Displacement Fuel Human Trafficking and Abuse of Vulnerable Groups: The Case of Colombia and Opportunities for Real Action and Innovative Solutions*, *supra* note 167, at 10.

Colombian IDPs often become stigmatized for being identified as displaced.<sup>182</sup>

Conflict and violence has unfortunately continued in the post-conflict era,<sup>183</sup> largely due to the Colombian government's lack of will and incapacity to implement the Peace Agreement while improving and increasing the necessary physical infrastructure and human capital in much of its marginalized and rural territories.<sup>184</sup> The government has yet to implement safeguards to prevent the exploitation and abuse of vulnerable groups, such as to consolidate institutional practices, strengthen local protection and conflict resolution mechanisms, and provide adequate economic opportunities for vulnerable populations.<sup>185</sup> On the other hand, Colombia did enact the Victims' Law,<sup>186</sup> which if properly executed in the post-conflict stage, could aid in the prevention of trafficking of IDPs and other victims. Under the law, municipal governments must provide victims of forced displacement with humanitarian assistance, including shelter and food. The Law establishes that if a municipal

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<sup>182</sup> One can often see this in cities where street beggars (sometimes comprising entire families) who are obviously not from the city due to their ethnic characteristics are generally shunned and ignored by busy urbanites. Arriving Venezuelans often take on the burden of stigmatization that Colombia's IDPs face for being identified as displaced.

<sup>183</sup> Jeremy McDermott, *Op-Ed: The ELN as a Colombo-Venezuelan Rebel Army*, INSIGHT CRIME.ORG (Mar. 22, 2019), [www.insightcrime.org/news/analysis/op-ed-the-eln-as-a-colombo-venezuelan-rebel-army/](http://www.insightcrime.org/news/analysis/op-ed-the-eln-as-a-colombo-venezuelan-rebel-army/).

<sup>184</sup> The Colombian government lacked readiness "to fill the security vacuum as FARC units demobilized in 2017." Instead, other criminal groups, paramilitaries, FARC dissidents, drug cartels, "[have] rushed in or consolidated their control of these territories [and] conflict dynamics have actually worsened." Ted Piccone, *Peace with Justice: The Colombian Experience with Transitional Justice* at 7, FOREIGN POLICY AT BROOKINGS (July 2019), [www.brookings.edu/wp-content/uploads/2019/06/FP\\_20190708\\_colombia.pdf](http://www.brookings.edu/wp-content/uploads/2019/06/FP_20190708_colombia.pdf).

<sup>185</sup> *Colombia: Criminal elements use violence and intimidation to 'stamp out' leaders' voices*, UN NEWS (Jan. 21, 2021), <https://news.un.org/en/story/2021/01/1082712>.

<sup>186</sup> "The so-called Victims' Law ("Ley de Víctimas") is the government's first serious attempt to address the conflict and its effects through legal mechanisms. It provides a series of rights for victims—rights to reparation, truth, and justice—and also establishes accountability for the various perpetrators involved. Most significantly, the Victim's Law declares a right of restitution for those who have been dispossessed of their land or who have been forced to abandon it." Nicole Summers, *Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict?*, 25 HARV. HUM. RTS. J. 219, 220 (2012).

government cannot offer this help, it must be done by the departmental government or a national body.<sup>187</sup> However, in 2017, the Constitutional Court of Colombia concluded that municipal governments did not have budgets to assist IDPs in the Pacific region of Nariño,<sup>188</sup> which may reflect similar circumstances in municipalities across the nation, especially in conflict related or border areas.

The government's delay to act and fill weaknesses in areas still unsettled in post-conflict Colombia fosters a transformation of the organized crime as well as illegal armed groups, boosting their criminal activities and allowing the proliferation of new criminal organizations and dissidents fighting for control of the criminal interests vacated by the former guerrilla FARC-EP when it demobilized.<sup>189</sup>

Post-conflict environments fuel organized crime and provide opportunities for criminals to profit from institutional instability, as warlords who profited from arms and other illicit trades during conflict seek out new criminal opportunities. Such factors, combined with the lack of access to economic opportunities and social resources, increase the vulnerability of affected individuals and hinder State efforts to identify and refer victims.<sup>190</sup>

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<sup>187</sup> L. 1448 of 2011, Diario Oficial No. 48.096, June 10, 2011, art. 63; Presidential Decree 4800 of 2011, Diario Oficial No. 48.096, June 10, 2011, art. 108, [www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43043](http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=43043)

<sup>188</sup> Corte Consitucional de Colombia, Auto 620-2017 [Constitutional Court of Colombia, Order 620-2017], 15 de noviembre de 2017, [www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=85747](http://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=85747).

<sup>189</sup> See Piccone, *supra* note 184, at 18 (detailing how several criminal groups filled FARC-EP's vacuum and play key roles in licit and illicit economies such as cattle grazing, exploitation of minerals, drug production and trafficking, and extortion. Today, there are several active armed groups and criminal organizations throughout Colombia. Some FARC-EP dissidents and its splinter groups, and paramilitary splinter groups and criminal gangs are active in the forced recruitment of minors. Other criminal organizations are active in sex and labor trafficking.); see also *Colombia Profile*, INSIGHTCRIME.ORG (Jan. 21, 2021), <https://insightcrime.org/colombia-organized-crime-news/colombia/#history>.

<sup>190</sup> U.N. Office on Drugs and Crime, *Countering Trafficking in Persons in Conflict Situations*, at 2, (2018) [https://unodc.org/documents/human-trafficking/2018/17-08776\\_ebook-Countering\\_Trafficking\\_in\\_Persons\\_in\\_Conflict\\_Situations.pdf](https://unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf).

The main battleground, both before and after the signature of Peace Agreement, takes place on the rural side of the country, where poor communities exist at the edge of urban centers<sup>191</sup> inhabited by marginalized and isolated IDPs, who in many cases have been displaced once again as a consequence of confrontations among the many criminal groups.<sup>192</sup> In 2020, the activities of the illegal armed groups triggered 151,609 new cases of forced displacements within the country.<sup>193</sup> The frequency of displacement in 2021 increased alarmingly, “almost doubling the total of 2020, and exceeding the total for each year since 2012.”<sup>194</sup>

Even after the 2016 Peace Deal, continuing conflicts with the FARC-EP persist,<sup>195</sup> especially in isolated rural and poor urban

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<sup>191</sup> Walter Kälin, *Report of the Representative of the Secretary-General on the human rights of internally displaced persons*, ¶ 32, U.N. Doc. A/HRC/4/38/Add.3 (Jan. 5, 2010).

<sup>192</sup> *ABC de la entrega de bienes de las Farc: entienda la controversia entre Gobierno y exguerrilla* [ABC of the delivery of FARC goods: understand the controversy between the Government and the ex-guerrilla], EL ESPECTADOR (Jan. 6, 2021), [www.elespectador.com/colombia-20/paz-y-memoria/abc-de-la-entrega-de-bienes-de-las-farc-entienda-la-controversia-entre-gobierno-y-exguerrilla-articulo/](http://www.elespectador.com/colombia-20/paz-y-memoria/abc-de-la-entrega-de-bienes-de-las-farc-entienda-la-controversia-entre-gobierno-y-exguerrilla-articulo/); see also “Los ejércitos ilegales que enfrentará la nueva cúpula militar” [“The illegal armies that the new military leadership will face”], EL TIEMPO (Dec. 21, 2018), [www.eltiempo.com/justicia/investigacion/los-ejercitos-ilegales-que-enfrentara-la-nueva-cupula-militar-305714](http://www.eltiempo.com/justicia/investigacion/los-ejercitos-ilegales-que-enfrentara-la-nueva-cupula-militar-305714); *FARC Dissidents Want Old Land Back in Colombia’s Caquetá and Meta*, INSIGHT CRIME (July 23, 2021), <https://insightcrime.org/news/farc-assets-center-of-dissident-disputes-colombia/>; *Disidencias de Las FARC: ¿Cuáles son, dónde están, qué hacen?* [FARC Dissidents: Who are they, where are they, what are they doing?], FUNDACIÓN IDEAS PARA LA PAZ (Feb. 7, 2018), <http://ideaspaz.org/especiales/infografias/disidencias.html>; see also U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Resultados HNO 2020* [Results HNO 2020] at 14, <https://reliefweb.int/sites/reliefweb.int/files/resources/Resultados%20HNO%202020.pdf>.

<sup>193</sup> *Resultados HNO 2020*, *supra* note 192.

<sup>194</sup> *Colombia: Impacto y tendencias humanitarias entre enero y julio de 2021 (a 30 de agosto de 2021)* [Colombia: Impact and humanitarian trends between January and July 2021 (as of August 30, 2021)], OCHA RELIEFWEB (Sept. 3, 2021), <https://reliefweb.int/report/colombia/colombia-impacto-y-tendencias-humanitarias-entre-enero-y-julio-de-2021-30-de-agosto>.

<sup>195</sup> Jeremy McDermott, *Op-Ed: The ELN as a Colombo-Venezuelan Rebel Army*, INSIGHT CRIME (Mar. 22, 2019), [www.insightcrime.org/news/analysis/op-ed-the-eln-as-a-colombo-venezuelan-rebel-army/](http://www.insightcrime.org/news/analysis/op-ed-the-eln-as-a-colombo-venezuelan-rebel-army/). The Ejército de Liberación Nacional (ELN) is a longstanding Colombian Marxist/Leninist revolutionary insurgency dating back to the early 1960s. See *Colombia: ELN*, INSIGHT CRIME

areas where minorities live marginalized, isolated, and vulnerable to powerful criminal actors.<sup>196</sup> Children and adolescents especially, both males and females, face forced recruitment by FARC-EP dissidents and other armed groups to “replenish the ranks”<sup>197</sup> as combatants and in many cases concubines and servants.<sup>198</sup> Children are also used by illegal groups to collect extortion payments, for work in drug processing labs,<sup>199</sup> for prostitution, to sell and smuggle

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(Oct. 27, 2020), <https://insightcrime.org/colombia-organized-crime-news/eln-profile/>.

<sup>196</sup> There are several reasons for the continuation and increase in violence, including ongoing disputes between FARC-EP fronts, conflict with dissident groups struggling for hegemony throughout Colombian territory, and actions by the insurgent group ELN to seize land once held by FARC-EP. *See generally*, *ABC de la entrega de bienes de las Farc: entienda la controversia entre Gobierno y exguerrilla* [ABC of the delivery of FARC goods: understand the controversy between the Government and the ex-guerrilla], EL ESPECTADOR (Jan. 6, 2021, 2:17 PM), [www.elespectador.com/colombia-20/paz-y-memoria/abc-de-la-entrega-de-bienes-de-las-farc-entienda-la-controversia-entre-gobierno-y-exguerrilla-articulo/](http://www.elespectador.com/colombia-20/paz-y-memoria/abc-de-la-entrega-de-bienes-de-las-farc-entienda-la-controversia-entre-gobierno-y-exguerrilla-articulo/); *Los ejércitos ilegales que enfrentará la nueva cúpula militar* [The illegal armies that the new military leadership will face], EL TIEMPO (Dec. 21, 2018, 9:14 PM), [www.eltiempo.com/justicia/investigacion/los-ejercitos-ilegales-que-enfrentara-la-nueva-cupula-militar-305714](http://www.eltiempo.com/justicia/investigacion/los-ejercitos-ilegales-que-enfrentara-la-nueva-cupula-militar-305714); Alicia Flórez y Luisa Acosta, *FARC Dissidents Want Old Land Back in Colombia's Caquetá and Meta*, INSIGHT CRIME (July 23, 2021), <https://insightcrime.org/news/farc-assets-center-of-dissident-disputes-colombia/>; *Disidencias de Las FARC: ¿Cuáles son, dónde están, qué hacen?* [FARC Dissidents: Who are they, where are they, what are they doing?], FUNDACIÓN IDEAS PARA LA PAZ (Feb. 7, 2018), <http://ideaspaz.org/especiales/infografias/disidencias.html>.

<sup>197</sup> FARC's demobilization left a vacuum in Colombia's underworld, stoking a growth of criminal factions and re-opening old wounds. Children “are the pawns of the drug trade.” Mathew Charles, *Investigations: Bajo Cauca and Vaupés—Colombia's Child Recruitment Hotspots*, INSIGHT CRIME (Apr. 1, 2021), <https://insightcrime.org/investigations/bajo-cauca-and-vaupes-colombias-child-recruitment-hotspots/>.

<sup>198</sup> Defensoría del Pueblo [Defense of the Town] (Colombia), *Alerta Temprana* [Early Warning] No. 026-2020, at 5 <https://alertasstg.blob.core.windows.net/alertas/026-20.pdf>.

<sup>199</sup> COVID-19 influenced the recruitment of children. Armed groups took advantage of the fact that children and adolescents, mostly from rural areas, have no way to receive virtual education. The groups promise children income by scraping coca or with the collection of extortion. According to Julia Castellanos of the Coalico Childhood and Conflict Observatory, the quarantine made visible the degree of inequality in Colombia. One situation is a child in the city with a computer, Internet, and parents who can work from home. Another very different situation is the child without the possibility of having a computer, and his mother has to

drugs, and to conduct assassinations.<sup>200</sup> There are reports that illegal armed groups used children “to manufacture, plant, and deploy anti-personnel mines to commit terrorist attacks.”<sup>201</sup> Recent reports indicate that in 2020, the number of minors currently involved with illegal armed groups stands at the highest level since before Colombia’s Peace Agreement was signed in 2016—a 113 percent increase since 2019.<sup>202</sup> In many cases, children are also threatened with death for them or their families if they refuse to participate in the illegal activities. Moreover, rural children face even greater risks as armed clashes in the vicinity of some schools are not uncommon.<sup>203</sup>

Perhaps the strongest safeguard against armed groups and criminal organizations is to consolidate institutional practices by “strengthening local protection and conflict resolution mechanisms; and providing decent economic opportunities for vulnerable

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recharge the cell phone with \$20,000 pesos a day for her son to get the homework. Carolina Avila, *Falta de clases aumentó el reclutamiento forzado en Colombia* [Lack of classes increase forced recruitment in Colombia], EL ESPECTADOR (May 17, 2020, 7:00 AM), [www.elespectador.com/colombia-20/paz-y-memoria/falta-de-clases-aumento-el-reclutamiento-forzado-en-colombia-article/](http://www.elespectador.com/colombia-20/paz-y-memoria/falta-de-clases-aumento-el-reclutamiento-forzado-en-colombia-article/).

<sup>200</sup> For an in-depth examination of the various criminal roles played by child recruits, see Mathew Charles, *In Colombia, Child Soldiers Play Many Roles*, INSIGHT CRIME (Apr. 8, 2021), <https://insightcrime.org/investigations/in-colombia-child-soldiers-play-many-roles/>. Indigenous children are recruited to guide criminals into the remote regions that serve as trafficking corridors. They are little more than “pawns in the drug trade.” *Id.*

<sup>201</sup> Luz E. Nagle, *Prosecuting the Use of Anti-Personnel Mines by Illegal Armed Groups: The Colombian Situation*, 8 OR. REV. INT’L L. 231, 247 (2006).

<sup>202</sup> Charles, *supra* note 197. The recruitment and use of minors “remain[s] a widespread and systematic practice that adapts to the new demands of the armed conflict. Threats, false promises of better conditions, break-ins into schools and a weak government presence have led to thousands of children joining the ranks of armed groups.” Adriaan Alsema, *Child recruitment in Colombia continues to be widespread and systematic*, COLOMBIA REPORTS (Jan. 31, 2020), <https://colombiareports.com/amp/child-recruitment-in-colombia-continues-to-be-wide-spread-and-systematic/>.

<sup>203</sup> At one point, even a grenade created by several seven-year-olds exploded in a primary school. Fortunately, the facility was empty at the time because the students and teachers had attended a cultural event. *Violencia Reciclada Abusos por grupos disidentes de las FARC en Tumaco, en la costa pacífica de Colombia* [Recycled Violence Abuses by FARC dissident groups in Tumaco, on the Pacific Coast of Colombia], HUMAN RTS. WATCH 43 (2018), [https://reliefweb.int/sites/reliefweb.int/files/resources/colombia1218sp\\_web.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/colombia1218sp_web.pdf).

populations.”<sup>204</sup> Unfortunately, it is dubious whether this actually happens. The Colombian government may have the will, but lacks the capacity to improve and increase the necessary physical infrastructure and human capital in much of its rural territories, especially in borderlands.<sup>205</sup>

In some areas, illegal armed groups have taken advantage of the pandemic-related conditions to expand their territorial presence, which has led to new hostilities and increased control over rural communities, with a significant impact on indigenous and Afro-Colombian populations.<sup>206</sup> Such hostilities cause communities to isolate for some semblance of safety or be subject to forced confinement that impedes access to essential goods and services.

In Colombia’s post-conflict state, gender-based violence has intensified, as has the stress induced by violence within communities. Gender-based violence is especially severe. One report suggests that approximately 80 percent of displaced women and girls are assaulted,<sup>207</sup> while another source has reported that one in two

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<sup>204</sup> *Colombia: Criminal elements use violence and intimidation to ‘stamp out’ leaders’ voices*, UN NEWS (Jan. 21, 2021), <https://news.un.org/en/story/2021/01/1082712>.

<sup>205</sup> Piccone, *supra* note 189, at 7. The Colombian government lacked readiness “to fill the security vacuum as FARC units demobilized in 2017.” *Id.* Instead, other criminal groups, paramilitaries, FARC dissidents, and drug cartels “rushed in or consolidated their control of these territories [and] conflict dynamics have actually worsened.” *Id.*

<sup>206</sup> See Annette Idler and Markus Hochmüller, *Covid-19 in Colombia’s Borderlands and the Western Hemisphere: Adding Instability to a Double Crisis*, 19 J. LAT. AM. GEOGRAPHY 280 (2020).

<sup>207</sup> Representative of the Secretary-General, Specific Groups and Individuals: Mass Exoduses and Displaced Persons: Rep. of the Representative of the Secretary General on internally displaced persons submitted in accordance with Commission resolution 1999/47: Addendum: Profiles in displacement: Follow-up mission to Colombia, ¶ 31, U.N. Doc. E/CN.4/2000/83/Add.1 (Jan. 11, 2000) (on file with the authors). In 2020, the National Victims’ Unit recorded 239 cases of conflict-related sexual violence. 67 victims were Afro-Colombians and 15 were individuals from indigenous communities. Sixteen cases concerned persons living with disabilities. The Office of the Ombudsperson reported 189 cases of sexual violence, primarily affecting women. The United Nations documented 32 cases of sexual violence. Dissident fronts of FARC-EP were implicated in six of these cases, and one case was attributed to Ejército de Liberación Nacional (ELN). Members of the military were implicated in cases of sexual violence against three indigenous girls. U.N. Security Council, *Conflict-related sexual violence*, U.N.

displaced females are victims.<sup>208</sup> Human Rights Watch has noted in its report on gender-based violence in Colombia the following:

Protection measures for victims of gender-based violence are available under several laws. Victims can start the process of procuring orders for protection measures through several government offices, including municipal officers, family commissioners, courts, or prosecutors. Unfortunately, the system does not always operate effectively.<sup>209</sup>

Many women are raped and suffer other physical abuse by spouses and others.<sup>210</sup> In the post-conflict stage, vulnerable, abandoned, and forgotten women are still impacted by forced displacement due to sexual violence<sup>211</sup> and abuse, including forced prostitution, sexual slavery, or human trafficking for sexual exploitation—all persisting factors of forced displacement.

Although there are many protection measures and programs under several laws to assist victims of gender-based violence, their shortcomings in implementation continue putting this group at risk of abuses and trafficking.<sup>212</sup> For instance, achieving justice for

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Doc. S/2021/312, ¶ 24 (Mar. 20, 2021), [www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2021\\_312.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2021_312.pdf).

<sup>208</sup> *Rights Out of Reach: Obstacles to Health, Justice, and Protection for Displaced Victims of Gender-Based Violence in Colombia*, HUMAN RTS. WATCH, at 1 (2012), [www.hrw.org/sites/default/files/reports/colombia1112forUpload.pdf](http://www.hrw.org/sites/default/files/reports/colombia1112forUpload.pdf).

<sup>209</sup> *Id.* at 4.

<sup>210</sup> *Id.* at 21.

<sup>211</sup> *Id.* at 2; José Miguel Vivanco, *Las mujeres abandonadas de Tumaco*, HUMAN RTS. WATCH (Mar. 25, 2019, 12:15 PM), [www.hrw.org/es/news/2019/03/25/las-mujeres-abandonadas-de-tumaco#](http://www.hrw.org/es/news/2019/03/25/las-mujeres-abandonadas-de-tumaco#) (In 2017–2018, the coastal town of Tumaco in southwestern Colombia received more than 70 reports of sexual violence linked to the armed conflict.).

<sup>212</sup> See Decree 4796 of 2011, Diario Oficial No. 48.289, December 20, 2011, <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/20/dec479620122011.pdf> (Under art. 42 of Colombia's Political Constitution, "any form of violence in the family is considered destructive to the family's harmony and unity and should be sanctioned in conformity to the law." Political Constitution of Colombia, 1991, art. 42. L. 1257 of 2008, Diario Oficial No. 47.193, December 4, 2008, sets out preventing and punishing violence and discrimination against women, and reforming the criminal and procedural codes, and art. 15 of L. 360 of 1997, Diario Oficial No. 42.978, February 11, 1997, establishes that displaced women and girls have a right to free health services after sexual or

displaced women and girls entails facing several traumatizing hurdles “including mistreatment by authorities, evidentiary challenges, and fear of retribution.”<sup>213</sup> When seeking benefits given to displaced families, like food and shelter, female victims of domestic violence most often face the conundrum of remaining with the abuser or losing vital benefits. Still, laws and programs to assist victims of gender-based violence do exist on paper, at least. Colombian law requires the government to provide temporary housing, transportation, and food to victims of sexual violence.<sup>214</sup> However, assistance is rarely provided, many areas lack shelters,<sup>215</sup> and females continue to be at risk of abuse, exploitation, and human trafficking.

The due diligence standard applied to nations in post-conflict situations must consider whether the nation is unwilling or unable to protect individuals from human trafficking and the violent criminal organizations or armed groups that engage in it.<sup>216</sup> Balancing international obligations with a country’s internal conditions must be a factor when addressing state responsibility. An objective test should be developed to determine if the internal conditions affect a nations’ response to human trafficking or if those conditions are not

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intrafamilial violence. In December 2011, Presidential Decree 4796 implemented L. 1257 of 2008 and directed the Ministry of Health and Social Protection to prepare the Ten-Year Plan of Public Health that would include the strategies, plans, programs, actions, and resources for the eradication of different forms of violence against women. The Law also defines actions necessary to detect, prevent and attend to women victims of violence through the services guaranteed by the General System of Social Security in Health, and implement mechanisms to make effective the right to health.)

<sup>213</sup> *Rights Out of Reach: Obstacles to Health, Justice, and Protection for Displaced Victims of Gender-Based Violence in Colombia*, supra note 208, at 3. (Women face daunting challenges, including delays in accessing forensic screening and police and prosecutors who will not take their cases seriously.)

<sup>214</sup> Ley 1257 de 2008, art. 19, Diario Oficial No. 47.193 de 4 de diciembre de 2008.

<sup>215</sup> Human Rights Watch, *Violencia Reciclada Abusos por grupos disidentes de las FARC en Tumaco, en la costa pacífica de Colombia* (2018), at 62–63, [https://reliefweb.int/sites/reliefweb.int/files/resources/colombia1218sp\\_web.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/colombia1218sp_web.pdf).

<sup>216</sup> ANNE T. GALLAGHER, *THE INTERNATIONAL LAW OF HUMAN TRAFFICKING* 247 (2010) (According to Gallagher, inferring due diligence in the trafficking context is not straight forward. She asks, “what is the situation with regard to claims that the State is unable (as opposed to unwilling) to protect its citizens and others within its territory from trafficking and related violations of human rights?”).

a determinant on the lack of response, and if the response is instead due to a lack of will by the government.

#### IMPACT OF THE COVID-19 PANDEMIC ON THE COLOMBIAN STATE

The onset of the COVID-19 pandemic has significantly aggravated Colombia's post-conflict conditions and hindered government efforts to attend to the humanitarian needs of vulnerable population in most parts of the nation.<sup>217</sup> COVID-19 rapidly overtook Colombia beginning in March 2020. The national government took aggressive steps to contend with high infection rates, although the harsh measures had significant adverse social impacts.<sup>218</sup> On March 12, Colombia's Ministry of Health and Social Protection declared a health emergency due to the rapid spread of COVID-19. On March 20, the Interior Ministry decreed mandatory isolation "for the elderly and the cessation of face-to-face academic activities in official colleges and universities."<sup>219</sup> Less than a week later, the government locked down the country for all population sectors from March 25 through April 13. Intensive isolation of the general population was partially lifted on September 1, 2020, with certain restrictions on crowd gatherings, and certain activities remaining in place.<sup>220</sup> After two years from the beginning of the pandemic, as of March 2022, more than 6 million cases of COVID-19 infections and

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<sup>217</sup> U.N. – Coordinated Support to People Affected by Disaster and Conflict, Global Humanitarian Overview 2021, at 87, (Dec. 10, 2020), [https://reliefweb.int/sites/reliefweb.int/files/resources/GHO2021\\_EN.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/GHO2021_EN.pdf).

<sup>218</sup> See Ariza-Sosa et al., *supra* note 164, at 125.

<sup>219</sup> Marcela Gutierrez Bernal, et al., *Colombia: Mis Manos te Enseñan [My Hands Teach You]*, ICBF (2020), <https://oecdeditoday.com/wp-content/uploads/2020/08/Colombia-Mis-manos-te-ensenan.pdf>. (Early childhood development programs closed, as well. In response, the Instituto Colombiano de Bienestar Familiar (ICBF) launched Mis Manos te Enseñan (My Hands Teach You) targeting more than 1.7 million vulnerable children and pregnant women. Its aims were to ensure that children's comprehensive development would continue to be fostered at home, and to contribute to the protection of children's rights during the period of social distancing.).

<sup>220</sup> See Ariza-Sosa et al., *supra* note 164, at 125.

139,650 deaths were reported nationwide by the Ministry of Health and Social Protection.<sup>221</sup>

The highly restrictive emergency measures had an adverse impact on women and children particularly, and extended into the Venezuelan migrant populations<sup>222</sup> where poverty, overcrowding, and insufficient sanitation in migrant communities contributed to high transmission rates.<sup>223</sup> Several feminist organizations found that isolation in a household exposed women and children to abuse and exploitation, and reports of widespread abuses suggested that steps taken by the Colombian government to protect its citizens from the spread of COVID-19 had the unintended consequence of increasing violence against vulnerable people (and likely including the elderly).<sup>224</sup> In Colombia, pre-pandemic violence against women was already considered a “political and health problem.”<sup>225</sup> As the pandemic spread throughout Colombia, emergency calls involving violence against women increased 99 percent between the March 25, 2020 lockdown to the lifting of restrictions on October 29, 2020. Calls reporting domestic violence in general increased 116 percent during the same time (more than 18 thousand calls).<sup>226</sup>

Along the Colombian-Venezuelan border, the Colombian government closed official border crossings of migrants into Colombia as soon as local authorities detected the first COVID-19 case in Colombia in March 2020.<sup>227</sup> The new restrictions on movement and working imposed by Colombian authorities placed Venezuelan

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<sup>221</sup> See *Situación actual Coronavirus (COVID-19)*, MINISTERIO DE SALUD Y PROTECCIÓN SOCIAL, [www.minsalud.gov.co/salud/publica/PET/Paginas/Covid-19\\_copia.aspx](http://www.minsalud.gov.co/salud/publica/PET/Paginas/Covid-19_copia.aspx) (last visited Apr. 3, 2022).

<sup>222</sup> See Colombian Women’s Observatory, *La violencia contra las mujeres migrantes en Colombia: una frontera por superar [Violence against migrant women in Colombia: a hardship to overcome]*, [https://observatoriomujeres.gov.co/archivos/publicaciones/Publicacion\\_187.pdf](https://observatoriomujeres.gov.co/archivos/publicaciones/Publicacion_187.pdf) (last visited Feb. 23, 2022).

<sup>223</sup> Hayley Evans and Prisyll Avoine, *An Intersectional Approach to Colombian Transitional Justice and COVID-19*, OPINIOJURIS (Jan. 15, 2021), <http://opiniojuris.org/2021/01/15/an-intersectional-approach-to-colombian-transitional-justice-and-covid-19/>.

<sup>224</sup> *Id.* at 125.

<sup>225</sup> *Id.* at 144.

<sup>226</sup> Ariza-Sosa et al. *supra* note 164.

<sup>227</sup> *Disorder on the Border: Keeping the Peace between Colombia and Venezuela*, INT’L CRISIS GRP. 28 (Dec. 14, 2020), <https://d2071andvip0wj.cloudfront.net/084-disorder-on-the%20border.pdf>.

migrants already in Colombia—migrants who depended on informal economic jobs or employment opportunities—in dire circumstances.<sup>228</sup> By May 2020, most social services were sharply curtailed, including shelters and organizations feeding migrants which switched from providing in-person meals to handing out food instead.<sup>229</sup>

Despite the lockdown and the international borders closure, including the border between Colombia and Venezuela, the pandemic did have the unintended consequence of an estimated 122,000 Venezuelans electing to return to their homes and family members in Venezuela.<sup>230</sup> Instead of finding shelter among family and friends, however, many returning migrants, refugees, and asylum seekers were subjected to inhumane treatment and victimization by Venezuelan authorities.<sup>231</sup> Returnees were forced to quarantine for two weeks in centers that were described as cramped, unhealthy and dirty. Venezuelan *colectivos*<sup>232</sup> were reported to visit the centers looking “for signs of political dissent” among the returning

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<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> Ángela Méndez-Triviño, *Forced Back Home by the Pandemic, Venezuelan Grandmother Sees No Choice But to Flee Once Again*, THE UN REFUGEE AGENCY (Dec. 10, 2020), [www.unhcr.org/news/stories/2020/12/5fd14a064/forced-home-pandemic-venezuelan-grandmother-sees-choice-flee-once.html](http://www.unhcr.org/news/stories/2020/12/5fd14a064/forced-home-pandemic-venezuelan-grandmother-sees-choice-flee-once.html).

<sup>231</sup> *Id.* (“With Latin America hit hard by the coronavirus pandemic, and lockdown and other restrictions taking a terrible economic and social toll throughout the region, tens of thousands of the estimated 5.4 million Venezuelans refugees and migrants living abroad have taken the drastic step of returning home over the past months.”)

<sup>232</sup> *Colectivos* are irregular armed gangs, para-police or paramilitary groups loyal to the Maduro regime who serve to harass and terrorize government opponents and protestors. President Maduro refers to them as “angels of socialism” stating: “I admire them. They are organisations created for the good of the community. The collectives work for society, for the sick, for peace, and against crime. They have been around for 20 years as a form of organisation of the people.” While some *colectivos* do some community good and provide social services, the *colectivos* originated in the 1960s as leftist urban rebel criminal gangs inspired by the Cuban revolutionary sentiments among Venezuela’s working class. Today’s *colectivos* are “well known for carrying out extrajudicial killings, kidnapping, running extortion networks and controlling lucrative food distribution networks in the community, as well as trafficking in petrol and drugs along the border with Colombia.” Lucia Newman, *Venezuela: Who are the Colectivos*, ALJAZEERA (May 9, 2019), [www.aljazeera.com/features/2019/5/9/venezuela-who-are-the-colectivos](http://www.aljazeera.com/features/2019/5/9/venezuela-who-are-the-colectivos).

migrants.<sup>233</sup> The Venezuelan government went so far as to accuse Colombia of “planting” sick migrants back into Venezuela as “biological weapons” intended to spread the pandemic through the country.<sup>234</sup>

That movement back into Venezuela slowed and again reversed as the pandemic subsided and in proportion to Colombia reopening its economy and easing restrictions on movement. In one case, it was reported that some 3,000 Venezuelans in Táchira border state crossed back into Colombia as of November 2020.<sup>235</sup> The anticipated return of Venezuelans into Colombia presented new challenges for Colombia and Venezuela to fulfill shared state responsibilities for the migrants and refugees. In December 2020, the International Crisis Group reported on then current conditions at the border:

The risk of uncontrolled disease transmission along and across the border persuaded parts of the Venezuelan and Colombian state to resume working-level contacts after over a year of total estrangement, although bilateral communication has largely ceased since then. At the beginning of the COVID-19 outbreak, the Venezuelan and Colombian ombudsmen, state agencies charged with protecting civil and human rights in each country, issued a joint statement to activate a channel of communication. Both health ministers also opened a line for joint consultation at the same time. Venezuelan and Colombian authorities established a basic procedure for returnees to cross the official border, although distrust between the two states remains visceral and is reflected in the treatment meted out to migrants. At present, Venezuela allows 200 people to cross back into the country over the Simón Bolívar bridge each day, and another 100 per day over the official border crossing between Arauca and Apure.<sup>236</sup>

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<sup>233</sup> INT’L CRISIS GROUP, *supra* note 227, at 29.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.* at 28.

<sup>236</sup> *Id.* at 28–29.

The COVID-19 pandemic did little to help Venezuelan migrants assimilate into Colombian communities, as fears arising from the pandemic increased hostility toward Venezuelans that had long simmered beneath the surface.<sup>237</sup> Many host communities in Colombia believed the returning Venezuelan migrants were COVID-19 carriers and showed renewed discomfort toward their presence, a “not in my backyard” attitude in municipalities or cities “through various types of rejection actions such as protests, physical and psychological violence, hate speech, and discrimination.”<sup>238</sup> The negativity and overt hostility toward the Venezuelan migrants occurred on top of Colombians’ existing uncertainty about the migrants and Colombia’s overall role as a host country.<sup>239</sup>

Nor did COVID-19 reduce the vulnerability of Colombians, migrants, and refugees to violence by armed groups and criminal organizations. In the first nine months of 2020 alone, illegal armed groups launched at least 242 assaults on humanitarian medical missions and health workers, “representing a 63 percent increase in comparison to the previous year.”<sup>240</sup>

#### PULL FACTORS, THE JOURNEY, AND COMPOUNDED VULNERABILITIES

If England and the United States are two countries separated by a common language,<sup>241</sup> Venezuela and Colombia are two countries separated by a common history.<sup>242</sup> During the 1990s, “Colombia

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<sup>237</sup> See Lucia Ramírez Bolívar & Lina Arroyave Velazquez, *Migración, pandemia y xenofobia en Colombia, Perú y Chile: tres palabras que nunca debieron unirse*, DEJUSTICIA 1, 4 (Sept. 2021), [www.dejusticia.org/wp-content/uploads/2021/09/DMAA-13.pdf](http://www.dejusticia.org/wp-content/uploads/2021/09/DMAA-13.pdf).

<sup>238</sup> *The Caminantes: Need and Vulnerabilities of Venezuelan Refugee and Migrants Travelling on Foot*, ASSESSMENT CAPACITIES PROJECT (ACAPS) 1, 9 (Jan. 2021), [www.acaps.org/sites/acaps/files/products/files/20210121\\_acaps\\_thematic\\_report\\_caminantes\\_in\\_colombia\\_and\\_venezuela.pdf](http://www.acaps.org/sites/acaps/files/products/files/20210121_acaps_thematic_report_caminantes_in_colombia_and_venezuela.pdf). [hereinafter *The Caminantes: Need and Vulnerabilities*].

<sup>239</sup> *Id.*

<sup>240</sup> *Part two: Inter-agency Appeals: Colombia*, GLOB. HUMANITARIAN OVERVIEW 2022, <https://gho.unocha.org/colombia> (last visited Feb. 12, 2022).

<sup>241</sup> A popular invective most often attributed to George Bernard Shaw. CONCISE OXFORD DICTIONARY OF QUOTATIONS 302 (rev. 3d ed.).

<sup>242</sup> Venezuela and Colombia once formed one country, in several manifestations, from liberation from Spain in 1819 until 1863 when Colombia became an

was the largest country of origin of refugees in the Latin America and Caribbean region”<sup>243</sup> with thousands migrating to Venezuela to escape political violence and internal armed conflict.<sup>244</sup> Over the last two decades, the deteriorating conditions in Venezuela triggered a reverse migration between the two countries, as desperate Venezuelans were “pulled” to Colombia by the hope of relocating to a place of opportunity, refuge, common cultures, and protection. Among the migrants and refugees, half a million Colombian nationals who fled to Venezuela during the previous century joined the flow west across the border, further impacting Colombia’s capacity to deal with the massive influx of people.<sup>245</sup> What they found brought them little relief from what they had left behind in Venezuela and they discovered that while the Colombian government recognized its duty under international law to care for refugees, Colombians were not very welcoming or sympathetic to the plight of their Venezuelan “neighbors.”<sup>246</sup> Moreover, since Venezuela’s humanitarian crisis was not provoked by armed conflict, Colombia is not necessarily obligated to extend protections that refugee status provides,<sup>247</sup> ignoring the international guidelines established in the

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independent nation. *See generally* DAVID BUSHNELL, *THE MAKING OF MODERN COLOMBIA: A NATION IN SPITE OF ITSELF*, 42–102 (1993).

<sup>243</sup> *World Migration Report 2020*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) i, 99 (Nov. 2019), [www.un.org/sites/un2.un.org/files/wmr\\_2020.pdf](http://www.un.org/sites/un2.un.org/files/wmr_2020.pdf).

<sup>244</sup> *See Cruzando la frontera: memorias del éxodo hacia Venezuela. El caso del río Arauca*, NAT’L CENTER FOR HISTORICAL MEMORY 1, 26 (2014), [www.centrodehistoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/cruzando-la-frontera.pdf](http://www.centrodehistoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/cruzando-la-frontera.pdf).

<sup>245</sup> According to the Ministry of Foreign Affairs and the Cancillería de Colombia, as of October 30, 2019, more than half a million Colombian nationals returned from Venezuela. *See #HazteVisible, el llamado de la Cancillería para visibilizar a los colombianos que han retornado del exterior*, CANCELLERÍA (Oct. 30, 2019), [www.cancilleria.gov.co/en/newsroom/news/haztevisible-llamado-cancilleria-visibilizar-colombianos-han-retornado-exterior](http://www.cancilleria.gov.co/en/newsroom/news/haztevisible-llamado-cancilleria-visibilizar-colombianos-han-retornado-exterior).

<sup>246</sup> *See* John Otis, *Large Venezuelan Migration Sparks Xenophobic Backlash In Colombia*, NPR (Dec. 29, 2020), [www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia](http://www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia).

<sup>247</sup> Oriana Van Praag, *Understanding the Venezuelan Refugee Crisis*, WILSON CENTER (Sept. 13, 2019), [www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis](http://www.wilsoncenter.org/article/understanding-the-venezuelan-refugee-crisis). The Syrian refugee crisis should provide Venezuela with a useful comparison of international management of a refugee crisis, especially given that Venezuela ranks second to Syria in terms of people that have been

1984 *Cartagena Declaration on Refugees*.<sup>248</sup> This creates a problem for the government as to how the Colombian people treat migrants.

i) *Vulnerabilities associated with irregular migration*

By 2019, migrants with proper papers were exceeded by undocumented migrants in an *irregular* situation —"who are not authorized to enter, to stay or to engage in a State"—<sup>249</sup> often referred to as *caminantes* (walkers), who crossed by foot into Colombian territory carrying all their belongings in backpacks or even plastic bags.<sup>250</sup> The *caminantes* enter Colombia through *trochas*—irregular routes along the border—to avoid having the required documentation or financial means to enter Colombia.<sup>251</sup> Taking the *trochas* involves “risking their lives and belongings along the way,” according to Adriana Mejía Hernández, Colombia’s Vice-Minister for Multicultural Affairs.<sup>252</sup>

Failure to prepare before departure without knowing their destination means no turning back for the *caminantes* once they choose to leave everything behind in Venezuela.<sup>253</sup> Unforeseen

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displaced across international borders. However, despite the magnitude of the problem, the Venezuelan crisis has only received a fraction of the international attention and funding dedicated to the Syrian crisis.

<sup>248</sup> The 1984 Cartagena Declaration on Refugees “is the landmark regional refugee instrument, which broadened the refugee definition for Latin America and proposed new approaches to the humanitarian needs of refugees and displaced with a spirit of solidarity and cooperation.” *Cartagena+30*, UNHCR, [www.acnur.org/cartagena30/en/background-and-challenges/](http://www.acnur.org/cartagena30/en/background-and-challenges/) (last visited Feb. 3, 2022); see also *Cartagena Declaration on Refugees*, UNHRC (Nov. 22, 1984), [www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html](http://www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html).

<sup>249</sup> Richard Perruchoud & Jillyanne Redpath-Cross, *Glossary on Migration*, INTERNATIONAL ORGANIZATION FOR MIGRATION 55 (2d ed. 2011), [www.corteidh.or.cr/sitios/observaciones/11/anexo5.pdf](http://www.corteidh.or.cr/sitios/observaciones/11/anexo5.pdf); see also *World Migration Report 2020*, INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) i, 99 (2019), [www.un.org/sites/un2.un.org/files/wmr\\_2020.pdf](http://www.un.org/sites/un2.un.org/files/wmr_2020.pdf).

<sup>250</sup> Tamara Taraciuk Broner, *The Venezuelan Walkers*, HUMAN RIGHTS WATCH (Sept. 5, 2018), [www.hrw.org/news/2018/09/05/venezuelan-walkers](http://www.hrw.org/news/2018/09/05/venezuelan-walkers).

<sup>251</sup> *The Caminantes: Need and Vulnerabilities*, *supra* note 238, at 1.

<sup>252</sup> Adriana Mejía Hernández, *Understanding Migration as an Asset: the Colombian Case*, OECD DEV. MATTERS (May 5, 2021), <https://oecd-development-matters.org/2021/05/05/understanding-migration-as-an-asset-the-colombian-case/>.

<sup>253</sup> *The Caminantes: Need and Vulnerabilities*, *supra* note 238, at 6.

circumstances in their journey to Colombia increase vulnerability to human rights violations, including human trafficking and other forms of human exploitation. Children and unaccompanied minors, elderly, and sick family members face daunting obstacles as they simply seek to survive and flee the chaotic life they left behind.

ii) *Vulnerabilities associated with mental health issues*

As a result, there is an increased risk of mental health issues amongst migrants—a result that can be attributed to migrants’ vulnerability in the migratory cycle, to the characteristics of their personality and life stories, and to their individual capacity for resilience.<sup>254</sup> The mental health of the *caminantes* can be affected by several factors, making them more vulnerable to abuse and exploitation. Leaving a country and worrying about the wellbeing of the families they have left behind causes depression, hopelessness, sleep disturbances, distress, concern, fear, somatizations, and difficulties in interpersonal relationships.<sup>255</sup> This can be due to the accumulation of stressful situations to which they are exposed, such as separation from loved ones, difficulties finding and keeping a job, inability to have a decent home, financial need, the feeling of helplessness and failure, loneliness, and the daily struggle to survive. Violence and other traumatic experiences during the journey can cause post-traumatic stress or generate other psychological issues.<sup>256</sup> Additionally, the emotional impact of migration on women and children can be attributed to the familial disintegration and other challenges raised by the migratory process. This can lead to the adoption of risky behaviors by children and young people, creating a greater vulnerability to violence, sexual abuse, and exploitation.<sup>257</sup>

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<sup>254</sup> Luisa Fernanda Ruiz Eslava & David Alejandro Rodríguez Pérez, *Percepción de las necesidades en salud mental de población migrante venezolana en 13 departamentos de Colombia. Reflexiones y desafíos*, 19 REVISTA GERENCIA Y POLÍTICAS DE SALUD (Oct. 2, 2020), <https://revistas.javeriana.edu.co/index.php/gerepolsal/article/view/31372>.

<sup>255</sup> *Id.* at 12.

<sup>256</sup> Tamara, *supra* note 250.

<sup>257</sup> Ruiz Eslava, *supra* note 254, at 11.

iii) *Vulnerabilities associated with lack of resources*

Nearly half a million *caminantes* have remained along the border as they lack the resources and proper documentation to enter further into Colombia, or because family members remain in their homeland and they have no alternative but to stay closer to them, despite the extremely complicated conditions.<sup>258</sup> There, they have established informal communities. These settlements have spread, exacerbating the already limited access to essential services, food, health, and shelter. Most border towns are impoverished and poor, causing tensions between the local population and Venezuelan migrants over employment opportunities and social services, increasing incidents of violence, discrimination, crime, and prejudice.<sup>259</sup>

iv) *Vulnerabilities associated with crime and armed groups in border crossings*

Plagued with “[p]overty, corruption and booming black markets—including trade in the world’s largest concentration of coca crops,” the border crossings are a magnet for transborder crime and exploitation of vulnerable populations, “particularly on the Colombian side.”<sup>260</sup> Crime and smuggling of contraband have long been a way of life in border towns.<sup>261</sup> What has changed in recent years is

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<sup>258</sup> “Individuals most vulnerable to harm are those with the fewest alternatives.” For research on the social, political, economic and cultural conditions that could put Venezuelans at risk of being trafficking victims in Colombia, see *Migración Venezolana y la Trata de Personas*, MINISTERIO DEL INTERIOR, OBSERVATORIO NACIONAL TRATA DE PERSONAS (2018), [https://tratadepersonas.mininterior.gov.co/sites/default/files/migracion\\_venezolana\\_y\\_la\\_trata\\_de\\_personas.pdf](https://tratadepersonas.mininterior.gov.co/sites/default/files/migracion_venezolana_y_la_trata_de_personas.pdf).

<sup>259</sup> The primary border crossings are located in the towns Paraguachó in north-eastern Colombia, Puerto Santander and Cúcuta/Santa Teresa in the central region of the border, and Arauca in southeastern Colombia. For an in-depth report on economic and social conditions in Colombia’s border towns along the Colombia–Venezuela frontier, see Nubia Pedraza Palacios, *Género, desplazamiento y refugio. Frontera Colombia y Venezuela*, UNIFEM (Dec. 2005), [www.acnur.org/fileadmin/Documentos/Publicaciones/2006/4039.pdf](http://www.acnur.org/fileadmin/Documentos/Publicaciones/2006/4039.pdf).

<sup>260</sup> INT’L CRISIS GROUP, *supra* note 227, at i.

<sup>261</sup> The Venezuela–Colombia border has experienced a high level of gasoline smuggling, which has become a highly lucrative black-market commodity. In August 2016, the Colombian government broke up what authorities claimed to be the largest gasoline transborder smuggling network. It was just one group of smugglers among many following a similar modus operandi, and despite claims

the overt increase in violence and clashes between illegal armed groups that often catch migrants in the crossfire.<sup>262</sup> Thus, remaining in these border towns is dangerous for migrants passing through.<sup>263</sup>

During 2020 and 2021, border closings due to diplomatic confrontations and COVID-19 created new opportunities for criminal groups and corrupt officials who extort migrants seeking to cross the border.<sup>264</sup> Some migrants have been reported as “disappeared or murdered, either for not paying extortion fees or because they are suspected of collaborating with other bands . . . .”<sup>265</sup> Murders have become almost a daily occurrence at the *trochas*.<sup>266</sup> Moreover, the border areas where there is little government control have become locations for sporadic clashes between rogue units of the FARC-EP that did not demobilize in 2016 and militant National Liberation Army (ELN)<sup>267</sup> guerrilla groups seeking control over the Colombian-Venezuelan border territory.<sup>268</sup> The fighting has risen to the

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by the government, there is no reason to think that the enforcement effort has any significant impact. The smuggling operation goes something like this: the gasoline is collected into convoys of trucks, nicknamed “caravans of death”, in Maracaibo, Venezuela, and moved at high-speed along clandestine border crossings and rural roads to porous border crossings. Once across the border, the gasoline is redistributed along black-market corridors in the eastern Colombian Department of César. This large-scale form of smuggling grew after Colombia and Venezuela closed the border for nearly a year due to increasing political tensions between the two governments involving armed insurgents. Before the borders closed, smalltime smuggling of all manner of goods and consumables were flowing from Colombia into Venezuela (for generations), taking advantage of an easing of border restrictions under globalization policies. The small-time smuggling, referred to as “smurfing,” went away when the borders were closed, which made large-scale movement of contraband far more profitable, especially for organized crime and illegal armed groups. See Luz E. Nagle, *Transborder Crime, Corruption, and Sustaining Illegal Armed Groups in Latin America*, SMALL WARS J. (July 8, 2017, 2:08 AM), <http://smallwarsjournal.com/jrnl/art/transborder-crime-corruption-and-sustaining-illegal-armed-groups-in-latin-america>.

<sup>262</sup> INT’L CRISIS GROUP, *supra* note 227, at 10 (Even though the Colombia border is sparsely populated, it is one of the country’s most violent areas. Between 2012 and 2019, close to 5,000 people were killed.).

<sup>263</sup> See *id.* at i.

<sup>264</sup> See *id.* at ii.

<sup>265</sup> *Id.* at 6.

<sup>266</sup> See *id.* at 7.

<sup>267</sup> *Colombia: ELN*, *supra* note 195.

<sup>268</sup> According to the U.S. State Department as of 2021, “Illegal armed groups, particularly in the departments of Chocó, Norte de Santander, Córdoba, Nariño,

level of a low-intensity conflict<sup>269</sup> that has sucked the migrant population into the violence, including the forced recruitment of young Venezuelans to become combatants. The armed groups operate “with near-to-absolute impunity on both sides of the border,” posing an enormous threat, particularly for women and children.<sup>270</sup>

Venezuelan and Colombian human trafficking networks abound on each side of the border, often in collusion with corrupt law enforcement officers who belong to the networks. These networks “impose their own rules, threaten residents, and punish those who disobey, even with murder or months of forced labor in the fields.”<sup>271</sup> Women unable to pay extortion to not be trafficked are sexually abused and assaulted. Reports chronicle that some pregnant migrants have sold “their unborn babies for a spot price at the informal crossings.”<sup>272</sup> In 2019, the Ombudsman’s Office issued an early warning regarding human trafficking networks for sexual exploitation, and it documented recruitment in Venezuela at the border crossing.

v) *Vulnerabilities associated with gender and sexual orientation*

Among the Venezuelan migrants and refugees, at-risk groups include the indigenous Wayuú, Zenú, and Inga, individuals of

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and Cauca, forcibly recruit children, including Venezuelan, indigenous, and Afro-Colombian youth, to serve as combatants and informants and harvest illicit crops, and to exploit them in sex trafficking.” *2021 Trafficking in Persons Report: Colombia*, U.S. Dep’t of State. (June 2021), [www.state.gov/reports/2021-trafficking-in-persons-report/colombia/](http://www.state.gov/reports/2021-trafficking-in-persons-report/colombia/) (last visited Feb. 23, 2022).

<sup>269</sup> INT’L CRISIS GROUP, *supra* note 227, at 10.

<sup>270</sup> According to Human Rights Watch, illegal armed groups in the eastern Colombian province of Arauca and the neighboring Venezuelan state of Apure control the local population with extreme violence. The Colombian side is controlled by rogue FARC-EP and ELN units, and the Patriotic Forces of National Liberation (Fuerzas Patrióticas de Liberación Nacional – FPLN) operates on the Venezuelan side. These groups are known to sometimes cooperate with government security forces and local authorities. See “*The Guerrillas Are the Police*” *Social Control and Abuses by Armed Groups in Colombia’s Arauca Province and Venezuela’s Apure State*, HUMAN RIGHTS WATCH 1, 1 (Jan. 2020), [www.hrw.org/sites/default/files/report\\_pdf/colombia0120\\_web.pdf](http://www.hrw.org/sites/default/files/report_pdf/colombia0120_web.pdf).

<sup>271</sup> *Id.*

<sup>272</sup> INT’L CRISIS GROUP, *supra* note 227, at 10.

African descent and LGBT individuals.<sup>273</sup> The “feminization” and sexualization of the Venezuelan tragedy is widespread and gloomy.<sup>274</sup> Venezuelan women face great challenges, and prostitution and survival sex are a difficult result.<sup>275</sup> Regardless of their economic and educational status, the despair associated with migrant women struggling to send food and medicine to their loved ones back home has created “a breeding ground for trafficking, sexual slavery, child exploitation, forced prostitution and survival sex.”<sup>276</sup> Venezuelan females are constantly subjected to “harassment and sexual exploitation in exchange for food, water, medicine, personal hygiene products and other basic goods.”<sup>277</sup>

Venezuelan women and young girls are the most affected by human trafficking both in larger and smaller cities.<sup>278</sup> In one

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<sup>273</sup> *Early Alert No. 039–19: Prevention and Protection*, INDEPAZ (Sept. 16, 2019), [www.indepaz.org.co/wp-content/uploads/2020/02/AT-N%C2%B0-039-19-LAG-Maicao.pdf](http://www.indepaz.org.co/wp-content/uploads/2020/02/AT-N%C2%B0-039-19-LAG-Maicao.pdf).

<sup>274</sup> In macho societies, life for women is more difficult to navigate. They encounter situations of vulnerability and exposure to people taking advantage of them. Venezuelan migrants endure “men sexually harassing and verbally abusing them and pressing them for sex while they work as waitresses or cleaners.” The “old and widely-known narrative of local beauties as an exportation product,” is an added factor that fuels and facilitates violations of Venezuelan women rights. See Noemí Pérez Vásquez, *The ‘fallen’ Miss Venezuela: a tragedy of sexual slavery and trafficking*, OPEN DEMOCRACY (Aug. 19, 2019), [www.opendemocracy.net/en/democraciaabierta/the-fallen-miss-venezuela-a-tragedy-of-sexual-slavery-and-trafficking/](http://www.opendemocracy.net/en/democraciaabierta/the-fallen-miss-venezuela-a-tragedy-of-sexual-slavery-and-trafficking/) Vulnerable women migrants feel the most the effects of xenophobia. They are given derogatory names, chastised for having children and are verbally and sexually harassed and abused.

<sup>275</sup> See Giacomo Tognini, *Another Consequence of Venezuela Crisis: A Sex Trafficking Boom*, WORLD CRUNCH (Jun. 11, 2018), [www.worldcrunch.com/world-affairs/another-consequence-of-venezuela-crisis-a-sex-trafficking-boom](http://www.worldcrunch.com/world-affairs/another-consequence-of-venezuela-crisis-a-sex-trafficking-boom).

<sup>276</sup> Vásquez, *supra* note 274.

<sup>277</sup> ALLISON B. WOLF, *JUST IMMIGRATION IN THE AMERICAS*, 160 (2020). The hyper-sexualization of Venezuelan women and young girls puts them at grave risk of sexual exploitation. See generally Victoria Capriles, *Trata de Mujeres Venezolanas en el Contexto de la Crisis Migratoria: Respuestas de Colombia, México y Trinidad y Tobago (2017–2020)*, LIBRO HOMENAJE AL DOCTOR PEDRO NIKKEN, TOMO I 419 (Allan R. Brewer-Carías and Carlos Ayala Corao eds., 2021) [www.researchgate.net/publication/353689995\\_Trata\\_de\\_mujeres\\_venezolanas\\_en\\_el\\_contexto\\_de\\_la\\_crisis\\_migratoria\\_y\\_de\\_refugiados\\_Respuestas\\_de\\_Colombia\\_Mexico\\_y\\_Trinidad\\_y\\_Tobago\\_2017-2020](http://www.researchgate.net/publication/353689995_Trata_de_mujeres_venezolanas_en_el_contexto_de_la_crisis_migratoria_y_de_refugiados_Respuestas_de_Colombia_Mexico_y_Trinidad_y_Tobago_2017-2020).

<sup>278</sup> From 2016 to 2018, Bogotá authorities assisted 93 human trafficking victims. Eighty-two percent were women and 75 percent were from

Colombian city bordering Venezuela, 80 percent of sex workers are Venezuelans and include many minors who may receive as little as the equivalent of about \$1.00 USD for sex, or a little more for sex without condoms.<sup>279</sup> Women and girls are also victims of femicide at a rate of at least two femicides of Venezuelan migrant women in Colombia per month since early 2018, “with no sign that the trend is abating.”<sup>280</sup>

The hook to attract and trap vulnerable Venezuelan women and young girls is to offer them what they want and desperately need. Their vulnerabilities make them susceptible to an array of tricks, lies, and deceptions. The most prevalent means of recruitment is to promise Venezuelan migrants and refugees decent jobs and permits to reside in Colombia, often with false promises of work, only to then be forced to sell drugs. Even more shocking was the recent discovery of a network “whose members posed as religious devotees to lure some 60 Venezuelans into their clutches.” Instead of spirituality, the victims “were forced to perform sexual acts in front of web cameras” and were found crammed into small, locked rooms.<sup>281</sup>

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Venezuela. According to reports, most of the victims were between the ages of 15 and 27, followed by adults between the ages of 28 and 59. Five of the cases involved trafficking of minors and only one case trafficking of older adults. Sixty-four of the 93 cases were for sexual exploitation while the rest involved trafficking for forced labor and servile marriage. *Venezolanos, los más afectados por trata de personas en Bogotá*, EL ESPECTADOR (Jul. 30, 2018), [www.elespectador.com/bogota/venezolanos-los-mas-afectados-por-trata-de-personas-en-bogota-articulo-803244/](http://www.elespectador.com/bogota/venezolanos-los-mas-afectados-por-trata-de-personas-en-bogota-articulo-803244/).

<sup>279</sup> Some pregnant Venezuelans have also “been denied pre-natal care, vaccines and medicines, despite a favorable decision of the Colombian Supreme Court and the recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW) concerning the protection of migrant women.” Vásquez, *supra* note 274.

<sup>280</sup> For an in depth report on femicide of Venezuelan migrants in Colombia between January and April 2019, see *Vivas Nos Queremos: Femicidio de Migrantes Venezolanas en Colombia Enero a Abril 2019*, RED FEMINISTA ANTILITARISTA, <http://observatoriofemicidioscolombia.org/attachments/articulo/391/Bolet%C3%ADn%20Vivas%20Nos%20Queremos%20-%20Femicidio%20de%20mujeres%20migrantes%20venezolanas%20en%20territorio%20colombiano%20-%20Enero%20.pdf>.

<sup>281</sup> *Human Trafficking in Colombia Increasingly Targets Venezuelan Migrants*, INSIGHT CRIME (Oct. 24, 2018), <https://insightcrime.org/news/brief/human-trafficking-in-colombia-increasingly-targets-venezuelan-migrants/>.

Vulnerabilities associated with sexual orientation and gender identity among the migrant and refugee population are also very concerning. In January 2020, the United Nations Committee on the Elimination of Racial Discrimination (CERD) also expressed concern over the increase in discriminatory practices, racial hatred, and xenophobia especially towards LGBTQ+ and HIV-positive migrants. The Committee recommended the Colombian government “take the necessary measures to prevent” discrimination “in their access to health services and work, and to facilitate their access to documentation, promote their integration and ensure that victims of acts of discrimination have access to effective remedies.”<sup>282</sup>

#### COMPOUNDED VULNERABILITY RESULTING FROM UNCERTAIN MIGRATORY STATUS

The prolonged crisis in Venezuela, the increase of irregular entry to Colombia, the emergence of an illegal economy of migrant smuggling in which the migrant population is victimized, and the risk to migrants’ integrity in returning to Venezuela results in hundreds of thousands of Venezuelans remaining in Colombia in vulnerable conditions and uncertain migratory status. Irregular migratory status facilitates the ability of criminal groups, and in some cases “police officers or members of host communities,” to exploit them with

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<sup>282</sup> *Concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia*, COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION ¶ 11 (Jan. 22, 2020) [www.undocs.org/en/CERD/C/COL/CO/17-19](http://www.undocs.org/en/CERD/C/COL/CO/17-19). (The Committee recommended the government to:

- a) Take effective measures to prevent and combat hate speech, incitement to racial discrimination and expressions of racism;
- b) Ensure that all cases of xenophobia, hate speech, incitement to racial discrimination and racially motivated violence are investigated and that those responsible are prosecuted and adequately punished.
- c) Carry out public awareness-raising campaigns on respect for diversity and the elimination of racial discrimination. Criminalize the dissemination of ideas that justify or promote racial hatred and prohibit organizations that promote and incite racial discrimination, as previously recommended by the Committee.)

impunity and creates a situation where the victims cannot obtain assistance from the host State.<sup>283</sup>

Most of the *caminantes* lack visas, documentation, or permission to stay,<sup>284</sup> and therefore lack access to formal work, basic sanitation, shelter, water, health, education, among other things.<sup>285</sup> Because of this, the migrants and refugees avoid reporting the exploitation and abuse they are subjected to for fear of being detained or deported.<sup>286</sup> They face discrimination, xenophobia, labor exploitation, as well as migratory-related crimes.<sup>287</sup> Some may become involved themselves in criminal activity. Arriving without resources and lacking legal papers to work with a need for money, migrants take whatever informal work they can find. Many are driven to sex work out of necessity, and there are plenty of “pimps” who are “often women previously introduced to sex work themselves, [who] are constantly looking for new recruits.”<sup>288</sup>

Worse still, migrant children are used by criminal groups for begging. Begging, child labor, and other forms of exploitation of minors are also unfortunately part of Colombia’s circumstances.<sup>289</sup>

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<sup>283</sup> *The Caminantes: Need and Vulnerabilities*, *supra* note 238, at 1.

<sup>284</sup> Many lack passports, some do not comply with the requirements for Special Permit of Permanence, and others fail to obtain a visa from the Ministry of Foreign Affairs. *See* Decree 216 of 2021, Diario Oficial No. 51.603, March 1, 2021, <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20216%20DEL%201%20DE%20MARZO%20DE%202021.pdf>.

<sup>285</sup> *See Venezuelan Refugee and Migrant Crisis*, INTERNATIONAL ORGANIZATION FOR MIGRATION (Mar. 2020), [www.iom.int/venezuelan-refugee-and-migrant-crisis](http://www.iom.int/venezuelan-refugee-and-migrant-crisis) (on file with the authors).

<sup>286</sup> *Id.*

<sup>287</sup> *See* Nossa, González, Lawrence, Daly et. al., *Xenofobia hacia personas Venezolanas: manifestaciones en cinco ciudades colombianas*, FRIEDRICH-EBERT-STIFTUNG (2021), <http://library.fes.de/pdf-files/bueros/kolumbien/17330.pdf>.

<sup>288</sup> INT’L CRISIS GROUP, *supra* note 227, at 10.

<sup>289</sup> *2020 Country Reports on Human Rights Practices: Colombia*, U.S. DEP’T OF STATE, [www.state.gov/reports/2020-country-reports-on-human-rights-practices/colombia/](http://www.state.gov/reports/2020-country-reports-on-human-rights-practices/colombia/) (last visited Feb. 23, 2022); *see also Child Labor and Forced Labor Reports: Colombia (2020)*, U.S. LAB. DEP’T, BUR. INT’L LAB. AFF., [www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia\\_](http://www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia_) (last visited Feb. 23, 2022) (Children in Colombia are subjected to the worst forms of child labor, including commercial sexual exploitation and illicit activities, many times as a result of human trafficking. During the COVID-19 pandemic in 2020, the government conducted virtual labor inspections and training, including on child labor. The U.S. Department of Labor reports that resource allocation for labor law

Authorities are aware of them because there are plenty of reports on those issues,<sup>290</sup> some are identified,<sup>291</sup> and many are posted on a dedicated government information website called News Monitoring – Crime of Trafficking in Persons.<sup>292</sup> “Parents rent out their children for the day to criminal groups and receive about 10,000 Colombian

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enforcement in rural areas is lacking, and that the existing social programs are deficient to address the scope of the worst forms of child labor. Even if agencies took action to combat child labor in 2020, labor inspections are insufficient, which hinders adequate enforcement. For instance, prohibitions against children working in mining and construction are often ignored. Under the law, the minimum age for employment is 15 years. It is 18 years of age for conducting hazardous work. Children under 15 years old are only allowed to work up till 14 hours a week, and only in the sectors of arts, sports, or recreational and cultural activities.); see *Child Labor and Forced Labor Reports: Colombia (2020)*, U.S. LAB. DEP’T, BUR. INT’L LAB. AFF., [www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia](http://www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia) (last visited Feb. 23, 2022) (Various U.S. Labor Department-funded projects have also addressed and called attention to child labor in Colombia. For example: “*We Are a Treasure* (Somos Tesoro)” to combat child labor and promote safe work in the mining sector; *Future Palm*, (Palma Futuro), preventing and reducing child labor and forced labor in palm oil supply chains; *Colombia Advances* (Colombia Avanza), builds civil society’s capacity to combat child labor and other abuses in Colombia’s coffee sector; and Cooperation on Fair, Free and Equitable Employment (COFFEE), to help businesses establish systems to prevent, detect, and eliminate child labor and other forms of exploitation from their supply chains.).

<sup>290</sup> See Carlos Ernesto Sánchez Hernández, *Viajes y turismo asociados a la explotación sexual comercial de niños, niñas y adolescentes en Colombia: pornografía infantil*, 51 REVISTA IUSTA (2019); see also Maria Cristina Quevedo-Gómez et al., *Social inequalities, sexual tourism and HIV in Cartagena, Colombia: an ethnographic study*, 20:1208 BMC PUBLIC HEALTH (2020).

<sup>291</sup> *Descubierta mafia israelí responsable de explotación y esclavitud sexual de niñas, adolescentes y mujeres en Colombia*, FISCALIA GENERAL (Dec. 10, 2018), [www.fiscalia.gov.co/colombia/noticias/descubierta-mafia-israeli-responsable-de-explotacion-y-esclavitud-sexual-de-ninas-adolescentes-y-mujeres-en-colombia/](http://www.fiscalia.gov.co/colombia/noticias/descubierta-mafia-israeli-responsable-de-explotacion-y-esclavitud-sexual-de-ninas-adolescentes-y-mujeres-en-colombia/) (Police and prosecutors (“Fiscalía”) carried out a simultaneous operation in Cartagena, Santa Marta, Bogotá, and Medellín, in which they identified and dismantled an international criminal network dedicated to sexual exploitation.); see also *Lista de Chequeo de Investigación y Judicialización de Violencia Sexual, Module 2*, FISCALIA GENERAL DE LA NACION (Aug. 2017), [www.fiscalia.gov.co/colombia/wp-content/uploads/Modulo-2.pdf](http://www.fiscalia.gov.co/colombia/wp-content/uploads/Modulo-2.pdf) (Investigators have developed a checklist when investigating violence against women in which sex tourism is included.).

<sup>292</sup> *Monitoreo de Noticias*, MINISTERIO DEL INTERIOR, <https://tratadepersonas.mininterior.gov.co/observatorio-del-delito-trata-de-personas/monitoreo-de-noticias> (last visited Feb. 23, 2022).

pesos (about \$2.80 USD), plus an additional average of 5,000 pesos (about \$1.30 USD) in earnings.”<sup>293</sup> Some of these children are raped.<sup>294</sup> The problem is compounded for children because many do not have access to identification documents, which implies that legally, they do not exist and are essentially stateless.<sup>295</sup>

Migrants’ irregular status forces many of them to accept unauthorized employment under miserable conditions. They are often recruited for involvement in illegal activities including fuel smuggling, manual labor in support of drug trafficking, and transporting gold by foot across regulated and unregulated border crossings.<sup>296</sup> Even more concerning is that locating victims has proven highly challenging since authorities are often unwilling to identify them, as doing so may implicate law enforcement officials involved in migrant exploitation schemes and human trafficking networks. In several cases, it has been reported that authorities have extorted payments from Venezuelan migrants and refugees to cross the border and, if the victims cannot pay the fees, they are often sexually abused.<sup>297</sup> Despite the horrendous experiences victims endure, they often refuse to report these experiences because they fear deportation to Venezuela.<sup>298</sup>

The Colombian government has attempted to address the limitations derived from migratory status, and to grant benefits and protect this vulnerable population. In 2018, Colombia developed a

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<sup>293</sup> *Id.* at 28.

<sup>294</sup> *Id.*

<sup>295</sup> Losada, *supra* note 146.

<sup>296</sup> *The shadow war on the Venezuela–Colombia border*, THE NEW HUMANITARIAN (May 5, 2020), [www.thenewhumanitarian.org/feature/2020/05/05/war-Venezuela-Colombia-border](http://www.thenewhumanitarian.org/feature/2020/05/05/war-Venezuela-Colombia-border).

<sup>297</sup> See Anastasia Moloney, *Venezuela crisis forces women to sell sex in Colombia, fuels slavery risk*, REUTERS (June 5, 2017), <https://www.reuters.com/article/us-venezuela-colombia-trafficking/venezuela-crisis-forces-women-to-sell-sex-in-colombia-fuels-slavery-risk-idUSKBN18W1EX>.

<sup>298</sup> Devon Cone and Melanie Teff, *Searching for Safety: Confronting Sexual Exploitation and Trafficking of Venezuelan Women and Girls*, REFUGEES INTERNATIONAL 9, (Aug. 2019), <https://www.refugeesinternational.org/reports/2019/8/2/searching-for-safety-venezuela-trafficking>. (“Victims often fear that reporting could lead to violent repercussions against themselves and their family members by traffickers. Trafficking is also underreported because undocumented women and girls may fear negative consequences, such as deportation, if they make themselves known to the authorities by making a complaint.”)

“Strategy to Care for Migration from Venezuela”<sup>299</sup> to establish and implement policies targeting health, education, early childhood, childhood and adolescence, work, housing, and security. Emphasis was placed on ethnic determinants in developing policies applicable to specific groups of migrants as a means to alleviate violence and reduce prejudice toward Venezuelans and other migrants. For instance, for those of a particular ethnicity—indigenous, Afro-descendants, Romani, and ethnic Caribbean creoles—it is “necessary to determine care routes with an ethnic focus to allow these specific populations to access the institutional offer.”<sup>300</sup> The main feature of the Strategy was that the government should promote Venezuelan migration as an opportunity:

Despite the enormous challenges posed by migration, there are a number of benefits that migration can generate, not only for migrants who can increase their standard of living by settling in places with greater economic opportunities . . . but also for the host country.<sup>301</sup>

In March 2021, the government announced the creation of the *Temporary Statute of Protection for Venezuelan Migrants* (TPS or ETPMV, for its acronym in Spanish).<sup>302</sup> The ETPMV allows the

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<sup>299</sup> Document CONPES 3950, *Estrategia Para La Atención De La Migración Desde Venezuela* Consejo Nacional De Política Económica Y Social República De Colombia Departamento Nacional De Planeación (CONPES), at \*69 (Nov. 23, 2018), <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%c3%b3micos/3950.pdf>.

<sup>300</sup> *Estrategia Para La Atención De La Migración Desde Venezuela*, CONSEJO NACIONAL DE POLÍTICA ECONÓMICA Y SOCIAL REPÚBLICA DE COLOMBIA DEPARTAMENTO NACIONAL DE PLANEACIÓN 69 (Nov. 23, 2018), <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%c3%b3micos/3950.pdf>.

<sup>301</sup> *Id.* at 26 (Sección 2.4. Justificación de la política: la migración como oportunidad: “A pesar de los enormes retos que plantea la migración, existe una serie de beneficios que esta puede generar, no solo para los migrantes que pueden aumentar su nivel de vida al establecerse en lugares con mayores oportunidades económicas (Mergo, 2016), sino también para el país receptor y el país de origen de los migrantes.”)

<sup>302</sup> *Estatuto Temporal de Protección para Migrantes Venezolanos*, L. 216 of 2021, Diario Oficial No. 51.603, March 1, 2021, <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%202016%20DEL%201%20DE%20MARZO%20DE%202021.pdf> (establishes a visa registration process legalizing the immigration status of more than 800,000 undocumented Venezuelans, or about 50 percent of the more than 1.7 million Venezuelans displaced to Colombia. The program is implemented in three different stages).

authorities to assemble information from migrants such as their names, gender, and age to generate effective public policies to address their needs and expectations. The ETPMV also provides temporary protected legal status for Venezuelan migrants and refugees and gives them up to ten years to acquire a resident visa.<sup>303</sup>

These and other policies reflect the government's commitment to upholding migrants' dignity and rights. However, proper implementation of good policy is key, and if requirements are not easy to meet (such as finding a solution to the chronic problem of lack of migrant identification and status documentation), many migrants could be forced deeper into the shadows.<sup>304</sup> Policies for upholding migrants' dignity and rights go hand in hand with the duty of the government to address discrimination.

Furthermore, the recognition of Venezuelan migrants as *refugees* is imperative not only to protect the victims and to expand the protections of the number of migrants to legalize their status, but it would also assist the host countries' authorities to undertake a smoother tracking and management of the migration process. An organized, efficient mechanism should be implemented to facilitate the administrative steps for migrants to apply for refugee status, starting with a coordinated response between Venezuela (the country in crisis) and Colombia (the hosting country). Monitoring can

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<sup>303</sup> *Id.* at 17. Under Article 4, ETPMV applies to Venezuelan migrants who wish to remain temporarily in Colombia, and who meet any of the following conditions:

1. Being in Colombian territory on a regular basis as holders of a Permit of Entry and Permanence (PIP), Temporary Permit of Permanence (PTP) or of a Special Permit of Permanence (PEP) in force, whatever its issuance phase, including the PEPFF.
2. Being in Colombian territory on a regular basis as holders of a Safe-conduct SC-2 within the framework of the processing of an application for recognition of refugee status.
3. Being in Colombian territory irregularly on January 31, 2021.

Entering Colombian territory on a regular basis through the respective legally authorized Immigration Control Post, complying with the requirements established in the immigration regulations, during the first two (2) years of validity of this Statute.

<sup>304</sup> Natalia Banulescu-Bogdan and Diego Chaves, *What Comes Next Now that Colombia Has Taken a Historic Step on Migration?*, MIGRATION PORTAL (Mar. 2021) [www.migrationpolicy.org/news/colombia-historic-legalization-what-next](http://www.migrationpolicy.org/news/colombia-historic-legalization-what-next).

also help protect the migrants before, during, and following resettlement.

COLOMBIA'S RESPONSIBILITY UNDER INTERNATIONAL LAW—LAW  
AND POLICY DISCONNECTED FROM EXECUTION

Post-conflict nations often encounter high levels of economic and socio-political instability. They face critical challenges in achieving a stable rule of law and implementing sound policies to support sustained poverty eradication, peace, security, domestic stability, respect for human rights. Organized crime and corrupt actors exploit weak institutions. Corruption becomes rampant,<sup>305</sup> and fighting it becomes a triviality instead of a priority. Dysfunctional institutions offer criminal networks ideal trafficking conditions. Ex-combatants, gangs, and warlords turn to human trafficking to replenish revenue losses resulting from the national peace agreement.

Vulnerabilities transcend the point at which hostilities ceased. Children, women, and girls victimized in many horrific ways during years of internal armed conflict are particularly at high risk of being re-victimized. A post-conflict nation needs time and money to rebuild, reform, and restore institutions and broken communities, attend to the needs of IDPs and provide the much-needed necessities and services to extricate them from their exposure to vulnerability. Hence, post-conflict Colombia, must find a way to put aside its political acrimony and attend to its citizens, thereby taking responsibility under international law.

Colombia's legal framework to combat human trafficking is generally comprehensive but does not comply fully with the Palermo Protocol and other international standards regarding prioritizing victims' rights, nor by standards on prosecuting individuals and

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<sup>305</sup> FOREWORD, U.N. CONVENTION AGAINST CORRUPTION, CH. VII AT 2349 U.N.T.S. 41 (2003). "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish . . . . Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment."

organizations responsible for the crimes<sup>306</sup>. In fact, some key elements in the framework are missing. In addition to ratifying the Palermo Protocol, Colombia ratified several international instruments specifically related to the trafficking of persons, including the International Convention for the Suppression of Traffic of Women and Children<sup>307</sup> and various ILO Conventions related to forced labor.<sup>308</sup> Colombia also ratified several instruments germane to human rights over the course of several decades to debatable effect.<sup>309</sup>

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<sup>306</sup> Kelly H Heinrich, “*Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking Victims?*” HUMAN RIGHTS BRIEF (2010), <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1145&context=hrbrief>.

<sup>307</sup> International Convention for the Suppression of the Traffic in Women and Children, Sept. 30, 1921, 9 L.N.T.S. 415.

<sup>308</sup> Abolition of Forced Labour Convention (No. 105), June 25, 1957, 320 U.N.T.S. 291, ratified 1963; International Labour Organization Convention Concerning Forced or Compulsory Labour (No. 29), June 28, 1930, 39 U.N.T.S. 55; Worst Forms of Child Labor Convention, No. 182, 17 Jun 1999 ILC 87, I.L.O.; see also Int’l Labour Organization (ILO), Ratifications for Colombia, [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:102595](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:102595).

<sup>309</sup> Colombia has ratified the following international instruments: (i) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), G.A. Res. 34/180, (Sept. 3, 1981), 1249 U.N.T.S. 13, ratified 1982; (ii) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (OP-CEDAW), Dec. 10, 1999, 2131 U.N.T.S. 83, ratified 2007; (iii) International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171, 173, ratified 1969; (iv) International Covenant on Economic, Social and Cultural Rights (ICESCR), U.N. Doc. E/C.12/2000/13 (Oct. 2, 2000), ratified 1969; (v) Convention on the Rights of the Child (CRC), Nov. 20, 1989, 1577 U.N.T.S. 3, ratified 1991; (vi) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, ratified 2003; (vii) Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratified 2005; (viii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), Dec. 18, 1990, 2220 U.N.T.S. 3, ratified 1995; and (ix) Convention on the Rights of Persons with Disabilities (CRPD), Dec. 13, 2006, 2515 U.N.T.S. 3, ratified 2011. See UNHCR Status of Ratification Interactive Dashboard, <https://indicators.ohchr.org/>.

The government incorporated those international obligations into domestic legislation<sup>310</sup> with the Law 800 of 2003<sup>311</sup> by including the United Nations Convention against Crime Transnational Organization and the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,<sup>312</sup> and enacting numerous subsequent laws and policies.<sup>313</sup> Trafficking of

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<sup>310</sup> COLOMBIA'S CONSTITUTION OF 1991 WITH AMENDMENTS THROUGH 2013 22, CONSTITUTE PROJECT (Aug. 26, 2021), [www.constituteproject.org/constitution/Colombia\\_2013.pdf?lang=en](http://www.constituteproject.org/constitution/Colombia_2013.pdf?lang=en). Article 13 of the Constitution states: In accordance with art. 93 of the 1991 Colombian Constitution, treaties ratified by the Colombian Congress have constitutional rank All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, political opinion, or philosophy. The State shall promote the conditions so that equality may be real and effective and shall adopt measures in favor of groups that are discriminated against or marginalized. The State shall especially protect those individuals who on account of their economic, physical, or mental condition are in obviously vulnerable circumstances and shall sanction the abuses or ill-treatment perpetrated against them Article 17 of the Colombian Constitution also outlaws slavery and servitude in no uncertain terms: "Slavery, servitude, and the slave trade in all forms are prohibited." See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COLOMBIA (1991), [www.secretariassenado.gov.co/senado/base-doc/constitucion\\_politica\\_1991.html](http://www.secretariassenado.gov.co/senado/base-doc/constitucion_politica_1991.html).

<sup>311</sup> L. 800 of 2003, Diario Oficial No. 45.131, Mar. 18, 2003, (Colom.).

<sup>312</sup> *Id.*

<sup>313</sup> Legislation for victims' assistance includes:

L. 599 of 2000, Diario Oficial No. 44.097 de 24 de julio de 2000 amending the Colombian Penal Code; L. 747 of 2002, Diario Oficial 44.872, de 19 de julio de 2002, adding crime of trafficking in persons, amending art. 188 of the Colombian Penal Code; L. 800 of 2003, Diario Oficial No. 45.131, de 18 de marzo de 2003, approving the Palermo Protocol; L. 985 of 2005, Diario Oficial No. 46.015 de 29 de agosto de 2005, adopting measures against human trafficking and rules for the care and protection of victims; Decree 4319 of 2006, Diario Oficial No. 46.472, December 4, 2006, which establishes the organization and operation of the special account created for the fight against human trafficking. In addition, Decree 4786 of 2008, Diario Oficial No. 47.208, December 19, 2008, established a national strategy for combating human trafficking. Decree 1066 of 2015, Diario Oficial No. 49.523, May 26, 2015, established a Unique Regulatory Decree mandating services and support for human trafficking victims and their dependents, including immediate and mediate medical and psychological assistance, education, job training, human development, integration to productive projects or link to formal employment, legal advice and support were contemplated and judicial representation, dignified accommodation in safe spaces and comfortable facilities, transportation service, and protection of relatives up to the first degree of consanguinity

persons became a crime when Law 747 of 2002<sup>314</sup> amended the Penal Code with the addition of Article 188–A,<sup>315</sup> criminalizing individuals who participated in transferring a person, including migrants, from one place to another—within the national territory or beyond national boundaries—for exploitative purposes.<sup>316</sup> However, the definition of human trafficking under Art. 188–A only contains two elements, the act and the purpose, and misses an essential component: to complete the definition of human trafficking, the law must include “the method used to accomplish the act.”<sup>317</sup> The means

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for the victims. Furthermore, Decree 1036 of 2016, Diario Oficial No. 49.914, June 24, 2016, approved the Comprehensive National Strategy on human trafficking for years 2016–2018. L. 747 of 2002, Diario Oficial No. 44.872, July 19, 2002, amended the Penal Code with the addition of Art. 188–A. *See IV Balance de la implementación de las políticas anti-trata en Colombia*, CORPORACIÓN SERVOZ & CORPORACIÓN ESPACIOS DE MUJER (2019), [www.espaciosdemujer.org/wp-content/uploads/IV-BALANCE-2019.pdf](http://www.espaciosdemujer.org/wp-content/uploads/IV-BALANCE-2019.pdf). (In order to prevent trafficking, the National Government promoted the design and implementation of strategies aimed at informing, sensitizing and empowering the population and officials to confront this problem. Notable initiatives include the Phone Line to Fight Human Trafficking; as well as public information campaigns such as With Human Trafficking, There Is NO Deal; and Let’s Act on the Web, Let’s Be Aware of Trafficking. In addition to signing the Palermo Protocol and eight bilateral agreements with other States, Colombia is part of the Program of Global Action to Prevent and Combat Trafficking in Persons and Smuggling of Migrants (GLO.ACT), and Conpes 3950 of 2018, established by the Colombian Interior Ministry’s Consejo Nacional de Política Económica y Social, which created a strategy to care for migration from Venezuela, including human trafficking.) Consejo Nacional De Política Económica Y Social República De Colombia Departamento Nacional De Planeación (CONPES), *Estrategia Para La Atención De La Migración Desde Venezuela*, at 69 (Nov. 23, 2018), <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%c3%b3micos/3950.pdf> (on file with the authors).

<sup>314</sup> L. 747 of 2002, Diario Oficial No. 44.872, July 19, 2002 (Colom.).

<sup>315</sup> C. PEN. ART. 188–A.

<sup>316</sup> L. 747 of 2002, *supra* note 313.

<sup>317</sup> *Annex II: The Definition of trafficking in persons and the mandate for the Global Report*, U.N. OFFICE ON DRUGS AND CRIME (2016), [www.unodc.org/documents/data-and-analysis/glotip/Annex\\_II\\_-\\_Definition\\_and\\_mandate.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Annex_II_-_Definition_and_mandate.pdf).

(Trafficking in persons is a process comprising three distinct elements: the act, the means and the purpose (which is always exploitation).” The “means” refers to the method used to accomplish “the act”. “Possible means are the threat or use of force, deception, coercion, abduction, fraud, abuse of power or a position of vulnerability, or giving payments or benefits.” While these terms are not necessarily precise from a legal point of view and may be defined differently in different jurisdictions, their inclusion completes the human trafficking process.)

determine the actions by which people are exploited—abduction, fraud, deception, coercion, abuse of power of the position of vulnerability, giving/receiving payment/benefits to attain the consent of a person having control over another person.<sup>318</sup> Sex is a big business, and legal in Colombia as Paid Sexual Activities,<sup>319</sup> which requires a

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<sup>318</sup> Palermo Protocol, art. 3 states: “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, **by means** (emphasis added) 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 . . .

Art, 188–A of the Colombian Penal Code only includes two elements of the criminal conduct:

1. The acts: Whoever recruits, transfers, houses, or receives a person, within the national territory or abroad, for the purpose of exploitation . . .
2. The purpose: For the purposes of this article, exploitation shall be understood as obtaining economic gain or any other benefit for oneself 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. slavery, servitude, exploitation of the begging of others, servile marriage, the extraction of organs, sex tourism or other forms of exploitation.

The consent given by the victim to any form of exploitation in this article shall not constitute grounds for exoneration from criminal responsibility. [Artículo 188–A. 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 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. El consentimiento dado por la víctima a cualquier forma de explotación definida en este artículo no constituirá causal de exoneration de la responsabilidad penal.] Código Penal Artículo 188–A, [https://leyes.co/codigo\\_penal/188–A.htm](https://leyes.co/codigo_penal/188-A.htm).

<sup>319</sup> For instance, the District of Bogotá has a Public Policy on Paid Sexual Activities (PPASP). See Mayor of Bogotá D.C., *Política pública de actividades sexuales pagadas 2020 – 2029*, Documento Conpes 11, District Secretary for

much higher level of investigation to sort out who are trafficking victims than most law enforcement officials want to go.<sup>320</sup> The effect of this missing means element is reflected in the lack of prosecutions and proper sanctions. Authorities often charge traffickers not as traffickers but as criminals engaged in lesser crimes, such as induction into prostitution or pimping.

Were the means element present, investigators would question whether the individual that is engaged in prostitution is doing so freely or because of force, fraud, coercion, or abuse of vulnerabilities, in order to properly identify human trafficking. Investigators focus only on what they see—the prostitution, the begging—instead of inquiring whether the acts are the result of someone having lost the right to freedom to decide and to act, or the result of someone being threatened, abused, or tortured into acquiescence. Looking at instances of begging, would an investigator consider the abuse of power or of a condition of *vulnerability* by a parent or family member who forces a child to beg on the street, or worse, rents the child out to beg?<sup>321</sup> The result of the existing law is charging lesser crimes, if at all, and goes also to the failure of victim identification.<sup>322</sup> Investigators are not looking at whether a victim was forced

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Women, District Registry No. 6704, Dec. 27, 2019, [www.sdmujer.gov.co/sites/default/files/2021-02/documentos/conpes\\_11\\_sdmujer\\_doc\\_conpes\\_pp\\_asp-convertido.pdf](http://www.sdmujer.gov.co/sites/default/files/2021-02/documentos/conpes_11_sdmujer_doc_conpes_pp_asp-convertido.pdf).

<sup>320</sup> Heidi Tamayo Ortiz, *La prostitución se tomó la vida nocturna del parque Lleras*, EL COLOMBIANO (Sept. 27, 2021); Author's note (Luz Nagle): Parque Lleras is a centrally located hotel, restaurant and bar venue in the very upscale El Poblado financial district of Medellín. Having lived for several years three blocks from this location, seeing sex tourism out in the open day and night was a constant reminder that the government is too weak or indifferent to protecting citizens and migrants from sexual exploitation and forced servitude. Sex tourism is big business, after all. When I interviewed a police commander in El Poblado about sex trafficking, his answer was that the women are all prostitutes and not trafficking victims.

<sup>321</sup> Colombian authorities launched efforts in 2020 to combat child begging, but they are focusing only on getting children off the street and fail many who may be trafficking victims and in need of protection from the perpetrators who are exploiting them. Sarah Hucal, *How Bogotá is combating child begging*, ABC NEWS (Apr. 20, 2020) (discussing government efforts to get Venezuelan migrant children off the streets).

<sup>322</sup> “Implementation of proactive victim identification, funded victims services, and alternatives to detention and deportation would respect trafficked persons’ human rights and yield better prosecution results.”, Kelly Hyland Heinrich,

or coerced. All they are looking for is the first and last elements—were they harbored, transported, housed, and was there economic gain or any other benefit through various forms of exploitation.<sup>323</sup>

The “means” element goes to the heart of the Palermo Protocol, being both a criminal justice and a human rights instrument. The drafters of the Protocol understood that it is not possible to “consent” to trafficking, and that when the personal freedom to decide is taken away by some means, consent is irrelevant.<sup>324</sup> Moreover, using the means element established by the Protocol allows the identification of several human rights violations suffered by the victim (freedom of movement, freedom to decide, freedom from torture, abuse and degrading treatment, etc.). The means element also guides the type of protection and assistance that must be extended to the victims who have experienced physical and emotional trauma. Further, the means element helps to understand the vulnerability factors to tackle them appropriately through policies and legislation.

If the government is actually intent on effectively fighting human trafficking, it must include the means element because such will force investigators to look for patterns, including the identification of those responsible for making job offers to migrants, what methods are they using to publicize job offers (social media, message boards, flyers in cantinas and bars, at border crossings, etc.), what the job offers entail, and whether they are legitimate. In cases of “prostitution and escorting,” authorities are missing the opportunity to combat trafficking for sexual exploitation. Mapping the tactics of the traffickers in known locations where so-called prostitution and escorting occurs (often in affluent tourist areas, like Cartagena, Santa Marta, and Medellín) is crucial to distinguishing human trafficking from voluntary sex work.<sup>325</sup> Rather than investigating and making arrests, authorities are giving a “get out of jail free card” not only to those who exploit, but also to all members of the

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*Ten Years After the Palermo Protocol: Where are Protections for Human Trafficking Victims?*, 18, HUMAN RIGHTS BRIEF, 2, 2 (2010).

<sup>323</sup> C. PEN. ART. 188-A.

<sup>324</sup> United Nations Sources – R 21.7.

<sup>325</sup> See *Preocupación en Medellín por aumento del turismo sexual*, INFOBAE (Sept. 28, 2021), [www.infobae.com/america/colombia/2021/09/28/preocupacion-en-medellin-por-aumento-del-turismo-sexual/](http://www.infobae.com/america/colombia/2021/09/28/preocupacion-en-medellin-por-aumento-del-turismo-sexual/) (Travelers from the United States, Europe, Asia, Mexico, Puerto Rico, among others, go to Medellín to engage in the city’s burgeoning sex tourism industry).

trafficking conspiracy—tour operators, homeowners, apartment managers, taxi drivers, and other facilitators. Thus, including the means element can ultimately increase the likelihood of human traffickers being held liable for their crimes by Colombian authorities.

The current approach taken by the Colombian government to address the root causes of the human trafficking problem is simply insufficient. The government is trying to meet international responsibility through bilateral and multilateral cooperation, various policies,<sup>326</sup> and additional legislative measures.<sup>327</sup> As required by the Palermo Protocol, Colombia added a human rights response to the existing criminal justice in order to protect and respect the human rights of trafficked persons.<sup>328</sup> In fact, Law 985 of 2005<sup>329</sup> adopts several “measures necessary to guarantee respect for the human rights of the victims” and those at risk. The Law also creates a *National Strategy for the Fight Against Human Trafficking* in which

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<sup>326</sup> The government increases human trafficking awareness through various campaigns, such as *#AnteLaTrataNoSeHaga*, targeting border population, <https://costarica.embajada.gov.co/node/videos/12220/video-antelatratatnosehaga>. There is also the *#EsoEsCuento* campaign led by the Office of the Attorney General with the support of national authorities and international organizations, including the UNODC under its Global Action Program to Combat Trafficking in Persons and Migrant Trafficking, [www.esoescuento.com/](http://www.esoescuento.com/). See also UNODC, *Campaña para la prevención del delito de trata de personas #EsoEsCuento fue presentada durante CCPCJ en Viena* (May 17, 2018), [www.unodc.org/colombia/en/campaa-para-la-prevencion-del-delito-de-trata-de-personas-esoescuento-fue-presentada-durante-el-ccpcj27-en-viena.html](http://www.unodc.org/colombia/en/campaa-para-la-prevencion-del-delito-de-trata-de-personas-esoescuento-fue-presentada-durante-el-ccpcj27-en-viena.html).

<sup>327</sup> Art. 9 of the Palermo Protocol sets out various measures States are to implement in preventing trafficking. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children – Annex II to the United Nations Convention Against Transnational Organized Crime, art. 3. *Palermo Protocol*, *supra* note 10.

<sup>328</sup> In the Palermo Protocol, the rights of trafficked persons are fundamental, as reflected in the following articles: Article 2(b), which states that the Protocol is intended to protect and assist the victims of trafficking, with full respect for their human rights; and Article 6, which refers to the various types of assistance to and protection of trafficking victims, including, protecting their privacy and identity, providing for the physical, psychological, and social recovery, housing, counselling and information regarding their legal rights, in a language victims can understand. Also, States must provide assistance and protection with due regard “to the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.” *Palermo Protocol*, *supra* note 10.

<sup>329</sup> L. 985 of 2005, Diario Oficial No. 46.015, Aug. 29, 2005.

human rights become paramount to preventing trafficking, and the government “consider[s] factors that increase vulnerability to trafficking, including inequality, poverty, and discrimination in all its forms, and [addresses] the cultural and ethnic diversity of possible victims.”<sup>330</sup>

The National Strategy established comprehensive policies, programs, and other criteria. Under the Strategy, the government committed to monitoring, evaluating, coordinating, and sustaining a different focus on (1) human rights, (2) gender, (3) generation and age, and (4) differences (recognizing particularities of groups).<sup>331</sup> The Strategy’s goals include informing, protecting, and assisting

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<sup>330</sup> The goal of the law is “to adopt prevention, protection and assistance measures necessary to guarantee respect for the human rights of the victims and possible victims of human trafficking,” (Art. 1). The State will act to prevent human rights violations “by reason of human trafficking.” (Art. 2 (2)). The law further states that the National Strategy is to include the “design and execution of assistance programs aimed at their physical, psychological and social recovery, and based on the protection of their Rights.” These actions must guarantee the protection of the privacy and identity of the victims, and will include, at a minimum:

- Immediate assistance to return victims to their place of origin if they request it, security, adequate accommodation, medical, psychological and material assistance, and information and legal advice regarding the rights and legal procedures (Art. 7 (1)).
- Mediate assistance in providing job training and support in finding opportunities for work; and legal support to take legal actions to demand reparation (Art. 7 (2)).

It conditions “mediate assistance” to victims’ reporting trafficking to the authorities. “This condition may not be required for the provision of the immediate assistance.” (Art. 7 (1)). The Constitutional Court held that this requirement is “disproportionate, unnecessary and harmful of victims’ fundamental rights.” Sentencia C-470/16. The Law also establishes national and regional committees to strengthen the act further. *See also IV Balance de la implementación de las políticas anti-trata en Colombia, supra* note 313.

<sup>331</sup> The focus differential recognizes differences, inequities and inequalities faced by different population groups due to the confluence and intersectionality of characteristics, situations or conditions, such as ethnic-racial (indigenous peoples, Afro-descendants, ethnic Caribbean creoles (Raizales and palenqueras), Romani and others), sexual and gender orientation (women and gender identity and sexual orientation), class (belonging to or originating in an urban or rural area, having a disability, being a victim of the armed conflict, generational (boys, girls, adolescents), among others. All are factors that can influence the degree of vulnerability and risk to being trafficked. Decreto 1036 de 2016, Diario Oficial No. 49.914 de 24 de junio de 2016, art. 4.4.

victims, strengthening investigations, promoting inter-institutional work and coordination, international cooperation, encouraging research to generate information relative to causes, modalities, purposes of exploitation, trends, and regional particularities for consequences of trafficking.<sup>332</sup>

In support of its prevention measures, strategies were established to inform, sensitize, and empower the population and officials.<sup>333</sup> These strategies resulted from collaboration among the different stakeholders, including the national Inter-Institutional Committee to Fight Human Trafficking, as well as departmental, municipal and district committees, and civil society organizations. Committees at the regional and local levels are responsible for coordinating prevention, investigation, prosecution, and assistance to victims for acts in their respective territories.<sup>334</sup> However, few departments, districts, and municipal governments have budgets<sup>335</sup> suitable to implement the national strategy to combat human trafficking, and most of them approach it from a security and criminal prosecution perspective and not as a victim-centered approach (victim protection

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<sup>332</sup> Decreto 1036 de 2016, Diario Oficial No. 49.914 de 24 de junio de 2016, art. 5.2.

<sup>333</sup> In order to prevent trafficking, the National Government promoted the design and implementation of strategies aimed at informing, sensitizing and empowering the population and officials to confront this problem. Notable initiatives include the Phone Line to Fight Human Trafficking; as well as public information campaigns such as *With human trafficking, there is NO deal*, and *Let's act on the web, let's be aware of trafficking*. In addition to signing the Palermo Protocol and eight bilateral agreements with other States, Colombia is part of the Program of Global Action to Prevent and Combat Trafficking in Persons and Smuggling of Migrants (GLO.ACT), and Conpes 3950 of 2018, established by the Colombian Interior Ministry's Consejo Nacional de Política Económica y Social which created a strategy to care for migration from Venezuela and including human trafficking. Consejo Nacional De Política Económica Y Social República De Colombia Departamento Nacional De Planeación (CONPES), *Estrategia Para La Atención De La Migración Desde Venezuela*, at 69 (Nov. 23, 2018), <https://colaboracion.dnp.gov.co/CDT/Conpes/Econ/%c3%b3micos/3950.pdf> (on file with the authors).

<sup>334</sup> Under ART. 2.2.3.4.1, ¶ 2, the Strategy continues in force until the government adopts a new one. Decree 1036 of 2016, D.O. No. 49.914, June 24, 2016 (approving the Comprehensive National Strategy on human trafficking for years 2016–2018).

<sup>335</sup> *IV Balance de la implementación de las políticas anti-trata en Colombia*, *supra* note 313 at 4(4).

and assistance). Helping female victims is not a concept in which they are necessarily willing to invest time and training, when many misogynistic male authorities, including police officers of prosecutors, may be prone to dismiss them as “prostitutes”. One wonders if the government has taken any practical steps required to ensure that victims of trafficking are quickly and accurately identified.

To allow the nation to face the current human trafficking trends, the government adopted a new *National Strategy for the Fight Against Trafficking in Persons* for 2020–2024.<sup>336</sup> This revised Strategy introduces new approaches and a novel course of action. It prioritizes migration and border-related risks, including armed conflict, violence, and sex trafficking, and emphasizes prevention among migrant populations. It is organized around specific approaches.<sup>337</sup> And while the prior Strategy had four points of focus, this new one has ten: (1) human rights, (2) gender, (3) sexual orientation and diverse gender identities;<sup>338</sup> (4) life course;<sup>339</sup> (5) differentials;<sup>340</sup> (6) ethnic identity; (7) intersectionality; (8) territorial

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<sup>336</sup> Decree 1818 of 2020, Diario Oficial No. 51.544, Dec. 31, 2020, *Estrategia Nacional para la Lucha Contra la trata de Personas 2020–2024*, [www.funcion-publica.gov.co/eva/gestornormativo/norma.php?i=154426](http://www.funcion-publica.gov.co/eva/gestornormativo/norma.php?i=154426).

<sup>337</sup> The axis is the implementation paths, and there are several: coordination and sustainability; protection and assistance; investigation and judicialization; knowledge generation and management; prevention; international cooperation; migration, and border security. This last one addresses the geopolitical importance of Colombian borders due to drug trafficking and routes used by organized crime, and stresses that to combat trafficking in persons in such a context requires the planning of cooperation with neighboring countries, with those from the hemisphere, and with the assistance of international organizations. *Id.*

<sup>338</sup> *Id.* at art. 4.2.3. (recognizing discrimination and marginalization of people with diverse sexual orientations or gender identities, and the importance of understanding human trafficking based on discrimination, exclusion, and marginalization of Lesbian, Gay, Bisexual, Transsexual, Intersex and Queer (LGBTIQ) individuals or individuals with diverse gender orientations or expressions; appropriate policies and state actions require understanding of the dynamics, contexts and environments that affect them.)

<sup>339</sup> *Id.* at art. 4.2.4. (facilitating the recognition of events in the lives of human beings, according to one’s particularities—biological, psychosocial, emotional, among other factors—which in turn are affected differentially by individual behavior, social and economic relations, environment, and policies specific to the context in which people live).

<sup>340</sup> *Id.* at art. 4.2.5. (providing guidance for the action of the State while appreciating and recognizing the difference and diversity in social classes and human groups since these characteristics, based on origin, territory, ethnicity,

association;<sup>341</sup> (9) border and migration security;<sup>342</sup> and (10) criminological study.<sup>343</sup> In an effort to improve institutional capacity for the exchange of information and best practices in the fight against human trafficking, the Strategy incorporates a specific approach to address the emerging challenges derived from the Venezuelan migration.<sup>344</sup> However, as Women’s Link Worldwide has warned, “by not establishing specific and uniform criteria for the entire territory, the care and protection of victims depends on the will and capacity of local authorities, resulting in serious geographical differences.”<sup>345</sup>

As to the issue of human trafficking in the forced recruitment of children and women, Colombia considers forced conscription by illegal armed and organized criminal groups to be crimes under humanitarian law rather than a crime of human trafficking.<sup>346</sup> This disconnect in official policy hinders the gathering of meaningful

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language and customs, as well as what concerns gender identity and sexual orientation, along with other elements of social construction, demand from public entities and from society in general the ability to apprehend and adapt their actions to the multiplicity of populations).

<sup>341</sup> *Id.* at art. 4.2.8. (describing that since crime trends change according to cultural, ethnic, economic, political, legal, social and geographical regions, this approach seeks to identify the divergences between regions and highlight their particularities, so that government action can be effective).

<sup>342</sup> *Id.* at art. 4.2.9. (considering the humanitarian crisis derived from massive migration, migrants can be victimized in contexts of human trafficking in light of their vulnerabilities. This approach recognizes the need for differentiated care at the borders and throughout national territory).

<sup>343</sup> *Id.* at art. 4.2.10. (explaining that under this approach, the commission of trafficking in persons conforms to a series of multi-causal factors that must be permanently investigated, analyzed, and studied in order to understand the different factors related to the emergence, transformation, increase or decrease of crime, and to make permanent public policy decisions that contribute to its prevention, investigation, prosecution and fight against crime from a national and transnational perspective).

<sup>344</sup> *Id.*

<sup>345</sup> *La Trata de Personas en Colombia—Principales Fallas en el Sistema de Protección*, WOMEN’S LINK WORLDWIDE, (Mar. 2021), [www.womenslinkworldwide.org/files/3127/principales-fallas-en-el-sistema-de-proteccion-para-victimas-de-trata-en-colombia.pdf](http://www.womenslinkworldwide.org/files/3127/principales-fallas-en-el-sistema-de-proteccion-para-victimas-de-trata-en-colombia.pdf).

<sup>346</sup> *See also IV Balance de la implementación de las políticas anti-trata en Colombia*, *supra* note 313 (noting that international tribunals have jurisdiction over illegal armed and organized criminal groups and considers trafficking a transnational crime within domestic jurisdiction).

statistics necessary to understand the scope of this particular human trafficking activity, and this exclusion is troubling.<sup>347</sup> There are few vigorous investigations, prosecutions, and convictions of trafficking cases involving members of illegal armed groups or organized criminal groups involved in forced child recruitment or forced criminal activity.<sup>348</sup> Could this also be the result of a lack of budget to address the needs of child soldiers? Or could the lack of serious investigations be the result of inadequate training or ignorance and the relative invisibility of trafficking in the context of the conflict, as highlighted by the stories of thousands of adolescents and young men forced to join armed groups, and women that have been sexually exploited and considered little more than the spoils of war?

#### IT'S A MATTER OF TRAINING

Colombia's actions in fighting trafficking also appear disconnected from its laws and policies. Despite the numerous legislative initiatives, programs, and capacity development trainings, only 731 cases between 2013 and 2020 have been reported.<sup>349</sup> The government has performed poorly in its execution of victim identification,<sup>350</sup> in great part due to missing the "means" element required

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<sup>347</sup> *Id.*

<sup>348</sup> *2019 Trafficking in Persons Report: Colombia*, U.S. STATE DEP'T 1, 3 (2019), [www.state.gov/reports/2019-trafficking-in-persons-report-2/colombia/](http://www.state.gov/reports/2019-trafficking-in-persons-report-2/colombia/) (In its 2019 TIP report, the U.S. Department of State recommended the Colombian government to "vigorously investigate, prosecute, and convict trafficking cases, including cases involving members of illegal armed groups or organized criminal groups involved in forced child recruitment or forced criminal activity.").

<sup>349</sup> *Casos de trata de personas*, MINISTERIO DE INTERIOR – GOBIERNO DE COLOMBIA, <https://tratadepersonas.mininterior.gov.co/observatorio-del-delito-trata-de-personas/casos-de-trata-de-personas> (click on 1\_casos\_trata\_de\_personas\_2013-2020.xls) (last updated Nov. 30, 2020).

<sup>350</sup> *Child Labor and Forced Labor Reports: Colombia*, U.S. LAB. DEP'T, BUR. INT'L LAB. AFF. (2020), [www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia](http://www.dol.gov/agencies/ilab/resources/reports/child-labor/colombia) ("In 2020, the Attorney General's Office (AGO) reported that out of the criminal cases investigated pertaining to the worst forms of child labor, 11 percent were related to the use of children in illicit activities, 40 percent to the use of children in pornography, and the remaining were related to forced recruitment, commercial sexual exploitation, and human trafficking. Of the 71 individuals charged, 35 percent were charged for the use of children in illicit activities. (4) During the reporting period, 421 criminal investigators were trained on concepts related to the worst forms of child labor, 75 were trained on identifying human

under the Palermo Protocol.<sup>351</sup> The duty to identify human trafficking victims “is implied in all legal instruments that provide for victim protection and support,”<sup>352</sup> and any “failure to quickly and accurately identify victims of trafficking renders any rights granted to such persons illusory.”<sup>353</sup> Due diligence requires identifying the suspected victims correctly. Not identifying at all or misidentifying someone as a criminal or an irregular or smuggled migrant results in a denial of that person’s rights and “directly affects that person’s ability to access the rights to which she or he is entitled.”<sup>354</sup> In its report on human trafficking issues in Colombia, the NGO Women’s Link Worldwide noted the following:

One of the traditional problems that makes it difficult to identify victims of trafficking is the lack of training by officials, as well as the ignorance of regulations and protocols or procedures to identify victims and potential victims of human trafficking. The efforts that have been made in recent years to train judicial authorities and the Prosecutor’s Office on the procedures of care and protocols for attention and assistance to victims have not been sufficient.<sup>355</sup>

Identification and conviction rates remain too low. The duty to identify victims requires the government to develop proactively intelligence-driven investigative techniques without reliance on the testimony of victims. In fact, proper identification of a trafficking victim is “a prerequisite for their access to assistance and

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trafficking, and another 206 were trained on investigating and prosecuting human trafficking crimes. (4) To better address human trafficking crimes, the AGO led five inter-governmental trainings on trafficking identification for 5,431 government employees and 459 AGO investigators. The Ministry of the Interior (MOI) also conducted mock trials as an educational tool for those involved in prosecuting such crimes.”)

<sup>351</sup> *See generally id.* (For example, authorities may confuse smuggling with human trafficking.)

<sup>352</sup> *Human Rights and Human Trafficking, Fact Sheet No. 36*, U.N. HUMAN RIGHTS, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS 1, 12 (2014), [www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf).

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *La Trata de personas en Colombia, supra note 345.*

protection.”<sup>356</sup> Yet, the lack of proper identification of trafficking victims and conviction rates for traffickers is troubling, as seen in the low number of human trafficking cases reported between 2013 and 2020. According to the Colombian Family Welfare Institute (ICBF), more than a million minors, alone, are exploited for labor. Still, in 2020 only a paltry 300 were identified.<sup>357</sup> The U.S. State Department’s 2021 Trafficking in Person Report (TIP) for Colombia presents additional discouraging statistics in the justice sector. Since 2010, there have been only 54 convictions in 1,817 cases of child sex trafficking prosecuted, a conviction rate of roughly three percent.<sup>358</sup>

The troubling investigation-to-prosecution ratio, as the State Department suggested, may be due to the proliferation of so many anti-trafficking laws in Colombia over the last two decades, which has “caused confusion among law enforcement and the judicial process.”<sup>359</sup> The logical conclusion one draws is that without proper training to keep law enforcement and the judicial system at an adequate level of competency, investigation and conviction rates will remain disproportionate to the number of trafficking cases reported each year by individuals and stakeholder organizations.<sup>360</sup>

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<sup>356</sup> *International Framework for Action To Implement the Trafficking in Persons Protocol*, U.N. OFF. ON DRUGS AND CRIME 1, 10 (2009), (Victims do not self-identify for many reasons including lack of knowledge of their rights, understanding that they are victims, fear, mistrust of law enforcement, and not knowing the language. Countries must develop or strengthen the identification process in order to promote victims’ ability to self-identify).

<sup>357</sup> Leonardo Sierra, *Esclavitud infantil*, AL PONIENTE (Nov. 7, 2020, 4:26 PM), <https://alponiente.com/esclavitud-infantil/>.

<sup>358</sup> *2021 Trafficking in Persons (TIP) Report: Colombia*, U.S. DEP’T OF STATE, [www.state.gov/reports/2021-trafficking-in-persons-report/colombia/](http://www.state.gov/reports/2021-trafficking-in-persons-report/colombia/) (last visited Feb. 23, 2022) (Elected officials indicated that convicted traffickers rarely receive sentences as prescribed in the anti-trafficking law and noted only one of 43 traffickers convicted between 2013 and 2018 received a sentence as prescribed in the anti-trafficking law.)

<sup>359</sup> *See id.*

<sup>360</sup> Luz E. Nagle, *The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT’L L.J. 345, 359–360 (2000) (“Judgeships have often been the jobs no one seeks, unless the individual is either truly committed to social justice or interested in a venue for acquiring wealth through bribery and corruption. Those who become lower courts judges for the sake of societal good, however, are soon stymied by their corrupt superiors who do not want reformers rocking the boat.”).

The duty to investigate requires cultural competency in training protocols that emphasizes the country's uniqueness, especially the vast differences at the local and regional levels. As a country changes, training must evolve to adjust to the changes, such as the increasing migration waves. Incorporating these individualities into an investigative probe provides a clear "background of facts" and aids in determining if someone is a victim of trafficking in need of protection.<sup>361</sup> However, there is also a lack of clarity and irregularities in applying procedures for the identification and assistance of trafficking victims—Law 985 and its regulatory norms are confusing regarding this process. The following are some illustrations.

In 2018, during a raid on several establishments in Cartagena, 23 undocumented Venezuelan youths were rescued for allegedly being trafficking victims for sexual exploitation.<sup>362</sup> Women's Link presented various petitions to the authorities requesting information on protective actions taken. According to the Ministry of the

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<sup>361</sup> EUROPEAN COURT OF HUMAN RIGHTS [ECHR] JULY 1, 2010, RANTSEV V. CYPRUS AND RUSSIA, APP. NO. 25965/04 ("The Colombian government provides training, in some cases with the support of international organizations, to immigration officials, police, and members of the Attorney General's Office on the law in understanding trafficker recruitment tactics, and the investigation and prosecution of trafficking crimes."); see also 2019 Trafficking in Persons Report, *supra* note 348 (Such training, however, needs to include corruption and the uniqueness of trafficking patterns, vulnerabilities, risks, and victims present in the country.).

<sup>362</sup> The young women were convinced to travel to Cartagena to meet supposed job expectations, when in fact they were forced into prostitution. The traffickers kept them in precarious conditions in lodgings located in basements. They provided their victims with inadequate food, withheld their identity cards and passports to have control over their movements, sexually exploited them, and most of the income obtained was taken by the criminal network as a "collection" for accommodation and maintenance. The Prosecutor's Office found logbooks with the lists of the enslaved young women. Next to each name, the traffickers recorded the amounts each individual owed to her captors, as well as "fines" for the apparent breach of the restrictions imposed on them. The logbook also detailed the average sexual services that each victim had to fulfill in each day. Officials also discovered a secret corridor that connected two establishments that were used by johns for the sexual encounters or to evade the intervention of the authorities. Jhon Montaña, *Rescatan 49 mujeres que eran explotadas sexualmente en Cartagena*, EL TIEMPO (Aug. 20, 2018), [www.eltiempo.com/colombia/otras-ciudades/rescatan-49-mujeres-que-eran-explotadas-en-cartagena-23-eran-venezolanas-257960](http://www.eltiempo.com/colombia/otras-ciudades/rescatan-49-mujeres-que-eran-explotadas-en-cartagena-23-eran-venezolanas-257960) (Forty-nine young women were convinced to travel to Cartagena under the false premise of meeting certain job expectations, when in fact, they were forced into prostitution instead.).

Interior, errors occurred with the identification because eight women filled in the form reporting human trafficking.<sup>363</sup> The Ministry indicated that “according to what was stated by the twenty-three (23), none of them identified themselves as a trafficking victim for sexual exploitation.”<sup>364</sup>

This case illustrates several problems due to improper training. Identification and care procedures were applied without the minimum guarantees. No additional measures were adopted to examine any risks the young women could face upon their return to Venezuela. Requiring the alleged victims to fill out a form for self-identification placed a disproportionate burden on the alleged victims and revictimized them. While the women received hygiene kits and medical care, this did not conform with the government’s immediate care and assistance program.<sup>365</sup> Under that program the government must guarantee the return of victims to their place of origin, if they request it, and provide security, dignified accommodation, medical and psychological assistance, and information and legal advice regarding their rights.<sup>366</sup>

There appears to be a concerning, glaringly apparent detachment between the laws and policies involving human trafficking and the training of officials to understand and enforce them.<sup>367</sup> Investigators need to know how to make inquiries and obtain actionable information to determine if someone is a victim or at risk of being trafficked.<sup>368</sup> Training needs to be comprehensive and tailored to the uniqueness of the country’s situation, including combating corruption and all the human rights issues involved in human trafficking.<sup>369</sup>

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<sup>363</sup> *Informe sombra sobre el noveno informe de Colombia ante el Comité para la Eliminación de la Discriminación contra la Mujer*, WOMEN’S LINK WORLDWIDE (Feb. 2019), [www.womenslinkworldwide.org/files/3079/informe-sombra-sobre-el-noveno-informe-de-colombia-ante-la-cedaw.pdf](http://www.womenslinkworldwide.org/files/3079/informe-sombra-sobre-el-noveno-informe-de-colombia-ante-la-cedaw.pdf) (The Minister of Interior is a coordinator of the Inter-Institutional Committee to Combat Trafficking in Persons.).

<sup>364</sup> *Id.*

<sup>365</sup> Decree No. 1066 of 2015, May 26, 2015; L. 49.523, May 26, 2015, art. 2.2.2.6, Diario Oficial (Colom.).

<sup>366</sup> *Víctimas de trata en América Latina: Entre la desprotección y la indiferencia*, WOMEN’S LINK WORLDWIDE 1, 81–82 (2017), <https://bit.ly/2xv3B0P>.

<sup>367</sup> Author’s observation based on interviews conducted in Colombia.

<sup>368</sup> See 2021 Trafficking in Persons Report, *supra* note 268.

<sup>369</sup> See Donny Meertens, et al., *Estudio Nacional Exploratorio Descriptivo sobre el Fenómeno de Trata de Personas en Colombia*, UNODC § 2.3 (2009),

Failures of training, however, are evident in the many cases where authorities do not screen for trafficking indicators to recognize victims, or fail to protect them and provide adequate services. In many cases, authorities have dealt with victims as criminals or unprotected irregular migrants, denying them protection and assistance and punishing them in some manner, or subjecting them to deportation procedures.<sup>370</sup>

The importance of training is underscored by the first and last element of the Palermo Protocol. If the “means” element is missing from the training, then authorities do know how to ask questions that will provide them the red flags to determine if someone is a trafficking victim—questions like, “What job was offered to you and what job did you end up doing?”; “Were you free to stop working?”; “Were you able to determine who your client for sex work was going to be and were you able to keep all the money you made?”. Police and investigators appear not to be trained to ask, or those who are being trained are too few in number and location. Again, to emphasize, training **must** target the uniqueness of the country as well as the methods used to exploit the vulnerabilities of individuals due to that uniqueness,<sup>371</sup> with a special focus on the vulnerabilities of the migrant and refugee population.

Furthermore, the coordination and sustainability of state actions are weak without an established and well-supported capacity to train, implement, continually monitor the adherence to policies, and hold accountable the officials responsible for carrying out the

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[www.unodc.org/documents/frontpage/Investigacion\\_Trata\\_CO1.pdf](http://www.unodc.org/documents/frontpage/Investigacion_Trata_CO1.pdf) (A 2009 Colombian government publication includes several sections pertaining to gender issues: incorporation of the perspective of Human Rights, gender in understanding human trafficking, violence against women, the use of their bodies as spoils of war, and sexual slavery and the promotion of prostitution.).

<sup>370</sup> See Capriles, *supra* note 277; see also DOCUMENTO DE INSUMOS, REUNIÓN SOBRE EL BORRADOR DE RECOMENDACIÓN GENERAL: TRÁFICO DE MUJERES Y NIÑAS, CANCELLERÍA DE COLOMBIA (Feb. 22, 2019), [www.ohchr.org/Documents/HRBodies/CEDAW/GRTrafficking/Colombia.docx](http://www.ohchr.org/Documents/HRBodies/CEDAW/GRTrafficking/Colombia.docx); see also 2021 Trafficking in Persons Report, *supra* note 268.

<sup>371</sup> See generally RANTSEV V. CYPRUS AND RUSSIA, *supra* note 361 (Cyprus had a specific artiste visa that attracted young women from Eastern Europe, most of whom ended up being exploited for sex. There were red flags the investigators missed because of the uniqueness of Cyprus’ circumstances—the visa attracted young women to be forced into sex trafficking and a significant increase in prostitution in the country.).

policies. The latter is an issue because, at present, it is left up to each territorial committee to determine what it considers pertinent in the fight against trafficking.<sup>372</sup> These obstacles and shortcomings in inter-institutional training and coordination for adequate and comprehensive assistance re-victimizes trafficking victims, including a great many Venezuelan migrants.

Training must also account for tendencies toward xenophobia, misogyny, and sexism present in the minds of some investigators, prosecutors, and judges,<sup>373</sup> with close attention paid to the unique circumstances of vulnerable migrants. In a macho society like Colombia, however, the gender, age, sexual orientation, or disabilities of some victims often render them “invisible” just because of who they are.<sup>374</sup> Only training and constant monitoring and re-training can help officials differentiate and target the needs of trafficking victims in order to ensure effective protection. Another issue concerns the poor enforcement of anti-trafficking laws in labor cases. While the government has made efforts to strengthen inspections and enforce labor laws more broadly, proactive investigation of suspected cases or increased inspections of possible forced labor remain inadequate.<sup>375</sup>

One of the most recent examples of Colombian authorities’ lack of training concerns a Venezuelan migrant and her family members.

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<sup>372</sup> See also *IV Balance de la implementación de las políticas anti-trata en Colombia*, *supra* note 313.

<sup>373</sup> Author’s note (Luz Nagle): These are tendencies I personally encountered often while I was a district judge in Medellín, Colombia in the 1980s, and still encounter occasionally when conducting research and interacting with law enforcement officials in Colombia. To say that such backward thinking is widespread would be an injustice to many Colombian law enforcement and government lawyers and officials. But an encounter with just one misogynist or sexist individual in a position of legal authority can do immeasurable harm to someone who is a victim of gender-based abuse or human trafficking.

<sup>374</sup> See generally *La Trata de personas en Colombia: La esclavitud moderna*, CORPORACIÓN ESPACIOS DE MUJER, [www.tipheroes.org/media/1597/la-trata-en-colombia.pdf](http://www.tipheroes.org/media/1597/la-trata-en-colombia.pdf) (last visited Feb. 12, 2022) (Females face more vulnerability than males due to the ancestral permissiveness of the use of the female body as a commodity. The notion of women as property is supported by asymmetric power relations and ideologies of “*macho*” and patriarchal traditions.).

<sup>375</sup> U.S. DEP’T OF STATE, 2019 TRAFFICKING IN PERSONS (TIP) REPORT, 145–46 (Jun. 2019), [www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf](http://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report.pdf).

In 2019, Yolanda's<sup>376</sup> neighbor offered her a job opportunity in Colombia. The offer included a paid trip from Venezuela to Colombia for her, her husband, and their daughters, 6 and 7 years old. Yolanda accepted the proposal, and upon crossing the border, a person transferred her to the place where she would reside and work. Her trafficking nightmare had begun.<sup>377</sup>

Upon arrival at the site, Yolanda was told that instead of selling coffee, she had to prostitute herself, and that her eight-year-old daughter already had clients lined up, older men who like to be with minors. Yolanda was threatened with a knife, and one of the traffickers sexually assaulted her. She and her family escaped from the house when a man tried to abuse one of his daughters, and they spent several nights sleeping on the street. One day, a police officer asked them about their situation. After hearing her story, the officer stated that he knew the trafficker and had heard those kinds of stories happening to Venezuelan women, but he did not offer them any help. Fortunately, Yolanda came across an organization that helped people in vulnerable situations. The organization contacted national and international organizations, and the police specializing in human trafficking. But this police entity did not respond to the request immediately. Organizations provided basic assistance, such as the purchase of basic hygiene and food products, primary health, hotel accommodation, and protection measures, but it was always temporary.<sup>378</sup>

Accompanied by one of these organizations, Yolanda filed a complaint for the crime of human trafficking with the Attorney General's Office. However, the Office of the Prosecutor staff determined that this case did not correspond to a crime of trafficking in persons for the purpose of sexual exploitation, but rather of inducing prostitution. This decision would subsequently have serious

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<sup>376</sup> Yolanda is a fictitious name to protect her identity and safety.

<sup>377</sup> See Sergio Camacho, *Histórica sentencia de la Corte Constitucional ordena mejorar el sistema de protección de víctimas de trata en Colombia*, WOMEN'S LINK WORLDWIDE (Oct. 11, 2021), [www.womenslinkworldwide.org/informate/sala-de-prensa/historica-sentencia-de-la-corte-constitucional-ordena-mejorar-el-sistema-de-proteccion-de-victimas-de-trata-en-colombia](http://www.womenslinkworldwide.org/informate/sala-de-prensa/historica-sentencia-de-la-corte-constitucional-ordena-mejorar-el-sistema-de-proteccion-de-victimas-de-trata-en-colombia).

<sup>378</sup> Watch full testimony at WOMEN'S LINK WORLDWIDE, *Yolanda: Trata de mujeres venezolanas en Colombia* (July 20, 2020), [www.youtube.com/watch?v=1PPfnZOicbw](http://www.youtube.com/watch?v=1PPfnZOicbw).

consequences for recognizing Yolanda's rights and protection measures for her and her family.

Yolanda also went to the Ministry of Government to activate protection and assistance for the care of victims of trafficking. However, the attending officials informed her that her case did not qualify to trigger such protections because, in the complaint to the Prosecutor's Office, the crime registered was not trafficking in persons, but induction to prostitution. Faced with the lack of protection due to the government's failure to identify her status as a victim of trafficking, and due to the serious economic situation in which she found herself, Yolanda decided to return to Venezuela with her family. However, upon arriving in her hometown, Yolanda began receiving death threats against her and her family from the trafficking network. She therefore ultimately returned with her daughters and her husband to Colombia.

But once back in Colombia, the threats continued. Her situation was brought to the attention of the Ombudsman's Office and the Prosecutor's Office to grant protection measures, but Yolanda never received a response. The competent authority for the protection of victims of trafficking did not fully activate the procedures for protection and assistance to which she was entitled. Yolanda had no access to housing, employment, the health system, or the minimum conditions of survival. In addition, her daughters were out of school, and they faced ongoing threats from the trafficking network, which made Yolanda very afraid for her safety and that of her family, seriously affecting her psychological health.

Accompanied by Women's Link Worldwide, Yolanda presented her case to the justice system, where she finally reached the Constitutional Court.<sup>379</sup> In September 2020, the Court issued immediate provisional measures of protection for Yolanda and her family, but the competent authorities never complied with the Court's orders. In July 2021, through Sentencia T-236 of 2021, the Constitutional Court ordered the protection of Yolanda and her family and dictated structural measures to improve the protection system for victims of

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<sup>379</sup> See Women's Link Worldwide, *Histórica sentencia de la Corte Constitucional ordena mejorar el sistema de protección de víctimas de trata en Colombia* (Oct. 11, 2021), [www.womenslinkworldwide.org/informate/sala-de-prensa/historica-sentencia-de-la-corte-constitucional-ordena-mejorar-el-sistema-de-proteccion-de-victimas-de-trata-en-colombia](http://www.womenslinkworldwide.org/informate/sala-de-prensa/historica-sentencia-de-la-corte-constitucional-ordena-mejorar-el-sistema-de-proteccion-de-victimas-de-trata-en-colombia).

trafficking in Colombia, including orders to the Attorney General's Office, the Inter-Institutional Committee to Combat Trafficking in Persons, the Ministry of Interior, Migración Colombia, the Ministry of Defense, the Presidential Council for Rights Human and International Affairs, the Presidential Counsel for the Equity for Women, and the Office of Inspector General (PGN for its acronym in Spanish).<sup>380</sup> This landmark decision was celebrated by the Inter-American Commission on Human Rights (IACHR), stating that the ruling incorporates an intersectional and gender perspective, in line with inter-American standards.<sup>381</sup>

Yolanda's interactions with the Colombian authorities illustrate the problems with Colombia's human trafficking definition, approach, and execution of the laws and policies as well as the discriminatory attitudes towards women, migrants, and refugees by those in positions of authority. For example, Yolanda's first contact with a government official, the police officer, highlights several problems. Yolanda was:

- A young female (sex trafficking affects predominantly woman);
- From Venezuela (traffickers rely on manipulating and abusing the many push factors in that country);
- The manner in which she arrived in Colombia (crossing the border—with or without documents, on foot or car);
- Promised a job selling coffee but forced to prostitute (deceived – fraud);
- Threatened with a knife (an effective control measure);

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<sup>380</sup> *Sentencia T-236/21*, CORTE CONSTITUCIONAL REPUBLICA DE COLOMBIA (Jul. 23, 2021), [www.corteconstitucional.gov.co/Relatoria/2021/T-236-21.htm](http://www.corteconstitucional.gov.co/Relatoria/2021/T-236-21.htm).

<sup>381</sup> *See CIDH celebra decisión de la Corte de mejorar sistema de protección a víctimas de trata de personas*, INFOBAE (Oct. 16, 2021), [www.infobae.com/americas/colombia/2021/10/16/cidh-celebra-decision-de-la-corte-de-mejorar-sistema-de-proteccion-a-victimas-de-trata-de-personas/](http://www.infobae.com/americas/colombia/2021/10/16/cidh-celebra-decision-de-la-corte-de-mejorar-sistema-de-proteccion-a-victimas-de-trata-de-personas/).

- Sexually assaulted (a means of dehumanizing and subjugating a trafficking victim)

These are all indicators that call on the officer (1) to provide Yolanda with information for an organization tasked with helping vulnerable people, and (2) if within his jurisdiction, corroborate the indicators with further inquiries or pass the case to the respective officer. Certainly, there were enough indicators to trigger a proactive investigation, but he did nothing of the sort.

Yolanda filed a complaint with authorities, but the Attorney General's Office determined that her case was not human trafficking for the purpose of sexual exploitation, but for the induction of prostitution. Such classification not only preempted Yolanda from obtaining recognition of her rights and protection measures as a *victim*, but it re-victimized her by humiliating her and aggravating her physical and psychological health. The human trafficking definition under Colombian law (recalling that only two of the three elements of trafficking are recognized) allows the Attorney General's Office to make a determination ignoring the actions by which people are exploited—abduction, fraud, deception, coercion, abuse of power of the position of vulnerability, giving/receiving payment/benefits to attain the consent of a person having control over another person.<sup>382</sup> The law states that consent given by the victim to any form of exploitation shall not constitute grounds for exoneration from criminal responsibility—this section does not call upon the officer to consider the actions by which people are exploited and which nullify consent. Such a discretion violates the human rights of trafficking

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<sup>382</sup> See *Palermo Protocol*, *supra* note 10 (“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 . . . .”); see also LEGAL CONSIDERATIONS CONCERNING THE SCOPE AND APPLICATION OF THE PRINCIPLE OF UNIVERSAL JURISDICTION, MINISTRY OF FOREIGN AFFAIRS 13 (Apr. 11, 2011), [www.un.org/en/ga/sixth/66/ScopeAppUniJuri\\_StatesComments/Colombia%20\(S%20to%20E\).pdf](http://www.un.org/en/ga/sixth/66/ScopeAppUniJuri_StatesComments/Colombia%20(S%20to%20E).pdf).

victims, re-victimizing and preventing them from receiving the help and benefits to which they are entitled.<sup>383</sup>

Unfortunately, Yolanda's case is not the exception but rather the rule for most Venezuelan women and children seeking protection in Colombia.<sup>384</sup> In practice, these obstacles continue to exist, especially when irregular migrant victims are involved. For instance, some shelters for trafficking victims receive only women with authorized immigration status,<sup>385</sup> not only contravening the

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<sup>383</sup> See *Corte Constitucional ordena protección para mujer venezolana víctima de trata de personas*, RADIO NACIONAL DE COLOMBIA (Sept. 15, 2020 11:26), [www.radionacional.co/cultura/corte-constitucional-ordena-proteccion-para-mujer-venezolana-victima-de-trata-de-personas](http://www.radionacional.co/cultura/corte-constitucional-ordena-proteccion-para-mujer-venezolana-victima-de-trata-de-personas) (Women's Link Worldwide took the case to the Constitutional Court. The Court ordered that Yolanda receive psychosocial and legal help, security, education, accommodation, health affiliation and support to resolve her immigration status—rights that were denied since she arrived. As a provisional measure, the Constitutional Court ordered the Secretary of Government or the Technical Secretariat of the Municipal Committee to Combat Trafficking in Persons to activate the trafficking procedures for the benefit of Yolanda and her family. Additionally, the Court requested information from the Inter-Institutional Committee for the Fight against Human Trafficking on the problem with Venezuelan migrants and the measures adopted to confront it and requested information from different authorities on the specific measures that were taken in Yolanda's case.).

<sup>384</sup> A similar situation, demonstrating the link between identification and protection, was denounced by Women's Link Worldwide, which documented the case of a Venezuelan girl whose father relocated her to Arauca (Colombia) to exploit her sexually. Colombian authorities, specifically the Colombian Institute of Family Welfare (ICBF) and the Ombudsman's Office, did not consider her a victim of human trafficking for sexual exploitation. Consequently, the authorities initiated the girl's expulsion without considering the risk that she would suffer in her home country. See PLATAFORMA CONTRA EL ARCO MINERO, ET AL., INFORME SOBRE LA SITUACIÓN DE LOS DERECHOS HUMANOS EN EL ARCO MINERO Y EL TERRITORIO VENEZOLANO UBICADO AL SUR DEL RÍO ORINOCO 25 (2009), [www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf](http://www.civilisac.org/civilis/wp-content/uploads/Informe-sobre-la-situaci%C3%B3n-de-derechos-humanos-en-el-Arco-Minero-y-el-territorio-venezolano-ubicado-al-sur-del-r%C3%ADo-Orinoco.pdf.pdf).

<sup>385</sup> Colombia can grant a distinct treatment afforded to documented Venezuelans “with respect to undocumented migrants, or between migrants and nationals, provided that this differential treatment is reasonable, objective, proportionate and does not harm human rights.” *Juridical Conditions and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-Am. Ct. H.R. (ser. A) No. 18 ¶ 118-19 (Sept. 17, 2003); see also Recommended Principles and Guidelines, *supra* note 2.

Constitutional Court of Colombia's ruling in Sentencia C-470 of 2016,<sup>386</sup> which held that a formal complaint was not mandatory for victims of human trafficking to access protective measures due to the verifiable risks (revictimization, fear of retaliation from criminal organizations, and stigmatization), but also disregarding the fact that irregular migrants are the most vulnerable.<sup>387</sup> That requirement in itself, makes Venezuelan women and girls afraid to report their victimization for fear of being deported.<sup>388</sup> Unfortunately, this is a legitimate fear among irregular migrants, as cases of deportation of human trafficking victims have been previously documented throughout country.<sup>389</sup>

#### IT'S ABOUT THE BUDGET

Colombia's budget for combating human trafficking has been modest, given the enormity of human trafficking activities. The U.S. State Department's 2021 Trafficking in Persons (TIP) Report on Colombia shows that in 2019 (the most recent statistics reported), authorities appropriated a total of 2.1 billion Colombian pesos (\$616,370) for the implementation of anti-trafficking efforts, including 855.68 million Colombian pesos (\$250,600) for technical

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<sup>386</sup> See generally *Sentencia C-470/16*, CORTE CONSTITUCIONAL REPUBLICA DE COLOMBIA, (Aug. 21, 2016), [www.corteconstitucional.gov.co/relatoria/2016/C-470-16.htm](http://www.corteconstitucional.gov.co/relatoria/2016/C-470-16.htm).

<sup>387</sup> Capriles, *supra* note 277.

<sup>388</sup> Devon Cone and Melanie Teff, *Searching for Safety: Confronting Sexual Exploitation and Trafficking of Venezuelan Women and Girls*, REFUGEE INTERNATIONAL 9 (Aug. 2019), <https://static1.squarespace.com/static/506c8ea1e4b01d9450dd53f5/t/5d472cc87370400001f5dc52/1564945609233/Venezuela+Trafficking+Report+-+August+2019+-+FINAL.pdf>; see also Selene Soto and Ana Margarita González, *La desprotección de las mujeres venezolanas víctimas de trata de personas*, MOVILIDAD HUMANA VENEZOLANA (Sept. 2, 2019), [www.movhuve.org/blog/2019/09/02/la-desproteccion-de-las-mujeres-venezolanas-victimas-de-trata-de-personas/](http://www.movhuve.org/blog/2019/09/02/la-desproteccion-de-las-mujeres-venezolanas-victimas-de-trata-de-personas/).

<sup>389</sup> The U.S. Department of State in its 2019 Trafficking in Persons Report documented a case in which 23 Venezuelan women and girls were not identified as victims of trafficking. Since they did not want to testify out of fear of reprisals and their lack of trust in the justice system, they were penalized for doing so after deportation proceedings commenced, contravening the Constitutional Court of Colombia's ruling in Sentencia C-470 of 2016. See *2019 Trafficking in Persons Report*, *supra* note 348.

assistance and anti-trafficking training provided by international partners.<sup>390</sup>

The modest level of funds budgeted to such a massive problem is regrettable and raises the issue of appropriation of resources destined for the implementation and compliance of Law 985 of 2005. There is little transparency on how funds are allocated or managed, and resistance to reporting is contrary to the government's legal duty to account for public resources. The action plans developed are not known, and this makes it even more difficult to understand how Colombia is implementing public policy and whether the policies are effective and efficient.<sup>391</sup> Moreover, Colombia is a centralized government with the lion's share of resources remaining close to the seat of power in Bogotá. Imagine the conditions out in the territories where resources are always stretched very thin.<sup>392</sup>

There is also no certainty of the allocation of resources from year to year. Although there is the Transparency Law<sup>393</sup> and the legal duty to render accounts, it is a constant among government entities not to provide more detailed information than necessary on budget management, especially within the Ministry of the Interior that has under its responsibility the special account determined by Law 985 of 2005. What we do see is that rather than focusing greater funding on human trafficking training for law enforcement and the judicial system, resources are being allocated mainly to awareness-raising activities and negotiating agreements with international non-

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<sup>390</sup> 2021 *Trafficking in Persons Report*, *supra* note 268.

<sup>391</sup> See also *IV Balance de la implementación de las políticas anti-trata en Colombia*, *supra* note 313, at 35.

<sup>392</sup> See Luz E. Nagle, *The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT'L L.J. 345, 359 (2000) (Allocation of resources nationwide and waste of funding is an endemic problem without a solution so long as public corruption remains prevalent in Colombian government. It is not unusual for regional prosecutors and local investigators to work on outdated equipment or never receive follow-up training on new technology to maintain competency. Even in the larger cities where technology has been updated and made available to government officials, there is an acute lack of interest to utilize new resources, due in large measure to the lack of consistent, motivated, and progressive continuing education. During an interview with a judge several years ago, he pointed to a computer behind his desk and said he had never so much as turned it on.).

<sup>393</sup> L. 1712 of 2014, *Diario Oficial* No. 49.084, March 6, 2014 (Colom.).

government organizations.<sup>394</sup> One might argue that doing so is “easier” than concentrating on the difficult tasks of implementing, managing, and sustaining a nationwide training and competency regime for those on the front lines of combating human trafficking.

Another failure in execution arises from the meager or nonexistent budget allocation for actions to combat trafficking at the regional and local levels. Few departments, districts, and municipal governments assign a budget to combat human trafficking.<sup>395</sup> Also, each territorial committee, as described earlier, does only what it considers pertinent in the fight against trafficking,<sup>396</sup> and the sense of the committees seems to be that they are not responsible for implementing and paying for the national strategy to combat human trafficking. Rather, they view their financial obligation from a security and criminal prosecution approach rather than a victim-centered approach (victim protection and assistance).

#### COLOMBIA’S INTERNATIONAL RESPONSIBILITY TO PREVENT HUMAN TRAFFICKING

Colombia carries a duty under international law to “ensure respect for the protection of the rights of [Venezuelan] migrants [and refugees] and intensify their efforts to fight trafficking.”<sup>397</sup> The government has an obligation to interpret and apply the Palermo Protocol “in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of nondiscrimination.”<sup>398</sup>

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<sup>394</sup> See also *IV Balance de la implementación de las políticas anti-trata en Colombia*, *supra* note 313.

<sup>395</sup> *Id.* at 8.

<sup>396</sup> *Id.*

<sup>397</sup> U.N. Office of the High Comm’r for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking: Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, U.N. Doc. E/2002/68/Add. 1 (2002), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf) (Trafficking in persons is “a particularly abusive form of migration. In the Millennium Declaration, States resolved to take measures to ensure respect for the protection of the rights of migrants and to intensify their efforts to fight trafficking.”)

<sup>398</sup> G.A. Res. 55/25, annex II, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Jan. 8, 2001).

Colombia also carries a duty under international law to protect all individuals living within its borders. Despite its best of intentions, Venezuelans of all sexual orientations and genders face grave risks in Colombia, including hyper-sexualization that results in a dynamic of harassment, sexual exploitation, human trafficking, and survival sex.<sup>399</sup> While many Colombians support migrants' access to essential services such as health and education, others believe Venezuelans undercut "employment for natives and burden the economy" and are contributors to a "host of problems, including rising crime, unemployment, and the spread of COVID-19."<sup>400</sup> In a post-conflict nation with an unstable economy due to high unemployment, insecurity, overstretched public services, post-peace agreement debts,<sup>401</sup> and the unexpected disaster of the COVID-19 pandemic, assigning funds for migrants has aggravated long-simmering anxieties about migrant inflow and deepened xenophobia felt by some Colombians and Venezuelans toward each other.<sup>402</sup>

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<sup>399</sup> Capriles, *supra* note 277.

<sup>400</sup> John Otis, *Large Venezuelan Migration Sparks Xenophobia Backlash in Colombia*, NPR, (Dec. 29, 2020, 10:02 AM), [www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia](http://www.npr.org/2020/12/29/949548865/large-venezuelan-migration-sparks-xenophobic-backlash-in-colombia) (COVID-19 strained already scarce city budgets and the national government left local officials "on their own to address the flood of impoverished, sick, and desperate Venezuelan migrants." The reaction and message from citizens and "powerful government officials" was that "Venezuelan migrants are no longer welcome.").

<sup>401</sup> Jérôme Duval, *Gaviria Ocampo: "Cerca del 40% del presupuesto de Colombia se destina a guerra y deuda"*, EL SALTO (Jan. 30, 2018, 4:21 PM), [www.elsaltodiario.com/colombia/entrevista-gaviria-ocampo-cerca-40-presupuesto-colombia-destina-guerra-deuda](http://www.elsaltodiario.com/colombia/entrevista-gaviria-ocampo-cerca-40-presupuesto-colombia-destina-guerra-deuda) (The need for resources for the post-conflict must include money dedicated to guarantee other investments for the well-being of the population and the development of the country. However, doing so will likely cause the external debt in the next 10 years to grow to an estimated \$100 billion USD.); *see also Implementar el acuerdo de paz necesitaría una nueva reforma tributaria: Fedesarrollo*, SEMANA (Jan. 23, 2018), [www.semana.com/economia/articulo/costos-del-proceso-de-paz-y-el-posconflicto/554526/](http://www.semana.com/economia/articulo/costos-del-proceso-de-paz-y-el-posconflicto/554526/) (In the next 15 years, Colombia must invest at least 129.5 billion pesos to implement the peace agreement, allocating: \$110.6 billion in rural reform, \$4.3 billion in political participation, \$1.9 billion to end of the conflict, \$8.3 billion in illicit drugs, and \$4.3 billion in reparation to victims.).

<sup>402</sup> Sergio Guzmán and Juan Camilo Ponce, *Hate against Venezuelans in Colombia is a ticking time bomb*, GLOBAL AMERICANS, (Nov. 10, 2020), <https://theglobalamericans.org/2020/11/hate-against-venezuelans-in-colombia-is-a-ticking-time-bomb/> (Many Colombians see Venezuelan migrants as a

The Colombian government recognized the tensions and took steps to alleviate common misconceptions about migrants. Agencies developed a communications campaign, promoting the idea that regularizing the status of migrants will boost the country's GDP growth because most migrants are willing and able to work and make a positive impact on their host communities, "generating new skills, networks, business models and entrepreneurship."<sup>403</sup> Nonetheless, one big challenge remains how to fund the sustenance and integration of Venezuelan migrants into the civil society—assuming they will not be returning to Venezuela until a drastic change in that government occurs.

According to the Brookings Institution, in 2020 the estimated funding available from the international community to support a single Venezuelan migrant in Colombia was a meager \$265 USD, compared to the funding available for a Syrian refugee at \$3,150 USD.<sup>404</sup> In an attempt to bridge this gap, the Colombian government has lobbied with its international partners to contribute to meeting the funding requirements of the Temporary Protection Statute (TPS) for Venezuelan Migrants through migrant relief platforms called the Regional Migrant and Refugee Responsive Plan (RMRP) and the Interagency Group for Mixed Migratory Flows (GIFMM).<sup>405</sup> Yet, the effectiveness of these international cooperation efforts will be measured in the years to come during the TPS implementation process.

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problem. Sixty-nine percent view them "unfavorably" and a source of unemployment and a drain of scarce social resources.)

<sup>403</sup> *Private sector is key to increase employment opportunities for migrants and refugees*, INTER-AMERICAN DEVELOPMENT BANK (Mar. 19, 2021), [www.iadb.org/en/news/private-sector-key-increase-employment-opportunities-migrants-and-refugees](http://www.iadb.org/en/news/private-sector-key-increase-employment-opportunities-migrants-and-refugees).

<sup>404</sup> Dana Bahar and Meagan Dooley, *Venezuela refugees and their receiving communities need funding, not sympathy: February 2021 update*, BROOKINGS (Feb. 26, 2021), [www.brookings.edu/blog/up-front/2021/02/26/venezuelan-refugees-and-their-receiving-communities-need-funding-not-sympathy/](http://www.brookings.edu/blog/up-front/2021/02/26/venezuelan-refugees-and-their-receiving-communities-need-funding-not-sympathy/).

<sup>405</sup> *See generally* REGIONAL REFUGEE AND MIGRANT RESPONSE PLAN FOR REFUGEES AND MIGRANTS FROM VENEZUELA, RESPONSE FOR VENEZUELAN (2019), [www.iom.int/sites/g/files/tmzbdl486/files/press\\_release/file/rmrp\\_venezuela\\_2019\\_onlineversion\\_final.pdf](http://www.iom.int/sites/g/files/tmzbdl486/files/press_release/file/rmrp_venezuela_2019_onlineversion_final.pdf).

Colombia also has a duty to exercise due diligence to prevent human rights violations by private persons.<sup>406</sup> As a host country for migration from Venezuela, Colombia should prevent, mitigate, and punish the corruption that facilitates human trafficking, especially between the countries.<sup>407</sup> For example, traffickers rely on the collusion of corrupt actors all along the trafficking chain, including border guards who are bribed, immigration officials who process false documents and visas, business people and landlords, hotel operators, and transporters that move victims along the trafficking networks.<sup>408</sup>

Traffickers also bribe law enforcement and local authorities to overlook trafficking crimes, and in some cases, police, prosecutors, and judges have direct links to human trafficking networks and actively prevent or stall investigations or manipulate charges to be dropped.<sup>409</sup> In one instance, public officials were linked to a transnational sex trafficking case involving collusion with the police department and the Attorney General's Office in Cartagena, where child sex trafficking and child sex tourism are rampant. Those officials engaged in protecting the operations by "notifying traffickers of upcoming raids," and falsifying "documentation for underage victims who were later exploited in Mexico and Spain." In addition, a Colombian navy captain was implicated in pimping, prostitution, and trafficking more than 250 girls and adolescents, mainly from Venezuela.<sup>410</sup> He was so emboldened by a perceived level of

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<sup>406</sup> Velasquez Rodriguez v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 172 (July 29, 1988).

<sup>407</sup> 2019 Trafficking in Persons Report, *supra* note 348 (Although the government made significant progress on three cases reported during the year, corruption and official complicity in trafficking crimes remained significant concerns. "In 2018, authorities opened investigations into three police officers; one for his alleged role in a child sex trafficking ring and the other two for accepting bribes to overlook an extensive sex trafficking ring operating in Cartagena. At the end of the reporting period, one case was in the trial phase and officials associated with second case were indicted.").

<sup>408</sup> See Anastasia Moloney, *Colombian authorities bust child sex trafficking ring in tourist city*, REUTERS (July 31, 2018, 3:35 AM), [www.reuters.com/article/us-colombia-humantrafficking/colombian-authorities-bust-child-sex-trafficking-ring-in-tourist-city-idUSKBN1KLOXT](http://www.reuters.com/article/us-colombia-humantrafficking/colombian-authorities-bust-child-sex-trafficking-ring-in-tourist-city-idUSKBN1KLOXT) (discussing hotel owners being arrested as members of a sex trafficking ring operating in Cartagena).

<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

impunity that he forced minors to have a tattoo bearing his name, a trait indicative of ownership and sexual slavery.<sup>411</sup>

Judicial leniency toward public officials involved in sex trafficking has also been uncovered and takes the form of handing out “disciplinary measures in lieu of prison time, a response that was not commensurate with the severity of the crime and hindered efforts to combat trafficking.”<sup>412</sup> In such instances, it is the victims who are penalized “for crimes their traffickers compelled them to commit.”<sup>413</sup>

Finding effective ways to prevent, mitigate and punish corruption can serve to sever key parts of the trafficking chain and help to create new momentum for anti-trafficking efforts. In 2020, the Ministry of the Interior and Migración Colombia teamed up to provide both migrants and Colombian citizens with a free smartphone application called LibertApp to help combat human trafficking and aid in crime prevention. Through the application, citizens and migrants can report a case of suspected trafficking, misconduct by officials, or generate a panic report which is sent, along with the user’s personal and location data, to the Anti-Human Trafficking Operational Center (COAT) of the Ministry of the Interior, which manages and coordinates human trafficking investigations. The app also provides a public awareness component by which users can access detailed information on human trafficking and can find a directory with the contact information of the different consulates in different parts of the world.<sup>414</sup> After only two weeks of releasing the app, its use resulted in the arrest of two Colombians for human trafficking of 15 women, including a 16-year-old Venezuelan.<sup>415</sup> This is a promising

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<sup>411</sup> *Id.*

<sup>412</sup> 2021 Trafficking in Persons Report, *supra* note 268.

<sup>413</sup> *Id.*

<sup>414</sup> See generally *LibertApp – OIM / Migración Colombia*, CANNEDHEAD (2020) [www.cannedhead.com/projects/libertapp](http://www.cannedhead.com/projects/libertapp) (describing the LibertApp developed jointly with the IOM and the Colombian government); see also *Con LibertApp, Cualquier Persona Puede Denunciar la Trata de Personas en Colombia*, ORGANIZACIÓN INTERNACIONAL PARA LAS MIGRACIONES MISIÓN EN COLOMBIA (Sept. 8, 2020), <https://colombia.iom.int/news/con-libertapp-cualquier-persona-puede-denunciar-la-trata-de-personas-en-colombia>.

<sup>415</sup> *Con LibertApp, Cualquier Persona Puede Denunciar la Trata de Personas en Colombia*, *supra* note 414 (Upon rescuing the Venezuelan minor, she was processed through the Family Police Station of the Maní municipality for the restitution of her rights.).

development in combating human trafficking at the ground level. Still, it remains up to the authorities, their competency, their training, and resolve to uphold Colombian law to decide what to do with the intelligence generated by this kind of technology.

#### CONCLUSIONS AND RECOMMENDATIONS

Colombia is required to extend protection of the fundamental human rights to Venezuelan migrants and refugees, without any discrimination owing to their regular or irregular residence.<sup>416</sup> Consequently, it must respect and ensure the principle of equality and non-discrimination—not to discriminate or tolerate discriminatory situations that prejudice migrants or refugees.<sup>417</sup> Under the due diligence standard, the government is also responsible for injury to aliens when “a violation of . . . rights . . . has occurred with the support or the acquiescence of the Government, [or when] the State has allowed the act to take place without taking measures to prevent it or to punish those responsible.”<sup>418</sup>

Migration crises are among the most delicate issues that demonstrate the difficult social, economic, and political conditions we must currently face. The constant violation of human rights because of forced displacement leads to a humanitarian emergency with global impact, and requires the coordinated intervention of every country, given that all States will be involved at a certain point. Even though they might not be directly responsible for crimes and human rights abuses, nations like Colombia do play a role as hosts to

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<sup>416</sup> Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 397, Art. 1 (“The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.”).

<sup>417</sup> See generally *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. HUMAN RIGHTS, OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, 51–73 (July 2002), [www.ohchr.org/Documents/Publications/Commentary\\_Human\\_Trafficking\\_en.pdf](http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf) (detailing analysis of the applicability of human rights to special groups, including IDPs and people with disabilities. Venezuelan migrants are entitled to basic human rights, and depending on their status, to the additional rights applicable to women, children, migrants, migrant workers, and refugees); see also Anne T. Gallagher, *The International Law of Human Trafficking*, 12 HUMAN RIGHTS L. REV. 1, 5 (2012).

<sup>418</sup> Velasquez Rodriguez, *supra* note 406.

victims and, therefore, they are responsible for their well-being once they land within their territory seeking refugee status or asylum.

In this sense, a coordinated plan to address the violence, abuses, and human trafficking dangers faced by migrants, including Venezuelan migrants and refugees, is needed in Colombia. Governments should work multilaterally to create conditions that ameliorate the migration process of refugees between countries. This point is evidenced in the Venezuelan migration crisis, since there has not been a common plan of action, thereby resulting in disparate approaches and leads to misinformation for the victims, who then ignore any mechanisms that do provide effective assistance.

Migrants, like those *caminantes* crossing by foot from Venezuela to Colombia, are especially vulnerable—they can often be subjected to human rights violations by criminals, including organized criminal organizations and illegal armed groups, for example, who take advantage of migrants' uncertain legal status and their urgent need to survive at any cost. Taking responsibility under International Law, host countries must address these understandings within their public policies, so they can be successfully applied, especially regarding the Venezuelan crisis and its profound impact in Latin America.

But—Colombia is still in a post-conflict stage with its internal problems, ongoing human rights concerns, and criminality on many levels while attempting to implement the mandate laid out over five years ago in the Peace Agreement. With time, Colombia can strengthen its local institutions, and with continuous support from international organizations and nations, particularly within the Americas, it can emerge from so many years of conflict and establish effective policies that protect the rights of *all* people who seek security and protection in their lives.