

**TRAFFICKING IN PERSONS  
ECUADOR**

**ASSESSMENT ONE**  
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Submitted by

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## EXECUTIVE SUMMARY

In June 2004 the American Bar Association's Latin America Law Initiative (ABA/LALIC) held a conference on Trafficking in Persons in Cuenca, Ecuador, with support from the U.S. Embassy and co-sponsorship from the Supreme Court of Ecuador and the National Council of the Judiciary. The results collected from the discussions in the break out groups and the plenary sessions all demonstrated the need, as expressed by the conference attendees, for a practical assessment of the situation in country. The Ecuadorians suggested that the assessment focus on: 1) How the problem is defined and perceived; 2) the realities and challenges facing Ecuador; 3) planning guidelines and priorities, and 4) strategies for a workable plan.

Subsequent to the conference ABA/LALIC was awarded a two-year anti-trafficking project by the US Department of State Office to Monitor and Combat Trafficking. Following the advice of the experts in Ecuador, this project set out to conduct an assessment that will serve as a guide for the development and planning of the project. The major goals of this assessment are to: 1) identify organizations around the country working on trafficking and trafficking related issues; 2) identify the major trends/themes in the trafficking and anti-trafficking activities; 3) identify gaps in service, public policy and see how they relate to the existing legislative framework, and finally to 4) develop recommendations for the project.

With this in mind, the report is divided into three main components: Part I of the assessment looks at the economic and social underpinnings of the country to give context to the reasons why trafficking in persons is gaining strength in Ecuador. Part II of the assessment discusses important themes that surround the actual trafficking in persons. These themes include the nature of the problem; where trafficking is most prevalent and why; defining who is a victim; pinpointing some of the underlying causes; and exploring the legislative gaps that hamstring effective prosecution. Part III of the assessment takes the information gathered and presented in this document and sets out the recommendations according to the three "p's" (Prevention, Prosecution and Protection).

A full discussion of the methodology used for this assessment may be found on page 2. A short synopsis of each of the three broad sections mentioned above follows.

In looking at the realities and challenges facing Ecuador, it was necessary to turn to the general literature that discusses the social and economic dynamics of the country in order to have a better understanding of related factors that contribute to the trafficking infrastructure in the country. This small Andean nation is a relatively new and struggling democracy that suffered important set backs throughout the nineties. Ecuador experienced a number of economic, political and natural crises. As of 2003 figures, 65% of the population in Ecuador lives below the poverty line with close to 70% of Ecuador's 4.8 million children living in poverty. Furthermore, violence against women appears endemic and tightly knit to the culture. It has been reported that up to 80% of men in Quito, alone, beat their wives. Poverty takes a toll on the people of Ecuador not only in

their ability to provide the bare minimum for the family, but in what many are forced to do to meet these bare requirements. The need for additional income prevents children from attending school; instead they are out in the street begging, selling gum, souvenirs or anything they can get their hands on. Many young girls turn to prostitution in order to support themselves and/or their families. Other children are left to fend for themselves because the adults migrate to urban areas or abroad in search of a better life. The children abandoned look to gangs as the only source of “family” and stability. The children are at a high risk of economic, substance and sexual abuse and exploitation. Also, the search conducted reveals that trafficking in persons, particularly in its international manifestations, is linked to drug trafficking and alien smuggling.

Michele Clark and her team corroborated much of the information collected from the research during the two site visits. The site visits focused on Quito, Guayaquil and four other cities known for trafficking. (The site descriptive reports can be found as Annex II and III). The site reports were worked into this final report and make up a substantial component of Parts II and III of this report.

Part II, entitled Trafficking in Persons in Ecuador, outlines the four major themes previously mentioned. With respect to the **nature of the problem** of trafficking, interviews reveal a prevailing lack of understanding as to what constitutes trafficking in persons. Terms such as “alien smuggling”, “illegal immigration” and “human trafficking” are used interchangeably. There is little public awareness or understanding on the subject; the media either sensationalizes specific cases or pays no attention to the problem; law enforcement has little understanding or training to deal with this problem as well. Nevertheless, on the positive side, interviews revealed a potential for attitudinal change.

In the area of **defining victims**, the evidence collected reveals that internal trafficking of children for prostitution constitutes a significant portion of trafficking in the country. The exploitation of children for forced labor purposes is also problematic. The site visits also point to a great deal of cross border trafficking for commercial sexual exploitation with Colombia. While the foreign girls are considered more valuable to club owners, they face greater discrimination within the law enforcement system in Ecuador. Interviews and recent news also reveals a growing pornographic industry in the country. Ecuadorian law does not define pornography as a form of commercial sexual exploitation of children and this loophole in the law hinders prosecution. Finally, a lack of victim services around the country was evident. Shelters run by religious organizations care for victims of sexual abuse, runaways or drug addicts. However, there are no shelters for foreign victims and victims services overall are lacking.

In the third sub-category, **complexity of underlying causes**, interviews revealed the following causes and contributing factors to the trafficking infrastructure in Ecuador: 1) corruption and document forgery, especially in the Civil Registry; 2) victimization of children and women at the hands of family members; 3) lack of positive social networks and activities for children/adolescents, and 4) sexual abuse of boys and girls in gangs. Finally, in the category of **need for legislative reform** the following issues were significant: 1) a lack of legal framework that defines the nature of the crime or provides

adequate punishment; 2) lack of a legal definition of a victim and the corresponding attitudes toward trafficked individuals as criminals not victims; 3) lack of law enforcement training at various levels—how to treat victims, what is the nature of the crime etc., 4) Ecuadorian law and the international conventions, to which Ecuador is a signatory, are not consistent and hinder the effort; 5) the absence of witness protection makes trafficked persons reluctant to come forward and the lack of a legal framework makes rapid and adequate response to victims needs difficult; finally, 6) there is a lack of agreement in the country as to whether to develop separate anti-trafficking legislation or amend the current penal code.

Part III, entitled *The Need for a Comprehensive Approach*, of this report focuses on suggestions and possible strategies to make headway in combating trafficking in Ecuador. While it is important that the national government set out a comprehensive plan to support the efforts to combat trafficking and provide adequate legislation, the various regions, cities and municipalities in Ecuador must lead the effort. Empowering leadership at the local level is crucial as implementation must be a local endeavor to a large extent. Of course frequent national collaboration and participation will be important, but the people most affected must see strong local pressure to curtail trafficking coupled with an overall national effort.

The recommendations in this last section have been organized according to the three “p’s”—prevention, prosecution and protection.

With respect to prevention, awareness and public education are critical. Awareness must focus on informing vulnerable populations about how traffickers lure young girls, boys and desperate people with promises of a better life abroad, making sure that the information is distributed widely at the community level and sensitizing the public about the plight of the victims of trafficking. The targeted audiences should include community leaders, parents, youngsters (including street children), schools, vulnerable populations and the media. As Ecuador’s laws concerning trafficking improve and the government pays more attention to the problem, awareness campaigns should also target potential traffickers and customers of those who traffic to dissuade them by making them aware of the new penalties and enforcement measures. Prevention must also focus on family violence as abused children take to the streets and put themselves at greater risk. Low school attendance must be countered with stay in school programs and post school activities. Success in these two areas will have a positive affect on gang recruitment.

In the area of prosecution, while we encourage the Ecuadorian Congress to continue to work on the legislation proposal related to trafficking in persons, we would go a step further in suggesting they consider a separate comprehensive and effective anti-trafficking legislation to enable law enforcement to respond quickly. Training of law enforcement in the use of the legislation provisions, identification of victims, treatment of victims vis-à-vis traffickers during raids, and collection of evidence is also necessary. For example, young girls trafficked, raped and abused cannot be thrown in jail alongside hardened criminals and mature women prisoners. Also, the links between drug trafficking, alien smuggling and trafficking in persons must be utilized to develop a

cooperation network to speed and improve investigations, raids, prosecutions and collection of evidence. Finally, this report includes the conclusions and recommendations made to the proposed law by Dr. Mohamed Mattar and Maria Velikonja (These documents may be found as Annexes IV and V respectively).

In evaluating the protection component of a larger plan, the strategic plan should strive to address the lack of shelters for trafficked victims, foreign victims and other appropriate protective services. According to various interviews, there is a potential source of funding to establish some shelters through a potential partnership between the Ecuadorian government and USAID. This possibility should be explored immediately. Furthermore, there are a good number of organizations throughout Ecuador with experience providing similar services to victims of other types of abuse and exploitation. Their knowledge, good will, experience and facilities should be used whenever possible, and they should, in turn, receive additional specific training on the handling of trafficked victims. They may be good candidates for expanding their services with some additional support.

The real key is to gather all these groups, organizations, and government entities that presently combat trafficking and, while allowing them to maintain their autonomy weave them into one solid voice and force against trafficking in persons in Ecuador. Once this Ecuadorian anti-trafficking group solidifies, it will act as a wave of change and provide the momentum needed to move forward.

# INTRODUCTION

## Background

In June 2004, the staff at the US embassy in Quito asked ABA/LALIC to hold a conference on the problem of trafficking in Ecuador, co-sponsored by the Supreme Court of Ecuador and the National Council of the Judiciary, bringing together both governmental and non-governmental organizations who work on the problem. Around the time of the conference, ABA/LALIC was awarded funds for a two-year anti-trafficking project. The conference thus served as a springboard for the project. The conference allowed many different perspectives to be aired and encouraged participants to identify ways to combat the problem. The most pressing need identified during the conference was for a comprehensive assessment of trafficking in Ecuador. This document represents part of that assessment.

The assessment will show that addressing trafficking in persons in Ecuador has two critical dimensions. The first—in light of the emerging data concerning the pervasiveness and diversity of human trafficking in Ecuador—is the urgent need to develop a comprehensive framework to address trafficking in persons in all its manifestations in the country through the lens of prevention, prosecution and protection. Secondly, combating trafficking will require the involvement of NGO's, police, prosecutors, and governmental officials at local, regional, and national levels. Working together with organizations and officials at all levels will foster a partnership atmosphere. The high visibility of this issue in Ecuador as well as the genuine willingness of many organizations to work together emerge as strong assets in developing an effective anti-trafficking campaign. Though the country's leadership have expressed concerns about their recent Tier 3 rating in the US Department of State's Annual Trafficking in Persons (TIP) Report, the concern is, in the main, genuine and this assessment has verified the presence of significant political good will that will provide stamina and energy to an national anti-trafficking initiative. Initial efforts to address the problem will benefit from support in order to ensure sustained impact over time. This two-year project, consequently, is strategically timed for great potential impact on the development and implementation of Ecuador's anti-trafficking initiatives.

## Assessment Goals

The overall objective of the assessment has been to serve as a guide for further development and planning of the ABA/State TIPS project. With this framework, four related sub-goals have been identified. They are:

1. Identify organizations on human trafficking and trafficking related issues working in the major cities, such as Quito and Guayaquil, as well as the smaller centers of activity such as Machala, Esmeraldas, Lago Agrio, and Santo Domingo de los Colorados.
2. Identify major trends/themes in trafficking as well as anti-trafficking activities.

3. Identify gaps between existing service provision, public policy and the existing legislative framework and the reality of trafficking in persons.
4. Develop recommendations for a comprehensive anti-trafficking approach in Ecuador.

## **Methodology**

To accomplish the objectives of the study, the following steps were taken:

1. Comprehensive background research on the scope of the problem of human trafficking based on a review of existing literature.
2. Identification of local partners who could act as logistical resources as well as serve as neutral conveners in order to facilitate meetings with local organizations.
3. Development of project time-line and management plan.
4. Development of an assessment in three parts: Site visits to Quito; site visits to regions throughout Ecuador that illustrate different types of human trafficking; and an evaluation of the draft of the proposed anti-trafficking legislation.
5. Development of interview protocols for representatives of government organizations as well as NGO's and IGO's.
6. Selection of individuals and organizations to be interviewed. This list was developed with the assistance of the American Bar Association (ABA), the US Embassy in Quito and local partners.
7. On-site interviews.
8. Personal interviews with individuals coming out of trafficking situations or involved in the commercial sex industry.
9. Site visit reports on each of the visits, which included detailed descriptions of each meeting.
10. An analysis of the existing legal framework as well as the proposed amendments to the penal code to address trafficking in persons
11. A comprehensive report which identifies themes common across the country, as well as recommendations for the development of solutions to eliminate trafficking in persons in Ecuador.



**Part I**  
**THE SCOPE OF THE PROBLEM OF HUMAN  
TRAFFICKING IN ECUADOR**  
**A REVIEW OF THE LITERATURE**

Ecuador has traditionally been a fragile democracy. However, the events over the last twenty years have greatly exacerbated existing problems. The economic situation in Ecuador deteriorated sharply throughout the 1990s, causing skyrocketing poverty rates and giving rise to a host of social challenges that continue to this day. During these years, Ecuador experienced a number of economic, political and natural crises, which led to rapidly climbing inflation rates, record levels of unemployment, and eventually a mass exodus from the country. As a result, one million Ecuadorians, a record number in Ecuador's history left the country between the years of 1999-2000 alone.<sup>1</sup> In the aftermath of these crises, the social indicators in Ecuador deteriorated sharply, with increases in insecurity and conflict as well as inadequate access to services.<sup>2</sup> Unfortunately, little has changed in the past year or two.

**A. Economic Profile**

As of 2003 estimates, 65% of the population in Ecuador lives below the poverty line (under 2 USD per day).<sup>3</sup> The absolute number of the extremely poor in Ecuador rose from 2.1 million to 4.2 million people between 1995 and 2001.<sup>4</sup> Merely citing the statistical increase in poverty levels does not accurately represent the impact these changes have had on different sectors of the Ecuadorian population because the increases were not uniformly distributed across all regions of the country. In rural Sierra, one of the hardest hit regions, poverty increased by 15%. The high levels of migratory flows in the 1990s from the rural areas of the country to urban areas led to an increase in urban poverty accompanied by the growth of slums around urban centers. The result has been a corresponding rise in vulnerability of the poor, particularly children, to various types of exploitation, including economic and sexual.

The largest poverty increases were recorded in urban areas of the Costa and the Sierra regions of the country, where the poverty rates in urban areas increased by 80% between

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<sup>1</sup> "Labor - Ecuador: Job Shortage Fuels Historic Exodus," *InterPress Service*, 1 May 2001.

<sup>2</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>3</sup> Index Mundi – Ecuador, accessed November 2004 at [http://www.indexmundi.com/ecuador/population\\_below\\_poverty\\_line.html](http://www.indexmundi.com/ecuador/population_below_poverty_line.html). UNDP figures are slightly different, stating that this number is 40.8%, as of the 2004 Human Development Report figures.

<sup>4</sup> Patricia Bermudez, "Information and communication technology-appropriation in Ecuador: educative initiatives with disadvantaged groups," Paper presented at the Workshop: "Information and Communication Technologies in Education in the South: Beyond Futurological Prophecies and Critical Dystopias," 2-3 October 2003, available at <http://www.svt.ntnu.no/geo/Arena/Workshop03/Bermudez.pdf>.

1990 and 2001.<sup>5</sup> Nonetheless, the most acute levels of poverty continue to remain in the rural areas of the country. While the urbanization of poverty continues and rural to urban migration flows persist, large income gaps between the rural and the urban areas remain with the latter faring considerably better.<sup>6</sup>

Overall, Ecuador has not experienced real improvements in GDP per capita in the last two decades.<sup>7</sup> The unemployment rate is reported at 9.8%, with underemployment at 47%, as of 2004 estimates.<sup>8</sup> Close to 70% of Ecuador's 4.8 million children live in poverty.<sup>9</sup>

## ***B. Social Profile and Contributing Factors to the Trafficking Infrastructure***

Indigenous communities are particularly affected. The vast majority of the indigenous population in Ecuador, numbering some 3.5 million out of Ecuador's population of 12.5 million,<sup>10</sup> lives in rural areas, particularly in the Sierra. In 2000, a government study found that 79% of indigenous children were living below the poverty line, often lacking electricity and potable water and suffering from a prevalence of malnutrition and endemic disease.<sup>11</sup> Indigenous communities face discrimination at most levels of society and few are informed about their rights.<sup>12</sup> Indigenous women living in the Sierra tend to be particularly disadvantaged, with a 50% illiteracy rate, as compared to the 18% illiteracy rate of rural women in general.<sup>13</sup>

Studies by the UN and other experts have concluded that a majority of women in Latin American countries report being physically assaulted by their male partner.<sup>14</sup> Estimates

<sup>5</sup> The World Bank Group, "Ecuador Poverty Assessment," April 2004, available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016\\_20040615095708/Rend ered/PDF/270610EC.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016_20040615095708/Rend ered/PDF/270610EC.pdf).

<sup>6</sup> The World Bank Group, "Ecuador Poverty Assessment," April 2004, available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016\\_20040615095708/Rend ered/PDF/270610EC.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016_20040615095708/Rend ered/PDF/270610EC.pdf).

<sup>7</sup> The World Bank Group, "Ecuador Poverty Assessment," April 2004, available at [http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016\\_20040615095708/Rend ered/PDF/270610EC.pdf](http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/06/15/000160016_20040615095708/Rend ered/PDF/270610EC.pdf).

<sup>8</sup> CIA Factbook, "Ecuador," accessed 14 December, 2004 at <http://www.cia.gov/cia/publications/factbook/geos/ec.html>.

<sup>9</sup> UNICEF, "At A Glance – Ecuador," accessed December 2004, <http://www.unicef.org/infobycountry/ecuador.html>.

<sup>10</sup> Kintto Lucas, "Indian Women – Still a Long Way To Go," *InterPress*, 7 March 2003, available at <http://www.ipsnews.net/interna.asp?idnews=16542>.

<sup>11</sup> United States Department of State Human Rights Report, "Ecuador," 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27896.htm>.

<sup>12</sup> United States Department of State Human Rights Report, "Ecuador," 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27896.htm>.

<sup>13</sup> UNESCO, "Latin America and the Caribbean: Gender Illiteracy, Patterns of Inequalities in Adult Education," [http://www.unesco.cl/medios/biblioteca/documentos/illiteracy\\_adults\\_gender\\_latinaamerica.pdf](http://www.unesco.cl/medios/biblioteca/documentos/illiteracy_adults_gender_latinaamerica.pdf).

<sup>14</sup> United Nations, "UN Proposes Pact on Family Violence," *ALC News Service*, 24 July 1998. See also, Liz Creel, "Domestic Violence – An Ongoing Threat to Women in Latin America and the Caribbean," *Population Reference Bureau*, October 2001, accessed at <http://www.prb.org>.

from Ecuador corroborate this conclusion, and violence against women appears to be endemic, with reports that up to 80% of men in the capital city of Quito beat their wives.<sup>15</sup> There is a 25% income gap between men and women and fewer women are employed in professional work and in the skilled trades.<sup>16</sup> Women form the majority of the poorest 60% of the population, while men form the majority of the wealthiest 40%.<sup>17</sup>

Sexual violence likewise appears to be widespread. A 1997 study by the Commission on Women and the Family in Guayaquil found that close to 25% of young girls suffered various forms of sexual abuse, with 8% having been raped by their teachers. Nearly 6 of every 10 children in Ecuador experience some type of abuse either at home or at school.<sup>18</sup>

Poverty in both rural and urban areas is intimately linked to the inability of children to attend schools, as families expect them to contribute to family income. The average number years of schooling for the poor is as low as only four years.<sup>19</sup>

Ecuador has been cited as having the highest number of children in the labor force in Latin America, with 62% of children reportedly working in the rural highlands, and 70.2% working in the rural coastal areas. The Ecuador National Institute of Statistics and Census found in 2001 that 24.9% of children between the ages of 5 and 17 were working.<sup>20</sup> Around 20% of girls aged 10-14 work in domestic service, in situations which frequently led them to be physically and/or sexually abused.<sup>21</sup>

The pressure to contribute to family income compels many children to quit school before the age of 15. A recent UNICEF study indicates that only 67% of Ecuador's children finish primary school,<sup>22</sup> and the National Statistics Institute of Ecuador reported in 2001 that one out of six citizens between the ages of 13 and 20 had not completed the sixth grade, even though the Constitution requires that children receive an education of at least

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<sup>15</sup> LibertadLatina.org, "Latin American Women, Children At Risk," accessed December 2004 at [http://www.libertadlatina.org/Crisis\\_Latin\\_America\\_Ecuador.htm](http://www.libertadlatina.org/Crisis_Latin_America_Ecuador.htm).

<sup>16</sup> United States Department of State Human Rights Report, "Ecuador," 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27896.htm>.

<sup>17</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>18</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>19</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>20</sup> The US Department of Labor's "2003 Findings on the Worst Forms of Child Labor," 2004, available at <http://www.ilr.cornell.edu/library/downloads/keyWorkplaceDocuments/Child%20Labor%20LAB/ChildLaborFindingsWorstForms2004.pdf>.

<sup>21</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>22</sup> "An Education for Ecuador's Children," *World Vision eNews*, accessed 16 September 2004 at <http://www.worldvision.org>.

9 years.<sup>23</sup> Only 43% of adolescents between the ages of 12 and 17 are formally enrolled in school.<sup>24</sup> Nearly 300,000 children are excluded from the educational system altogether.<sup>25</sup>

Teenage pregnancy and the associated low-skilled and low-wage labor of teenage mothers appear to be correlated to educational levels. Teenage pregnancies are prevalent in Ecuador, with the teenage pregnancy rate at 17% of the total of annual pregnancies. In rural coastal areas, the number is even higher, with approximately 23.3% of teenage pregnancies out of all pregnancies on an annual basis. Four out of ten girls who did not finish primary school are mothers. This premature responsibility of parenthood leads to unskilled and low-wage employment for these women.<sup>26</sup> With little education and few employment opportunities available to them, these young women are sometimes forced to enter prostitution to support their children. For many young girls in Ecuador, a life of prostitution is the result of their inability to ensure a means of survival through more conventional means such as marriage, domestic work or other employment, especially in rural areas.<sup>27</sup> Married women are not exempt from this fate: husbands have been reported to push their wives into prostitution to contribute to the family income. Lack of education and knowledge about sex and sexuality, sexual abuse and domestic violence also contribute to these trends.<sup>28</sup>

The government of Ecuador has few resources available to adhere to the Constitutional requirement of providing a basic education of 9 years. Particularly in rural areas, schools are in short supply, as are adequate resources for the schools that do exist, and the necessary training for teachers.<sup>29</sup> Additionally, the system is hindered severely by a lack of equity in the disbursement of funds and resources and an inadequate curriculum.<sup>30</sup> In addition, while the Constitution requires that 30% of the public budget be spent on

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<sup>23</sup> United States Department of State Human Rights Report, "Ecuador," 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27896.htm>.

<sup>24</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>25</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>26</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>27</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>28</sup> Mariana Sandoval Laverde, "Executive Summary," in *Magnitude, Characteristics and Environment of Sexual Exploitation of Girls and Adolescents in Ecuador* (Lima: International Labor Organization Regional Office for Latin America and the Caribbean, International Program on the Elimination of Child Labor, October 2002).

<sup>29</sup> The US Department of Labor's "2003 Findings on the Worst Forms of Child Labor," 2004, available at <http://www.ilr.cornell.edu/library/downloads/keyWorkplaceDocuments/Child%20Labor%20ILAB/ChildLaborFindingsWorstForms2004.pdf>.

<sup>30</sup> Salesian Project, "The Reality that Challenges Us," accessed September 2004 at <http://www.chicosdelacalle.org.ec/reality.html>.

education, the country spent only half of that in 2003.<sup>31</sup> As a result, while the absolute illiteracy rate in the country averages at 13%, the functional illiteracy rate is 40%.<sup>32</sup>

Children are often abandoned and left to fend for themselves when parents emigrate in search of work. Left to care for themselves, these children drop out of school and frequently wind up living in the streets where they become prime targets for abuse and exploitation.

While definitive statistics on the numbers of street children in Ecuador are difficult to obtain, estimates from the early 1990's indicate that the highest concentrations of street children are in urban areas, and that there were at that time 700 street children in Quito and 600 in Guayaquil.<sup>33</sup> Children living on the street are at high risk for economic abuse, violence, substance abuse, recruitment into gangs, and sexual abuse, exploitation and prostitution. As an illustration, a recent survey of girl prostitutes in the country revealed several important commonalities among them:

many had been abandoned or orphaned by one or both parents and had been subjected to domestic violence and abuse. Most had entered prostitution by the age of 14.<sup>34</sup>

An estimated 5,200 girls and adolescents are sexually exploited in Ecuador through prostitution and similar activities.<sup>35</sup>

Trafficking in persons in Ecuador, particularly in its international manifestations, appears to be linked to drug trafficking and alien smuggling. Between 1999 and 2001 alone, 30-40% of the Ecuadorian population migrated either within or outside of the country, both legally and illegally. Illegal immigrants paid between 6,000 USD and 10,000 USD per person to arrange passage to the United States. The money was paid to criminal organizations often specializing in alien smuggling. Unable to pay back their travel costs, these immigrants are subsequently forced into conditions of servitude and exploitation in order to repay their debts. Well-organized networks of facilitators connected with loan sharks, local banks, professional forgers, and corrupt officials, organize every step of the trips abroad. At every point of the treacherous process, immigrants are extremely vulnerable and may fall prey to indebtedness.<sup>36</sup> Colombian criminal networks, which are

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<sup>31</sup> United States Department of State Human Rights Report, "Ecuador," 2003, available at <http://www.state.gov/g/drl/rls/hrrpt/2003/27896.htm>.

<sup>32</sup> Salesian Project, "The Reality that Challenges Us," accessed September 2004 at <http://www.chicosdelacalle.org.ec/reality.html>.

<sup>33</sup> Salesian Project, "The Reality that Challenges Us," accessed September 2004 at <http://www.chicosdelacalle.org.ec/reality.html>.

<sup>34</sup> International Labor Office, *Girl Child Labor in Agriculture, Domestic Work, and Sexual Exploitation: Rapid Assessments on the Cases of the Philippines, Ghana, and Ecuador*, vol.1 (Geneva, International Labour Office, 2004).

<sup>35</sup> ILO-IPEC cited in The US Department of Labor's "2003 Findings on the Worst Forms of Child Labor," 2004, available at <http://www.ilr.cornell.edu/library/downloads/keyWorkplaceDocuments/Child%20Labor%20ILAB/ChildLaborFindingsWorstForms2004.pdf>.

also involved in drug trafficking, have been reported to regularly traffic women throughout Latin America, including Ecuador, for the purpose of prostitution.

The social and economic woes of Ecuador over the past twenty years have made the country vulnerable to those who would exploit the suffering of Ecuador's poorest citizens. How trafficking has come to flourish in this environment will be discussed in the next section.

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<sup>36</sup> David Kyle and Zai Liang, for The Center for Comparative Immigration Studies, "Migration Merchants: Human Smuggling from Ecuador and China," Working Paper No. 43, October, 2001, available at [www.ccis-ucsd.org/PUBLICATIONS/wrkg43.PDF](http://www.ccis-ucsd.org/PUBLICATIONS/wrkg43.PDF).

## ***PART II***

### ***TRAFFICKING IN PERSONS IN ECUADOR***

Much of the information in this report about the characteristics and amount of trafficking in Ecuador comes from two site reports completed in September and November of 2004. While Ecuadorian and other researchers have done some research on the frequency and patterns of human trafficking, many government officials and representatives of local organizations interviewed lauded the investigators as the first observers interested in the problem to visit their communities. A review of the site reports reveals a wide range of attitudes, feelings, and knowledge about trafficking. From an analysis of interviews conducted with representatives of government, non-governmental agencies, and international organizations, as well as with trafficked persons, several themes emerged and contributed to the development of a comprehensive profile of trafficking in persons in Ecuador. These themes have been categorized into four major areas and will be discussed within that structure:

- A. The nature of the problem of human trafficking
- B. Definition of a victim of trafficking
- C. The complexity of underlying causes
- D. The need for legislative reform

#### ***A. The Nature Of The Problem Of Human Trafficking***

Interviews revealed a lack of uniform understanding about the nature of trafficking in persons. Although some individuals were clear about the distinctions in terminology, others were not yet making the distinction between the terms “trata,” “trafico,” and “explotacion.”

##### **1. Lack of a clear definition of the problem**

For many groups, human trafficking is understood as a migration issue. The terms “alien smuggling,” “illegal immigration,” and “human trafficking” are used interchangeably by many groups. This was particularly true in conversations with representatives of the Ministry of Foreign Affairs as well as with representatives of certain immigrant rights groups, especially in Guayaquil.

When discussing issues of human trafficking in the context of illegal immigration, Ecuadorians emphasized the need to ensure safe passage for individuals wishing to leave the country in order to work overseas. Ecuadorian immigrant advocates promoted the distribution of information related to immigrant/migrant workers rights, including the dissemination of information about the risk of being subjected to abuse if the immigrants

are not entering a country legally. Ecuador depends heavily on remittances from foreign workers (which amount to \$1.6 billion annually, second only to petroleum as percentage of national revenue). Currently 24 million Ecuadorians live outside the country.

Because many of these civil society organizations do not make the distinctions between trafficking and alien smuggling, they do not always recognize instances of trafficking, or victims of trafficking when they encounter them.

For other civil society groups, trafficking in persons is defined largely as commercial sexual exploitation of children (CSEC). The commercial sexual exploitation of children is easier to document and to address than trafficking of adult women and girls across international borders. Furthermore, acknowledging the presence of foreign women in the country carries with it implications for international intervention. There is also a reluctance to include exploitative child labor practices as a form of trafficking since these are already recognized as the worst form of child labor, rather than child trafficking.

## 2. Little public awareness on the topic

In general, there is little understanding of the nature of trafficking in persons among the general public. This lack of awareness results in inappropriate treatment of victims, as well as in inadequate laws and law enforcement activities. Prostituted children are considered to be “bad girls” or troublemakers. Street children are considered to be public nuisances, rather than as children in need and potential victims of sexual predators. Foreign women are believed to be entrepreneurs who cross borders knowing that they will enter into lives of prostitution. Interviews indicate the following:

- Victims of trafficking, including minors, are treated as offenders and not as victims of a crime. When young women are arrested in raids they are “fined” by local law enforcement officials and these fines routinely serve as bribes. The girls are placed in detention centers often with adult women offenders and then returned to their original brothels/clubs, or removed to more hidden locations in order to avoid public detection of prostituted minors.
- The victim of trafficking is often seen as a criminal, particularly in cases of illegal immigration. Employment and travel agencies, which facilitate illegal immigration, are not held liable even though ads and information distributed to potential clients may contain deceptive information. The role of travel agencies, overseas employment services, and the print and broadcast media which advertise such services as potential facilitators of trafficking has not been sufficiently discussed in the public arena in Ecuador as these activities are not regulated in any form.
- Most of the anti-trafficking debate revolves around public policy at the national level, with little focus on local or regional activity. In Santo Domingo de los Colorados, NGO’s reported that the assessment team’s visit was the very first outside visit related to trafficking in persons in that region. They welcomed this intervention. There has been little grass roots empowerment other than through a very active network of commercial sex workers, focused on an HIV/AIDS prevention campaign.



### 3. The potential for attitudinal change

Conversations with representatives from sex workers rights groups in different communities indicate that there has been significant change in the way commercial sexual workers are perceived in their communities. Whereas they and their families used to face considerable ostracism from community members, they are beginning to attain some public acceptance in spite of their professional activities. This change of attitude, the result of community efforts, indicates that attitudes towards social behaviors can be changed. All sex workers will say, however, that this has been a very long and hard-fought battle. Furthermore, it has been effective on the community levels and not the national levels. This report does not propose to integrate anti-trafficking awareness programs into pro-prostitution educational campaigns. Rather, this point is raised as an illustration of how concerted public awareness efforts managed at the grass roots level have been able to challenge and change public perception around sensitive issues.

### 4. The lack of media sensitivity

The lack of a clear definition of the problem, especially one which considers the trafficked person as the victim of a crime, contributes to the dissemination of misinformation in the media. The press tends to sensationalize the stories without addressing the criminal aspects of the phenomenon. In several instances the media has also severely compromised the confidentiality of the victims – at times with extreme consequences, as was the case of children who were murdered after a newspaper covered the story.

## ***B. Definition Of A Victim Of Trafficking***

The 2004 Trafficking in Persons Report, published by the US Department of State, indicates that “Ecuador is a source, transit and destination country for persons trafficked for sexual exploitation and forced labor.” It goes on to say that “most victims are internally trafficked for prostitution.”<sup>37</sup> While recognizing that internal trafficking of children for prostitution constitutes a significant portion of trafficking in Ecuador, it is important to recognize the international dimensions to human trafficking and the extent of labor trafficking in the country. Furthermore, the lack of an adequate understanding of who is a victim of trafficking in Ecuador creates an environment where victims fall through the cracks.

### 1. Cross Border Trafficking

- Women and girls are trafficked from Colombia to Ecuador for purposes of commercial sexual exploitation. Interviews with women involved in the commercial sex industry as well as law enforcement officials indicated a strong presence of Colombian girls, who are highly preferred to local women and who thereby earn more money for club owners. Most high-end clubs are

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<sup>37</sup> Trafficking in Persons Report, June 2004, p. 235.

filled with foreign girls and women whereas local women are usually found in the lower end clubs or the streets.

- Foreign girls, while considered to be valuable to club owners, face discrimination within the law enforcement system. Adult sex workers who had spent time in jail indicated that, once in jail, foreign women are severely mistreated. Discriminatory practices include being denied beds or even bedding and being forced to sleep on the floor regardless of the weather conditions.
- The head of a commercial sex workers association in Guayaquil was approached by an “agent” who offered her \$50,000 if she would help him recruit young women to send overseas. She refused because she did not know him and could not ensure safe conditions for her girls. Several did go, and returned with vivid stories of abuse and exploitation. As an interesting observation, this same woman facilitates the movement of adult commercial sex workers to known establishments throughout the country because she is able to guarantee the treatment of “her girls.”
- Anecdotal evidence heavily links human trafficking with drug trafficking. This was particularly evident in Guayaquil and in Lago Agrio.
- Evidence also seems to indicate that many women who seek overseas employment are at risk of being trafficked for purposes of commercial sexual exploitation or forced labor by fraudulent travel and employment agencies. Because many migrant worker rights organizations are not familiar with definitions of trafficking or of the potential for abuse by commercial agents, there is still insufficient documentation as to the scope of the problem.

## 2. Trafficking and pornography

The on-going case of a Galapagos Island couple being prosecuted for using minors to make pornographic films which are then being marketed to Europe is drawing attention to the growing pornographic industry in the country. Because pornography is not defined as a form of commercial sexual exploitation of children, the perpetrators are being tried on charges of corruption of minors.

## 3. Trafficking for Forced Labor

This assessment made every effort to include individuals and organizations addressing labor trafficking. Such organizations have identified cases of labor trafficking in particular among street children. The worst forms of child labor are to be found in agriculture, banana plantations in Machala, mines and the shrimp industry in Guayaquil. Girls are mostly exploited as domestic servants and in the local markets.

## 4. The Presence of Boys in the Commercial Sex Industry

Representatives from numerous sex worker associations in different parts of the country mentioned the presence of boys in the sex industry. Boys may be found working in

hotels, cleaning, or assisting guests. They are also made available for sexual services upon request. They are kept out of sight to regular clients.

#### 5. Lack of Victim Services

Neither the legal framework nor public perception allows the trafficked person, including foreign women and minors, to be seen as a victim of a crime. A consequence of this misperception is the lack of adequate services, including shelters. Several shelters run by religious organizations exist to care for young Ecuadorian runaways, drug addicts or victims of sexual abuse. These shelters focus on helping specific populations and, although willing to accommodate young foreign women, are unable to meet the needs of different populations. There are no shelters or networks of social services for foreign victims of trafficking that can assist them with counseling, medical care, shelter and employment. Some provision is made for repatriation by government offices but in many cases, repatriation is not a possibility for these women and the resources available are much too limited.

### *C. The Complexity Of Underlying Causes*

#### 1. Corruption and document forgery

- The representatives of almost every interviewed organization raised concerns about the corruption of the Civil Registry. One young Colombian woman, who had been trafficked from her native Colombia to Japan and then to Ecuador, showed us her official Ecuadorian documents. The owner of the strip club where she was sent after being brought into the country illegally obtained these for her.
- As a corollary to this corruption, Ecuador has become a regional hub for forged documents.
- Document forgery complicates the victim identification process as well as efforts to document routes and forms of trafficking into and within Ecuador. Many foreign women, particularly Colombian women and minors, “work” in Ecuador with false documents, stating that they are either Ecuadorian citizens or they are older than their actual age.
- Severe corruption of law enforcement is another frequently recurring theme, particularly in relation to minors working in prostitution. Law enforcement often raid brothels and impose “fines” on minors. If the fines are paid, the girls will be allowed to go back to work. Law enforcement will jail minors who cannot afford to pay high enough bribes.

#### 2. Victimization at the hands of family members

- Most representatives interviewed pointed out that many children and adolescents are victimized by family members.

- Young girls are often recruited into prostitution by their boyfriends or husbands. Some men have even forced their daughters into prostitution.
- These victims cannot go back to their families, because they are likely to be revictimized, thus adding to the street children problem.
- Sexual abuse, sexual exploitation and trafficking in persons are still not discussed in public or community forums outside of the capital city. There is little grass roots awareness on: 1) how exploitation takes place, including recruitment; 2) internal and cross border transportation; 3) forms of exploitation; and 4) special needs of victims once they are no longer in exploitative circumstances.

### 3. Sexual abuse of boys and girls in gangs

Large numbers of street children turn to gangs for a sense of belonging as well as protection usually following instances of domestic violence and sexual abuse in the homes. For most young Ecuadorian street children, gang membership helps to ensure survival. Discussions with representatives from NGO's working with youth gangs have indicated how gang membership creates an infrastructure for trafficking. Furthermore, gang membership breeds a culture of violence and abuse among young members.

- Of particular concern to many social workers involved in youth gangs is the extent to which gang membership perpetuates a cycle of violence towards women. Young girls are introduced to gangs at a young age but, upon reaching adolescence, they are initiated as sexual partners to gang leaders and, often, to other gang members. Girls become pawns between gangs, exchanged in discussions over turf and power, and eventually exploited into the commercial sex industry as a source of gang revenue. Networks originate locally but expand nationally and regionally.
- Domestic violence and child abuse, rather than economic circumstances, are cited as major reasons for children joining gangs. In gang life they seek and often gain acceptance and find understanding.
- Street children are considered delinquents and criminals, not victims, and are treated accordingly. This further alienates them and pushes them into violent or delinquent behavior.
- Many girls are recruited into prostitution in Ecuador from the street children population.

#### ***D. The Need for Legislative Reform***

There is currently no legal framework which defines the nature of the crime of trafficking in persons or provides for adequate punishment of the perpetrators. Furthermore, because there is no legal definition of a victim of trafficking, trafficked persons are considered to be criminals rather than victims. At the practical level, law enforcement officers lack training on the nature of the crime, how to identify it, or how to treat victims of

trafficking. Within this broad framework, several key issues emerged from the interviews:

- Although Ecuador is signatory to international conventions which define a child as a person who has not reached the age of 18 (including the UN Protocol to Prevent, Suppress and Eliminate Trafficking in Persons), Ecuadorian law defines the age of consent to sexual activity at 14. This discrepancy creates challenges in the country's ability to adopt rigorous measures against the commercial sexual exploitation of children.
- The absence of witness protection makes trafficked persons reluctant to come forward and testify against their traffickers.
- There are different opinions in the country as to whether to develop separate anti-trafficking legislation or to amend the current penal code.
- The lack of legal framework makes rapid and adequate response to the prosecution of perpetrators and the needs of victims difficult. There is a need to address corruption when reforming laws that address trafficking.
- The existing legal framework makes it difficult to dispense adequate punishment to traffickers.
- Commercial institutions including travel and employment agencies and transportation companies have been identified as complicit in aspects of trafficking but are not held liable.

***PART III***  
***THE NEED FOR A COMPREHENSIVE APPROACH TO  
ERADICATE TRAFFICKING IN PERSONS -  
RECOMMENDATIONS***

The preceding sections provided background information on the scope of the problem of human trafficking in Ecuador, the gaps in understanding the problem, the variety of types of trafficking existing today, the complexity of the root causes and the need for legislative reform. This section will offer suggestions for developing a comprehensive approach to curtailing trafficking in persons in Ecuador.

While putting together a national strategy to combat trafficking, it is recommended that the government take into account - to the extent possible - all the forms of trafficking and trafficking patterns that exist throughout the country. At the same time, a wise national plan must grow out of local and regional efforts. The national anti-trafficking agenda should be developed with consideration given to local interests, how the local area is affected, and what the local needs are. Implementation should focus on local initiatives, with frequent national collaborative participation in conferences, trainings and other capacity building exercises to promote clarity and encourage networking.

***A. Prevention***

1. Prevention as public education and awareness

The widespread lack of understanding about all aspects of trafficking warrants comprehensive public awareness and education programs. The overall objectives should include: 1) informing vulnerable populations about potential trafficking situations, 2) sensitizing the public as to the plight of victims of trafficking and 3) informing potential traffickers or consumers of trafficked victims that governments, either local or national, are focused on the crime.

Within this context, special focus should be placed on empowering municipalities and ensuring that information is distributed to communities throughout the country. Local governments should be tapped to organize community and town hall meetings addressing the issue with trafficking in persons experts providing the expertise at such meetings. Public awareness should be raised particularly in border towns which are places of entry and transit for women trafficked from other countries.

Public awareness should be specific and target individual groups:

- Communities (Cities, Town, And Villages): Communities need to understand the dynamics of trafficking particular to their areas. Who are the recruiters, why are trafficked persons victims and not criminals, and what they can do to prevent trafficking. These same communities will also

eventually face the fact that many young women will look to return home after being trafficked to the cities or to another country. Will these communities be able to welcome them without prejudice and make opportunities for victims of trafficking to earn a living in the traditional economic sectors?

- Parents: It is recommended that parents receive information on the following: 1) The relationship between domestic violence and vulnerability to trafficking; 2) the potential for abuse in sending children to work with families they do not know; 3) trafficking practices, including likely places of recruitment common to their areas. It is also recommended that parents be informed of their rights and of possible resources if they suspect that their children have become victims of trafficking.
- Victims and Potential Victims of Trafficking: Victims and potential victims of trafficking will benefit from public information programs if they are geared towards both prevention as well as protection. Preventive information campaigns will include information on recruitment techniques, risks involved in seeking overseas employment, and precautionary measures to take if planning to travel overseas. Protective information campaigns include information on existing services including shelters, legal aid, and medical as well as psychological counseling
- Service providers: Service providers themselves in Ecuador have little understanding or knowledge of trafficking in persons. Before they can be trained to provide appropriate services, public awareness campaigns can help them identify cases and get involved.
- The Media: Documented breaches of victim confidentiality and oversensationalized stories are harmful to victims and those trying to assist them. Media must be educated about the nature of trafficking and how to write stories in a way that educates the public without compromising the victims, protectors/advocates, or their cases.
- Traffickers and their customers: As Ecuador improves its anti-trafficking laws and the government begins to crack down on this crime, traffickers and their customers (customers at brothels, business owners, and sex tourists as examples) should receive targeted campaigns regarding new penalties and the potential for stiff punishments.

## 2. Prevention as economic and social investment

Family violence, low school attendance and a strong gang culture create an environment where violence is allowed to grow. Gaps noted below need to be addressed if a comprehensive anti-trafficking prevention program in Ecuador is going to be effective.

### *a) Stay in School Programs*

Children do not stay in school because they must work in order to contribute to the support of the household. Prevention campaigns targeting root causes of trafficking can be very effective by developing creative programs which provide incentives for families

to send their children to school. Public/private partnerships can accommodate these types of programs. Something along the lines of the “Bolsa Escola” programs in Brazil can be instituted, particularly with the help of the private sector. Bolsa Escola provides families with a set amount of money monthly which compensates for money lost from the children’s labor. The amount should be enough to cover not only what the family loses if a child doesn’t work but also the supplies the child needs to go to school.<sup>38</sup> This can become an attractive option for local municipalities given that better education means higher income for the mayors’ cities, as well as potential opportunity for commercial investment.

*b) Need to address the large percentage of minors in the sex industry.*

The large presence of minors, especially in the commercial sex industry, indicates that prevention programs should focus on this vulnerable population.

Any services, whether prevention or protection, should specifically target minors with special focus on young girls and boys. Minor victims of trafficking need special attention including mental and physical health services and specialized rehabilitation programs that focus on skills that would be most useful for them – these may not be the same as those for adults.

Prevention campaigns should speak the language of young girls and boys and should be presented in places where youngsters are able to see them. Most importantly, there must be ongoing research and efforts to find viable alternatives for these youngsters and their families.

Interviews indicate that few adolescents have any safe positive organized social activities in which to participate. The absence of clubs or centers for youth contributes to adolescents frequenting establishments for adults, or joining gangs. The action plan should include initiatives, and look for funds to create such centers around the country.

*c) Need to address the presence of boys in the sex industry*

Although a number of organizations mentioned the presence of boys in the sex industry, it is likely that this population may be overlooked in the design of preventive and protective programs. Boy prostitution is often neglected because it is hidden as well as misunderstood. The social stigma of the prostitution of young boys is even greater than towards the prostitution of young girls. Prevention and protection programs designed through the action plan will need to take into account the presence of boy prostitution and provide specialized services to work with these types of cases.

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<sup>38</sup> “Bolsa Escola: Redefining Poverty and Development in Brazil”.  
([http://wbln0018.worldbank.org/eurvp/web.nsf/Pages/Paper+by+Denes/\\$File/CHRISTIAN+DENES.PDF](http://wbln0018.worldbank.org/eurvp/web.nsf/Pages/Paper+by+Denes/$File/CHRISTIAN+DENES.PDF));  
“Bolsa Escola: Bridging Two Worlds”  
[http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/globalView/Bolsa%20Escola.pdf/\\$File/Bolsa%20Escola.pdf](http://wbln0018.worldbank.org/HDNet/HDdocs.nsf/globalView/Bolsa%20Escola.pdf/$File/Bolsa%20Escola.pdf).



#### *d) Focus on Street Children and Gangs*

Because of the prevalence of street children and gangs, and their vulnerability to predators, programs need to be established and the existing few need to be better funded within the framework of the national action plan to reach out to street children, to work with children in gangs, and to begin to establish some type of a network of alternatives to gangs and to life on the street.

#### 3. Prevention encouraged through a broad coalition

Two visits to the country revealed an extensive and growing network of civil society organizations already involved in or concerned with the issue of human trafficking. In addition to organizations already involved in public conversations concerning anti-trafficking measures, this assessment also indicated the presence of groups which encounter victims of trafficking while providing other services. These organizations have facilities, commitment and access to victims and should be brought to the table and empowered to provide assistance to victims of trafficking. In particular, faith based organizations, child labor organizations and organizations involved with gangs and street children are providing shelter, social services and counseling to a wide range of victims of abuse. Because these groups are traditionally left out of the policy debates, the larger anti-trafficking arena has not been able to tap into the benefits these groups can offer.

### ***B. PROTECTION***

#### 1. Need to address lack of shelter and appropriate protective services

USAID money is available for shelter and protective services and USAID is willing to be creative. At the same time, few or no facilities exist in a number of cities. In Guayaquil, where prostitution is rampant, for example, there are no facilities for young pregnant women, and activists have taken these girls into their own homes to help them.

Funding should be expanded to consider non-traditional service providers, notably faith based organizations. REMAR, an outreach organization for street children and drug addicts, has experience with shelters and providing services to street children. Their social workers indicate that some of their clients could very well be victims of trafficking but, because they do not think in those terms, they are unable to identify victims as such. Organizations such as REMAR would be good candidates for protective services provision for victims of trafficking. They are already involved in getting girls out of prostitution, they have a number of various shelters responding to the needs of different types of victims and they have come across cases of trafficking. Importantly, REMAR engages those it shelters in skill-building activities and allows them to work in REMAR-run businesses, which provides them with a level of independence and an alternative to going back to the street or into prostitution. This is crucial, particularly for minors who have been abused by their families and cannot go back to them – they need to be provided with skills and a measure of independence. In the words of the report based on

interview with DNI, “the goal is not to return children to their families, but to create homes for teenagers”. The need for such alternatives is made more acute by the fact that if girls return to prostitution, they are likely to, after a period of time working as prostitutes, become recruiters and the vicious cycle is perpetuated as new girls enter the system.

## 2. Need to address lack of preventive programs

The Ministry of Education of Ecuador should play a central role in preventive efforts. Although field reports indicate a high percentage of children who do not complete their elementary and secondary education, the Ministry of Education still has a privileged position, because of its infrastructure, to provide a forum for the preventive efforts of the project. Educational Models can be developed by the Project, in partnership with other organizations, such as the United Nations Office on Drugs and Crime and regional educational support organizations, like the Latin American Institute for Educational Communication (ILCE, for its initials in Spanish).

These programs should be designed in such a way, that they may also serve for community based trainings, outside schools, conducted by Municipal governments and by civil society organizations and other NGO’s.

## ***C. PROSECUTION/LEGAL FRAMEWORK***

Given that the ABA Project and other experts consulted have had an opportunity to review the proposed legislation, in addition to the knowledge gained through the site visits, this section includes general recommendations based on the trip reports and research, as well as a synthesis of the observations and recommendations expressed by our legislative experts, Dr. Mattar and Maria Velikonja, JD, and the project staff regarding the law proposal.

### 1. Law Enforcement Activities

Here are some general observations and recommendations regarding law enforcement and its role in curtailing trafficking and trafficking related activities. Corruption, training and the need to coordinate networks between drug trafficking law enforcement officers and human trafficking law enforcement officers are at the heart of the finding.

#### *a) Need to address corruption and sophisticated levels of document forgery*

- The level of law enforcement corruption needs to be addressed.
- Border guards should be provided with and trained on advanced equipment to recognize and identify forged documentation.
- Law enforcement must be trained.
- Once relationships of trust are established, well-informed and trained representatives of NGO’s should be encouraged to accompany police on raids to provide a measure of protection for adult and child victims.

- Reform of the Civil Registry is badly needed.

*b) Need for effective anti-trafficking legislation which provides a framework for a law enforcement response to cases of trafficking in persons*

- Once the legislation passes, law enforcement personnel throughout Ecuador must be trained on the applicable provisions of the new legislation. Training should include gathering of evidence, investigation techniques, interrogation, identification of victims and the non-criminalization of the victim of trafficking. Enforcement should focus on predators, adult traffickers, and the understanding that a minor caught in a raid is a victim of trafficking and should be turned over to protective services, rather than incarcerated.

*Additional Law Enforcement Training:*

- As NAS is open to ideas on the training of police officers, Interpol can be involved in this training. From the organizations interviewed, Interpol appears to have a realistic, practical understanding of the issue of trafficking in persons and its dimensions in Ecuador. Interpol can become an important partner to train local law enforcement. Additionally, law enforcement from countries in the region where trafficking is being addressed can also participate in trainings.
- During raids, law enforcement officers must be trained to separate young girls and see them as victims rather than delinquents and criminals. Authorities must place them in shelters rather than in. This will prevent the girls from being pushed closer to other criminal activity.
- The action plan should encourage the use of NGO's to accompany law enforcement on raids. NGO's can provide a useful buffer to prevent further abuse of victims. However, there must be previous contact and interaction between the two groups to foster trust and develop a partnership that is mutually beneficial.
- Law enforcement treatment of minors in prostitution needs reform. As training on trafficking proceeds, these broader issues of human rights concerns should also be addressed.

*c) Need to effectively address the links between trafficking in persons and drug trafficking*

- Law enforcement in Ecuador can use its experience in combating drug trafficking to address trafficking in persons.
- The action plan should call for collaboration of various law enforcement divisions particularly in the investigation of trafficking cases and in researching and understanding the networks involved and the dynamics of trafficking in persons in Ecuador.
- Law enforcement personnel responsible for drug trafficking investigation should be tapped for any existing knowledge about trafficking in persons

which may not have been utilized due to lack of legal definition or interest in trafficking in persons.

- Law enforcement responsible for drug trafficking should be trained to recognize trafficking in persons and if a special anti-trafficking in persons unit is created, these units should be actively encouraged to collaborate.

## 2. Proposed Congressional Bill Amending the Criminal Code to include the crime of Trafficking in Persons

The ABA/LALIC was approached by Ecuadorian leaders to comment on the proposed Law. The Project solicited the opinions of three experts in the field:

- Mohamed Y. Mattar, S.J.D., Adjunct Professor of Law and Co-Director of the Protection Project of the Johns Hopkins University School of Advanced International Studies
- Maria Velikonja, J.D., formerly of the Office of General Counsel, FBI; Attorney
- Salvador A. Cicero, J.D., Advisor to the Undersecretary for Multilateral Affairs and Human Rights, Mexican Ministry of Foreign Affairs

This section incorporates their recommendations regarding the Ecuadorian Proposed Law.

### *a) Overall Summary and Recommendations*

The draft law includes substantial revisions of Ecuador's current criminal code relating to crimes of a sexual nature, including trafficking in persons, rape, sexual exploitation of minors, sexual harassment, pornography, sexual tourism, and other related revisions. Although there are some changes recommended, overall the proposed changes in the legislation are an important step in the right direction.

The draft law is not, however, comprehensive anti-trafficking in persons (TIP) legislation. While there are several articles that specifically address trafficking in persons and criminalize it, the draft law does not include the necessary methods and tools for law enforcement and prosecutors to carry out and adequately implement the provisions of the law. Also, the proposed law has no provisions for the protection of victims and the prevention of trafficking. The body of this assessment will address how specific anti-trafficking legislation should include and refer to the provisions of the Transnational Organized Crime Convention as well as the Trafficking Protocol.

In considering the number of new amendments proposed by the legislator regarding trafficking in persons, trafficking in minors, and sex tourism, the legislator may consider the following issues mentioned herein.

For example, the proposed legislation does not fully comply with the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Since the function of the criminal law is to specify a crime and to prescribe a punishment for this crime, protection and prevention fall outside the scope of the proposed law. Consequently, we would recommend the approach of other legal systems around the world adopting a comprehensive approach, addressing trafficking in a separate comprehensive act or at least amending other laws that are relevant in the areas of the prevention of trafficking and protection of victims of trafficking.

This is the case of the 2000 Trafficking Victims Protection Act of the United States as amended by 2003 Trafficking Victims Protection Reauthorization Act, as followed by countries such as Nigeria, Kosovo, Romania, Cyprus, Bulgaria, and Dominican Republic. In these laws the legislator does not only criminalize trafficking, it also provides for the prevention of the act of trafficking and protection of the victims of trafficking.

Nevertheless, until a separate comprehensive law is passed, Ecuador should pass this much-needed reform to its criminal code, making some minor changes which are addressed below. Thereafter, Ecuador should consider forming a TIP-draft committee to work on writing comprehensive anti-TIP legislation. This committee should be comprised of knowledgeable working professionals including a representative from a relevant non-governmental organization in Ecuador, representatives from the Ministry of Justice, law enforcement, border patrol/ immigration, the prosecutor's office, and a judge. Once a comprehensive draft is completed the committee should invite one or two international experts to review the draft. A working group meeting that includes the international experts lasting several days should be convened. Time for changes to the draft should be allowed before parliament meets to pass the draft TIP law. The ABA has already assisted numerous countries using this process with great success.

#### *b) Introduction*

The following analysis refers to the draft "Ecuador Criminal Code Reform". Although this draft code contains revisions to the current criminal code on related issues (trafficking in persons, rape, sexual exploitation of minors, sexual harassment, pornography, sexual tourism), this analysis will primarily focus on the portions of the draft code dealing with Trafficking in Persons.

This draft code criminalizing trafficking in persons is analyzed against the background of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which supplements the Convention against Transnational Organized Crime, and the Convention itself,<sup>39</sup> as well as the "Recommended Principles and Guidelines on Human Rights and Human Trafficking,"<sup>40</sup> which were adopted by the UN High Commissioner for Human

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<sup>39</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, UN General Assembly Resolution A/55/383, Convention Against Transnational Organized Crime, UN General Assembly Resolution A/55/383 ([http://www.odccp.org/odccp/crime\\_cicp\\_convention\\_documents.html](http://www.odccp.org/odccp/crime_cicp_convention_documents.html)).

<sup>40</sup> Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the UN High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.32 (<http://www.unhchr.ch/women/focus-trafficking.html>).

Rights in May 2002, and the Council of Europe Recommendation R (2000) 11 on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation.<sup>41</sup>

The analysis strongly focuses on the definition of trafficking as established under the draft law, taking into account that a clear and concise definition of trafficking is a crucial starting point for any anti-trafficking action with regard to all of the so-called “3 p’s”: prosecution, protection, and prevention. The report also covers other issues that must be included or added to a comprehensive anti-trafficking law, including criminal liability, victim assistance and protection, international cooperation, and the institutional framework.

*c) Terms of Reference*

***i) The UN Trafficking Protocol and the Organized Crime Convention***

Ecuador has signed and ratified the Protocol and the Convention. This assessment uses the Protocol and the Convention as a yardstick for analyzing the Ecuadorian draft law provisions. First of all, the Protocol is the first international legally binding instrument including a definition of trafficking in human beings and represents a broad and universal commitment to undertake effective and coordinated action to prevent and combat trafficking and to protect the rights of trafficked persons. Ecuador, by signing and ratifying these instruments, has also expressed its political commitment to strengthen its efforts to combat trafficking. Because Ecuador has ratified the Protocol, legislative amendments are necessary to comply with the standards set out by the Protocol.

The Trafficking Protocol obligates State parties to undertake measures to investigate and prosecute trafficking in persons with a particular focus on international cooperation, to protect and assist victims of trafficking and to undertake preventive measures. The Convention provides for general measures to combat organized crime, including measures to confiscate assets and ensure protection of victims and witnesses of organized crime, and applies *mutatis mutandis* also to the combat of trafficking in persons.<sup>42</sup> Both instruments have in common that they provide minimum standards: State parties are obligated to fulfill a certain minimum threshold, but may adopt more strict measures.<sup>43</sup>

One of the major achievements of the Trafficking Protocol lies in the establishment of the first international legally binding definition of the term of trafficking in persons. It obligates state parties to criminalize trafficking under their national laws as defined in the Protocol. Attempts to commit trafficking, participation in the offense, and organizing or directing other persons to commit trafficking must also be criminalized (Article 5).

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<sup>41</sup> Recommendation No. R (2000) 11 of the Committee of Ministers to member States on action against trafficking in human beings for the purpose of sexual exploitation, 19 May 2000 (<http://www.humanrights.coe.int/equality/Eng/MainActivities/trafficking.htm>).

<sup>42</sup> For an analysis of the Trafficking Protocol, see *Anne Gallagher*, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis, in: *Human Rights Quarterly* Vol 23 (2001), pp 975-1004.

<sup>43</sup> Organised Crime Convention Article 34 paragraph 3, Trafficking Protocol Article 2 paragraph 2.

Article 3 (a) defines trafficking as follows:

- [act:] *the recruitment, transportation, transfer, harboring or receipt of persons,*
- [means:] *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,*
- [purpose:] *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 organ.*“

This definition consists of three elements, namely: 1) acts, 2) means and 3) purposes. The *acts* are defined as recruiting, transporting, transferring, harboring or receiving persons, thus covering all stages of and all actors involved in the trafficking circle. The Protocol does not mention the sale or purchase of persons, thus there is no requirement of any exchange of the victim against money. The acts must be committed by using certain coercive *means* - namely the actual use or threat of force or other forms of coercion, of abduction, fraud, deception, abuse of power or of a position of vulnerability,<sup>44</sup> or “the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.” Further, acts must be committed and means must be used for the *purpose* of exploitation. The Protocol does not provide a definition of the term “exploitation”, but does list forms of exploitation, including sexual exploitation, forced labor or services, slavery, slavery/like practices, servitude or the removal of organs.<sup>45</sup> This list of exploitative purposes is not exhaustive, which means that states could add additional purposes.

The definition is thus not restricted to trafficking into the sex industry, but encompasses other forms of trafficking as well, such as trafficking in domestic workers or factory laborers. Further, it is not restricted to victims of either sex, but includes trafficking in women, men, girls and boys.

It should be noted, that, in order to constitute trafficking, a combination of at least one of the listed elements (acts, means, purpose) is required. For example, transferring persons by the use of force with the purpose of exploiting them in prostitution, or transporting them with false promises to exploit them as beggars constitute trafficking, whereas slavery or prostitution in itself are not encompassed by the obligation to criminalize.<sup>46</sup>

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<sup>44</sup> According to the *travaux préparatoires*, “abuse of a position of vulnerability” refers to “any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved.” Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organised Crime and the Protocols, UN General Assembly Resolution A/55/383/Add.1, paragraph 63.

<sup>45</sup> According to the *travaux préparatoires*, the removal of organs from children with the consent of a parent or guardian for legitimate medical or therapeutic reasons should not be considered exploitation (*paragraph 65*).

<sup>46</sup> For prostitution, this was explicitly stated in the *travaux préparatoires*. The Protocol addresses “exploitation of the prostitution of others” or “other forms of sexual exploitation” only in the context of

There is an exception from this principle: trafficking in minors is defined by the same acts and purposes as trafficking in adults, but does not require any of the coercive means listed above (Article 3 paragraph (c)).

***ii) Human-rights based documents: Council of Europe Recommendation R (2000) 11 and OHCHR Recommended Principles and Guidelines***

In this assessment, reference will also be made to human rights based standards as contained in the “Recommended Principles and Guidelines on Human Rights and Human Trafficking”, which were adopted by the UN Office of the High Commissioner for Human Rights (OHCHR) in May 2002, and the Council of Europe Recommendation R (2000) 11 on Action against Trafficking in Human Beings for the Purpose of Sexual Exploitation. Both documents are legally non-binding, but are based on binding human rights standards and express a strong political commitment to human rights based anti-trafficking action. They are of particular relevance in the area of victim assistance/protection, where the Protocol and the Convention include mainly discretionary provisions, and are therefore used to supplement the framework created by the Protocol and the Convention.

Overall notes:

1. Victims should always be referred to as “he” and “she” or be gender neutral. Both males and females become victims of trafficking, particularly in trafficking for the purposes of forced labor.
2. All terms should be defined.
3. In order to increase the user-friendliness of the law, it is suggested that:
  - a separate “Law Combating Trafficking in Persons” be established;
  - all articles and issues pertaining to minors be consolidated and included in this separate Law Combating Trafficking in Persons.

*d) Definition of Trafficking in Persons*

The definition of trafficking in persons under the proposed legislation seems comprehensive and is in compliance with Article 3 of the UN Protocol. It needs to be emphasized that the proposed law includes both internal and external trafficking. And this is a very good approach.

Draft Article 8 (Crimes Related to Trafficking of People”)

(Ecuador draft Art. 8) Trafficking in people means the capture, transport, transfer, reception, of people within or outside the country, with a mind to physical, economical, work, sexual or any other kind of exploitation, including servitude, slavery, organ extraction and the use of persons

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trafficking in persons. The terms are not defined in the Protocol, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws (*paragraph 64*).



younger than eighteen years of age for armed conflicts, even where no payment or benefit has been received, that is realized through threats, use of force or other forms of enticement, kidnapping, fraud, deception, abuse of power or taking advantage of a situation of economic or social vulnerability.

For purposes of the commission of this crime, the consent of the victim to any of the forms of exploitation will not be taken into account.

While this language is positive, it is recommended that this Article more closely reflect the language found in the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, Supplementing the United Nations' Convention against Transnational Organized Crime (the Protocol), which Ecuador has ratified. Recommended additions have been underlined:

Protocol, Article 3

Use of terms

For the purposes of this Protocol:

(a) "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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

It is recommended that the term "recruitment" be added to the meaning of trafficking in persons. Many victims are recruited into trafficking by travel agencies and independent persons utilizing various forms of advertising. The term "position of vulnerability" is preferable rather than the language used in the draft Article 8 (or taking advantage of a situation of economic or social vulnerability), as a victim may be in a position of vulnerability that is neither economic nor social.

Language should be added to define 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). Furthermore, a future anti-TIP comprehensive law should include definitions for every term used.

Because these definitions are absent, there seems to be some uncertainty as to the different forms of trafficking that are covered by the proposed law. A number of questions arise:

- What does the legislator mean by physical exploitation?
- What is the difference between economic and labor exploitation?

Particular care should be placed in the section related to sexual exploitation. For example, does this refer to other forms of sexual exploitation as well? Would sexual exploitation include sexual explicit performances or sexually oriented establishments?

One example of how to define several forms of sexual exploitation is the United States Model Law to Combat Trafficking in Persons, defining it as “including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, [and] child pornography.”

Proposed Amendment Article 28 reads:

“Art. ... (4).- **Sexual exploitation will be understood as** any type of activity of a sexual nature in which a person uses the body of another who has not yet reached 18 years of age or those that the Civil Code deems legally incompetent, to take **advantage or profit** of a **sexual and/or economic nature**, whether in exchange for money or in-kind exchange, with or without the intermediation of a third party. *(emphasis added)*<sup>47</sup>

This article is contained within a new Title of the Criminal Code in Chapter III, Title VIII, Second Book denominated as: “OF THE CRIMES OF SEXUAL EXPLOITATION.” This Title substitutes the existing Title named “OF THE CRIMES OF PANDERING<sup>48</sup> AND CORRUPTION OF MINORS.”<sup>49</sup>

After Proposed Amendment Article 28, in the same chapter, Proposed Amendment Article 32, includes an entire new section of articles (proposed articles 9 through 17),<sup>50</sup> designed to create various degrees of crimes related to pornography, both for adults, minors and children.

So pornography (and related crimes such as using minors for exhibitionist spectacles), would be contained in the same Chapter related to the “Crimes of Sexual Exploitation.”

Sexual exploitation would include sexual explicit performances or sexually oriented establishments under the new proposed bill, if the person has less than eighteen years of age.<sup>51</sup>

It is important to point out that in Ecuador, prostitution is not prohibited, but pimping is. This is a very old Latin American practice which must be taken into account and which differs greatly from practice in other countries, such as the U.S.

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<sup>47</sup> See Ecuador Criminal Code proposed reform, p. 15.

<sup>48</sup> Commonly referred to as “pimping” or sexual pandering, i.e. procuring a person to have sex with another.

<sup>49</sup> *Supra* note 4, Ecuador Criminal Code proposed reform, at 14.

<sup>50</sup> *Id.*, pp. 16-17. Articles 18-21 relate to “spectacles of exhibitionism” and crimes of trafficking against sexual freedom, indicating that consent is never presumed when the person has less than 18 years of age.

<sup>51</sup> See e.g., Proposed Amendment Article 26, making pimping for a person with less than 18 years of age a crime, Ecuador Criminal Code proposed reform, at 14.

In Ecuador there are established prostitution houses (*Casas de cita*). The women who work at these establishments must have a current permit and must undergo periodic medical evaluations. There are also clandestine brothels where people are detained and later released, but are not processed criminally.<sup>52</sup>

While prostitution is not a practice publicly accepted, in several Latin American countries it is not defined as a crime.

Generally, in Latin American countries (e.g., Mexico or Ecuador), prostitution to be legal must be exercised freely, without coercion, and as long as it is done out of the public's eye (otherwise one might be stopped, not for prostitution, but for morally reprehensible public acts). For example, in Mexico's Federal District a law was recently promoted that provides sexual workers with social security. The various boroughs of the city have a health registry and medical services are available. Boroughs have a designated "tolerance zone."

While the project in no way condones legalized prostitution, it is important to keep this cultural difference in mind when making further evaluations. Without a doubt, this fact will have an impact on the efficiency of the program and the proposed legislation.

Consequently, all these terms must be better defined. Lack of definition or disagreement as to the intended meaning of these provisions will lead to difficulties in the implementation, especially in prosecuting cases of trafficking.

The language used in Article 8 regarding the consent of the victim should more closely resemble the language of the Protocol, which states: The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

The language used in Article 8 should include specific reference to the trafficking of children. The important distinction between trafficking in persons and trafficking in children is that, in accordance with the Protocol, the means of trafficking do not have to be proved (Protocol: The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article).

It is a good thing that Article 1 of the proposed law goes beyond the definition of the UN Protocol. Article 1 of the law went beyond the definition of the UN Protocol by including the use of children in armed conflict as a form of exploitation.<sup>53</sup>

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<sup>52</sup> Information corroborated with the Consulate General of Ecuador, Mexico City, Mexico.

<sup>53</sup> This is perhaps of special importance to Ecuador because of its geographical proximity to the armed conflict in Colombia and the insurgent groups (like "Sendero Luminoso") in Peru. Special consideration ought to be placed by Ecuador's legislators as to whether this issue is best addressed in separate and subject-specific legislation.

However, one should question the deviation of the proposed law from the forms of exploitation as stipulated in Article 3 of the UN Protocol. For instance:

- Article (1) of the proposed law does not explicitly mention exploitation of prostitution of others;
- While Article 1 makes a reference to slavery, it does not include practices similar to slavery.

Practices similar to slavery are enumerated in Article 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery as following:

“(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;

(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labor on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;

(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or

(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

(iii) A woman on the death of her husband is liable to be inherited by another person;

(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

Legislation of other countries may be considered by the proposed law.

For example, Article 165 of the Moldovan Criminal Code defines trafficking in persons as “[t]he recruitment, transportation, transfer, harboring or receipt of a person for the purpose of a commercial and non-commercial sexual exploitation, forced labor or services, slavery and slavery-like conditions, using a person in armed conflicts or in criminal activities, removal of organs or tissues for transplantation.”

Also, Article 111(b) of the Criminal Code of Serbia defines trafficking as an act of a person who “recruits, transports, transfers, surrenders, sells, buys, acts as an intermediary in transfer or sale, conceals, or keeps another person for the purpose of obtaining some gain, exploitation of labor, criminal activities, prostitution or begging, for pornographic purposes, removal of organs for transplantation or exploitation in armed conflicts.”

*e) Definition of “victim of trafficking in persons”*

If the legislator would consider defining the different terms, it is advisable that the trafficked person is defined as a victim, and that the proposed law provides for a definition of a victim of trafficking.

For example, The Draft Law of Georgia on Prevention and Combating Trafficking in Persons and on Protection, Assistance and Rehabilitation of the Victims of Trafficking in Persons defines a victim of trafficking as “a natural person who suffered moral, physical or material damage as a result of the commission of the crime of trafficking in persons.”

Also, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power says that victims is any person who “individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”

#### *f) Adopting the Principle of Non-Criminalization of the Acts of Victims of Trafficking*

It is essential that the proposed law adopts the principle of non-criminalization of the acts of victims of trafficking. The non-criminalization principle is important because the acts of victims of trafficking usually involve illegal acts, be it prostitution, illegal entry, unauthorized work, fraud or other types of illegal activities.

A good example is provided by the United Nations Regulation No 2002/4 on the Prohibition of Trafficking in Persons in Kosovo. The UN Regulation states that “a person is not criminally responsible for prostitution or illegal entry, presence or work in Kosovo, if that person provides evidence that supports a reasonable belief that he or she was the victim of trafficking.”

Another good example is provided by Section 208 of the United States Department of Justice Model Law to Combat Trafficking in Persons of March 2003. This Section, titled Victim Immunity [Exemption] from Prosecution, states that “a victim of trafficking is not criminally liable for any migration related offense, prostitution, or any other criminal offense that has been a direct result from being trafficked.”

While the principle of non-criminalization naturally applies to the victim of the crime, some legal systems extend the doctrine to the trafficker as well. Consider for instance article 127 of the Russian Criminal Code, which states that a person can be excluded from criminal liability when he/she commits a crime of trafficking for the first time, voluntarily frees the victim and assists in the exposure of the crime of trafficking.

#### *g) The Vulnerability Doctrine*

The proposed law includes the vulnerability doctrine which is incorporated in illegal means defined in Article 1. The proposed law makes reference to both, economic and social vulnerability, but it does not define the concept itself.

The *Traveaux Preparatoires* to the UN Protocol defines vulnerability to include cases where a person "has no real and acceptable alternative but [to] submit to the abuse involved."

Under the Georgia Law on Prevention and Combating Trafficking in Persons and on Protection, Assistance and Rehabilitation of the Victims of Trafficking in Persons, a position of vulnerability refers to a situation "when a person materially or otherwise depends on another person; when a person, due to his physical or mental disadvantage, is unable to realistically assess the existing situation; as well as a position in which a person involved has no other real and acceptable alternative but to submit to the abuse involved."

The United States Model Law to Combat trafficking in Persons defines the abuse of a position of vulnerability as a "such abuse that the person believes he/she has non reasonable alternative but to submit to the labor or services demanded on the person and includes but is not limited to taking advantage of the vulnerability resulting from the person having entered the country illegally or without proper documentation, pregnancy, any physical or mental disease or disability of the person, including addiction to the use of any substance, or reduced capacity to form judgments by virtue of being a child."

To avoid ambiguities, especially in the area of prostitution, legislator may like to consider defining vulnerability.

#### *h) Abuse of Power*

While Article 1 of the proposed law makes a reference to abuse of power as an illegal means, we recommend that the legislature add 'abuse of office' so that public corruption may be confronted.

The legislature provides for enhanced penalty in trafficking cases committed by a public official when abusing his/her "position, responsibility or charge," as stipulated in section 9 of the article providing for aggravated circumstances. While this is a good approach, the legislator may also consider including corruption as part of the definition of trafficking itself.

#### *i) Taking of Travel/Identity Documents*

In Ecuador Article 8 (on page 10 of English translation) (the former Art. 3), discusses the deceitful taking of identity/travel documents:

- a) In a premeditated (deceitful) manner, acting or pretending to act as an employer, manager, supervisor, contractor, employment agent or solicitor of clients, obtains, destroys, hides, retires, seizes or possesses the passport, immigration document or any other public document of identity belonging to a victim of the crime of trafficking in people; and
- b) In a deceitful manner, participates directly or indirectly in the transport of persons, through international boundaries, with the end of exploiting them through prostitution.

While it is an excellent idea to impose additional penalties for the taking of identity/travel documents from a trafficked victim, consideration should also be given to 1) making the confiscation of travel/identity documents a separate crime; and 2) changing the definition slightly. The confiscation of identity/travel documents from trafficked victims is a common way for traffickers to keep control over their victims. It is also an easy crime for prosecutors to prove, and has made for a very effective law enforcement tool in countries where such legislation exists. Secondly, it is recommended that the term “premeditated” or deceitful be changed and that the meaning be changed to the illegal taking and/or withholding of travel/identity documents.

The last two words (through prostitution) should be omitted. Trafficking in persons also includes forced labor, servitude, etc.

*j) Aggravating Circumstances (Draft Article 4)*

The legislature, while providing for a long list of aggravated circumstance, may like to consider three important circumstances that enhance the penalty:

1. When a case of trafficking is of a transnational nature, we suggest the language “transferring a victim across state borders;”
2. Cases of trafficking where the trafficker is a repeat offender of trafficking, we suggest the language “if the act is committed repeatedly;”
3. Cases that involve an organized criminal activity, we suggest the following language “if the act is committed by an organized criminal group.” The United Nations Convention against Transnational Organized Crime defines an organized criminal group as three or more persons.

Aggravating circumstances do not constitute additional separate offenses, but define certain factors, which supplement a basic offense and lead to a stricter punishment of the perpetrator. Article 4 establishes several aggravating circumstances, including: 1) If the person has more than sixty years of age or less than eighteen, or those that the Civil Code considers legally incompetent; 2) When the victim finds herself, at the moment of the commission of the crime, in a public or private establishment, such as those for health services, education, cult (religion), research, assistance or refuge, in centers of social rehabilitation or in police and military precincts; 3) Taking advantage of the fact that the victim undergoes a situation of extreme vulnerability, extreme economic need or abandonment; 4) Having infected the victim with a serious illness, incurable or mortal, or having inflicted lesions that cause permanent disablement, mutilations, loss or disablement of organs, physical disablement, emotional perturbation, psychological or mental alteration; 5) If the victim were or resulted pregnant, or if she were in “puerperium” (caring for a dependent child); 6) If the victim were physically or mentally impaired; 7) The concurrence of infractions; 8) If the transgressor has a position of power and/or authority over the victim, or if he/she is the adopting parent, tutor, trustee or has the victim under his care for any reason; 9) Being a public official, religious minister, professor, physician or health professional, or any other kind of professional that may have abused their position, responsibility or charge to commit the crime; 10) To have

been aided in the commission of the crime by other people; and 11) Share with the victim in the same family environment.

In particular, enumerated item 5 should be revised:

“5. If the victim were or resulted pregnant, or if she were in ‘puerperium’.”<sup>54</sup>

It is recommended that the above underlined language be changed to be gender neutral. Both males and females can become victims of trafficking. Males as well as females can care for dependent children. The language should be changed to say that aggravated circumstances exist when the victim is pregnant, or when the victim is a parent who is caring for a dependent child. “Dependent child” needs to be defined as a child under age 18.

Again, all references to victims should be gender-neutral.

Other aggravated circumstances should be added, including involvement of organized criminal groups as an aggravated circumstance and not as an element of the basic crime. This can be a useful approach because it recognizes that, even if there is an increasing degree of organized crime in the trafficking business, the crime may also be committed by individual persons. It also may prevent traffickers from escaping unpunished in cases where there is not sufficient evidence to establish the existence of an organized criminal group.

#### *k) Criminal Liability and Penalties*

As a general principle of criminal law, sanctions for any criminal offenses should be proportionate: they should reflect the gravity of the offense and be comparable with similar offences established under a state’s criminal law (with regard to trafficking, this would be for example serious bodily harm, rape, or slavery).<sup>55</sup>

In Article 8 (page 10 of English translation), under former Article 5, the penalty envisioned seems insufficient:

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<sup>54</sup> Caring for a dependent child. The law refers not to the child, but to the state the mother is in, in order to care for the minor child. However, there is no definition of the time parameter applicable to the puerperium (a clarification might be needed). In the context of the death penalty it has been defined as ‘La situación de las madres sujeta a la condición de dependencia de los hijos’ (The situation of the mother subject to the condition of dependence of her children), Text in Spanish of UNCHR Resolution, calculating 6 months of age. The medical definition is “[time period following childbirth when the mother's uterus shrinks and the other functional and anatomic changes of pregnancy are resolved](#)”

<sup>55</sup> See OHCHR E/2002/68/Add., Recommended Guideline 4.3, and CoE Recommendation R (2000) 11, Article 43. Neither the Trafficking Protocol nor the Organized Crime Convention provide for guidelines for the severity of sanctions against traffickers. Article 5 paragraph 1 of the Convention, which provides for “sanctions that take into account the gravity of the offense”, is applicable only to four offenses covered by the Convention (activities of organized criminal groups, money laundering, corruption and obstruction of justice), but not to trafficking in persons.



Art. ... (5). - The person that engages in commerce offering or receiving, directly or indirectly, organs or other anatomic materials from cadavers, will be reprimanded with imprisonment of one to three years.

Although “cadavers” mean persons who are already dead, traffickers who engage in trafficking in organs will often kill the victims in order to obtain the materials, which is also murder.

Possible sanctions include custodial penalties, fines, and confiscation of assets.<sup>56</sup> Confiscation of assets is a useful tool because it makes the crime of trafficking financially less attractive for the perpetrators and, if used for the benefit of the victims, increases their chance to access compensation payments for wages due and the harms suffered at the hands of the traffickers. The use of confiscated assets for the benefit of victims was also recommended by the OHCHR Recommended Guidelines and Principles.<sup>57</sup>

It is recommended that the draft law establish sanctions against traffickers, which are proportionate to the gravity of the offense and the human rights abuses involved, and comparable to penalties for other serious offenses under Ecuador’s criminal law.

The draft law should provide for confiscation of the assets of traffickers (of both, individual persons and organizations). These assets should be used to compensate trafficked persons and to fund shelter, assistance and support for trafficked persons, law enforcement efforts (such as special anti-trafficking or anti-corruption units, human rights training for law enforcement, or witness protection programmes), and prevention programmes.<sup>58</sup>

Draft Article 7 states that a trafficker is obligated to pay damages to the victim:

Art. 7-The person convicted of any of the crimes in this Code will be obliged to pay and indemnify the victim for any damages and prejudice caused, including all medical and/or psychological expenses that the victim may require for complete recuperation, even if the victim had not expressly asked for compensation or even if the victim had not presented an accusation against the perpetrator.

It is not clear in this Article whether forfeiture of the defendant’s assets is contemplated by the drafters, and whether the proceeds of the forfeiture can be ordered by the judge to be used to pay the victim for damages and prejudice that the victim is determined to have suffered. How will victims be compensated in cases where the defendants have no money or hide their assets? While Article 2 provides for confiscation of assets, it is not clear whether these assets are to be used for the indemnification of the victims of trafficking, although Article 67 provides that “the person convicted...[is]obliged to pay and indemnify the victim for any damages and prejudice caused...” Language should be added to this Article to clarify this issue.

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<sup>56</sup> Confiscation of assets is an obligation under the Organised Crime Convention (Article 12 paragraph 1).

<sup>57</sup> OHCHR E/2002/68/Add., Recommended Guideline 4.4.

<sup>58</sup> Review of the draft law by *Ann Jordan*, Initiative Against Trafficking in Persons/IHRLG, December 2002.

Consider for example article 16 of the Russian draft legislation on countering trafficking in persons. Article 16 states that,

“proceeds received from the sales of property confiscated .....shall be directed:

- a) to pay compensation, restitution and damages to victims of trafficking in human beings;
- b) to finance special institutions engaged in the activity countering trafficking in persons;
- c) to finance subdivisions of law enforcement agencies involved in countering trafficking in persons and other illicit actions relating to trafficking in persons;
- d) to ensure implementation of programs aimed to eliminate causes and conditions facilitating trafficking in persons and created to work with persons victimized by trafficking in human beings.”

Attention should also be directed to the anti-trafficking law of the Dominican Republic, which provides that upon confiscation, the proceeds of the crime of trafficking in persons are to be used for the compensation of victims for material and moral damages as well as for the establishment of programs that protect and assist trafficked victims

Parties to the Protocol must also criminalize persons who attempt to commit trafficking, who participate in the offense, and who organize or direct other persons to commit trafficking (Article 5). From the provisions available for the present analysis, it cannot be determined if the Ecuadorian Criminal Code criminalizes attempted trafficking.

In addition to establishing a definite crime for trafficking in persons, Ecuador should ensure that attempts to commit trafficking, participation in trafficking or organizing or directing other persons to commit trafficking are also punishable under criminal law.

A paragraph should be added to the draft law exempting victims of trafficking from detention and prosecution for any offenses related to their status as victims of trafficking, such as illegal entry or residence or prostitution-related offenses.<sup>59</sup>

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<sup>59</sup> OHCHR E/2002/68/Add., Recommended Principle 9, Recommended Guideline 4.5.

### *l) The Liability of Legal Persons*

Article 10 of the UN Convention against Transnational Organized Crime calls upon States to establish the liability of legal persons. It provides for the following:

- a) Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative;
- b) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences;
- c) Each state party shall, in particular, ensure that legal persons be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Under the Italian law implementing the UN Convention on Transnational Organized Crime, the legal person is subjected to the monetary sanction of 600 to 1,000 shares of the society for the crimes of human trafficking and reduction and maintenance into slavery or servitude.

Moreover, the legal person is subjected to a two-year freezing of the proceeds of the crime. When this is not possible, the judge orders the seizure of money or other properties of the legal person for an amount equal to the proceeds of crime.

As mentioned above, the proposed law does not provide for the liability of legal persons. In fact, under the section on Sexual Exploitation, the proposed law states “if the proprietor of the house of tolerance were a legal entity, then the punishment will be imposed upon its legal representative.”

The legislator may like to consider adding a provision to this effect by providing for the liability of the corporate person, the juristic person, or the legal person that is involved in an act of trafficking.

It also may be suggested that the law defines a trafficker as “a natural or legal person who has committed a crime under” criminalizing the act of trafficking.

This suggestion finds support in the proposed chapter of the proposed law on Sexual Tourism, which provides for the closure of a business that may be involved in sex tourism (*see infra*)

### *m) Sexual Harassment*

#### Ecuador draft Article 19:

“Art. ... (1).- Sexual Harassment is committed by the person that in any way solicits favors of a sexual nature, for himself or a third party, taking advantage of a situation of work, educational or similar superiority, with the express or tacit announcement of causing the victim a wrong related to the victim’s legitimate expectations regarding such relationship, and will be penalized with imprisonment of six months to two years.

A person will be reprimanded with the same penalty when, according to what is provided in the preceding paragraph, acts by taking advantage of having under his charge the resolution of judicial or administrative processes, or affairs of any kind, both in the public and private sectors.

The person that repeatedly or systematically requests favors or makes suggestions of a sexual nature, that attempts against the self-esteem or sexual freedom of another person, will be reprimanded with incarceration of one to six months or the alternative punishment of doing community service, depending on the severity of the crime.

The penalty for the crime referred to in this article, necessarily includes the permanent prohibition to have activities that imply contact with the victim.”

The definition of sexual harassment is more commonly found in the civil, not criminal context. It is recommended that if sexual harassment is to be criminalized, that the terms be defined (including the terms underlined above). If this Article is not revised, its prosecution can easily be abused. And again, the language should be gender-neutral.

#### *n) Statutory Rape*

Ecuador draft Articles 16, 17 and 18 revise previous articles regarding “Stuprum” committed against minors. Consideration should be given to the elimination of the word “stuprum”. Ecuador should consider passing legislation similar to the “statutory rape” laws used in the United States and other countries. Under statutory rape laws, an adult who engages in sex or copulation with a minor under an established age (e.g. 14 years or 16 years, in some countries) has committed the crime of statutory rape. Consent and sexual history of the minor are irrelevant.

In fact, other Latin American countries have done away with the term “Stuprum” (*estupro*) and replaced it with the term “abuse of minors” (*abuso de menores*).<sup>60</sup>

However, please note that the most appropriate translation for “Stuprum” is Statutory Rape. For example, West’s English-Spanish Law Dictionary translates and defines “*Estupro*” as: “Stuprum. In Roman and Civil Law, unlawful sexual intercourse between a man and an unmarried woman. Some laws require her to be a minor.”<sup>61</sup>

#### *o) Sexual Tourism with Minors*

Draft Article 34 criminalizes sexual tourism as follows:

The Crime of Sexual Tourism is committed by the person that promotes, disseminates, organizes or realizes trips from abroad into Ecuador or within the national territory, using its aerial, terrestrial, maritime and hotel infrastructure, with the purposes of encouraging and facilitate the traveler to have sexual intercourse with minors in the country; and will be punished with greater ordinary term of incarceration of four to eight years.

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<sup>60</sup> This, for example, is the case in Mexico.

<sup>61</sup> See Gerardo Solis & Raul A. Gasteazoro, Jr., West’s Spanish-English/English-Spanish Law Dictionary, West Publishing Co., St. Paul, Minn. (1992), at 132.

The crime of sexual tourism is not enumerated under the Protocol but is an additional tool that can be utilized to combat sex trafficking. It is recommended that the language underlined above be modified so as not to require all means listed (aerial, terrestrial, maritime and hotel infrastructure) in order to prove the crime. Rather, the possible means should be broadened to say "...using its tourism structure, including but not limited to its aerial, terrestrial, maritime or hotel infrastructure."

*p) Extraterritoriality*

The proposed law does not provide for the principle of extraterritoriality. For instance, Article 5 of the Criminal Code of Macau provides that the criminal law is applicable to acts carried outside of Macau when such acts constitutes the crimes of "trafficking in human beings," "trade in slavery," and when such acts are committed by a national or resident of the country.

Similarly, in Cyprus, if criminal activity committed by any individual in a country outside of Cyprus qualifies as an offense under the Combating of Trafficking in Persons and Sexual Exploitation of Children Law of 2000, Cypriot courts can assert jurisdiction.

Likewise, the criminal code of Niger recognizes international trafficking in persons as an aggravated offense and imposes sanctions upon perpetrators if they commit such a crime within the territory of Niger or in a different country.

The proposed law may like to consider adding language to that effect.

*q) Extradition*

Trafficking in persons must be recognized as an extraditable offense. For instance, in Cyprus trafficking in persons and sexual exploitation of children are deemed as extractable offenses under the Extraction of Fugitive Law No 97 of 1970.

However, it is interesting to note that under Article 16(4) of the United Nations Convention against Transnational Organized Crime, if a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the Convention the legal basis for extradition in respect of any offence to which this article applies.

*r) Protection of the Victim and Preventive Measures*

While the proposed amendments to the Criminal Code provide an effective legal response to the problem of trafficking, comprehensive legal response must take into account related laws, especially the Criminal Procedure Law with respect to recognition of the legal status of crime victims, their right to be heard in court and to have legal representation, and the availability of witness protection mechanisms.

A review of the proposed amendments leads us to conclude that the Criminal Code recognizes trafficking in persons not only as a specific offence, but as a serious offence and that the Code provides for the appropriate criminal sanctions for such offence. However, any comprehensive legal response to the problem of trafficking should not be limited to criminalization. As previously specified, legislators must also consider preventive measures, as well as protective provisions. This is further supported by the findings of the evaluation team and should be an area of special emphasis for the anti-trafficking project. This area is absent in the proposed legislation. Funding for this purpose should also be allocated (see proposal below).

*s) Articles to consider in the inception of a new code called “Law Combating Trafficking in Persons”*

***i) Assistance to and Protection of victims of trafficking in persons (Protocol, Article 6)***

In accordance with the Protocol, States are required to take the following measures in order to protect the victims of trafficking:

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
  - (a) Information on relevant court and administrative proceedings;
  - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:
  - (a) Appropriate housing;
  - (b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
  - (c) Medical, psychological and material assistance; and
  - (d) Employment, educational and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, 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.
5. Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Ecuador should consider adopting procedures and develop new Articles within the recommended “Law Against Trafficking in Person” to address each issue discussed above. Specifically, Ecuador should:

- Adopt policies to protect the privacy and identity of victims of trafficking in persons. This includes insuring that law enforcement entities and non-governmental organizations adopt written procedures insuring the confidentiality of the victims. Additionally, Ecuador needs to make legal proceedings relating to such trafficking confidential.
- Adopt policies to ensure that victims are provided with information on relevant court and administrative proceedings, and ensure that victims are provided with the opportunity to present their views and concerns at appropriate stages of the criminal proceedings. This normally requires that the victim be given or appointed an independent counselor.
- Adopt policies providing for the physical, psychological and social recovery of victims of trafficking in persons. This normally requires the establishment of victim shelters or other appropriate housing. Victims should also be provided with counseling and other information, in particular as it relates to their legal rights, in a language that the victims of trafficking in persons can understand.
- Adopt policies to provide for 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.
- Adopt policies providing for the physical safety of victims of trafficking in persons while they are within its territory. This normally includes articles adopting security measures for shelters, including which law enforcement component will have the responsibility to coordinate security measures with the relevant non-governmental organization running the shelter. It also includes adopting witness protection measures, as well as how the Ministry of Justice and/or Interior will coordinate and implement such programs.

Whereas it makes sense to restrict certain measures, because of their very nature, to witnesses (such as police witness protection programmes, including relocation or identity changes, or certain evidentiary measures, such as video-linked testimonies), other protection measures should be made available to all victims of trafficking, irrespective of their willingness to testify. Such measures should include, but not be limited to, safe accommodation, police escorts, limited disclosure of information regarding the identity and whereabouts of the victim.

***ii) Status of Victims of trafficking in persons in receiving States.***

Article 7 of the Protocol recommends that States consider permitting victims of trafficking in persons to remain in its territory, temporarily or permanently in appropriate cases.

***iii) Repatriation of victims of trafficking***

Article 8 of the Protocol discusses the rights of the victim regarding repatriation and the obligations of the State:

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.
2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.
3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.
4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.
6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Ecuador's new "Law Against Trafficking in Persons" should adopt policies to address all the enumerated issues under Article 8 of the Protocol.

#### ***iv) Prevention of Victims of Trafficking***

Article 9 of the Protocol addresses the obligation of States to prevent trafficking in persons, as follows:

1. States Parties shall establish comprehensive policies, programmes and other measures:
  - (a) To prevent and combat trafficking in persons; and
  - (b) To protect victims of trafficking in persons, especially women and children, from revictimization.
2. States Parties shall endeavor to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.
3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Ecuador's new "Law Against Trafficking in Persons" should adopt policies to address all the enumerated issues under Article 9 of the Protocol.

#### ***v) Information Exchange and Training***



Article 10 of the Protocol discusses law enforcement cooperation and training:

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:
  - (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;
  - (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and
  - (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.
2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.
3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Ecuador's new "Law Against Trafficking in Persons" should adopt policies to address all the enumerated issues under Article 10 of the Protocol.

***vi) Responsible actors to combat trafficking in persons***

Ecuador's new "Law against Trafficking in Persons" should include an Article listing all Ministries and other authorities which are obligated to undertake, within the limits of their respective competences, anti-trafficking activities. The wide range of possible actors involved could include the Ministry of Interior, Ministry for Foreign Affairs, Federal Security Service, Federal Border Service, Ministry of Labour and Social Development, Ministry of Education, and Ministry of Health Care. The competencies of these actors with regard to anti-trafficking action should be set out in the article. A Federal Commission on anti-trafficking issues should be set up and serve, among others, as a coordinating mechanism. The commission should include representatives from relevant NGO's and international organizations.

The responsibilities of the listed Ministries could be supplemented and further Ministries added, for example the Ministry of Justice, which should be in charge of coordinating witness protection programmes. The competence of the Ministry of Education could include the development of school curricula. The competencies of the Ministry of Labor and Social Development could also include the development and coordination of victim assistance and voluntary return and reintegration programmes.

Within each of the competent Ministries and other authorities, specialised units to work on anti-trafficking issues should be set up. The government should ensure that these

actors are well trained and that they are provided with sufficient resources to carry out their work.<sup>62</sup>

All ministries and other authorities should work in cooperation with NGO's.<sup>63</sup>

The law should specify the members of the Federal Commission. Besides representatives from NGO's and international organizations, representatives from each of the above-mentioned Ministries and other authorities, the commission should also be represented in the commission.

The law should also specify the tasks and structure of "Regional Commissions", which should be established in outlying regions. Each Regional Commission would coordinate anti-trafficking activities with the Federal Commission.

## **CONCLUSIONS**

The present document provides the first subject-specific assessment, field-based study, and legislative analysis of trafficking in persons (TIPS) in Ecuador. The goals identified as priorities for the study have been translated into what we hope will be practical and useful information for all involved in the effort to combat TIPS in Ecuador.

The assessment and site visit reports clearly identify organizations that, although few in number, are working on human trafficking and trafficking related issues. This first assessment obtained very useful information for the communities where trafficking activity is prevalent, such as Quito, Guayaquil, Machala, Esmeraldas, Lago Agrio, and Santo Domingo de los Colorados.

Major trends in trafficking, as well as anti-trafficking activities, have been identified and strategies for combating them have been suggested. We hope that the assessment provides a guide to policy makers by identifying the gaps between existing services provisions, public policy and the existing legislative framework, as all these relate to the phenomenon of trafficking in persons. The recommendations in this assessment strive to provide the policy makers with the tools necessary to create a comprehensive anti-trafficking approach in Ecuador.

The phenomenon in Ecuador is not unlike other cases, being affected by many external factors like globalization, economic growth, social development, education, historical migration patterns and organized crime, among others. Therefore, the implementation of public policies to address the issue must take into account all the external factors. Civil society must play an integral role in the development of these policies. Without their help it is likely that they will not reach their maximum potential.

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<sup>62</sup> Trafficking Protocol Article 10 paragraph 2. See also Review of the draft law by *Ann Jordan*, Initiative Against Trafficking in Persons/IHRLG, December 2002.

<sup>63</sup> OCHCR E/2002/68/Add., Recommended Guidelines 5.9.

The field study conducted for this assessment confirms many of the notions and suspicions held regarding the phenomenon of trafficking in persons in Ecuador. It also revealed its timeliness, as our investigators were told in several places that they were the first to make inquiries related to trafficking in persons.

Some of the most worrisome findings confirmed the sexual exploitation of children, the lack of preventive measures, the lack of social consciousness regarding the issues and the lack of a legal framework to combat the phenomenon.

However, on the positive side and despite the political gridlock of the last few months in Ecuador, there remains a great deal of political good will toward this subject, primarily because of its international image components and implications.

The assessment also provides the Ecuadorian legislators with a lengthy analysis and a list of ways to improve upon an already innovative proposed legislation to combat TIPS.

With the data produced in the present assessment, the ABA/LALIC TIPS project is also better equipped to steer its efforts into areas where it can have greater impact. The evaluation and implementation of the recommendations – at least those most immediately and politically viable – is a necessary next step.

The strategies herein suggested are consistent with the overall work plan originally submitted by ABA/LALIC. The work plan requires some minor revisions in order to incorporate these suggestions and set priorities based on the new information gathered and analyzed.

The assessment will be translated into Spanish in the coming weeks, in order to make its recommendations available to the Ecuadorian authorities and legislators.

We look forward to what is sure to be an intense next year implementing these new ideas and recommendations. We also look forward to the continuation of our joint efforts with the U.S. Department of State and the government of Ecuador in combating the trafficking of human beings in Ecuador and the hemisphere.