



UNODC

United Nations Office on Drugs and Crime

Issue Paper

**The Role of Corruption in
Trafficking in Persons**



UNITED NATIONS
Vienna, 2011

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

© United Nations Office on Drugs and Crime, 2011

This document has not been formally edited.

Acknowledgements

This paper has been jointly developed by Anti-Slavery International (Ms Klara Skrivankova), Transparency International (Ms Gillian Dell) and the United Nations Office on Drugs and Crime (Mr Erik Larson, Ms Maria Adomeit and Ms Silke Albert). The critical and invaluable advice and input of Kathy Richards are greatly appreciated. Of great value are also the contributions provided by Silvia Canedo. Barbara Sidoti gave input and revised the final version of the report.



Contents

Introduction	3
I. Trafficking in Persons and Corruption: Reoccurring Patterns	4
What is Trafficking in Persons?	4
What is Corruption?.....	5
Corruption in Trafficking in Persons	6
Existing Knowledge - A Selection of Relevant Material	6
Patterns of Corruption	10
Perceived Corruption and the Rule of Law	12
Lack of Oversight	13
Vulnerability of Criminal Justice Actors	13
Civil Society and Private Sector Involvement	14
Outcomes of Corruption in Trafficking in Persons	15
II. International Legal Instruments	16
The United Nations Convention against Corruption (UNCAC)	16
The United Nations Convention against Organised Crime (UNTOC) and the Trafficking in Persons and Smuggling of Migrants Protocols	17
Relevance of the Smuggling of Migrants Protocol	18
Corresponding and complementing provisions of UNCAC, UNTOC and the Protocols ...	18
Corresponding Provisions	18
Complementing Provisions	23
UNCAC, UNTOC and the Protocols - A Solid Basis for Concerted Efforts.....	25
III. Recommendations	27

Introduction

Trafficking in persons and corruption are closely linked criminal activities, whose interrelation is frequently referred to in international fora¹. Yet, the correlation between the two phenomena, and the actual impact of corruption on trafficking in persons, are generally neglected in the development and implementation of anti-human trafficking policies and measures. This lack of attention may substantially undermine initiatives to combat trafficking in persons and prevent the customization of responses as needed. Only after recognizing the existence and the effects of corruption in the context of human trafficking, can the challenges posed by it be met. It is thus important to examine how corruption plays a role in human trafficking and actually contributes to the growth of the phenomenon.

This paper seeks to outline patterns of corruption in trafficking in persons; provide a description of relevant international legal instruments and outline some practical guidance on what can be done to address the issue of corruption in human trafficking.

In an attempt to keep its scope within reasonable limits, the paper focuses mostly on corruption of public officials, and in particular of law enforcement and criminal justice actors.²

¹ UNODC started to focus on this topic on the occasion of a workshop and panel discussion on the links between trafficking and corruption that took place on the occasion of the Vienna Forum to Fight Human Trafficking (13-15 February 2008) held within the framework of UN.GIFT: www.unodc.org/documents/human-trafficking/2008/BP020CorruptionandHumanTrafficking.pdf. The current publication builds upon and advances the discussions of the workshop.

² Far from intending to brand public officials corrupt in general, the paper attempts to highlight the areas of risk for corruption of public official relating to trafficking in persons, the vulnerability of the public officials involved and the possible consequences of lack of awareness.

I. Trafficking in Persons and Corruption: Reoccurring Patterns

Trafficking in persons and corruption are criminal activities that have received a great deal of international attention in recent years. International legal instruments have been negotiated and adopted by over 140 States to address these crimes in the past few years. Furthermore, various programmes, including technical cooperation projects and awareness-raising campaigns, as well as publications and other tools, such as research reports and training handbooks, have been developed to foster the implementation of the international treaties and help States address the two crimes effectively. However, efforts have concentrated mostly on the two phenomena separately, and although corruption is often mentioned as a key factor in trafficking in persons, to date a targeted strategy to tackle corruption in trafficking in persons has not been devised. Anti-trafficking and anti-corruption circles have not yet started to integrate their work approaches. The need to consider such an integrated approach is increasingly felt among experts in both areas.

In fact, despite the scarcity of specific official data on corruption and trafficking, there are consistent indications that corruption does play an important role in facilitating and fostering the crime of trafficking in persons. Information and data gathered for other purposes (e.g. investigation of cases of human trafficking, through accounts of victims and perpetrators, etc) indicates unequivocally that the corrupt behavior of law enforcers may help traffickers to recruit, transport and exploit their victims; corrupt criminal justice authorities may obstruct the investigation and prosecution of cases, and/or impede the adequate protection of victims of the crime. Furthermore, corruption involving the private sector – such as travel agencies, model agencies, marriage bureaus, hotels, construction companies and others – may also contribute to human trafficking.

Against this backdrop, a number of questions can be considered, for instance in the following areas:

1. Patterns of corruption - Though an exhaustive list of all corrupt actions that facilitate or abet trafficking in persons would be difficult to compile, it is possible to outline some *patterns* of corruption specific to the human trafficking crime, by identifying reoccurring acts of corruption related to trafficking in persons; and detailing at what stages of the trafficking process corruption is most likely to be a significant factor.
2. Outcomes of corruption - It is often easier to find the results of corruption than to prove the corrupt act itself. What are the *outcomes* of corruption in trafficking in persons?

Before looking at the role of corruption in trafficking in persons, it is useful to define the concepts of trafficking in persons and corruption:

What is Trafficking in Persons?

According to the Trafficking in Persons Protocol, the crime of human trafficking consists of three elements:

-
- (i) **Acts** such as transport, transfer, harbouring, receipt of a person, by
 - (ii) **Means** of deception, coercion, abuse of a position of vulnerability and others for the
 - (iii) **Purpose of exploitation**, including sexual exploitation, labour exploitation, removal of organs.

The means listed in point (ii) are irrelevant in case of children trafficking, the possible consent of a child being considered irrelevant, regardless of the circumstances in which it may have been expressed. Therefore, in cases involving children, two elements (acts and purpose of exploitation) are sufficient to determine if a case constitutes trafficking in children.

Trafficking in persons can also be seen as a process, usually consisting of the three stages of recruitment, transport and exploitation.

It is important to stress that although the Trafficking in Persons Protocol supplements the United Nations Convention against Transnational Organized Crime (UNTOC), trafficking in persons requires neither border crossing – whether illegal or not - nor the involvement of an organized criminal group.

The term trafficking in persons is often used indiscriminately with the term smuggling of migrants. While the two phenomena are distinct crimes and are dealt with in different international instruments,³ the two crimes may overlap and trafficking in persons may be easily confused with smuggling of migrants when traffickers move their victims from the country of origin to the destination country, possibly through one or more transit countries, without complying with the relevant migration laws and regulations of the countries involved. This highlights the importance of using indicators that reveal recruitment and exploitation, in order to correctly identify the situation as trafficking in persons where appropriate. In fact, the implications of failing to identify trafficking in persons is significant for the victims of the crime, who in such cases are not be provided assistance and protection as required, but are simply repatriated, with the high risk of being re-trafficked. Far from being an effective measure, this undermines substantially any fight against crime.

What is Corruption?

The World Bank's working definition of corruption is "the abuse of public power for private benefit". Transparency International takes a broader approach and understands corruption as "the misuse of entrusted power for private gain"⁴. During the negotiations of the United Nations Convention against Corruption (UNCAC), UN Member States carefully considered the opportunity for the global anti-corruption treaty to provide a legal definition of corruption. Concluding that any attempt at a comprehensive definition inevitably would fail to address some relevant forms of corrupt behaviour, the international community reached global consensus on large number of manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in the Convention. The Convention calls

³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.,

⁴ For this paper, which focuses mainly on corruption in the public sector, this difference is of little relevance.

for ratifying States to outlaw, at a minimum, bribery of national public officials, foreign public officials, and officials of public international organizations; embezzlement, misappropriation and other diversion of public property, trading in influence, abuse of functions, and illicit enrichment by public officials; and bribery and embezzlement in the private sector, as well as laundering of the proceeds of crime, concealment and obstruction of justice. These corrupt actions are spelled out under the chapter of the Convention devoted to criminalization and law enforcement, denoting that corruption is a crime, which is a notion wider than bribery and extortion.

Corruption can take the form of grand corruption or of petty corruption. The former involves high-level officials and has ultimately a destructive impact on governance and the rule of law in a country; the latter is defined as the day to day abuse of power that involves lower-level public officials in the performance of their daily duties .

Corrupt behaviour ranges from active involvement, such as violating duties, accepting or transferring bribes, facilitating transactions, to passive involvement, which can include simply ignoring or failing to follow-up on indicators that corruption may be taking place.

Corruption in Trafficking in Persons

Existing Knowledge - A Selection of Relevant Material

Specific data and in-depth analysis of the role of corruption in trafficking in persons is currently very limited. To the detriment of integrated strategies to understand and combat trafficking in persons, corruption is rarely a focus in anti-trafficking research or policies, although extensive information on corruption in human trafficking cases is available through other, non-dedicated sources.

A first attempt at providing an overview of the problem has been endeavoured in a 2002 report⁵ published by the Council of Europe (CoE), which provides a comprehensive initial analysis, listing opportunities for corruption that facilitate the trafficking process, and suggesting recommendations to address and prevent the problem.⁶

The main findings presented in the above-mentioned Council of Europe report are summarised in the text box below.

⁵ Trafficking in Human Beings and Corruption, Council of Europe, 2005. The report was developed in relation to a regional seminar held in Portoroz, Slovenia, on 19-22 June 2002, within the framework of the Programme against Corruption and Organised Crime in South-Eastern Europe (PACO).

⁶ A complementary source is also the presentation of Manuel Lezertua on behalf of the CoE at the 11th meeting of the International Anti-Corruption Conference (IACC), Seoul, Korea, 25-28 May 2003, available at www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt

Opportunities for Corruption in Trafficking in Persons

Opportunities for corruption exist in the trafficking chain, the criminal justice chain and the victims support and protection chain.

- ***Trafficking in persons chain***

“When”: The trafficking chain consists of the recruitment of victims, the provision of documentation (identity papers, visas, permits), the transport of victims, which may include border-crossing, their exploitation, as well as the laundering of the proceeds of the crime.

“Who”: Corrupt actors within this chain of activities may include police, customs officers, embassies/consulates, border control authorities, immigration services, other law enforcement agencies, intelligence/security forces, armed forces (national or international), local officials, persons/groups/parties with influence on public officials, as well as private sector actors, such as travel agencies, airlines, transportation sector, financial institutions, banks, etc.

“What”: Corrupt acts include ignoring, tolerating, participating in and organizing trafficking in persons, ranging from violation of duties or corruption and involvement in organized crime.

- ***Criminal justice chain***

“When”: The criminal justice chain includes the drafting and adoption of legislation, crime prevention, preliminary investigation, search, seizure and confiscation of proceeds, prosecution, trial and the enforcement of sanctions.

“Who”: Corrupt actors may include parliamentarians, government officials, police, customs border control, immigration services and other law enforcement agencies, prosecutors, investigative judges, intelligence/security forces, local officials, as well as persons/groups, parties with influence on public officials.

“What”: Acts may include passivity (e.g. ignoring, tolerating, and avoiding action) or actively obstructing investigations, prosecutions and judicial proceedings, revealing and selling information, betraying and altering the course of justice. Lack of awareness, capacities and skills may cause such behaviour, which may range from mere violation of duties to corruption and involvement in organized crime.

- ***Protection and support of victims***

“When”: This stage includes the provision of support, protection and shelter to victims of trafficking in persons.

“Who”: Actors involved may include non-governmental and civil society organizations, as well as public social service institutions.

“What”: Corrupt behaviour may range from passivity and “trade offs”⁷, to revealing or

⁷ The CoE report (2005) refers in particular to the risk of infiltrations of criminals in NGOs and civil society organizations and defines “trade offs” as passivity in order not to compromise access [of criminals] to victims or cooperation with official institutions.

selling information on victims.⁸

Additional hypothesis on the relationship between corruption and trafficking in persons

- Organized trafficking requires systemic corruption
- Corruption is central to the success of traffickers and therefore criminals consider it a necessary investment. Corruption is possibly the main cost factor for traffickers.

Recommended measurers to address corruption related to trafficking in persons⁹

The report contains an extensive list of recommendations, based on the country reports developed within the project, which include countries from South Eastern Europe. Among these, the inclusion of corruption issues in anti-trafficking action plans, the creation of specialized multi-agency units and the organization of multi-agency training, the establishment of codes of conduct, guidelines, conflict of interest regulations, the monitoring of sectors at risk, the promotion of awareness-raising campaigns, including the involvement of the media.

Moreover, the report stresses the importance of targeting vulnerable officials, investigating finances of suspects, and making a more systematic use of information provided by the very victims of the crime and by non-governmental organizations (NGOs) and civil society. NGOs and the international community in general are encouraged to monitor investigations.

Finally, it is recommended to strengthen international co-operation and join international conventions and monitoring systems, to organize regional networks and to seek technical assistance from international organizations and bilateral donors.

Another interesting source is the study by Schimmel and Pech (2004), *Corruption and Gender*.¹⁰ This source examines gender impacts of corruption, outlining the forms of corruption that affect women more severely, providing an overview of gender-specific causes of corruption, and analysing the role of corruption in trafficking in women, including “gateways” to corruption in the process¹¹. The authors also formulate recommendations on gender-sensitive approaches to combat corruption, such as fostering transparency and accountability in local administrations, introducing anti-corruption mainstreaming in education, health and various other sectors, and ensuring better coordination in anti-trafficking strategies.

In their 2007 article ‘Corruption as a Causal Factor in Human Trafficking’,¹² Zhang and Pineda have approached analysis of corruption and trafficking in persons trying to verify if a

⁸ Ibid., p. 7.

⁹ Ibid., p. 13-19.

¹⁰ Bianca Schimmel and Birgit Pech, *Corruption and Gender: Approaches and Recommendations for Technical Assistance - Focal Theme: Corruption and Trafficking in Women*, Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ), Eschborn, 2004.

¹¹ Ibid., p. 13-14.

¹² Sheldon X. Zhang, Samuel L. Pineda: ‘Corruption as a Causal Factor in Human Trafficking’, in *Organized Crime: Culture, Markets and Policies*, Springer New York, 2008.

significant correlation exists between the general levels of corruption present in a country and the extent of trafficking in persons. Their analysis questions the widely accepted, yet undemonstrated hypothesis that poverty is the main root cause for human trafficking.

The authors determined the predictor variables of a) the level of existing official corruption with the help of the 'Corruption Perception Index' (2005) developed by Transparency International and b) the level of poverty by a variety of indicators, including infant mortality and life expectancy. The extent of trafficking in persons in a particular country is determined by a country's ranking in the 'Trafficking in Persons Report' published by the U.S. Department of State (2005), the annually issued report that ranks countries according to their evaluated level of anti-trafficking efforts. The overall analysis concludes that although most of the predictor variables used show a significant relationship with the ranking in the 'Trafficking in Persons Report', only corruption comes close to statistical significance. Based on this assessment the authors conclude, in acknowledging the limitations of their study that, "*corruption is probably the most important factor in explaining human trafficking*" and that "*(c)ountries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption.*"

What the above-mentioned publications have in common is the acknowledgement that corruption in trafficking in persons is significant and a plea for an improved consideration of the issue.¹³

¹³ In early 2009, UNODC launched a survey on the issue of corruption and trafficking in persons. The survey was conducted electronically. A questionnaire was distributed to a total of 54 practitioners, including criminal justice authorities, law enforcement agencies, different government bodies, as well as representatives of non-governmental organizations (NGOs), academia and other civil society institutions. Only 8 practitioners completed the survey.

When asked to identify the categories of public officials most vulnerable to corruption in relation to human trafficking, 65% of the respondents indicated border control/immigration/customs most vulnerable; 50% indicated law enforcement and police; and 25% considered civil society organizations. Reasons given for border control/immigration/custom vulnerability included: "There is a lot of room for discretion and a lot of one-one of communication, not necessarily supervised"; "The transit into EU countries by non-EU nationals is the biggest problem to criminal networks"; "The people who are dealing directly with perpetrators / victims are the most exposed. In THB it is not always very clear who is a victim and who is a suspect, people change roles, victims can work themselves up in the organization and become traffickers, etc. This risk is less for prosecutors and judges, as in most cases they will not work with people, but with reports, files, etc. In many cases, the prosecution and judges have less contact with the individuals who are involved in specific cases."; "There is a growing number of trafficking victims who enter the country on illegal visas". Some of these comments were mirrored in the reasons given for law enforcement/police, and civil society vulnerability. In addition, respondents commented that law enforcement/police were: "[the] Largest, most vulnerable and only organisation with past history of corruption"; "Police officers are frontliners; if no training at all, understanding about the law, vulnerability to corruption can happen." Respondents reported direct knowledge of cases involving corruption in trafficking in persons where public officials involved in the identification, investigation, prosecution, or referral of human trafficking in their country had also been involved in related corruption (38% of survey participants knew of recent cases i.e. within in the previous 12 months).

When asked about the circumstances of the case, responses included: "Police officer convicted of warning brothel owners and taking sexual favours."; "Computer expert in ministry abused his position to gain false working permits that resulted in fraud of foreign workers."; "Many times police would leave the trafficker and exploiter not arrested and only get victims."; "Police providing real passports with false pictures to victims of traffickers". Public officials involved in the reported cases were reported to be at the middle management/working and the lower working level respectively.

All of the participants answered with "no" to the **question if they or any of their colleagues have ever been approached by someone with the intent of corrupting/bribing etc. them or their colleagues in connection with a human trafficking case.** One survey participant stated in this regard that "This is very difficult question, as in many cases corruption attempts are quite hidden. What to think about a police officer who in his free time is approached by a girl, not offering money but... Maybe a casual

*Patterns of Corruption*¹⁴

Most States do not seem to systematically collect and analyse data on investigations or prosecutions of public officials relating to human trafficking and corruption.¹⁵ Yet, while there is a lack of systematic research and official data on the links between trafficking and corruption, there is a wealth of anecdotal evidence provided by the victims of the crime and by traffickers. Victims often reveal to service providers instances of corrupt officials or former public officials involved in the process of trafficking; a number of post-conviction studies conducted interviewing persons convicted for trafficking-related crimes, who shared information on criminal practices with researchers, also revealed the corrupt involvement of public officials in the trafficking criminal activities. This section summarises information gathered through such sources.

Information based on victims' accounts relating to the country of origin

Victims of trafficking in persons have reported complicity of public officials at all stages of trafficking, indicating that bribery and abuse of power of public officials or influential people are often part of the process.

In the processes of recruitment.

In the process of transfer, transport and in general in the early stages of the trafficking journey, bribery and abuse of power are the most common forms of corruption reported, such as crossing of borders without any checks or with the cooperation of airline staff and visa officials. Victims often mention to have been able to go through immigration checks where an officials appeared to be complicit.

A woman trafficked from Southeast Asia to Western Europe mentioned, that she was instructed by the trafficker to stand in a particular queue at her home country's main airport. When she moved to a shorter one, she was moved back to the original queue and it was pointed out to her that

contact, but the possibility is always there that she is sent by somebody ...”

When asked if they have heard of any other type of corruption linked to human trafficking besides bribery the following details were provided by those who answered with “yes”:

”Abuse of the permit system, assisting persons in receiving permits they were not allowed to.” – “People can come to you through intimidation and to give up following such cases”- “Sexual favours. Also blackmail/threats. This is in "source" countries.” – “offering sexual services, offering drinks in bars, offering prestige, introduction in the world of the rich and famous, offering drugs, offering other services (e.g. labour exploitation, free or very cheap labour) - this list is endless. In many cases corruption attempts will be quite hidden. Things or services will be offered just like that. It will only be after a certain period of time that the police who is offering these things will demand something in return.”

Survey participants, in response to the question if there was anything else with regard to human trafficking and corruption that they would like to mention, provided the following additional details: “Corruption is viewed by victims as being in all law enforcement agencies having experienced it in source/transit Countries. The poor tactics of dealing with victims in destination Countries tend to confirm this false perception (IE brothel raids on TV when victims are hand cuffed)”; “The corruption is at the level of either consulates or immigration and or both because somehow these women receive visas.”

¹⁴ Information in this section provided by Anti-Slavery International.

¹⁵ Anti-Slavery International, for instance, conducted a *Freedom of Information Request* in several European countries from which it results that cases of public officials' corruption are not gathered systematically.

the particular immigration official serving this queue was “one of them” and he will not ask any questions about her documents.

Some victims have been trafficked using illegally obtained passports, which would be either previously issued documents belonging to others (bought, borrowed or stolen) or ‘black and white’ or fake passports. The latter are allegedly often acquired through the involvement of corrupt officials in the issuing country.”

Victims have also reported that often traffickers would mention they had to bribe officials to obtain visas and the cost of the bribe had been added to the victims’ debt towards the trafficker.

“Closing an eye”: Victims trafficked into sexual exploitation have repeatedly reported that police would visit the premises on a regular basis, but would not talk to the women and inspect their situation, but have a coffee with the owner. Similar anecdotal cases were reported across Europe. In a few cases in Central and South-Eastern Europe, victims have identified police officers as their customers.

The Story of M.

“M was a minor female from Moldova who was trafficked to the Balkans where she was sexually exploited and held in a brothel until she was rescued by a human trafficking task force operating with the assistance of the international community. M.’s trafficking had been allegedly facilitated by corruption in three different ways.

First, actual blank passports had been allegedly corruptly obtained by her traffickers from a neighboring Balkan country and used to transfer her into the location where she was sexually exploited.

Second, even though the passports were filled out incorrectly and obviously improper, with the wrong official stamps and other glaring mistakes, and even though M. did not speak any of the local languages of where she was exploited, she was passed through several border crossings without question, allegedly through corrupt facilitation.

Third, the brothel where M. was exploited was across the street from the local police station. No action to investigate was taken; some police officers were allegedly obtaining sexual services from M. and other victims of trafficking.

M. was freed based on a national level investigation undertaken with international support without the participation of the local authorities.”

Information based on victims accounts relating to the post-rescue phase

Some victims reported that also after having escaped/been rescued from a situation of exploitation and having returned home, they were faced with threats from corrupt officials in their countries. In a number of ca

ses, for instance, victims reported being apprehended by officials at the airport and held until they or their families paid a bribe. Sometimes they were threatened that they would be publicly exposed as being prostitutes.

Information based on offenders' accounts relating to the country of destination

A study by the British Home Office carried out among convicted traffickers revealed the following:

“In some cases, the corruption was not as obvious as the payment of money for services rendered, but was more subtle – [it had] to do with longstanding relationships of mutual benefit, such as the exchange favours among people in ‘useful positions’.[...] Interviewees also provided examples of bribery. “

“Some interviewees alleged that there was corruption within immigration and border services, both in Western Europe and outside the region.”

“There was a time in a Western European country where we paid the guards [400– 500 euros each]; there were 20 or 30 people to get through... “

“At the Immigration Office [Passport Agency] you had people who worked very, very hard but... there were a few people who would help and break the law – for money, of course... “

Perceived Corruption and the Rule of Law

Perceived corruption is a further crucial factor to be taken into account. Transparency International publishes annually the Corruption Perceptions Index. The index ranks countries in terms of the degree to which corruption is perceived to exist among public officials and politicians by citizens of the same country¹⁶. It appears rather consistently from victims' accounts, that perceived corruption is used by traffickers in the process of recruitment of victims and also later in the process of controlling them as a very effective threatening mechanism.

For people who live in a country where the level of corruption is quite high (or in a country where the majority of the population believes that the level of corruption is high) those at risk of being exploited through trafficking may not doubt a trafficker who claims that ‘middle men’ are required to obtain visa, passports or other travel documents.

The perception of corruption in one's home country is also a powerful tool used by traffickers to control their victims in countries of destination. Often the traffickers threaten victims that whatever attempt to escape or report the situation will be useless as corrupt police would bring them back to their exploiters; that the police would beat and rape women; or that the police were racist and would discriminate them.

In many cases, victims do not question these statements, having experienced or heard of corruption in their home countries.

¹⁶ www.transparency.org

In this context, it is indeed interesting to look at the Transparency International Corruption Perception Index and see where some of the common countries of origin are placed¹⁷. The index contains 180 countries. Countries that are known as countries of origin for trafficking in persons are found in the second half of the index.¹⁸

When trying to address corruption linked to trafficking in persons as an underlying cause, it is also important to consider the situation of the rule of law in general in a country.

In countries and regions where the rule of law is not guaranteed and access to justice is a problem for ordinary people, the levels of corruption seem to be high and also the prevalence of crime, including organised crime such as trafficking.

Furthermore, in countries where the rule of law is not a strong principle, victims of crime (including corruption) are unlikely to come forward and report cases, because of the negative and in some cases even punitive reaction of the authorities. In such contexts, the reluctance to report is due to fear of reprisals from the side of traffickers as well as lack of trust that reporting may have any consequence for the perpetrators.

Thus, experience of corruption or perception of corruption tend to contribute significantly to successful control of victims of trafficking and their reluctance in reporting the crime.

Lack of Oversight

Migrant smugglers take advantage of strict migration regimes and offer their services to people who want to migrate in spite of not meeting immigration conditions of the destination country. Such services may for instance involve bribing border officials to enable illegal border crossings. Border, immigration and customs authorities are indeed vulnerable to corruption in cases of trafficking in persons and migrant smuggling. It is worth noting that even where the number of border, immigration and custom personnel has increased significantly, the number of agents available to investigate corruption cases most often has not, or has decreased¹⁹.

Vulnerability of Criminal Justice Actors

The cases below (they have been made anonymous) provide some examples of how criminal justice officials may become an obstacle to justice.

“Several months ago the deputy director of the very Centre to Combat Trafficking in Persons, Mr. XYZ, was dismissed after a corruption-related scandal. He facilitated trafficking for a large scale trafficker, in part by selectively prosecuting only cases against his competitors. His case remains under investigation, and no criminal charges have so far been filed. An

¹⁷ See also Sheldon X. Zhang and Samuel L. Pineda: ‘Corruption as a Causal Factor in Human Trafficking’, in *Organized Crime: Culture, Markets and Policies*, Springer, New York, 2008.

¹⁸ Transparency International, Corruption Perception Index, 2008.

¹⁹ Interview with Silvia Canedo, Brazil, Independent Expert and former intern with UNODC in October 2009

assessment conducted last year revealed lower level police involvement in trafficking as well. It also found several reports of sexual crimes committed against victims by police officers.”²⁰

“Law enforcement officials in country A arrested dozens of people linked to an international human-trafficking ring. The identified possible victims were all young women from country Z. It is believed that the young women were brought to country A illegally and forced to work as prostitutes in a network of at least 20 brothels. Many of the brothels were fronted by seemingly legitimate businesses, like massage parlors, health spas and acupuncture clinics. Recruiters who worked for the trafficking ring would go to country Z in search of women who wanted to come to country A and either supply them with false documents to travel to country A or smuggled them into country A. Once handed over to a brothel, managers would take away their identification and travel documents and threaten to turn them into the authorities or to harm their families and loved ones back home, should they attempt to leave. The women were forced to work to pay off tens of thousands in country A’s currency of debts which their traffickers claimed they had accumulated in the context of their arranged travel from country Z.

The mentioned arrests are related to the breakup of a brothel, where an undercover police agent discovered that the brothel’s business had flourished under the protection of two retired police officers who accepted bribes from the brothel owners. Those officers were charged with public corruption offenses and are awaiting prosecution in a federal district court.”²¹

“Although NGOs on more than one occasion reported their suspicion that some escort agencies kept victims of human trafficking, no investigation was launched until the autumn of 2002, when A, Chief of the Public Peace and Order Section of Police, was arrested on charges of abuse of office. Being in charge of the suppression of prostitution, A’s Section was also responsible for escort agencies in which prostitution was taking place. A received bribes in form of money and valuable articles from the owners of agencies; in return, he did not carry out raids in these agencies.”²²

Civil Society and Private Sector Involvement

While the core focus of the working paper is on corruption in the ‘traditional’ sense, that is, corruption within the public sector, it is important to also touch upon corruption within the civil society in relation to trafficking.

²⁰ Source know to the authors

²¹ Source known to the authors

²² Source known to the authors

Trafficking is a profitable crime, where a key investment is made into building a functional infrastructure to facilitate the success of a criminal enterprise, frequently with the help of corrupt public officials. On the other hand, in the past ten years large amounts of money have been put in anti-trafficking interventions. Civil society has been a major recipient of such monies in the area of assistance to victims of trafficking. Like any other inflow of funds, this has naturally also attracted some criminal actors.

While, like in the case of the public officials, the vast majority of non-governmental organizations would be genuine, honest and achieve significant results in a cost-effective manner, there have been cases of bogus “NGOs” that are set up purely due to the fact that funds were being spent on the issue. In several instances across the world, “NGO”s (often with a false license/registration obtained through bribery) were given funds to run projects, however, no activities were ever undertaken and the fraudulently obtained money was used for private gain.

Few extremely worrying cases were reported from Eastern Europe and West Africa, where individuals working with non-governmental organizations that assisted women were implicated in disclosing the addresses of shelters to traffickers. At least one case was reported of a woman re-trafficked directly from a shelter.²³

As regards private sector involvement, recruitment of migrant workers through fraudulent trade unions that were set up as a cover for a trafficking operation has also been reported by trade unions in Eastern Europe.

These examples make it clear that while it is the responsibility of the governments to adhere to international legal standards to stamp out corruption and ensure linkages are made between anti-trafficking and anti-corruption policies, it is at the same time crucial that also civil society and the private sector are held accountable in this area and mechanisms for monitoring adherence to standards by civil society should also be in place.

Outcomes of Corruption in Trafficking in Persons

While it is easier to find the results of corruption than to find evidence of the corrupt act itself, corruption in trafficking in persons produces outcomes that may serve as indicators for situations that suggest the need for more thorough investigations. For instance, the existence of fraudulent travel and identification documents used in the trafficking process and seized by law enforcers: or the actual illegal border crossing:, the issuance of visa without all the requirements being fulfilled: other clues that indicate the existence of exploitation, etc.

In the presence of such elements, in contexts that could suggest a trafficking in persons connection, the outcomes of corruption may be valuable indicators for the existence of the crime of human trafficking and should lead to thorough investigations.

²³ Particularities of the reported case known to Anti-Slavery International

II. International Legal Instruments

The international community has adopted separate legal frameworks to deal with corruption and trafficking in persons, the main instruments being the United Nations Convention against Corruption (UNCAC), the United Nations Convention against Transnational Organized Crime (UNTOC) with one of its three supplementing protocols, i.e. the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (or Anti-Trafficking Protocol, also often referred to as the Palermo Protocol).²⁴ Ensuring that the major, relevant international agreements -, can complement and reinforce one another is one of the challenges addressed by this paper. In an attempt to draw attention to this matter, this chapter presents an overview of the main corresponding and complementing provisions contained in the Conventions.

The United Nations Convention against Corruption (UNCAC)

The United Nations Convention against Corruption (UNCAC), the sole global legal instrument to prevent and combat corruption, entered into force on 14 December 2005. To date, it has been ratified by more than 140 States Parties.²⁵ UNCAC seeks to prevent and combat corruption by fostering a consistent understanding of the issue and a harmonized, effective counter-strategy.

Article 1 defines the purpose of the convention as follows:

- a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery; and
- c) To promote integrity, accountability and proper management of public affairs and public property.

The four pillars of the UNCAC are prevention, criminalization and law enforcement, international cooperation, and asset recovery.

The Convention requires States parties to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law²⁶. In particular, the UNCAC requires ratifying States to criminalize not only basic forms of corruption such as bribery and the embezzlement of public funds, but also offences

²⁴ The Smuggling of Migrants Protocol is also referred to with the aim to point out its possible relevance at operational level.

²⁵ As of 02 September 2010, 146 States are party to UNCAC, www.unodc.org/unodc/en/treaties/CAC/signatories.html (UPDATE FOOTNOTE to date of final revision correcting if appropriate)

²⁶ For relevant information see e.g. www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html and Toolkit to Combat Trafficking in Persons, 2nd edition, UNODC 2008, tool 9.4: Prevention of Corruption.

committed in support of corruption, such as laundering of the proceeds of corruption and the obstruction of justice, and requires States to consider criminalizing other offences, including trading in influence and concealment. Private-sector corruption is also addressed in the Convention. An entire chapter of the UNCAC is devoted to the issue of prevention, providing the institutional and regulatory framework to reduce the likelihood of corrupt practices.

The convention moreover provides a series of measures to increase international cooperation in criminal matters, as well as on specific aspects of international law enforcement cooperation, including joint investigations and the use of special investigative techniques, such as controlled delivery, electronic surveillance, and undercover operations. Lastly, the UNCAC includes separate chapters on asset recovery, technical assistance and information exchange.

The United Nations Convention against Organised Crime (UNTOC) and the Trafficking in Persons and Smuggling of Migrants Protocols

The United Nations Convention against Transnational Organized Crime (UNTOC) is a legally binding instrument that commits States parties to taking a series of measures against transnational organized crime. These include the creation of domestic offences to combat human trafficking, the adoption of new frameworks for mutual legal assistance, extradition, law enforcement cooperation, technical assistance and training. The Convention entered into force on 29 September 2003. According to Article 1, its purpose is to promote cooperation to prevent and combat transnational organized crime more effectively.

The UNTOC is supplemented by three protocols, among which are the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol, entry into force: 25 December 2003) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol, entry into force: 28 January 2004). While the convention contains general provisions against transnational organized crime, such as extradition and mutual legal assistance, the specific aspects of each subject area of the protocols are dealt with directly in the protocols. Countries have to become parties to the convention before they can become parties to any of the protocols. With regard to trafficking in persons, it is important to note that legislators are not required to incorporate the elements of trans-nationality or the involvement of an organized criminal group into their national trafficking offences.²⁷

The purpose of the Trafficking in Persons Protocol (art. 1) is to (i) prevent and combat trafficking in persons, paying particular attention to women and children, (ii) protect and assist victims of such trafficking, with full respect to their human rights and (iii) promote cooperation among States parties in order to meet those objectives.

The Smuggling of Migrants Protocol seeks to prevent and combat the smuggling of migrants, as well as to promote the cooperation among States parties to that end, while protecting the rights of smuggled migrants.

²⁷ Trafficking in Persons Protocol, Art., 1 paragraph 1 ; and UNTOC, Art. 34, paragraph 2.

Relevance of the Smuggling of Migrants Protocol

The terms trafficking in persons and smuggling of migrants are often used indiscriminately. The two phenomena are however distinct crimes, dealt with in different international instruments. While it is important to treat trafficking in persons and smuggling of migrants as two distinct crimes that differ significantly from each other (the purpose of exploitation or the irrelevance of consent if means such as deception and coercion have been applied, being, for instance only elements of human trafficking) in the context of corruption, it is appropriate to have a look at the overlapping elements of the crimes.

At first sight, when traffickers move their victims from the country of origin to the destination country, possibly through one or more transit countries, without complying with the relevant migration laws and regulations of the countries involved, it may be very difficult to find out whether the individuals involved are smuggled migrants or trafficked persons. In such cases, the two crimes overlap, so to say, at least from the outside – certainly not from the criminals' perspective. If corruption of public officials (or others) takes place to facilitate the criminal process, it is necessary to ascertain which legal instrument to apply based on the evidence gathered. In many cases, when there are smuggling features in trafficking, if the exploitation phase has not taken place yet or the evidence substantiating human trafficking is not evident, the Protocol against the Smuggling of Migrants by Land, Sea and Air, that also accompanies the UNTOC, may be applied as guidance.

Corresponding and complementing provisions of UNCAC, UNTOC and the Protocols

The UNTOC covers many substantive and procedural issues relative to corruption. In fact, many provisions of the UNTOC use identical language to the UNCAC to describe several offences. There are however also some differences between the two instruments.

Corresponding Provisions

Criminalization of Bribery

The UNCAC requires States parties to criminalize active and passive bribery (Article 15). The UNTOC requires the establishment of these two offences, as well as the criminalization of the participation as an accomplice in such offences. With regard to participation in bribery, the UNCAC is more comprehensive than the UNTOC, in that it also stipulates the criminalization of participation in any capacity, e.g. as an accomplice, assistant or instigator (Article 27).

The question of bribery involving foreign public officials (i.e. officials of other countries, and international civil servants) is also addressed by article 8 UNTOC, which, however, requires only that States give serious consideration to the introduction of such an offence. The UNCAC, as the specific anti-corruption instrument, makes it a mandatory requirement for States parties to criminalize the active bribery of foreign public officials and officials of public

international organizations in its article 16²⁸. With regard to passive bribery of foreign public officials and officials of public international organizations, the UNCAC requires States parties only to consider criminalizing such conduct. As the interpretive notes to the UNCAC state, “This is not because any delegation condoned or was prepared to tolerate the solicitation or acceptance of such bribes. Rather, [...] is due to the fact that the core conduct addressed [...] is already covered by article 15, which requires that States criminalize the solicitation and acceptance of bribes by their own officials”.²⁹

Definition of Public Official

The UNCAC definition of a public official, article 2 (a) is (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of UNCAC, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State party and as applied in the pertinent area of law of that State party.

The UNTOC does not provide a definition of a public official as such, but specifies in article 8 paragraph 4 that a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State party in which the person in question performs that function is equivalent to a public official.

Criminalization of Obstruction of Justice

Article 23 UNTOC and article 25 UNCAC have almost the same working and require the establishment of the following two criminal offences:

(a) Use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage either to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to offences covered by each convention; and

(b) Use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to offences covered by each convention, and, with regard to the UNTOC, its protocols.

Thus, both conventions require States to address the question of *obstruction of justice* by creating an offence for situations where efforts are made to influence potential witnesses and others in a position to provide the authorities with relevant evidence. The obligation is to

²⁸ With regard to the bribery of foreign public officials in international business transactions, the UNCAC and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions supports and reinforces the UNCAC. This footnote is contradictory. How to correct it?

²⁹ A/58/422/Add. 1, para. 28

criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence. The use of force, threats and inducements to false testimony can occur at any time before the commencement of the trial, whether a formal “proceeding” is in progress or not. Therefore, the term *proceeding* must be interpreted broadly to cover all official governmental proceedings, including pretrial processes. States are required to apply this offence to all proceedings relating to offences “covered by the Convention” and, in the case of UNTOC, its protocols. Interpreted narrowly, this would only apply where testimony is actually given, or when it is apparent that testimony will be given, although the requirement to protect witnesses from “potential” retaliation may lead to a broader interpretation.³⁰

Criminalization of Money Laundering³¹

Both the UNTOC and the UNCAC address the issue of money laundering and require its criminalization.

Article 23 UNCAC requires States parties to establish four offences relating to money laundering (in accordance with fundamental principles of domestic law) when they are committed intentionally: The conversion or transfer of proceeds of crime, the concealment or disguise of proceeds of crime, the acquisition, possession or use of proceeds of crime and the Participation in, association with or conspiracy to commit, attempt to commit, aiding, abetting, facilitating and counselling the commission of any of the foregoing offences. With regard to the establishment of offences relating to money laundering, the UNTOC in its article 6 echoes article 23 UNCAC.

Both instruments oblige States to establish criminal offences related to money laundering for the widest range of ‘predicate offences’. This could mean that trafficking in persons will be designated as a predicate offence to the specific offence of money laundering in many national criminal laws.

Prevention of Money Laundering

Both the UNCAC and the UNTOC recognize that preventing money laundering is an important part of the fight against corruption and transnational organized crime as both phenomena entail the pursuit of illicit material gain. A first crucial step of money laundering is to introduce illicit funds into the financial system, so as to make it harder, if not impossible, to trace them. Therefore it is crucial not just to criminalize money laundering activities, but to also prevent criminals from bringing the money into the financial system in the first place and to acquire the capacity to track the movement of assets, also through international cooperation.

³⁰ Legislative Guides to UNTOC and UNCAC. Add weblink?

³¹ The problem of money laundering and trafficking in persons is addressed in a technical paper currently under preparation. UNODC, title, expected date of publication.

The provisions relating to the prevention of money laundering of both instruments coincide largely (UNTOC, article 7; UNCAC, article 14). Both instruments contain mandatory and optional requirements. Mandatory requirements include the establishment of a comprehensive regulatory and supervisory regime to deter money laundering, as well as the capacity of administrative, regulatory, law enforcement and other authorities in charge of anti-money laundering to cooperate at national and international level. The regulatory regime has to require at a minimum banks and non-bank financial institutes to ensure effective consumer identification, accurate record-keeping and a mechanism for the reporting of suspicious transactions.

Optional requirements relate to the establishment of financial intelligence units and the monitoring of funds across borders.

The prevention of money laundering is to be dealt with by private – mainly financial – intermediaries, as well as public bodies and actors.

A relevant addition of the UNCAC to the corresponding provisions in the UNTOC is that financial institutions include “natural or legal persons that provide formal or informal services for the transmission of money or value”. This addresses concerns about both formal remitters and informal value-transfer systems, such as the *hawala* networks that originated in South Asia and have become global in recent decades. This alternative remittance system can offer valuable services to expatriates and migrant workers, but also be used by traffickers and smugglers, to transfer the proceeds of their crimes³².

Furthermore, the UNCAC contains an optional requirement that goes beyond the UNTOC, asking States to consider implementing measures that put obligations on financial institutions including money remitters relating to the identification of remitters and beneficiaries on the one hand and the traceability of transactions on the other (article 14 paragraph 3).

Of relevance are also the provisions of UNCAC and UNTOC relating to the freezing, seizure, confiscation and disposal or return of proceeds from offences established under each of the conventions, as well as the provisions on collection of information and international cooperation.

Participation in Corrupt Conducts

The UNTOC requires States to criminalize the participation as an accomplice in active or passive bribery as defined in the convention, as well the participation in, association with or conspiracy to commit, attempt to commit, aiding, abetting, facilitating and counselling the commission of any money laundering offences established by the UNTOC.

The UNCAC requires that States establish as a criminal offence the participation as an accomplice, assistant or instigator in the offences established in accordance with the UNCAC, covering more corrupt conducts than the UNTOC. Most States already have laws that

³² Legislative Guide for the implementation of the United Nations Convention against Corruption, United Nations, New York 2006. Add weblink?

determine the liability for aiding and abetting, participation as an accomplice and similar forms of liability, which means they would only need to ensure that these will apply to newly created corruption offences in line with UNCAC.

Liability of Legal Persons

Trafficking in persons and related corrupt acts can be committed by using legal entities, such as companies and corporations. In order to meet the challenge of fighting criminal activities carried out under legal cover, so to say, both conventions require the establishment of liability for legal entities for offences established in line with UNCAC and UNTOC respectively.

Mutual Legal Assistance

In cases of trafficking in persons that entail corruption, both the UNCAC and the UNTOC may be relevant with regard to mutual legal assistance.

The mutual legal assistance regime of the UNCAC is in many ways similar to corresponding UNTOC provisions³³. Both instruments require States parties to provide one another with the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings regarding the offences established in line with the respective convention. In fact, States parties to the UNTOC would comply with much of the requirements of the UNCAC. The UNCAC, however, extends mutual legal assistance obligations to cases of asset recovery and to cases that lack dual criminality, in which States parties are required to render assistance through non-coercive actions, as long as such is in line with their legal system and the offence is not just of trivial nature.

This can be of relevance when States have not yet taken legislative steps to establish particular crimes and liabilities as requested by the UNCAC, and this results in the absence of dual criminality, and, in the case of the UNTOC, of mutual legal assistance obligations.

The requirement of the UNCAC is much stronger in this regard (the wording in UNCAC is 'shall' as opposed to 'may, when it deems appropriate' in the UNTOC).

Also relevant in this regard is UNCAC's unique and pioneering asset recovery regime, which mandates States parties to ensure one another the 'widest measure of cooperation and assistance'.

Furthermore, the UNTOC and UNCAC contain similar provisions relating to the fight against transnational organized crime and/or corruption with regard to, among others, confiscation and seizure, extradition, transfer of sentenced persons, joint investigations, special investigative techniques, mutual legal assistance, joint investigations, special investigative techniques, transfer of criminal proceedings, and international cooperation.

³³ *Legislative Guide for the implementation of the United Nations Convention against Corruption, United Nations*, New York 2006; and P. David, F. David and A. Gallagher, *Trafficking in Persons: Handbook on International Cooperation*, ASEAN and UNDOC (draft forthcoming). Update footnote indicating date if possible.

Complementing Provisions

Criminalization of Other Forms of Corruption

Article 8 UNTOC contains a general provision requiring States to consider establishing as criminal offences other forms of corruption in addition to the mandatory requirement to criminalize active and passive bribery.

The UNCAC, as the more comprehensive and specific anti-corruption instrument, requires States to establish further mandatory offences. There are mandatory offences that State parties are obliged to criminalize and non-mandatory offences that States are obliged to at least consider criminalizing. In addition to criminalizing active and passive bribery (article 15 and 16) the obstruction of justice (article 25) and the laundering of the proceeds of crime (article 23) also the criminalization of the embezzlement, misappropriation or other diversion of property by a public official is established as a mandatory offence that States are obliged to criminalize (article 17).

With regard to optional requirements, States are encouraged to criminalize passive bribery of foreign and international public officials, trading in influence, abuse of function, illicit enrichment, bribery in the private sector and the concealment of illicit assets.

Private Sector Corruption

Corruption in trafficking in persons must not necessarily appear in the form of the corruption of public officials. As this paper discussed in earlier sections, corrupt practices could also involve private sector and civil society actors, such as travel agencies, marriage agencies, construction companies, non-governmental service providers, etc.

The UNTOC does not cover issues relating to corruption in the private sector, unlike the UNCAC, which specifically addresses private sector corruption. . Article 12 of the UNCAC stipulates three different obligations with regard to preventing private sector corruption. First, it imposes a general obligation to take measures to prevent corruption in the private sector; it mandates States parties to enhance accountability and auditing standards in the private sector, so as to enhance transparency and detect malpractices; and it requires States to establish effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with the accountability and auditing standards.

Article 12 also outlines recommendations based on good practice, including the cooperation between law enforcement agencies and relevant private entities, the promotion of the development of codes of conduct and the use of good commercials among business.

Moreover, the UNCAC requires the criminalization of active and passive bribery and of the embezzlement of property in the private sector (articles 21 and 22 respectively).

Prevention of Trafficking in Persons and Smuggling of Migrants

The Trafficking in Persons Protocol does not specifically mention corruption. However, there are provisions in the context of prevention of trafficking in persons that link the two issues.

Article 9 of the Protocol, for instance, requires States to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons and to protect victims from re-victimization. In particular, paragraphs 4 and 5 of article 9 oblige State parties to take or strengthen measures to make persons less vulnerable to trafficking and to discourage the demand that fosters all forms of trafficking. Poverty, underdevelopment and lack of equal opportunity are listed in as circumstances that make people vulnerable. Corruption is commonly a concomitant phenomenon - be it as one of the primary causes, or be it as a result - of such conditions. The existence of corruption can also encourage the demand for exploitative services, which might be difficult to obtain without the aid of corruption.

With regard to preventive measures, the requirements of the Smuggling of Migrants Protocol are similar to those listed in the Trafficking in Persons Protocol, requiring States to combat the socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

Travel and Identity Documents

Although trafficking in persons and smuggling of migrants are distinct crimes, some of the conducts relating to the movement and transport of people across borders can at times overlap. In fact, articles 12 and 13 of both the Trafficking in Persons and the Smuggling of Migrants Protocol, which deal with travel and identity documents, are identical. The Smuggling Protocol, however, also specifies in article 3 what is meant by *fraudulent travel or identity document*, specifically mentioning that a fraudulent travel or identity document can be any document that has been improperly issued through *inter alia* corruption.

Furthermore, article 12 calls for technical measures with regard to the quality of identity and travel documents, so that they may not be easily misused, forged or unlawfully issued. It also special measures on the integrity and security of documents in order to the production and issuance process against corruption, theft or other ways of diverting documents.

Article 13 obliges States parties to verify, at the request of another State party, the legitimacy and validity of documents purported to have been issued by them within a reasonable time.

If the setting up of certain technical standards for the production of documents such as passports is a legislative matter, the advice of national or external technical experts, to determine what basic standards are implementable and how they should be formulated will be crucial. Understanding technologies such as biometrics and the use of documents containing electronically stored information will be essential to the drafting of legal standards requiring the use of such technologies. Implementing the requirement to verify travel or identity documents does usually not require legislation, as virtually all States already do this upon request, but may require resources or administrative changes to permit the process to be completed in the relatively short time frames envisaged by the Protocol.

Prevention of Corruption

The UNTOC outlines in article 9 general measures against corruption, addressing corruption of public officials. States are required to adopt legislative or other measures in order to

promote integrity, to prevent, detect and punish corruption of public officials and to ensure effective action by officials. Moreover, the UNTOC obliges States to endow anti-corruption authorities with sufficient independence to deter undue influence.

The UNCAC, being the more specific anti-corruption instrument, contains an entire chapter devoted to the prevention of corruption, acknowledging the importance of preventing corrupt practices from taking place in the first place.

Measures required by the UNCAC are directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public officials should be subject to codes of conduct, financial disclosure or other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements should be established for the prevention of corruption, in particularly critical areas, such as the judiciary, public procurement, etc.

Those who use public services should expect a high standard of conduct from civil servants.

Preventing public corruption also requires an effort from all members of society. In fact, the UNCAC calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, in order to raise public awareness about corruption and what can be done about it.³⁴

Participation of Society

Corruption in trafficking in persons can directly and indirectly affect a wide range of individuals and communities - from direct victims of trafficking or people who are very vulnerable and at-risk to falling prey to traffickers, to non-governmental service providers and other organizations.

The UNCAC demands that States take measures to encourage the active participation of the general public in the areas of preventing and fighting corruption, increasing public awareness about the existence, causes, seriousness and threats of corruption (article 13). Measures foreseen include ensuring that the public has effective access to information, respecting, promoting and protecting the freedom of citizens to review, obtain, publish and disseminate information concerning corruption. Article 13 also requires that States take practical measures to encourage communication between the wider public and the authorities relative to corrupt practices.

UNCAC, UNTOC and the Protocols - A Solid Basis for Concerted Efforts

To sum up, the large numbers of corruption-related provisions in the UNTOC, partly identical to the UNCAC provisions, show there is international consent that corruption is an

³⁴ For ease of consultation, see www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html

integral component of transnational organized crime, which needs to be addressed in order to fight domestic and international crime.

UNCAC and UNTOC coincide and reinforce each other on issues like the criminalization of corruption, money laundering, obstruction of justice, etc.; the need for a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies particularly susceptible to money laundering, in order to deter and detect all forms of money laundering; providing a framework for international cooperation in mutual legal assistance, law enforcement cooperation (in particular investigations) extradition, criminal records, as well as transferring criminal proceedings, sentenced persons and other issues.

Furthermore, the UNCAC, being the more specific anti-corruption instrument, addresses areas not covered by the UNTOC and its supplementing protocols, which are relevant for trafficking in persons. Among these for instance private sector corruption, which complements the provisions contained in the instruments against trafficking in persons and transnational organized crime. The UNTOC and its protocols, on the other hand, provide relevant provisions aimed at preventing corrupt conducts that enable trafficking in persons.

The wide range of corresponding and complementing provisions of the conventions and protocols - UNCAC, UNTOC, Trafficking in Persons and Smuggling of Migrants Protocol – strongly suggest there is not only a need but a solid basis for a concerted effort on combating corruption in human trafficking.

III. Recommendations

This section outlines first some key problem areas that a combined anti-trafficking in persons and anti-corruption approach would need to address, and proposes 15 recommendations to start working on the issue of corruption in human trafficking in a systematic way. In line with the main objective of this paper, the focus of the recommendations is on criminal justice and law enforcement actors.

Problem areas identified include, among others:

- Traffickers may recruit, transport and exploit their victims with the help of corrupt public officials
- Lack of investigation, prosecution and adjudication of trafficking in persons due to corrupt criminal justice officials
- Lack of information and data collection on, as well as reporting of trafficking in persons related corruption
- Protection of victims of trafficking impeded by corrupt public officials (and/or civil society actors)
- Lack of adequate responses to root causes of trafficking in persons
- Lack of adequate response against major impediments to adequate criminal justice response

1. Streamlining Approaches

Good tools to address corruption do exist and are being implemented in many countries. However, some of these tools need to be modified for anti-trafficking initiatives, while others need to be simply included in anti-trafficking strategies and trainings as they are. To achieve complementariness of approaches, it is necessary to mainstream anti-trafficking measures into anti-corruption measures and vice versa.

2. Connecting Relevant Actors

There seems to be a general lack of awareness as to which agencies and actors are de facto identifying the links between corruption and trafficking in persons in their daily work, for instance by coming into direct contact with trafficked persons or with criminals. Some actors may have the mandate to provide assistance to victims, others to protect them and investigate cases, others to conduct research. Such professionals may acquire considerable information on corruption in trafficking while conducting their duties. Yet they often do not know each other or do not have the opportunity to share information, experiences and resources on this specific topic. The same applies to for anti-corruption practitioners and researchers, who may investigate trafficking in persons within an anti-corruption framework.

A crucial step in jointly addressing corruption in trafficking in persons would be to identify possible agencies and actors operating, so to say, at the intersection of the two issues. These may be actors who work with victims of trafficking or presumed victims of trafficking, such as service providers, but also law enforcement agencies and criminal justice practitioners,

who interview victims. Others may be asylum authorities, who may hear testimonies of victims and all other authorities or practitioners that may identify or come into contact with victims of trafficking. Other potentially interesting partners to involve would be researchers, as well as international staff working on these topics.

3. Identification of Vulnerable Sectors

In most countries, there are already anti-corruption measures for public officials in place. Trafficking in persons, however, may require specific prevention measures to address particular risks and vulnerabilities. With regard to special anti-corruption measures for public officials, it would be useful to identify and address the sectors of law enforcement, criminal justice and other possible relevant professionals whose tasks could be linked to the identification, investigation, prosecution and referral, of human trafficking cases. Such actors would include but not be limited to border control, customs and immigration authorities, specialized anti-human trafficking units, etc.

A general overview of vulnerable public officials is provided by the Council of Europe,³⁵ which includes: Police, customs, consular offices/embassies, border control, immigration services, other law enforcement agencies, local officials, intelligence/security forces, armed forces (national or international), and persons/groups/parties with „influence“, to private sector actors, such as travel agencies, airlines, transportation sector, financial institutions, banks, etc.

Once identified, such categories may then be targeted with specific activities (see also recommendations below)

4. Awareness-Raising and Training of Relevant Public Officials

Exposed and vulnerable staff may not always be fully aware of their potential role relating to trafficking in persons and the consequences of their misconduct within a criminal chain. General anti-corruption measures should therefore be accompanied by specific awareness raising measures that highlight vulnerabilities, responsibilities, risks, etc., drawing attention to how corrupt behaviour could facilitate the crime of trafficking in persons. Such awareness-raising could also extend to support staff, such as translators, legal guardians, etc.

Specific anti-corruption training needs to be delivered to public officials who come in touch with victims of trafficking. Training courses for law enforcement and criminal justice practitioners would preferably be interactive, linking anti-trafficking and anti-corruption measures to the daily tasks and functions of the trainees.

In order to create synergies between anti-trafficking and anti-corruption measures, trainings should have a multi-agency approach; trainers and trainees should be from both trafficking and corruption sectors (see also below on improving cooperation).

³⁵ Trafficking in Human Beings and Corruption, Council of Europe, 2005.;

5. Ensuring Transparency of Performance

Sectors among law enforcement and criminal justice authorities, who are at a specific risk of corruption in the context of trafficking in persons, need to ensure that the activities of their staff are performed in a transparent manner. This does not necessarily mean public disclosure but rather safeguards, such as an internal approval system of tasks to be performed, the avoidance of one-to-one meetings with individuals (such as visa applicants, presumed victims, suspects, etc.) .

6. Developing and Implementing Codes of Conduct for Law Enforcement Agencies, Criminal Justice Actors, and International Civil Servants

There are codes of conduct for most sectors of public officials, including those who could play a role in trafficking in persons. Some codes of conduct may have to be amended in order to meet the specific requirements relating to trafficking in persons. Measures may include e.g. to request police staff who are conducting brothel raids to always be accompanied by one or more colleagues, preferably female staff, when conducting raids in brothels.

In order to make staff aware of and familiar with codes of conduct they need to be specifically trained on them.

Violations of codes of conduct should be sanctioned.

Also international civil servants need to be provided with and trained on codes of conduct that specifically address their vulnerabilities.

7. Establishment of Control Mechanisms

General anti-corruption measures may be sufficient to control most vulnerable staff who may become involved in the process of trafficking in persons. Special measures may however be required in specific areas such as the referral of victims of trafficking. Standard operating procedures may be one means of ensuring controlled workflows.

8. Disciplinary and Judicial Responses

Supervision, discipline, and accountability are key in preventing and combating the occurrence of corruption among staff who have the responsibility to investigate, prosecute trafficking in persons, or protect victims, as well as front-liners from police and immigration/customs/border control. As mentioned above, the violation of codes of conduct should entail sanctions.

9. Personnel Recruitment and Training of

There should be a careful and transparent selection process for new staff. Training upon recruitment, adequate supervision, and performance appraisals should be ensured. Training

should not only concern technical instructions relating to specific tasks and responsibilities, but also the ethics and values that are at the basis of integrity.

Job rotation measures need to be carefully developed and implemented in order not to be a double-edged strategy. If there is a lot of rotation, as in systems with a rather mercenary (I am not sure this is the correct expression, a native speaker may help us here) law enforcement structure for instance, it may be difficult to build-up expertise and cooperation, as well as to monitor unethical behaviour. In such cases, the establishment of a tracking system to monitor individuals rotating among police units should accompany the strategy of job rotation.

10. Cooperation between Anti-Trafficking and Anti-Corruption Practitioners

Trafficking and corruption cases are often dealt with independently. There seems to be a lack of referral of cases of trafficking in persons where there are indicators for corruption, and vice versa, referral of corruption cases, where there are indicators of trafficking in persons.

What would be needed is the development of indicators for actors working in the field of corruption to detect trafficking in persons when investigating relevant corruption cases and for actors working in the field of trafficking in persons to detect corruption when investigating trafficking cases..

Cooperation procedures should then be developed and introduced to ensure coordinated action.

Also with regard to cooperation efforts, the development and conduct of inter-agency training should be introduced.

Cooperation among relevant actors may also require the sharing of information and resources at the working level. This can be achieved for instance through the establishment of task-forces, joint operations, etc.

Improved access to appropriate and reliable information is one of the benefits of cooperation among different agencies. , is the Other benefits include avoiding duplication of efforts and mutual interference. Sharing resources among cooperating agencies (equipment, staff, information, etc.) may also speed-up investigations.

Cooperation efforts could also be of assistance in transnational cases of trafficking in persons at the international level.

11. Improvement of Data Collection

Although corruption is often mentioned as an impediment to fight trafficking in persons, there is hardly any official report analysing how corruption of public officials makes trafficking from, through or to their country possible. Reference is indeed made to reported cases, but the information is not collected systematically to examine patterns of corruption in trafficking in persons..

A crucial step in addressing human trafficking-related corruption is precisely the collection of data and information in order to get a better insight into the problem. This would allow the implementation of targeted, knowledge-based responses.

Improved data gathering and analysis would also make it possible to verify whether corrupt practices relating to trafficking in persons have a systemic scope.

States need to start collecting data on investigations and prosecutions of officials in connection with human trafficking cases. This would also create an obligation for the criminal justice system to collect data and ensure that these types of crime are investigated.

Victims and service providers, currently often ignored as a source of information need to be considered as sources for data collection efforts.

There may also be a lack of investigation into situations where trafficked persons appear to be complacent in corrupt acts (e.g. holder of false identity and travel documents that are secured through bribes). In some cases, criminal justice actors may be interested in holding victims liable for having falsified documents, without trying to trace suspicious facts that may point at the involvement of corrupt officials. Victims may be detained and/or repatriated without further investigation on either trafficking circumstances or corruption.

Documentation of corruption in trafficking in persons may also improve as a result of enhanced coordination among anti-human trafficking, anti-corruption actors and other specific efforts leading to better detection and reporting of cases.

12. Improvement of Protection of Victims of Trafficking who Report Corruption

Claims of corruption of victims and service providers are often ignored as a source of information and not acted upon in investigations. This may discourage reporting of cases. Victims may also be hesitant to report corruption for fear of reprisals from the corrupt officials involved and/or their exploiters. Specific protection mechanisms need to be in place for victims who would like to report corruption relating to their trafficking.

The use of pro-active investigative techniques for corruption within anti-trafficking operations that have a large organized crime element may help to remove pressure from victims as the sole source of information. Pro-active investigation techniques should be used to corroborate hints given by victims.

13. Involving Civil Society and the Private Sector

As trafficking in persons may also be facilitated by civil society actors, a comprehensive response should address also these actors. Potential victims and victims may also face risks of corruption and should be targeted in prevention measures.

Such measures could include:

1. Building civic response and community awareness about the links between corruption and human trafficking;

-
2. Alerting communities that early signs of corruption in a legitimate migration journey should be considered as warning indicators that trafficking may be taking place;
 3. Giving citizens access to free, confidential counselling about corruption and trafficking before and after they have undertaken a migration journey, in order to make them aware of their rights and capable of looking for help if they are infringed in a way that renders them victims of trafficking. Trade unions should be involved in awareness-raising so that individuals who witness corruption and trafficking in certain work environments/sectors but are not aware of the links between the two issues, may actually report cases to the appropriate authorities.
 4. Similar approaches would be valid also for NGOs and agencies providing care and assistance to trafficked persons. The establishing and monitoring of codes of conduct for civil society and private sector actors would also be highly recommendable.

14. Incentives and Protection Measures

Other general anti-corruption measures, such as incentives for and protection of whistleblowers, measures aimed at ensuring the integrity of public officials, adequate remuneration and pay-scales, general education about corruption, etc. may further contribute to prevent and combat corruption in trafficking in persons.

15. Developing Joint Strategies

States are strongly encouraged to develop strategies that jointly address trafficking in persons and corruption. Furthermore, the international community is called upon to start highlighting corruption in trafficking in person as a grave concern, which can and must be tackled systematically.

The recommendations outlined above represent only a first step towards adequately responding to corruption in trafficking in persons. They may be further developed and should be translated into operational guidelines and concrete initiatives. They are not necessarily stand alone but rather interconnected measures that could reinforce each other. In fact, sanctioning corrupt behaviour may lead to an increased reporting of cases, which in turn would possibly allow a more realistic analysis of the phenomenon through better data collection. Practitioners who have been trained adequately and who are aware of the risks of corruption might be better trusted by victims and service providers, who would possibly be more willing to provide information helping investigations, enhancing institutional capacity to fight the crime.



UNODC

United Nations Office on Drugs and Crime

For more information about UNODC's work against human trafficking and migrant smuggling contact:

Anti- Human Trafficking and Migrant Smuggling Unit

UNODC P.O. Box 500, 1400 Vienna, Austria

Tel. (+43-1) 26060-5687

Email: ahtmsu@unodc.org

Online: www.unodc.org/unodc/en/human-trafficking/