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# The role of corruption in trafficking in persons

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**Background Paper**  
**for the Side Event “*The Role of Corruption in Trafficking in Persons*”**  
**at the Third Session of the Conference of State Parties to the**  
**United Nations Convention against Corruption (09-13 November 2009)**

**Doha, 11 November 2009**

(Working draft)



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This paper has not been formally edited.

Vienna, London, Berlin, etc., November 2009

## Table of content

<b>I. Introduction – Summary .....</b>	<b>4</b>
<b>II. Trafficking in persons and corruption: reoccurring patterns.....</b>	<b>4</b>
1) What is trafficking in persons? .....	5
2) What is corruption? .....	6
3) Corruption in trafficking in persons .....	6
a) Existing knowledge - a selection of relevant material.....	6
b) Cross-cutting issues.....	11
<b>III. International legal instruments: a short overview of UNCAC and UNTOC with its Trafficking in Persons and Smuggling of Migrants Protocols .....</b>	<b>18</b>
1) The United Nations Convention against Corruption (UNCAC).....	18
2) The UNTOC and its Trafficking in Persons and Smuggling of Migrants Protocols.....	19
3) Corresponding and complementing provisions of UNCAC, UNTOC and its Protocols relating to trafficking in persons and corruption:.....	20
<b>IV. Recommendations, with a focus on criminal justice and law enforcement actors .....</b>	<b>28</b>

# The role of corruption in trafficking in persons

## I. Introduction – Summary

Trafficking in persons and corruption are closely linked criminal activities and their connection is frequently referred to at international fora<sup>1</sup>. However, it appears the correlation of the two phenomena and the actual impact of it are greatly neglected in the development and implementation of anti-human trafficking measures and policies. This disregard for the issue may substantially undermine ongoing initiatives against trafficking in persons and prevent the customization of responses needed. It is only after recognizing the existence and effects of corruption in the context of human trafficking that the challenges posed by it can be met. It is thus important to examine the causal factors and how the existence of corruption contributes to trafficking and proliferates the process.

With this in mind, this paper seeks to outline patterns of corruption in trafficking in persons and provide some practical guidance on what can be done to address this issue. In an effort to limit the scope of this paper, its main focus is on corruption of public officials and more particularly law enforcement and criminal justice actors.<sup>2</sup>

## II. Trafficking in persons and corruption: reoccurring patterns

Trafficking in persons and corruption are both criminal activities that have received a great deal of international attention over the recent years. International legal instruments have been negotiated and adopted to address these crimes. Accordingly, various programmes including technical cooperation projects and awareness raising campaigns as well as publications and tools such as research reports and training handbooks seek to address the crimes and help to get these international treaties implemented.

As commonly as corruption is mentioned as a key factor in the trafficking in persons, it is surprising that to date a targeted strategy to tackle corruption in trafficking in persons is lacking. Very little official data seems to be available to corroborate the assumption of corruption playing a major role in the illicit trade.

Inherent in the almost overwhelming problem of *what we don't know about trafficking and corruption* is, that we do not seem to ask the right questions about the role of corruption when we are discussing trafficking in persons, and vice versa, we do not know what to ask about trafficking in persons when anti-corruption stakeholders are convening.

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<sup>1</sup> UNODC, on the occasion of the Vienna Forum to Fight Human Trafficking (13-15 February 2008) that took place in the framework of UN.GIFT, started to look closer at the issue at a panel discussion on the linkages of trafficking and corruption.

<sup>2</sup> It is important to note that the current paper does not seek to brand public officials in general corrupt, but rather highlight the areas of risk of public official corruption in trafficking in persons and the vulnerability of public officials involved.

But no matter the scarcity of official data, there is sufficient indication that corruption plays indeed an important role in the crime of trafficking in persons. The corrupt behavior of law enforcers can assist traffickers to recruit, transport and exploit their victims; corrupt criminal justice officers can obstruct the investigation, prosecution and adjudication of trafficking in persons and impede the adequate protection of victims of the crime. Corruption involving the private sector - for example travel agencies, model agencies, marriage bureaus, hotels, construction companies and others – can also contribute to human trafficking.

Acknowledging the global community lacks detailed information and data about the links between trafficking and corruption, it does *at least* have a grasp on the questions that answers are sought to. Such questions could be:

- **Patterns of corruption:** Though it may not be possible to reveal all types of corrupt action that facilitate or abet trafficking in persons, it is possible to build a picture of the *patterns* of corruption. What are the reoccurring acts of corruption that link into trafficking in persons? Where and when (in the trafficking process) is corruption most likely to be a significant factor?
- **Outcomes of corruption:** It is often easier to find the results of the corruption than to prove the corrupt act itself. What are the *outcomes* of corruption in TIP?

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

### 1) What is trafficking in persons?

According to the Trafficking in Persons Protocol<sup>3</sup> the crime basically 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.

Child trafficking does not require the use of force, deception or another means, as children are considered incapable of deciding for themselves in the first place.

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

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<sup>3</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

international instruments<sup>4</sup> both crimes can overlap, especially 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. From the outside, such cases of trafficking in persons may look like smuggling of migrants. This highlights the importance of using indicators that will reveal improper recruitment, or exploitation, and thereby identify the situation as trafficking of persons.

## **2) What is corruption?**

Corruption is widely understood as misuse of public power for private gain<sup>5</sup>. Unlike the internationally endorsed definition of trafficking in persons found in the in the Trafficking in Persons Protocol, the United Nations Convention against Corruption (UNCAC) does not provide as definitive a definition, although it does profile a range of examples of corrupt acts including bribery, embezzlement of public funds, money laundering and obstruction of justice.

The paper discusses the UNCAC and the UNTOC with its Trafficking in Persons and Smuggling of Migrants Protocols as well as the need to link them together in more detail in later sections.

Corruption can appear as grand corruption – pervading the highest levels of a government, thereby destroying the trust in good governance, the rule of law and economic stability - and as petty corruption, the use of public office for private benefit in the actual course of public service delivery. 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.

## **3) Corruption in trafficking in persons**

### **a) Existing knowledge - a selection of relevant material**

Accurate information and in-depth analysis on the role of corruption in trafficking in people is very limited. There have been relatively few reports or investigations into corruption offences relating to trafficking, with virtually no cases leading to convictions. To the detriment of holistic strategies to understand and combat trafficking in people, corruption is rarely a focus in anti-trafficking research or strategies.

However, preliminary discussions and presentations do provide an early overview of the

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<sup>4</sup> As for the smuggling of migrants the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime applies

<sup>5</sup> The World Bank's working definition of corruption is "the abuse of public power for private benefit". TI takes a broader approach and understands corruption as "the misuse of entrusted power for private gain". For the current paper, focusing mainly on corruption in the public sector, this difference is of little relevance.

problem, as well as offering some initial recommendations<sup>6</sup>. The Council of Europe provides an opening, and comprehensive, analysis in its 2005 report ‘Trafficking in Human Beings and Corruption’<sup>7</sup>, distinguishing and suggesting some of the many opportunities for corruption to facilitate the trafficking process. Related to, if not based on this report is a presentation delivered on behalf of the Council of Europe<sup>8</sup>, which is key to the issue.

***The following presents a summary of the findings of this presentation, acknowledging its importance in the discussion of the issue:***

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 documents to victims, their transport, which may include border-crossing, their control and exploitation as well as the laundering of the proceeds made through trafficking in persons.

**“Who”**: Corrupt actors within this chain of activities range from police, customs, visa 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.

**“What”**: Corrupt acts include ignoring, tolerating, participating in and organizing trafficking in persons, within the range of violation of duties and corruption, to the 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 could be parliamentarians, government officials, again police, customs border control, immigration services and other law enforcement agencies, prosecutors, investigative judges, local officials, intelligence/security forces, as well as persons/groups, parties with “influence”.

**“What”**: Acts could vary from passivity, (ignoring, tolerating, and avoiding action) to actively obstructing investigations, prosecution and judicial proceedings, revealing and selling information, to betraying and perverting the course of justice. Lack of awareness, capacities and skills may cause such behaviour, which could again range from mere violation of duties to corruption and organized crime involvement.

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<sup>6</sup> By Manuel LEZERTUA, at the 11<sup>th</sup> IACC meeting, in Seoul, Korea, 25-28 May 2003, available at [www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt](http://www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt)

<sup>7</sup> Report on a regional seminar in Portoroz, Slovenia, 19-22 June, in the framework of the “Programme against Corruption and Organised Crime in South-Eastern Europe” (PACO)

<sup>8</sup> By Manuel LEZERTUA, at the 11<sup>th</sup> IACC meeting, in Seoul, Korea, 25-28 May 2003, available at [www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt](http://www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt)

- ***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 could be non-governmental and civil society organizations, as well as social service institutions.

**“What”**: Corrupt behaviour could range from passivity and “trade offs”<sup>9</sup>, to revealing or selling information on victims, betraying victims. This could even lead to service providers being infiltrated by trafficking organizations.

After drawing attention to the opportunities for corruption in trafficking in persons, the presentation goes on to provide some *hypothesis* relevant to and further insight into the issue e.g. the assumption that organized trafficking requires systemic corruption, that corruption is central to the success of traffickers, that corruption costs are key item for traffickers, and on the interrelation of weak institutions /capacities and corruption.

The presentation also recommends *counter strategies and specific measurers* to address trafficking in persons related corruption. Key steps to be taken include the acknowledgement of the problem as, the inclusion of corruption issues in anti-trafficking plans, the building of trust, the creation of specialized multi-agency units and the organization of multi-agency training, as well as the prevention of corruption through codes of conduct, guidelines, conflict of interest regulations and the monitoring of sectors at risk. Moreover, the presentation advises targeting vulnerable officials and investigating finances of suspects, making more systematic use of information provided by the very victims of trafficking in persons and non-governmental organizations (NGOs)/civil society. NGOs and the international community in general are encouraged to monitor investigations; the presentation also promotes awareness raising campaigns, including with the involvement of media. 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

The Center for the Study of Democracy focuses in its report ‘Corruption and Trafficking: Monitoring and Prevention’<sup>10</sup> on corruption and transborder crime, the monitoring of trafficking and ways to curb trafficking and related corruption. It examines typical smuggling schemes, channels and practices, including how public officials could be involved. It also, looks at assessment methods and mechanisms, and provides some recommendations regarding countermeasures. Trafficking in this publication is not limited to trafficking in persons, but also other forms of trafficking.

The publication ‘Corruption and Gender’ with the ‘Focal Theme: Corruption and

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<sup>9</sup> The CoE report “Trafficking in Human Beings and Corruption”, which the presentation is based upon specifies “trade offs” as “passivity in order not to compromise access to victims or cooperation with official institutions

<sup>10</sup> ‘Corruption and Trafficking: Monitoring and Prevention – Assessment methodologies and strategies for counteracting transborder crime in Bulgaria’, Center for the Study of Democracy, Sofia, 2000

Trafficking in Women’<sup>11</sup> examines gender impacts of corruption in general before outlining the manifestations of corruption that specifically affect women more severely, including the role of corruption in trafficking in women.

Another useful resource<sup>12</sup> has approached analysis of corruption and trafficking in people from different angles, such as establishing links between the general levels of corruption present in a country, and the extent of the trafficking in persons in the same country, suggesting to what extent is corruption a contributing factor corruption is, compared to, say, poverty. For this purpose, 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 (dependent variable) is determined by a country’s ranking in the ‘Trafficking in Persons Report’ published by the U.S. Department of State (2005), an 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 all the publications have in common is a plea for an improved examination and consideration of the issue.

### ***Survey material***

In early 2009 UNODC launched a survey among relevant practitioners on the issue of corruption and trafficking in persons.<sup>13</sup> When asked to identify those most vulnerable to corruption in relation to human trafficking, 65% of respondents identified border control/immigration/customs, 50% indicated law enforcement and police, and 25% considered civil society organizations most vulnerable. (The particular survey question allowed for multiple entries)

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*

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<sup>11</sup> Bianca Schimmel and Birgit Pech: Corruption and Gender: Approaches and Recommendations for Technical Assistance; Focal Theme: Corruption and Trafficking in Women, published by Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) 2004

<sup>12</sup> 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

<sup>13</sup> The survey ‘Corruption and Trafficking in Persons’ was launched electronically by UNODC on 02 February 2009 and closed 27 February 2009; 54 criminal justice, law enforcement and other relevant governmental experts, as well as experts from non-governmental organizations, academia and other civil society institutions have been invited to participate in the survey. 8 survey participants fully completed the survey, while some others completed it only partially. Ms Sílvia Canêdo, then an intern with UNODC, assisted in developing the survey.

*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 had a reasonably high knowledge of cases involving corruption in trafficking in persons: 38% of survey participants knew of recent cases (within in the past 12 months) where public officials involved in the identification, investigation, prosecution, adjudication or referral of human trafficking in their country had also been involved in related corruption (reference date: launch of survey, see footnote 9). 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 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.”*

## **b) Cross-cutting issues**

In the public sector, officials are routinely confronted with circumstances in which their personal interests can conflict with that of their responsibility to act in the best interests and according to the laws and regulations of the State they serve. This is not different when considering trafficking in persons and its prevention. Corrupt officials can play an important role in contributing to human trafficking, including those public officials, whose very duties include the prevention and suppression of and fight against the illicit trade.

At the recruitment stage for instance, obtaining fraudulent invitations or forged travel and identity documents may be facilitated by corrupt officials. At the transportation stage, in exchange for bribes, officials may turn a blind eye to signs of trafficking in persons, allowing traffickers to cross borders unchallenged, whether in an apparently illegal way or a seemingly or actually legal way. At the exploitation phase, extortion may be exercised and again, public officials may act against better knowledge or ignore suspicions.

### ***Victims and offenders as sources of information***

While there is a lack of systematic research into and official data on the links between trafficking and corruption, there is a wealth of anecdotal evidence that makes it an imperative that these two criminal activities be looked at in conjunction. A main source of information about actual occasions where corruption was part of trafficking are the very persons involved – the victims and the traffickers.

Victims commonly reveal to service providers and support agencies instances of corrupt officials or former public officials being involved in the process of their trafficking. Furthermore, there have been post-conviction studies conducted where persons convicted of crimes in trafficking shared their criminal practices with researchers and revealed the participation of public officials.

Generally, most States do not seem to systematically collect and analyse data on the investigations or prosecutions of public officials in connection with trafficking and

corruption.<sup>14</sup>

*Information based on victims accounts relating to the country of origin:*<sup>15</sup>

Victims of trafficking in persons have reported complicity of various officials at all stages of trafficking. According to such accounts, special services that are required by traffickers seem to be obtained through bribery or abuse of power of officials or influential people.

In the processes of recruitment, transfer transport and the early stages of the trafficking journey, bribery and the misuse of the power of officials are the most common forms of corruption reported by victims of trafficking in persons. They include instances such as passing through borders without any checks, or with cooperation of airline staff and visa officials.

Some victims have been trafficked using illegally obtained passports. They would be “either ‘previously issued’ passports (bought, borrowed or stolen) or ‘black and white’ (i.e. blank) passports. The latter are allegedly acquired where corrupt relationships can be formed with passport authorities in the issuing country.”<sup>16</sup>

Victims have also reported that traffickers said they had to bribe officials to obtain visa and the cost of the bribe has been added to the victims’ debts towards the trafficker. Victims also often mention to have been able to pass through the immigration checks where the officials appear 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 the particular immigration official serving this queue was “one of them” and he will not ask any questions about her documents.

*Information based on victims (and service providers) accounts relating to the destination country:*

Abuse of influence: In a number of countries, cases of domestic servitude in diplomatic households have been reported. It is very common that these cases are not investigated, because of diplomatic immunity of the perpetrators. Service providers in several European countries informed about cases, where pressure was put on the law enforcement not to request the withdrawal of immunity for diplomats implicated in cases of trafficking for domestic servitude.

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<sup>14</sup> „Freedom of information requests’ made by Anti-Slavery International in several European countries suggest that cases of public officials’ corruption, are apparently not gathered systematically and thus unsuitable to provide hard evidence

<sup>15</sup> Information gathered by Anti-Slavery International

<sup>16</sup> Home Office: Organised immigration crime: a post-conviction study; London, 2009

### **The story of F<sup>17</sup>.**

F. was exploited in domestic servitude, beaten and sexually abused by a diplomat and his royal wife, who brought her to the capital of a country in Northern Europe.

She came to work for the diplomatic household and was promised work as a nanny, own room and good treatment in their expensive house as well as time off. Instead, they violently beat her, sexually assaulted her and locked her away to work 19-hour days for no pay.

F. is owed more than 20,000 of the local currency in compensation following an employment tribunal order, but is unlikely to get justice, because of the diplomatic status of her abusers.

*"From the first night I knew something was wrong," she said. "I was made to share a room with the diplomat and he came into my bed and touched me all over."*

*"I was so scared but I did not speak the language and had no money and no phone. I was trapped. I was paid nothing, never allowed to leave the house, and only given scraps to eat."*

*"They made me get up at six to cook, clean and care for them and their children; I didn't get to bed until one in the morning. They treated me like dirt, throwing things at me, shouting at me and hitting me ... I hand-washed all their clothes until my hands were inflamed. If I didn't do what they asked they would beat me and smash my head against the wall. Every time I asked to go home they threatened me. They said they would destroy my passport and harm my family. I was terrified because I knew they could; they have power in my country."*

Eventually she escaped, but was followed by her abusers and her family received death threats.

Although she reported to police, she was told that the couple could not be prosecuted because of their diplomatic status. The Foreign and Commonwealth Office (the British ministry of foreign affairs) contacted their embassy but were told that since the couple has returned to their home country, nothing can be done to ensure that F. receives her compensation.

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<sup>17</sup> Source known to the authors

“Closing of eyes”: 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. Anecdotal cases like that were reported across Europe. In a few cases in central and south-Eastern Europe, victims have identified police officers as their customers.

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

Victim reports suggest that trafficking and corruption continue to be connected even after survivors escape a situation of exploitation. According to their accounts, victims faced threats from corrupt officials in their home countries, after their return. In a number of cases, victims reported being apprehended by officials at the airport and held until they or their families paid a bribe. At times, 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 – to do with longstanding relationships of mutual benefit (that is, favours between people in ‘useful positions’). The term ‘influence’ rather than corruption was used in some circumstances. But, equally, interviewees provided examples of bribery (and, naturally, the payments of bribes are included in any business costs). “

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]; there were 20 or 30 people to get through... “*

(Trafficker from Eastern European country)

*“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... “*

(Trafficker from Eastern European country) <sup>18</sup>

***Role of 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

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<sup>18</sup> Ibid.

countries in terms of the degree to which corruption is perceived to exist among public officials and politicians<sup>19</sup>. The perceived corruption is used by traffickers in the process of recruitment of victims and also later in the process of controlling them.

For people who live in a country where the level of corruption is quite high (or in a country where majority of the population believe that the level of corruption is high), those at risk of being exploited through trafficking may not question a trafficker who claims that ‘middle men’ will be required to obtain visa, passports or other travel documents. The experience of corruption in the home country is also a powerful tool used by traffickers to control their victims in countries of destination. Often the traffickers would imply that if victims ran away, the corrupt police would bring them back; that the police would beat and rape women or that the police were racist. In many cases, victims do not question these insinuations, having experienced corruption in their home countries.

In this context, it is indeed<sup>20</sup> interesting to look at the Transparency International Corruption Perception Index and see where some of the common countries of origin are placed. 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.<sup>21</sup>

When trying to address corruption linked to trafficking in persons, e.g. as an underlying cause, it is also important to consider the rule of law in general. In countries and region, where the rule of law is not working properly 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, because of the negative and in some cases even punitive reaction of the authorities. The reluctance to report shows as behaviour of victims of trafficking who have - directly or indirectly - experienced corrupt officials or poor rule of law: they are afraid not only because of the fear of reprisals from the side of traffickers, but more importantly because they do not see the merit of doing so.

Thus, experience of corruption, or perception of corruption will contribute to successful control of victims of trafficking and their reluctance in coming forward.

### ***Lack of oversight***

Migrant smugglers take advantage of stringent 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 could, as shown earlier in the report, also involve bribing border officials to enable illegal border crossings. Border, immigration and customs authorities are indeed exposed and consequently very vulnerable to corruption in regard to cases of trafficking in persons and migrant smuggling. However, even where

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<sup>19</sup> [www.transparency.org](http://www.transparency.org)

<sup>20</sup> See 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, mentioned in footnote 11

<sup>21</sup> Transparency International, Corruption Perception Index 2008.

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 even decreased<sup>22</sup>. The same might be true for other sectors at risk of corruption.

### ***Vulnerability of criminal justice actors***

The cases below illustrate – evidently in a non-exhaustive manner - that and how criminal justice officials, whose very job it is to investigate, prosecute and adjudicate traffickers and their crimes can themselves become an obstacle to justice being done to offenders and their victims.

*“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 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.”<sup>23</sup>*

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*“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.”<sup>24</sup>*

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<sup>22</sup> Information provided by Silvia Canedo

<sup>23</sup> Case based on findings of a UNODC country assessment, February 2007

<sup>24</sup> Based on newspaper article of August 2006, data and source anonymous

*“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.”<sup>25</sup>*

### ***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.

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.<sup>26</sup>

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.

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<sup>25</sup> Based on NGO deliberation, data and source anonymous

<sup>26</sup> Particularities of the reported case known to Anti-Slavery International

### ***Outcomes of corruption in trafficking in persons***

While it is easier to find the results of the corruption than to evidence the corrupt act itself, corruption in trafficking in persons produces outcomes that could serve as indicators for situations that indicate the need for more thorough investigations. Such outcomes are e.g. the existence of fraudulent travel and identification documents used in the trafficking process and seized by law enforcers. Outcomes, that would deserve further investigations could also be the actual illegal border crossing, despite control, the issuance of visa without all the requirements being fulfilled, obvious clues that indicate the existence of exploitation, being ignored by responsible authorities, an adoption being approved without the required 'paperwork', etc.

Not to pay attention to such outcomes in contexts that could suggest a trafficking in persons connection, risks to waist valuable indicators for the existence of this crime.

### **III. International legal instruments: a short overview of UNCAC and UNTOC with its Trafficking in Persons and Smuggling of Migrants Protocols**

While the international community has adopted separate legal frameworks to deal with trafficking in persons, and the separately corruption, there is still work to be done on ensuring the two major, relevant international agreements - the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC) with its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol), can complement and reinforce one another.

#### **1) The United Nations Convention against Corruption (UNCAC)**

The UNCAC, a global instrument with more than 130 States parties<sup>27</sup>, in force since 14 December 2005 seeks to prevent and combat corruption. As such, it brings about a globally consistent understanding of the issue and enables a counter-strategy that is consistent all over the world.

According to its Article1 the purposes of the UNCAC are: *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.

More particularly, 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

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<sup>27</sup> 24 August 2009: 138 States are party to UNCAC, [www.unodc.org/unodc/en/treaties/CAC/signatories.html](http://www.unodc.org/unodc/en/treaties/CAC/signatories.html)

domestic law<sup>28</sup>. The Convention criminalizes not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and offences committed in support of corruption, i.e. the concealment and “laundering” of the proceeds of corruption as well as the obstruction of justice. 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 in the first instance. 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 Convention includes separate chapters on asset recovery and technical assistance and information exchange.

## **2) The UNTOC and its 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 offenses to combat the problem, the adoption of new, frameworks for mutual legal assistance, extradition, law enforcement cooperation and technical assistance and training. It entered into force on 29 September 2003. According to its Article 1, the purpose of the UNTOC 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 Woman and Children (Trafficking in Persons Protocol, entry into force: 25 December 2003) and the and the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol, entry into force: 28 January 2004). The convention holds general provisions against transnational organized crime, such as on extradition and mutual legal assistance, and the specific aspects of each subject area of the protocols are dealt with in the very protocol. 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 transnationality or the involvement of an organized criminal group into their national trafficking offences<sup>29</sup>.

According to its Article 1, the Trafficking in Persons Protocol aims 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, as stated in its Article 1, 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.

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<sup>28</sup> See [www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html](http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html) and Toolkit to Combat Trafficking in Persons, 2<sup>nd</sup> edition, UNODC 2008, tool 9.4: Prevention of Corruption

<sup>29</sup> According to Art. 1 Para. 1 of the Trafficking in Persons Protocol and Art. 34 Para. 2 of the UNTOC

### *Relevance of the Smuggling of Migrants Protocol*

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

Both crimes can overlap - at least from the outside, certainly not from the traffickers' perspective - especially 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. Thus, when there are smuggling features in trafficking and where the two crimes overlap the Protocol against the Smuggling of Migrants by Land, Sea and Air, that also accompanies the UNTOCC, may provide further guidance.

### **3) Corresponding and complementing provisions of UNCAC, UNTOC and its Protocols relating to trafficking in persons and corruption:**

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

#### *Corresponding provisions:*

#### ***Criminalization of bribery, article 15 and 16 UNCAC and article 8 UNTOC***

The UNCAC requires States parties in its Article 15 to criminalize active and passive bribery. Also article 8 UNTOC requires the establishment of the two corruption related offences of active and passive bribery, as well as the participation as an accomplice in such offences. With regard to participation in bribery, the UNCAC in its article 27 is more comprehensive than the UNTOC, in that it also stipulates the criminalization of participation in any capacity such as an accomplice, assistant or instigator.

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 16<sup>30</sup>. 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

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<sup>30</sup> 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 .

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”.<sup>31</sup>

### ***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***

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, article 23 UNTOC and article 25 UNCAC 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 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

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<sup>31</sup> A/58/422/Add. 1, para. 28

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.<sup>32</sup>

### ***Criminalization of money laundering<sup>33</sup> article 23 UNCAC and article 6 UNTOC***

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 its 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 place illicit funds into the financial system, so as to make it harder, if not impossible to trace the assets. 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, including through international cooperation.

The provisions relating to the prevention of money laundering of both instruments, for the UNTOC article 7 for the UNCAC article 14, coincide largely. Both instruments contain mandatory and optional requirements. Mandatory are 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 both 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.

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<sup>32</sup> Legislative Guides to UNTOC and UNCAC

<sup>33</sup> The problem of money laundering and trafficking in persons is being addressed in a specific technical paper, currently developed by UNODC

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 - and 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 crimes<sup>34</sup>.

Furthermore the UNCAC holds an optional requirement that goes beyond the UNTOC, asking States (in article 14 paragraph 3) 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.

Of relevance in this regard are also provisions of UNCAC and UNTOC with regard to the freezing, seizure, confiscation and disposal or return of proceeds from offences established under each of the conventions as well as the 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 Organized Crime 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, being the more specific anti-corruption instrument. Most States already have laws that 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 under the cover or by use of legal entities, such as companies and corporations. In order to meet this challenge,

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<sup>34</sup> Legislative Guide for the implementation of the United Nations Convention against Corruption, United Nations, New York 2006

both UNCAC and UNTOC require the establishment of liability for legal entities for offences established in line with UNCAC and UNTOC respectively.

### ***Mutual legal assistance***

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

The mutual legal assistance regime of the UNCAC in many ways is similar to corresponding UNCOC provisions<sup>35</sup>. 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 regarding of the UNCAC. The UNCAC, however, extends mutual legal assistance obligations to asset recovery cases 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, resulting in the absence of dual criminality, and, in the case of the UNTOC, of mutual legal assistance obligations. The wording and thus requirement of the UNCAC is much stronger in this regard ('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 afford 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 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, among others.

### ***Complementing provisions:***

#### ***Criminalization of other corrupt forms of corruption***

Article 8 UNTOC requires States quite generally to consider establishing as criminal offences other forms of corruption, in addition to the mandatory requirement to criminalize active and passive bribery.

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<sup>35</sup> 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)

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 laid down 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 and marriage agencies, construction companies and non-governmental service providers.

The UNTOC does not cover issues relating to corruption in the private sector, unlike the UNCAC, which specifically addresses private sector corruption in its article 12.

Article 12 of the UNCAC stipulates three different obligations with regard to preventing private sector corruption. Firstly, it imposes a general obligation to take measures to prevent corruption in the private sector. The second obligation is to enhance accountability and auditing standards in the private sector, so as to enhance transparency and detect malpractices. The third obligation 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 outlines a couple of recommendations based on good practice, including the cooperation between law enforcement agencies and relevant private entities. It also recommends promoting the development of e.g. codes of conduct and the use of good commercial among business.

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

### ***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 issues.

One of them is article 9 of the Protocol, which requires States to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons and to protect its victims from revictimization. More particularly, paragraphs 4 and 5 of

article 9 obliges 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 an exemplary manner 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 that of the Trafficking in Persons Protocol, requiring States to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

### ***Security and control as well as legitimacy and validity of travel and identity documents***

As mentioned earlier, despite trafficking in persons and smuggling of migrants being distinct crimes, some of the conducts relating to the movement and transport of people across borders can at times overlap. Accordingly, articles 12 and 13 of both the Trafficking in Persons and the Smuggling of Migrants Protocol, dealing with travel and identity documents, are identical. The Smuggling Protocol, however, further specifies in its article 3 on the use of terms, what is meant by 'fraudulent travel or identity document'. Here it specifically mentions corruption, specifying that a fraudulent travel or identity document can be any travel or identity document that has been improperly issued through, *inter alia*, corruption.

The said article 12 calls for technical measures with regard to the quality of identity and travel documents, so that they among other things cannot be easily misused and unlawfully issued. It also requires protective measures concerning the integrity and security of these documents to protect the production and issuance process against corruption, theft or other means of diverting documents. Article 13 obliges States parties to verify, at the request of another State party, within a reasonable time the legitimacy and validity of documents purported to have been issued by them.

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 feasible 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 on 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 very general measures against corruption, addressing only the 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, dedicates an entire chapter 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<sup>36</sup> 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 servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants.

Preventing public corruption also requires an effort from all members of society at large. For these reasons, 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, and to raise public awareness of corruption and what can be done about it.

### *Participation of society*

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

The UNCAC in its article 13 demands that States take measures to encourage the active participation of the general public in the areas of preventing and fighting corruption, as well as in increasing public awareness about the existence, causes, seriousness and threats of corruption. Measures would include ensuring that the public has effective access to information or the respecting, promoting and protecting of the freedom to see, receive, 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.

To sum up the foregoing analysis, the large numbers of corruption related provisions in the UNTOC, partly identical with UNCAC provisions in the more specific anti-corruption instrument, show there is international consent that corruption is an integral component of transnational organized crime that needs to be addressed in order to address domestic and international crime.

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<sup>36</sup> See [www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html](http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html)

UNCAC and UNTOC come together 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 an international cooperation framework in mutual legal and law enforcement assistance, extradition, investigations, criminal record as well as in transferring criminal proceedings and sentenced persons and other issues.

The UNCAC, being the more specific anti-corruption instrument, addresses areas not covered by the UNTOC and its relevant protocols, though relevant for trafficking in persons, e.g. private sector corruption, thereby perfectly complementing the instruments against trafficking in persons and transnational organized crime. The UNTOC and its protocols, on the other side, provide relevant provisions aimed at preventing corrupt conducts that enable trafficking in persons.

The wide range of overlapping and complementing provisions of these highly relevant 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 people trafficking.

#### **IV. Recommendations, with a focus on criminal justice and law enforcement actors**

Key problems that a combined anti-trafficking in persons and anti-corruption approach would need to address are, among others:

- Traffickers may recruit, transport and exploit their victim 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 civil society actors).
- Lack of adequate responses to important root cause of and factor in trafficking in persons, and to major impediment to adequate criminal justice response.

Good tools to address corruption do exist and are being implemented. Some of these tools, however, need to be modified for an anti-trafficking initiative, while others can be simply included in anti-trafficking strategies and trainings as they are. There is the need to mainstream anti-trafficking measures into anti-corruption measures and vice versa.

### ***Identification of relevant authorities/actors***

There seems to be unawareness as to which agencies/activists are de facto identifying the links between corruption and trafficking in persons in their daily work with trafficked persons. Such actors may not even know each other, let alone sharing experiences and resources. The same seems to be true for anti-corruption researchers that could investigate trafficking in persons from a corruption framework.

A vital step therefore in jointly addressing trafficking in persons and corruption, where they are linked, would be to identify possible agencies and actors at the intersection of the two issues. This could be actors who knowingly work with victims of trafficking or people they assume to be victims, e.g. service providers, but also criminal justice practitioners who are interviewing victims. Others may be e.g. asylum authorities who may get to hear testimonies of victims on their trafficking experiences and corrupt officials involved and other authorities that could potentially identify or get in touch with victims of trafficking.

### ***Identification of vulnerabilities of relevant sectors that are exposed to the risks of corruption in a trafficking in persons context***

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 relevant public officials, it would be useful to identify and address the sectors of law enforcement, criminal justice and other public officials whose tasks could be linked to the identification, investigation, prosecution, adjudication and referral, as well as the facilitation of human trafficking cases. Such actors would include but not be limited to border control, customs and immigration authorities, law enforcement and criminal justice actors specialized in trafficking in persons, etc. A general overview of vulnerable public officials is provided by the Council of Europe<sup>37</sup>: Police, customs, visa 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.

### ***Awareness raising among and training of relevant public officials of the risks of trafficking in persons related corruption and their vulnerability***

Specifically exposed and vulnerable staff even when identified may not be aware of their potential role relating to trafficking in persons and the crime of trafficking in persons as such. 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

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<sup>37</sup> 'Trafficking in Human Beings and Corruption', Report on a regional seminar in Portoroz, Slovenia, 19-22 June, in the framework of the "Programme against Corruption and Organised Crime in South-Eastern Europe" (PACO), 2005 and Manuel LEZERTUA, at the 11<sup>th</sup> IACC meeting, in Seoul, Korea, 25-28 May 2003, available at [www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt](http://www.u4.no/helpdesk/helpdesk/queries/queryattach/q33lezertua.ppt)

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. Capacity building 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, that is trainers and trainees should be from both trafficking and corruption sectors (see also below on the issue of improving cooperation).

***Providing for transparency regarding performance of trafficking in persons related tasks that are vulnerable to corruption***

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 their staff's activities are performed in a transparent manner. This does not necessarily mean the public disclosure of their tasks and activities, but could include 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, suspects, etc.) in adequate cases (e.g. interviewing suspects, etc.).

***Codes of conduct for law enforcement and criminal justice as well as international public officials and training on existing codes of conduct***

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, though, in order to meet the specific risks relating to trafficking in persons. It would be useful, e.g. to request police staff who are conducting brothel raids, not to examine premises and rooms by themselves, but to always be accompanied by one or more colleagues, preferably female staff.

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, given the privileges they enjoy, also with regard to employing domestic workers, need to be provided with and trained on codes of conduct that specifically address their vulnerabilities.

***Establishment of control mechanisms regarding public officials who perform tasks that are related to trafficking in persons and vulnerable to corruption***

General anti-corruption measures may be sufficient to control vulnerable staff relevant to trafficking in persons. Special measures may only be required where the specifics of trafficking in persons require such, e.g. the adequate referral of victims of trafficking. Standard operating procedures may be one means of ensuring controlled workflows.

### ***Adequate disciplinary and judicial responses to corruption among relevant public officials***

Supervision, discipline, and accountability are key in preventing and combating the occurrence of corruption among relevant staff that are to investigate, prosecute and adjudicate trafficking in persons, but also frontliners from police and immigration/customs/border control. As mentioned above, the violation of codes of conduct should entail sanctions.

### ***Recruitment and employment of specialized criminal justice staff, as well as of staff specifically vulnerable to trafficking in persons, such as immigration, customs, border control, etc.***

There should be a careful and transparent selection process for new staff, which should be promptly trained when getting hired, adequately supervised, and their performance appraised promptly and fairly. Training should not only concern technical instructions relating to their tasks, but also the ethics and values that are 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 is the case e.g. in systems with a rather mercenary law enforcement structure, 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.

### ***Cooperation between anti-trafficking in persons practitioners and anti-corruption practitioners***

Trafficking and corruption cases are often dealt with in isolation by criminal justice, there seems to be a lack of referral of trafficking in persons cases where there are indicators for corruption, or vice versa, referral of corruption cases, where there are indicators for trafficking in persons.

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

Also with regard to cooperation efforts, training is needed, which would mean the development and conduction of inter-agency training.

Cooperation among relevant actors may also require the sharing of information and resources at the working level, e.g. by the establishment of task-forces, joint operations, etc.

One of the benefits of cooperation between different agencies in the collection and analysis of intelligence in relation to trafficking in persons related corruption, is the improved access to appropriate and reliable information. Other benefits include the avoidance of duplication of efforts and of mutual interference. Sharing resources among

cooperating agencies (equipment, staff, information, etc.) may speed up investigations process.

Such cooperation efforts could also be of assistance in transnational cases of trafficking in persons, when applied at an international level.

### ***Improvement of data collection***

Corruption is counted routinely among root factors for and impediments to fight trafficking in persons. Thus, one would think there are plenty of cases documenting the relationship of the two phenomena. This, however, is not the case. There is hardly any official report that points out how the corruption of public officials has made trafficking from, through or to their country possible. If reference is made to reported cases, such cases are treated as exceptions, but not collected systematically, to examine patterns of corruption in trafficking in persons and to be used as evidence or indicator for the existence or non-existence of systemic corruption of public officials in this context.

Thus, a vital step in addressing trafficking related corruption is the collection of relevant information in order to get a better insight into the problem, which would allow customize knowledge-based responses. It would also make it possible to recognize whether corrupt practices relating to the trafficking in persons have a systemic scope or if they are indeed committed on a mainly individual level.

States need to start collecting data on investigations and prosecutions of officials in connection of trafficking, (which would also put an obligation on the criminal justice system to collect data and ensure that these types of crime are investigated).

Victims and victims service providers, currently often ignored as a source of information and indications for the involvement of corruption in trafficking in persons, need to be brought into 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, secured through bribes). Criminal justice actors may even be primarily interested in holding victims liable for holding falsified documents, without trying to trace suspicious facts the point at the very likely involvement of corruption. Such victims may be detained and/or returned home without further investigation regarding both trafficking circumstances and public official corruption.

The poor documentation of corruption in trafficking in persons may also improve as a result of enhanced coordination efforts between anti-trafficking in persons and anti-corruption actors and of other specific efforts that lead to a better detection and reporting of such corruption.

### ***Improvement of protection of victims of trafficking who report corruption***

Not only are the claims of corruption of victims and victims service providers often ignored as a source of information and indications for the involvement of corruption in

trafficking in persons, but victims may even be hesitant to come forward with such accusation, for fear of reprisals from both the corrupt officials involved and the trafficking perpetrators. Survivors of trafficking, who fell prey to a trafficking network that availed itself of corruption, may wish to report corruption in order to prevent the continued facilitation, but feel unable to act for reasons of safety. Specific protection mechanisms need to be in place for victims who would like to give an account of 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 will help to remove some pressures from the victim relating to him/her being the sole source of information. Pro-active investigation techniques could corroborate mere hints given by victims.

### ***Involving civil society and private sector***

As trafficking in persons can also be facilitated and enforced by civil society actors, these actors need to be addressed in a comprehensive response to trafficking in persons related corruption. Victims and people vulnerable to trafficking may also face risks of corruption and be included in prevention measures.

Such measures could include building civic and community awareness about the links between corruption and people trafficking, to inform communities that the early signs of corruption in a legitimate migration journey should be an early warning indicator that trafficking in people maybe taking place, giving people access to confidential, accessible advice about corruption and trafficking before and after they have undertaken a migration which results in their rights being infringed such that they are victims of trafficking.

Moreover, links could be built with trade unions who may witness corruption and people trafficking taking place in certain work industries, but are not aware of the links between the two issues. Similar approaches would be valid for NGOs and agencies providing care and assistance for trafficked persons.

Also the establishing and monitoring of codes of conduct for civil society and private sector actors would be highly recommendable.

### ***Summary***

The recommendations outlined above represent only a first step towards adequately responding to corruption in trafficking in persons and need to be further developed and translated into precise actions and operational guidelines. They are not necessarily stand alone but rather interconnected measures – measures that could reinforce each other.

Sanctioning corrupt behaviour may lead to an increased reporting of cases, which again would allow for a more systematic data collection. Practitioners who have been trained adequately and who are aware of the risks of corruption might be better trusted by victims service providers who would be more ready to provide information.

Other, general anti-corruption measures such as incentives for and protection of whistleblowers, measures relating to ensuring the integrity of public officials, adequate

remuneration and payscales, general education about corruption, etc. will further contribute to effectively preventing and combating corruption in trafficking in persons.

States are strongly encouraged to develop strategies that jointly address trafficking in persons and corruption. But also the international community is called upon to start highlighting corruption in trafficking in person as a grave concern, which, however, can be tackled if acknowledged and addressed accordingly. This may create the political will needed among States to respond to the phenomenon accordingly.