

# Greasing the Palm: An Argument for an Increased Focus on Public Corruption in the Fight Against International Human Trafficking

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## Introduction

The global problem of international human trafficking<sup>1</sup> is a complex, difficult, and multi-faceted one. Although the U.S. government and inter-

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1. Definitions of human trafficking vary widely. The present Article adopts the definition of the United States Trafficking Victims Protection Act, describing "severe" trafficking as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age" or as "the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery" and sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act." Trafficking Victims Protection Act of 2000 § 103(8)-(9), 22 U.S.C. § 7102(8) & (9).

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national organizations have thus far failed to establish an “effective mechanism for quantifying the number of victims of trafficking on a national, regional, and international basis,”<sup>2</sup> the most recent U.S. trafficking report estimates that 12.3 million adults and children are living in conditions of forced labor, bonded labor, or forced prostitution around the world; 1.8 out of every 1000 individuals in the world is a victim of human trafficking; and identified victims represent only about 40% of actual estimated victims.<sup>3</sup> Public corruption acts as the grease that permits this mechanism of illegal activity to occur at such an alarming rate.<sup>4</sup> In order to secrete humans across international borders, traffickers must rely on a network of public officials willing to accept bribes in return for their official acts.<sup>5</sup> Whether the official act involves creating false identification documents, refusing to enforce customs laws, or merely turning one’s back when the obvious incidents of human slavery are present, these official acts facilitate the increasingly evasive actions of the trafficker and ensure his or her financial success in the illegal marketplace.<sup>6</sup>

In recent years, international organizations, national governments, scholars, and practitioners have approached the human-trafficking crisis from numerous angles in an effort to quantify, understand, and combat the crime.<sup>7</sup> These actors have made significant strides in prosecuting the perpetrators and assisting the victims of human trafficking, including advocat-

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2. Trafficking Victims Protection Reauthorization Act of 2005 § 104(c)(5), 22 U.S.C. § 7109 (2006); see, e.g., U.S. GOV’T ACCOUNTABILITY OFFICE, REPORT NO. 06-825, HUMAN TRAFFICKING: BETTER DATA, STRATEGY, AND REPORTING NEEDED TO ENHANCE U.S. ANTITRAFFICKING EFFORTS ABROAD 16, 20-26 (2006), available at <http://www.gao.gov/new.items/d06825.pdf>.

3. UNITED STATES DEPARTMENT OF STATE, TRAFFICKING IN PERSONS REPORT 7 (June 2010), available at <http://www.state.gov/documents/organization/142979.pdf> [hereinafter 2010 TIP Report].

4. See UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING (UN.GIFT), THE VIENNA FORUM REPORT: A WAY FORWARD TO COMBAT HUMAN TRAFFICKING 10 (2008), available at <http://www.ungift.org/docs/ungift/pdf/vf/ebook2.pdf> [hereinafter VIENNA FORUM REPORT] (“Corruption ranges from active involvement to passive negligence, and it is often the lubricant that allows victims to be selected, transported and held against their will.”).

5. See Sheldon X. Zhang & Samuel L. Pineda, *Corruption as a Causal Factor in Human Trafficking*, in ORGANIZED CRIME: CULTURE, MARKETS AND POLICIES 41, 46 (Dina Siegel & Hans Nelson eds., 2008).

6. See Anti-Slavery, Transparency International & United Nations Office on Drugs and Crime, *The Role of Corruption in Trafficking in Persons* 12-16 (Nov. 11, 2009) (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, Doha, Qatar), available at [http://www.unodc.org/documents/human-trafficking/Corruption\\_and\\_trafficking\\_Doha\\_final.pdf](http://www.unodc.org/documents/human-trafficking/Corruption_and_trafficking_Doha_final.pdf) [hereinafter Doha Background Paper] (reporting incidents of traffickers creating illegal passports, bribing officials to obtain visas, and the refusal of local law enforcement officers to intervene in situations where traffickers were open and notoriously holding victims against their will. Some victims have reported that the bribe payment is even deducted from the paltry payments obtained from their employment while being held.).

7. See e.g., Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 CARDOZO J.L. & GENDER 909, 910-24 (2006) (discussing several distinct perspectives on trafficking based in morality, violence against women, law enforcement, and labor migration).

ing for the expanded protection of trafficking victims,<sup>8</sup> constructing compelling arguments that human trafficking is an international human rights crisis on a grand scale,<sup>9</sup> and working to implement a “3P” paradigm of prevention, criminal prosecution, and victim protection as the optimal route to solving the human trafficking crisis.<sup>10</sup> Yet these efforts often overlook one critical piece:<sup>11</sup> the key roles corrupt public officials play in source countries, along trafficking routes, and in their destination countries. Public corruption facilitates the unwilling exits and unlawful entries of trafficking victims,<sup>12</sup> enables complex multi-national transit routes,<sup>13</sup> and helps traffickers procure falsified passports, visas, and entry documents at each step of the way.<sup>14</sup> The damage such pervasive public corruption wreaks upon the organs of democratic society, the reputation of government officials, and the morale of the wider public servant class generally—and of course on the direct and indirect human trafficking victims, specifically—is incalculable. To safeguard both the rule of law, as well as the dignity of those humans who fall into the vicious grip of the organized criminal groups dominating transnational human trafficking, increased focus must therefore be placed on, and resources directed to, the critical fight against public corruption in aid of human trafficking.

This Article calls attention to the significant role that public corruption plays in the international human trafficking crisis, and explains how and why existing trafficking protocols and monitoring systems can and should be expanded to reflect this reality. Part I examines the links between public corruption and human trafficking. Part II describes the scope of current anti-trafficking programs and protocols, including international agreements overseen by the United Nations and the United States’ powerful and flexible system developed under the aegis of the Trafficking Victims Protection Act (TVPA).<sup>15</sup> Part III applies a critical lens to the back-

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8. See 2010 TIP REPORT, *supra* note 3, at 5; NAT’L ASIAN PAC. AM. WOMEN’S FORUM, RIGHTS TO SURVIVAL & MOBILITY: AN ANTI-TRAFFICKING ACTIVIST’S AGENDA 33 (2008), available at [http://www.humantrafficking.org/uploads/publications/napawf\\_08\\_rights\\_mobility\\_0708.pdf](http://www.humantrafficking.org/uploads/publications/napawf_08_rights_mobility_0708.pdf).

9. See, e.g., Angela D. Giampolo, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 196-97 (2006); Ray, *supra* note 7, at 909; Mindy M. Willman, Note, *Human Trafficking in Asia: Increasing Individual and State Accountability Through Expanded Victims’ Rights*, 22 COLUM. J. ASIAN L. 283, 284-85 (2009).

10. 2010 TIP REPORT, *supra* note 3, at 5, 13 (suggesting that “a good anti-trafficking law” should focus on improved law enforcement and prosecution, on care and immigration relief for victims, and on legal redress for victims).

11. See 2010 TIP REPORT, *supra* note 3, at 13 (omitting reference to public corruption in its suggestions for “a good anti-trafficking law”); *id.* at 28 (noting a correlation between the performance of countries on the TIP Report ranking system and those countries’ rankings on scales of perceived corruption and lack of protection of civil liberties, but failing to examine the ways in which public corruption directly facilitates human trafficking).

12. See VIENNA FORUM REPORT, *supra* note 4, at 11.

13. See *id.* at 11, 25-26.

14. See Doha Background Paper, *supra* note 6, at 11.

15. Trafficking Victims Protection Act of 2000 (TVPA), Pub. L. No. 106-386, div. A, 114 Stat. 1466 (codified as amended in scattered sections of 8, 18, and 22 U.S.C.),

ground information elucidated in Parts I and II and proposes modifications to existing programs, as well as new measures that would place an increased focus on public corruption, in order to expand and strengthen current anti-trafficking efforts.

### I. Examining the Links Between Public Corruption and Human Trafficking

Many agencies and scholars have extensively reported upon and studied the activities of human traffickers<sup>16</sup> and the human cost they impose on their victims.<sup>17</sup> Less widely examined, however, is the role of public corruption in enabling and facilitating human trafficking.<sup>18</sup> Public corruption facilitates trafficking in a number of ways, often as a result of the complicity of law enforcement officials in trafficking.<sup>19</sup> Public corruption is implicated not only in the direct activities of human traffickers, but also in the criminal justice system—where corrupt officials may passively or actively impede efforts to bring traffickers to justice—and in the victim protection system, where both public and private corruption may limit efforts to provide victims with services and support.<sup>20</sup>

Currently available reports, studies, and commentators illuminate anecdotal as well as empirically backed links between public corruption and human trafficking.<sup>21</sup> In one study, the researchers relied on the annual Trafficking in Persons (TIP) reports, produced by the United States Department of State under the authority of the TVPA, for data on the extent of trafficking in a particular country.<sup>22</sup> These TIP reports are generated for each country from a variety of sources, both reliable and unreliable, and can also vary year-to-year based on which foreign service officer is

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amended by Trafficking Victims Protection Reauthorization Act of 2003 (2003 TVPRA), Pub. L. No. 108-193, 117 Stat. 2875 (codified in scattered sections of 8, 18, and 22 U.S.C.), Trafficking Victims Protection Reauthorization Act of 2005 (2005 TVPRA), Pub. L. No. 109-164, 119 Stat. 3558 (2006) (codified in scattered sections of 18, 22, and 42 U.S.C.), and William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (2008 TVPRA), Pub. L. No. 110-457, 122 Stat. 5044 (codified in scattered sections of 6, 8, 18, 22, and 42 U.S.C.).

16. See 2010 TIP REPORT, *supra* note 3, at 36 (summarizing the findings of several recent studies).

17. See Doha Background Paper, *supra* note 6, at 13-14; U.S. Dep't Of Health and Human Services, Admin. For Children and Families, Sex Trafficking Fact Sheet (2010), [http://www.acf.hhs.gov/trafficking/about/fact\\_sex.html](http://www.acf.hhs.gov/trafficking/about/fact_sex.html) (last visited October 18, 2010). Victims of human trafficking suffer from various physical disorders, including drug and alcohol addiction, physical injuries, traumatic brain injury, sexually transmitted diseases, sterility, miscarriages, and menstrual problems. *Id.* The mental health impacts of trafficking include shame, grief, fear, distrust, hatred of men, self-hatred, suicide, suicidal thoughts, and Posttraumatic Stress Disorder (PTSD). *Id.*

18. See Doha Background Paper, *supra* note 6, at 11 (“[T]here is a lack of systematic research into and official data on the links between trafficking and corruption . . .”).

19. See 2010 TIP REPORT, *supra* note 3, at 31.

20. See Doha Background Paper, *supra* note 6, at 7-8, 11.

21. See, e.g., 2010 TIP REPORT, *supra* note 3, at 28-29; See VIENNA FORUM REPORT, *supra* note 4, at 10-12.

22. See Zhang & Pineda, *supra* note 5, at 47.

tasked with preparing them. According to the three-tier approach set forth in the TVPA, countries are classified as “Tier 1”—those whose governments fully comply with the TVPA’s minimum standards, “Tier 2”—those whose governments do not yet fully comply with the TVPA’s standards, but are making significant efforts to come into compliance, and “Tier 3”—those whose governments do not fully comply and are not making significant efforts to do so.<sup>23</sup> Governments of Tier 3 countries may be subject to U.S. government sanctions in the form of the withdrawal of “nonhumanitarian, non-trade-related foreign assistance.”<sup>24</sup> Although the TVPA “provides for a waiver of sanctions if necessary to avoid significant adverse effects on vulnerable populations, including women and children,”<sup>25</sup> some have criticized the sanctions system as being likely to harm the victims of trafficking, rather than the governments who allow it.<sup>26</sup>

A review of the reports reveals that governments with significant levels of public corruption also have significant human trafficking numbers.<sup>27</sup> For example, Cambodia has pervasive corruption<sup>28</sup> and has been ranked as either a Tier 2 or Tier 2 Watchlist country in recent TIP reports.<sup>29</sup> Although in 2008 Cambodia enacted the Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation, which prohibits and severely penalizes all forms of trafficking,<sup>30</sup> the 2010 TIP Report section on Cambodia concludes that “[i]mpunity, corruption, and related rent-seeking behavior continue to impede anti-trafficking efforts.”<sup>31</sup> The report notes the direct and indirect involvement of police and judicial officials in trafficking.<sup>32</sup> Most notably, Cambodian authorities failed to prosecute the former president of Cambodia’s appeals court, who allegedly accepted \$30,000 in exchange for the release of brothel owners who were convicted of trafficking.<sup>33</sup>

23. See 2010 TIP REPORT, *supra* note 3, at 22.

24. 2010 TIP REPORT, *supra* note 3, at 25. In addition to these direct sanctions, the TVPA also allows the U.S. government to oppose IMF and World Bank assistance that would otherwise flow to Tier 3 countries. *Id.*

25. 2010 TIP REPORT, *supra* note 3, at 28.

26. See Janie Chuang, *The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking*, 27 MICH. J. INT’L L. 437, 457–59 (2006).

27. See, e.g., Zhang & Pineda, *supra* note 5, at 53. This study concludes that although most of the examined predictor variables, including poverty, infant mortality, and life expectancy, are significantly correlated with the ranking in the TIP Report, only corruption comes close to statistical significance. *Id.* at 52. Based on this assessment the authors conclude that “[c]ountries that make the least effort to fight human trafficking also tend to be those with high levels of official corruption.” *Id.* at 53.

28. See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 96 (2009) available at <http://www.state.gov/documents/organization/123357.pdf>.

29. See 2010 TIP REPORT, *supra* note 3, at 48; *id.* at 50; U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 44 (2008) available at <http://www.state.gov/documents/organization/105501.pdf>.

30. 2010 TIP REPORT, *supra* note 3, at 101.

31. *Id.* at 102.

32. *Id.*

33. *Id.* According to the report, the official remains employed with the Cambodian government. *Id.*

Public corruption increases human trafficking not only by facilitating the transport of victims due to the willingness of officials to accept bribes, but also by cultivating a climate fertile for the rapid growth of human trafficking.<sup>34</sup> Economic decline due to government mismanagement of public resources impacts women and children by keeping them in a weakened condition through poverty, hunger, and lack of education, thereby making them prime targets of the trafficker.<sup>35</sup> Corruption in Nigeria, for example, has been labeled “endemic or systemic” and the corresponding trafficking staggering.<sup>36</sup> Commentators caution, however, that an increase in law enforcement activity does not always equate to a reduction in human trafficking.<sup>37</sup> Governments focused on criminal measures often fail to provide victims with adequate remedies; this not only deprives victims of their rights, but it also fails to deter trafficking by not holding the traffickers monetarily accountable.<sup>38</sup>

## II. Current Anti-Trafficking Programs and Protocols Focus on Traffickers and Victims, Ignoring the Critical Role Played by Public Corruption

A number of extant monitoring and reporting systems contain a mandate to “research, report, review, and recommend” on various aspects of the human-trafficking crisis.<sup>39</sup> Focusing on the activities of traffickers and the protection of victims, national and international rapporteurs gather information, interview victims and government representatives, and meet with various NGOs working to combat human trafficking.<sup>40</sup>

### A. International Reporting Mechanisms

A number of international reporting mechanisms focus on collecting both qualitative and quantitative data on human trafficking. Many of these reporting mechanisms arise from international protocols and agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>41</sup> the Convention on the Rights of the Child (CRC),<sup>42</sup> and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UN Protocol).<sup>43</sup> Both the CEDAW and the CRC require state parties to submit periodic reports documenting their compliance with provisions of the

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34. See Osita Agbu, *Corruption and Human Trafficking: The Nigerian Case*, 4 W. AFR. REV. 1, 4 (2003).

35. *Id.* at 4-5.

36. *Id.* at 3-5.

37. See, e.g., Willman, *supra* note 9, at 304.

38. See *id.* at 304-07.

39. Mohamed Y. Mattar, *Comparative Models of Reporting Mechanisms on the Status of Trafficking in Human Beings*, 41 VAND. J. TRANSNAT'L L. 1355, 1409 (2008).

40. *Id.*

41. G.A. Res. 34/180, art. 17, U.N. Doc. A/RES/34/46 (Dec. 18, 1979).

42. G.A. Res. 44/25, art. 43, U.N. Doc. A/RES/44/49 (Nov. 20, 1989).

43. G.A. Res. 55/25, Annex II, U.N. Doc. A/RES/55/383 (Nov. 15, 2000).

conventions, including their anti-trafficking articles.<sup>44</sup> The United Nations has appointed a Special Rapporteur on trafficking in persons, especially women and children, who “has the power to investigate the scope of the problem, monitor and report on government actions, receive and inquire into complaints, and make recommendations for policy change.”<sup>45</sup>

In addition, regional state organizations have encouraged their members to collect internal human-trafficking data. For example, the Organization for Security and Co-operation in Europe (OSCE), in its 2003 Action Plan, recommended that state parties focus on research “related to victims of trafficking, the character and scale of trafficking in persons, the role of organized criminal groups, identification of the most vulnerable segments of the population, and an analysis of the root causes of trafficking in persons.”<sup>46</sup>

## B. National Reporting Mechanisms

In addition to the international research entities and reports, various countries compile their own reports regarding human trafficking. These national reports are usually self-assessments of the government’s response to human trafficking. For example, Sweden has appointed a government ministry, the National Police Board, to serve as the National Rapporteur on Trafficking in Women in Sweden; the national rapporteur assists the police in recording cases of trafficking and proposes measures that the government can take to combat trafficking within Sweden.<sup>47</sup> The Netherlands, by contrast, relies on an independent, extra-governmental rapporteur to report annually on trafficking in all persons and other forms of exploitation.<sup>48</sup> The United States, like Sweden, assigns responsibility to an agency of the government, the Department of Justice (DOJ), to report on the status of trafficking and the government’s efforts to combat it.<sup>49</sup>

In addition to the DOJ report, the United States, as discussed *supra*, publishes TIP reports assessing foreign governments’ efforts in combating trafficking in human beings. These reports categorize foreign governments

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44. See CEDAW, *supra* note 41, art. 18; CRC, *supra* note 42, art. 44(1); see also Mattar, *supra* note 39, at 1392-95.

45. Mattar, *supra* note 39, at 1359; Commission on Human Rights, Special Rapporteur on Trafficking in Persons, Especially Women and Children, 60th Sess., E/CN.4/2004/L62 (Apr. 19, 2004).

46. Mattar, *supra* note 39, at 1362 (citing Organization for Security and Co-operation in Europe [OSCE] Action Plan to Combat Trafficking in Human Beings, Annex, 462nd Plenary Meeting, PC.DEC/557 (July 24, 2003)).

47. See Mattar, *supra* note 39, at 1365-66; see also Summary of Verbal Submission to the OSCE by the National Rapporteur on Trafficking in Human Beings, available at <http://www.osce.org/what/trafficking/documents/60076> (explaining the purpose of the National Rapporteur and assessing the National Rapporteur’s impact on human trafficking).

48. See Mattar, *supra* note 39, at 1368 (citing Press Release, Dutch Ministry of Justice, Appointment of National Rapporteur on Trafficking in Human Beings (Jan. 27, 2000), available at <http://english.justitie.nl/currenttopics/pressreleases/archives2000/-appointment-of-national-rapporteur-on-trafficking-in-human-beings.aspx>).

49. See 22 U.S.C. § 7103(d)(7) (2006) (defining the requirements of the Justice Department report).

into three tiers according to their current and attempted levels of compliance with the TVPA's minimum anti-trafficking standards.<sup>50</sup>

In summary, although many countries, in addition to the three discussed above, require these reports and fund them liberally to send the message that they are supporting anti-trafficking initiatives, such reports routinely fail to mention the link between public corruption and human trafficking, and rarely, if ever, address the role of illegal enterprises in perpetuating that trafficking.

### III. Ideas and Proposals

First, states should amend their respective national statutes incorporating the 3P paradigm of trafficking prevention, prosecution, and victim prevention to include language specifically recognizing the critical role public corruption plays in facilitating and enabling human trafficking. The 2010 State Department TIP report proposes that the following elements be included in a "good anti-trafficking law":

- A broad definition of the concept of "coercion" that covers its many manifestations in modern forms of slavery, including the threat of physical, financial, or reputational harm sufficiently serious to compel a reasonable person to perform or to continue performing labor or services in order to avoid incurring that harm.
- A well-articulated definition of trafficking that facilitates effective law enforcement and prosecutorial responses and allows for the collection of meaningful data. The definition should incorporate all forms of compelled service in addition to forced prostitution. The definition should not simply criminalize the recruitment or transportation of prostituted persons. The definition should *not* include related but distinct crimes, such as alien smuggling or prostitution.
- A mechanism of care provided to all suspected victims of trafficking through which they have the opportunity to access basic services - including shelter, food, medical care, psycho-social counseling, legal aid, and work authorization.
- Explicit immigration relief for trafficking victims, regardless of their past legal status, and relief from any legal penalties for unlawful activities committed by victims as a direct result of their trafficking.
- Specific protections for child victims of trafficking ensuring a responsible chain of custody and a priority placed on the best interests of the child in all decisions made in providing services to them.
- Explicit provisions ensuring identified victims have access to legal redress to obtain financial compensation for the trafficking crimes committed against them. In order to be meaningful, such access must be accompanied by options to obtain immigration relief. Trafficking victims should not be excluded from legal services providers who can assist with these

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50. See 22 U.S.C. § 7107(b) (2006) (defining the requirements of the State Department report). For the first time in 2010, the TIP report included a ranking of U.S. anti-trafficking efforts and "a full, candid narrative on U.S. efforts to combat human trafficking." 2010 TIP REPORT, *supra* note 3, at 7.

efforts, whether NGOs or government programs.<sup>51</sup>

Anti-trafficking statutes should additionally have a specific anti-corruption provision that focuses on the need to research and monitor the role that public corruption plays in a country's human-trafficking activities<sup>52</sup> and allows for a powerful and flexible prosecutorial scheme under which corrupt public officials who benefit from allowing human traffic to flow will be brought to justice. Monitoring the types of public corruption in each prosecution can educate law enforcement regarding the unique method used by a particular trafficker in a particular country, which in turn provides guidance on how to effectively close corrupt loopholes along the trafficker's route.<sup>53</sup> In turn, knowledge of the specific corrupt practice would allow lawmakers to enact legislation targeting those specific practices.<sup>54</sup> Some specific recommendations could include the following:

- Develop a comprehensive Anti-Corruption Strategy built around the existing public corruption laws, and focused on identifying where the laws could be improved. The Strategy should build on an analysis of the patterns of corruption in the country and be developed in a participatory process. It should propose focused anti-corruption measures or plans for selected institutions. The Strategy must also include effective monitoring and reporting mechanisms. The Strategy should possibly mandate bank suspicious activity reports.
- Establish a national multi-stakeholder Anti-Corruption Council to facilitate the development and implementation of the Anti-Corruption Strategy. Stakeholders of the body should include representatives of all branches of government, as well as civil society, as equal partners.
- Consider establishing a Special Anti-Corruption Department empowered to detect, investigate, and prosecute corruption offenses. The Department could function as an autonomous Department with a special status integrated in the Prosecutor's Office with officers seconded from the main law enforcement agencies, and should have investigative, administrative, and analytical specialists, as well as specialized/dedicated prosecutors. The Department would thus not only work on actual corruption cases

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51. 2010 TIP REPORT, *supra* note 3, at 13 (emphasis in original).

52. See Doha Background Paper, *supra* note 6, at 32 (“[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[d] knowledge-based responses.”).

53. See Doha Background Paper, *supra* note 6, at 32 (“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).”).

54. See Doha Background Paper, *supra* note 6, at 29 (“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.”).

and raise public awareness of the problem but would also facilitate inter-agency cooperation (including security, law enforcement, and financial/bank bodies) and would maintain and disseminate statistical findings enabling comparisons among the institutions.

- Adopt a protocol for enhanced cooperation, information exchange, and resource sharing between agencies responsible for the fight against organized crime, trans-border trafficking, and smuggling (including drugs, counterfeit items, humans, etc.—these are all part of the same universe of criminality) for the fight against corruption.
- Organize corruption-specific joint training for police, prosecutors, judges, and other law enforcement officials; provide adequate resources for the enforcement of anti-corruption legislation; ensure the possibility of effective search and seizure of financial records.
- Conduct awareness-raising campaigns and organize training for the public, state officials, and the private sector about the sources and the impact of corruption, about the tools to fight against and prevent corruption, and about the rights of citizens.

Second, the extent to which a country's government is actively working to address and minimize public corruption in general, and particularly the enabling effect of public corruption for human trafficking, should be added to the TVPA's list of minimum standards for the elimination of trafficking and should be included in the standard reporting produced under the TVPA and under similar national and international protocols.<sup>55</sup> The TVPA currently provides for the following minimum standards:

- (1) The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.
- (2) For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.
- (3) For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.
- (4) The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.<sup>56</sup>

Although the 2010 TIP Report notes a correlation between levels of public corruption in a given country and its performance under the TVPA's

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55. See, e.g., Doha Background Paper, *supra* note 6, at 32 (“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.”).

56. 22 U.S.C. § 7106(a).

tier system,<sup>57</sup> the explicit degree of connection between public corruption in a country and the prevalence of human trafficking within that country is not specifically included within the TIP reports<sup>58</sup> nor made part of a country's placement within the TVPA's three-tier system.<sup>59</sup>

Third, currently thirty-eight countries are members of the Organization for Economic Cooperation and Development (OECD) Anti-Bribery Convention<sup>60</sup> and have adopted various pieces of legislation to enforce the Convention's goals of combating bribery.<sup>61</sup> The Anti-Bribery Convention became effective on February 15, 1999.<sup>62</sup> The member countries agreed to take action to ensure that their national governments pass legislation to ratify and implement the Convention.<sup>63</sup> Specifically, the Convention directs its members to adopt domestic legislation criminalizing bribery of foreign public officials.<sup>64</sup> In addition, member countries agree to sanction offenders and share information relevant to criminal investigations.<sup>65</sup> The OECD has also implemented a peer review system, whereby the OECD

57. See 2010 TIP REPORT, *supra* note 3, at 28 (“[I]t appears governments ranked Tier 3 and Tier 2 Watch List more closely track Freedom House’s low-performing civil liberties scale than do those countries ranked Tier 2 and Tier 1. These poor-performing governments, on average, rank significantly “higher” on this scale, reflecting lower freedoms.”).

58. See 2010 TIP REPORT, *supra* note 3, at 20–21 (listing the factors reflected by the tier rankings and country narratives but making no mention of public corruption or government complicity in human trafficking).

59. See *id.* at 20, 22. Because tier placement is “based on the extent of governments’ efforts to reach compliance with the TVPA’s minimum standards for the elimination of human trafficking” and the standards themselves do not include corruption as a factor, tier placement would not necessarily take into account the impact of corruption on human trafficking. *Id.* at 20.

60. Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, S. Treaty Doc. No. 105-43, 37 I.L.M. 1, available at <http://www.oecd.org/dataoecd/4/18/38028044.pdf> [hereinafter OECD Convention]; OECD, RATIFICATION STATUS AS OF MARCH 2009, available at <http://www.oecd.org/dataoecd/59/13/40272933.pdf>. The 38 parties to the OECD Convention are the 34 OECD member countries and the following non-OECD countries: Argentina, Brazil, Bulgaria, and South Africa. OECD, ABOUT THE NEW RECOMMENDATION FOR FURTHER COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS 2, available at <http://www.oecd.org/dataoecd/34/15/44281002.pdf> [hereinafter RECOMMENDATION EXPLANATION].

61. OECD, OECD ANTI-BRIBERY CONVENTION: NATIONAL IMPLEMENTING LEGISLATION, [http://www.oecd.org/document/30/0,3343,en\\_2649\\_34859\\_2027102\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/30/0,3343,en_2649_34859_2027102_1_1_1_1,00.html).

62. OECD, OECD ANTI-BRIBERY CONVENTION: ENTRY INTO FORCE OF THE CONVENTION, [http://www.oecd.org/document/12/0,3343,en\\_2649\\_34859\\_2057484\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/12/0,3343,en_2649_34859_2057484_1_1_1_1,00.html).

63. *Id.*

64. See OECD Convention, *supra* note 60, art. 1. Under the OECD Convention, the offense of “bribery of a foreign public official” is defined as (1) “intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business;” and (2) “complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official.” *Id.*

65. *Id.* art. 3, art. 9.

monitors and publishes an assessment of each member nation's efforts to implement the Convention's goals.<sup>66</sup> This oversight is essential because the Convention's goal of uniform and aggressive sanctions against bribery of public officials relies upon the continued commitment of each member nation.<sup>67</sup>

On December 9, 2009, the OECD released the OECD Recommendation for Further Combating Bribery of Foreign Public Officials.<sup>68</sup> The Recommendation elucidates how the Convention can more effectively investigate and deter foreign bribery.<sup>69</sup> The OECD Working Group on Bribery, comprised of representatives from each member nation, is responsible for implementing the goals set forth in the Recommendation.<sup>70</sup> Specifically, the Recommendation calls on the state parties to improve the cooperation and sharing of information between member nations, shield whistle blowers from retaliation, and interact more closely with the private sector to adopt ethics programs.<sup>71</sup>

For the first time since the Working Group convened, it published data in June 2010 regarding the countries' enforcement of the provisions of the Convention.<sup>72</sup> Although a significant number of prosecutions occurred,<sup>73</sup> a more careful review of the individual countries' enforcement procedures reveals that only eleven of the thirty-eight signatory countries have sanctioned an individual or entity under anti-bribery laws they enacted pursu-

66. *Id.* art. 12 ("The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference, or within the framework and terms of reference of any successor to its functions . . ."); OECD, COUNTRY REPORTS ON THE IMPLEMENTATION OF THE OECD ANTI-BRIBERY CONVENTION, [http://www.oecd.org/document/24/0,3343,en\\_2649\\_34859\\_1933144\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/24/0,3343,en_2649_34859_1933144_1_1_1_1,00.html).

67. See OECD Convention, *supra* note 60, Preamble ("Recognising that achieving progress in this field requires not only efforts on a national level but also multilateral cooperation, monitoring and follow-up.").

68. OECD, RECOMMENDATION OF THE COUNCIL FOR FURTHER COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, available at <http://www.oecd.org/dataoecd/11/40/44176910.pdf> [hereinafter OECD RECOMMENDATION]; RECOMMENDATION EXPLANATION, *supra* note 60, at 1.

69. See, e.g., OECD RECOMMENDATION, *supra* note 68, ¶ IV. ("Recommends, in order to ensure the vigorous and comprehensive implementation of the OECD Anti-Bribery Convention, that Member countries should take fully into account the Good Practice Guidance on Implementing Specific Articles of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, set forth in Annex I hereto, which is an integral part of this Recommendation."); *id.* ¶ V. ("Recommends that Member countries undertake to periodically review their laws implementing the OECD Anti-Bribery Convention and their approach to enforcement in order to effectively combat international bribery of foreign public officials."); see also RECOMMENDATION EXPLANATION, *supra* note 60, at 1.

70. OECD RECOMMENDATION, *supra* note 68, ¶ XIV.

71. *Id.* ¶ XIII, ¶ IX, ¶ X (C); RECOMMENDATION EXPLANATION, *supra* note 60, at 1.

72. OECD, WORKING GROUP ON BRIBERY DATA ON ENFORCEMENT OF THE ANTI-BRIBERY CONVENTION, available at <http://www.oecd.org/dataoecd/11/15/45450341.pdf>.

73. There were 138 total convictions of individuals, 49 total convictions of legal persons, 32 total acquittals of individuals, and 0 acquittals of legal persons. *Id.*

ant to the provisions of the Convention.<sup>74</sup>

Countries should be encouraged to adopt the 2009 Recommendation out of the recognition that public corruption affects illegal businesses as well as legal ones. By placing human trafficking bribes on the same level as any other corrupt business practice, countries will demonstrate their awareness that public corruption acts as the grease that moves this extremely profitable financial enterprise. Given that human trafficking ties with the illegal arms industry as the second-largest criminal industry behind only drug trafficking,<sup>75</sup> it clearly qualifies as a corrupt business whose shareholders reap huge financial benefits. Moreover, human trafficking is the fastest-growing criminal industry, so attention to the public-corruption aspect of the crime cannot occur too quickly.<sup>76</sup>

The Anti-Bribery Convention has a powerful, yet largely underutilized, role in the human trafficking problem. As an initial matter, the OECD should take proactive steps to increase the number of member nations. This, however, is no easy task, especially for those nations in which corruption has already taken root in the political system. Membership in the Convention is important because once a nation joins the Convention, the OECD can use its aggregate power to put pressure on the member nation to comply fully with the Convention's goals. As of now, under the 2009 Recommendation, a member nation that fails to comply with the Convention is subject to "strong pressure" from the OECD to fix the problem,<sup>77</sup> which may take the form of dispatching a high-level mission to the non-compliant country, sending a letter to the country's officials, or issuing a formal public statement.<sup>78</sup> The Convention should explore using more robust methods to hold its members accountable. Further, in order to add teeth to the enforcement provisions so sorely lacking in this first review of the Convention members' enforcement actions, countries should be encouraged to adopt Mutual Legal Assistance Treaties (MLATs) as part of their anti-human trafficking statutes and protocols. These MLATs would provide for the sharing of evidence across borders in order to effectively prosecute corrupt officials along the entire chain of the trafficking enterprise. MLATs are agreements between countries to facilitate judicial cooperation and the collection and exchange of information.<sup>79</sup> The treaties allow enforcement authorities to cooperate in their investigations and prosecutions of individuals and corporations overseas for criminal violations.<sup>80</sup> Prior to the proliferation of MLATs, the United States relied on letters rogatory to

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74. *Id.*

75. U.S. Dep't Of Health and Human Services, Admin. For Children and Families, Human Trafficking Fact Sheet (2010), <http://www.acf.hhs.gov/trafficking/about/index.html>.

76. *Id.*

77. RECOMMENDATION EXPLANATION, *supra* note 60.

78. *Id.*

79. S. Comm. On Foreign Rel., Mutual Legal Assistance Treaties with the European Union: Report, S. Exec. Rep. No. 110-13, at 3 (2008) [hereinafter MLAT Report].

80. *Id.*

obtain evidence abroad in criminal cases.<sup>81</sup> Letters rogatory, however, are often only issued if there is already a related civil or criminal judicial proceeding before a U.S. court and do not obligate the foreign court to assist in the request.<sup>82</sup> MLATs, in contrast, are obligations between states that may be invoked earlier in the investigation and can be used to immobilize assets, summon witnesses, or compel the production of documents.<sup>83</sup>

In February 2010, the United States and the European Union entered into a new MLAT, and the United States and each of the EU Member States either entered into new MLATs or adopted changes to existing MLATs to include certain modern provisions on mutual legal assistance.<sup>84</sup> The overarching MLAT “enhances and modernizes law enforcement and judicial cooperation by, among other things: allowing prompt identification of financial account information in criminal investigations; permitting the acquisition of evidence, including testimony, by means of video conferencing; and authorizing the participation of U.S. criminal investigators and prosecutors in joint investigative teams in the EU.”<sup>85</sup> Currently, the United States has bilateral MLATs in force with every EU Member State,<sup>86</sup> many of

81. *Id.* at 2 (“A ‘letter rogatory’ is generally used to refer to a formal communication in writing that is sent by a court in which an action is pending to a court in a foreign country, requesting that certain evidence or the testimony of a person within the latter’s jurisdiction be formally obtained for use in the requesting court’s pending action.”); See also Robert J. Currie, *Human Rights and International Mutual Legal Assistance: Resolving the Tension*, 11 CRIM. L.F. 143, 146 (2000).

82. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS § 474 (2) (1987); *id.* cmt. h; MLAT Report, *supra* note 79, at 2–3 (“The State Department advises that the letter-rogatory process can often take a year or more and, unless undertaken pursuant to an international agreement, compliance is a matter of judicial discretion. Furthermore, the scope of foreign judicial assistance might also be limited by domestic information-sharing laws, such as bank and business secrecy laws, or be confined to evidence relating to pending cases rather than preliminary, administrative, or grand jury investigations conducted prior to the filing of formal charges.”).

83. See Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Japan (Treaty Doc. No. 108-12), Aug. 5, 2003, <http://www.gpo.gov/fdsys/pkg/CDOC-108tdoc12/pdf/CDOC-108tdoc12.pdf>, Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-F.R.G. (Treaty Doc. No. 108-27), Oct. 14, 2003, <http://www.gpo.gov/fdsys/pkg/CDOC-108tdoc27/pdf/CDOC-108tdoc27.pdf>, Extradition Treaty, U.S.-U.K. (Treaty Doc. No. 108-23), Mar. 31, 2003, <http://www.gpo.gov/fdsys/pkg/CDOC-108tdoc23/pdf/CDOC-108tdoc23.pdf>, and Protocol Amending the Convention on Extradition, U.S.-Isr. (Treaty Doc. No. 109-3), July 6, 2005, <http://www.gpo.gov/fdsys/pkg/CDOC-109tdoc3/pdf/CDOC-109tdoc3.pdf>. *Law Enforcement Treaties: Hearing Before the S. Comm. on Foreign Rel.*, 109th Cong. 8 (2005) (statement of Mary Ellen Warlow, Director, Office of International Affairs, Criminal Division, Department of Justice) (“MLATs . . . confer a binding legal obligation to provide assistance if the requirements of the treaty are met. MLATs are broad in scope, and provide for assistance at the investigatory stage, usually without the requirement of dual criminality.”); Eric S. Rein & Bethany N. Schols, *Creative New Mechanisms for Banks to Recover Stolen Collateral*, 122 BANKING L. J. 725, 726–27 (2005).

84. See Treaty on Mutual Legal Assistance, U.S.-E.U., (Treaty Doc. No. 109–13), June 25, 2003, <http://thomas.loc.gov/cgi-bin/trtys2gpo.script/http://www.gpo.gov/fdsys/pkg/CDOC-109tdoc13/pdf/CDOC-109tdoc13.pdf>; MLAT Report, *supra* note 79, at 3; Press Release, Dep’t of Justice, U.S./EU Agreements on Mutual Legal Assistance and Extradition Enter into Force (Feb. 1, 2010), <http://www.justice.gov/opa/pr/2010/February/10-0pa-108.html> [hereinafter DOJ Press Release].

85. DOJ Press Release, *supra* note 84.

86. MLAT Report, *supra* note 79, at 3–4.

the Organization of American States member states,<sup>87</sup> and other countries around the world.<sup>88</sup> These MLATs are an innovative and vital resource for U.S. enforcement authorities and prosecutors.

## Conclusion

The role of public corruption in the creation, facilitation, and continuation of international human trafficking cannot be underestimated. Although academics, world leaders, and NGOs have focused their efforts on the protection of the victim and the prosecution of the offenders, those efforts will be fruitless without also combating official corruption along traffickers' routes. Awareness of the role that public corruption plays in aiding and abetting this lucrative illegal business will aid law enforcement to investigate and prosecute the offenders more effectively. The collection of data showing the specific methods of trafficking within a particular country will provide lawmakers with the information necessary to combat the crime through effective legislation. Countries should be encouraged to join the Anti-Bribery Convention and to adopt criminal sanctions that target corrupt acts. Finally, to facilitate their investigation and prosecution of corruption, countries should consider entering into MLATs with other countries to allow for the trans-border sharing of information and evidence.

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87. See, e.g., Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Venez., (Treaty Doc. No. 105-38), Oct. 12, 1997, <http://www.gpo.gov/fdsys/pkg/CDOC-105tdoc38/pdf/CDOC-105tdoc38.pdf>; Treaty on Mutual Legal Assistance Cooperation U.S.-Mex., (Treaty Doc. No. 100-13), Dec. 9, 1987, <http://thomas.loc.gov/cgi-bin/ntquery/D?trtys:10:/temp/-trtysmUe8Fm::>; Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Can., (Treaty Doc. No. 100-14), Mar. 18, 1985, <http://thomas.loc.gov/cgi-bin/ntquery/D?trtys:9:/temp/-trtysHtcHtA::>

88. See, e.g., Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-India, (Treaty Doc. No. 107-3), Oct. 17, 2001, <http://www.gpo.gov/fdsys/pkg/CDOC-107tdoc3/pdf/CDOC-107tdoc3.pdf>; Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-S. Afr., (Treaty Doc. No. 106-36), Sep. 16, 1999, <http://www.gpo.gov/fdsys/pkg/CDOC-106tdoc36/pdf/CDOC-106tdoc36.pdf>; Treaty on Mutual Legal Assistance in Criminal Matters, U.S.-Isr., (Treaty Doc. No. 105-40), Jan. 26, 1998, <http://www.gpo.gov/fdsys/pkg/CDOC-105tdoc40/pdf/CDOC-105tdoc40.pdf>.

