

# UNIVERSITY OF THE WESTERN CAPE



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**CRITICAL ANALYSIS OF THE SADC LEGAL AND POLICY FRAMEWORK FOR COMBATING  
CORRUPTION IN TRAFFICKING IN PERSONS**

UNIVERSITY *of the*  
by  
WESTERN CAPE

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**Declaration**

I, Juliet Cindy Chimwaga, declare that **Critical Analysis of the SADC Legal and Policy Framework for Combating Corruption in Trafficking in Persons** is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

Student: Juliet Cindy Chimwaga

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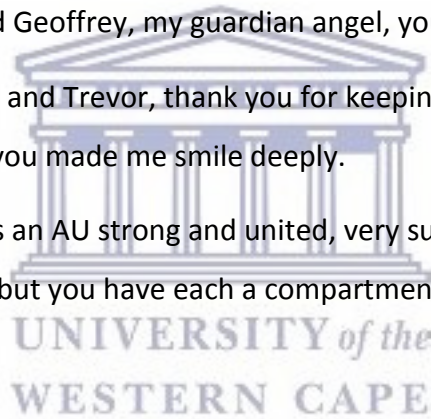
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## **Dedication**

To my dear dad Geoffrey and my mum Lucy.



## Acronyms and Abbreviations

AU Convention	African Union Convention on Preventing and Combating Corruption.
CPA	Corrupt Practices Act Cap 7.04 of the Laws of Malawi.
FCPA	Foreign Corrupt Practices Act
TVPA	Trafficking Victims' Protection Act
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community.
SADC Protocol	Southern African Development Community Protocol against Corruption.
TIPA	Trafficking in Persons Act 3 of 2015.
UNCAC	United Nations Convention against Corruption.
UNTOC	United Nations Convention against Transnational Organised Crime.
UNODC	United Nations Office on Drugs and Crime.



## **Key Words**

Border crossing

Corruption

Corruption in trafficking in persons

Corruption abetting trafficking

Crime abetting crime

Criminal Justice Chain

Immigration services

Organised crime and corruption

Trafficking

Trafficking chain

Trafficking in Persons

Transnational corruption

Southern African Development Community



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# CHAPTER ONE

## INTRODUCING THE STUDY

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### 1.1 Introduction

The fight against human trafficking requires a broad range of approaches, including the eradication of crimes that facilitate trafficking of human beings. The idea of committing crimes within crimes is common in most national regimes just as it is in transnational and organised crimes. For instance, transnational crimes such as money laundering and human trafficking always are accompanied by various types of corruption such as petty, grand or bureaucratic corruption. As the Southern African Development Community (SADC) States Parties strengthen strategies to address human trafficking, the region continues to face an increase of trafficking of persons into Europe and Asia, as well as within Africa. There are various causes of human trafficking, such as poverty, hunger and deteriorating economies, as victims are promised luxurious lives in the countries to which they are trafficked. The poverty and stunted economies in most African countries make it easy for corruption to flourish because most police and immigration officers occupy low-paying ranks, making them highly susceptible to bribery and other corrupt incentives.

Dealing with international crimes requires collective efforts from various countries, as observed in the related UN instruments and the AU Convention on Preventing and Combating Corruption. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, declares in its preamble that:

Effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognised human rights.<sup>1</sup>

Article 2(2) of the AU Convention on Preventing and Combating Corruption implores members to co-operate with one another in the fight against corruption and related offences. The provision identifies as one of its objectives to:

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1 UN General Assembly Resolution 55/25 of 15 November 2000.

Promote, facilitate and regulate co-operation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa.

This paper examines the legal and policy framework for dealing with transnational corruption and its influence on trafficking in persons. In the context of SADC efforts against human trafficking in the region, it is important to adopt a holistic approach. Catalysts of human trafficking such as corruption must be given due attention.

## 1.2 Statement of the Problem

Corruption and trafficking in persons feature amongst the crimes threatening both regional and global communities. The SADC region, which comprises 15 member states, continues to experience escalating rates of trafficking in persons.<sup>2</sup> However, the influence of corruption in facilitating trafficking in persons has not been dealt with adequately, both in global and regional legal frameworks.

The preamble to the SADC Protocol against Corruption<sup>3</sup> reiterates the need for States Parties to eliminate corruption through the adoption of effective, preventive and deterrent measures and by strictly endorsing legislation to eliminate all types of corruption.<sup>4</sup> A recent Baseline Report on the status of trafficking in persons in the SADC region revealed alarming levels of the crime.<sup>5</sup> The Report also acknowledges corruption as one of the tools that facilitates trafficking in persons at almost all its levels, from recruiting through transportation to delivery to the final destination. However, it fails to show the extent and impact of corruption in facilitating trafficking in persons and makes no recommendations to address this form of corruption. Furthermore, the SADC 10-year Plan of Action for combating trafficking in persons makes no mention of the probable influence of corruption in promoting trafficking in persons.<sup>6</sup>

A UNODC Issue Paper notes that transnational corruption is a useful tool for the facilitation of organised crimes such as trafficking in persons or drug trafficking.<sup>7</sup> However, the actual interrelations between the two phenomena generally are not a focus in the

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2 SADC Policy Brief (2016).

3 Adopted on 14 August 2001 and entered into force on 6 July 2005.

4 SADC Protocol against Corruption (2001).

5 SADC Baseline Report (2016).

6 SADC Policy Brief (2016).

7 UNODC Issue Paper (2011) at 1.

formulation of anti-human trafficking legal instruments or in the implementation of anti-human trafficking policies and systems.<sup>8</sup> Further, the Issue Paper indicates that:

opportunities for corruption exist in the trafficking chain, the criminal justice chain and the victims support and protection chain. The trafficking chain consists of the recruitment of victims, the provision of documentation (identity papers, visas, permits), the transport of victims, which may include border-crossing, their exploitation, as well as the laundering of the proceeds of the crime. Corrupt actors within this chain of activities may include police, customs officers, embassies or consulates, border control authorities, immigration services, other law enforcement agencies, intelligence or security forces, local officials, persons with influence on public officials.<sup>9</sup>

Corruption is recognised also as one of the main catalysts for trafficking in persons. Trafficking in persons naturally leads to corruption because it involves bribery of law enforcement officers at all stages of the trafficking chain.<sup>10</sup>

Vichitrananda & Sakdiyakorn suggest that corruption is a causal factor for trafficking in persons, noting that:

a vicious cycle is created by corruption which ensures the continuation of the trafficking business and obstructs the efforts to prevent trafficking, protect the victims, and prosecute the traffickers.<sup>11</sup>

Rwebangira acknowledges the level of corruption as one of the pertinent but less visible areas obstructing the fight against trafficking in persons. She states that “trafficking in persons is a very complex, multidimensional, multisectoral, illicit industry affecting both individuals and nations across Africa”.<sup>12</sup>

In 2013, the Organisation for Economic Co-operation and Development (OECD), in collaboration with the American Bar Association, held a roundtable meeting to examine the role of corruption in human trafficking. Participants reviewed draft principles to combat corruption in human trafficking, which are meant to guide future law enforcement and anti-corruption programming.<sup>13</sup>

Notwithstanding the growing recognition of corruption in the trafficking of persons, the problem hardly is addressed in most legal instruments targeting human trafficking or

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8 UNODC Issue Paper (2011) at 2.

9 UNODC Issue Paper (2011) at 7.

10 Moran (2000) at 111.

11 Vichitrananda & Sakdiyakorn (2010) at 55.

12 Rwebangira (2013) at 2.

13 APEC Pathfinder Dialogue II (2013).

drug trafficking. This omission poses a challenge regarding the mechanisms to combat trafficking in persons in circumstances influenced by corruption. The 2016 SADC Baseline Report on trafficking in persons shows that there is still a high prevalence of corruption within the region, manifested in various forms of exploitation of women and children.<sup>14</sup> For instance, the Report shows that Malawi is a hub for trafficking in persons and the victims are exploited in other SADC countries, as well as in Europe and Asia. Malawi also acts as a transit country for traffickers from countries such as Ethiopia, Somalia and Zambia whence victims are transported to South Africa or to Asian and European countries.

In 2016, the Malawi Social Welfare Report indicated that girls were trafficked to Kuwait from Malawi with the assistance of bribed medical officers who made available the required medical documents for travel, and bribed immigration officers who dealt with the documentation.<sup>15</sup> According to Mercy Lukwa, a rescued victim, the girls were instructed to deal with specific bribed immigration officers at the airport. Upon arrival in Kuwait they were processed by immigration officers in the know and passed on to other agents for hefty sums. The girls had their travel documents confiscated and they were forced into brothels as sex workers. Girls from Ethiopia, Nigeria and other African countries went through a similar sequence of events, also to land up as sex workers in Kuwaiti brothels.

Malawi has anti-trafficking legislation in the form of the Trafficking in Persons Act 3 of 2015. However, it does not regulate explicitly corruption that may occur at the various stages of the trafficking chain. Most traffickers bribe their way through the trafficking cycle with huge sums of money, to ensure that their victims can be transported without problems.<sup>16</sup>

It is important for SADC to begin to ensure that the anti-trafficking and anti-corruption domains become integrated, from legal and policy approaches to strategic action plans and mechanisms. The need for such an integrated approach is advocated increasingly among experts in both areas.<sup>17</sup>

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14 SADC Baseline Report (2016).

15 Ministry of Gender, Malawi (2016) at 7.

16 Rusev (2013) at 13.

17 UNODC Issue Paper (2011) at 8.

### **1.3 Objectives of the Study**

Despite the scarcity of official data on the relation between corruption and trafficking, there are consistent indicators that corruption does play an important role in facilitating and fostering the crime of trafficking in persons.<sup>18</sup> Thus, this research paper seeks, firstly, to assess the extent to which SADC has confronted the linkages between corruption and trafficking in persons and also to identify gaps that may exist.

Secondly, the paper aims at analysing critically and unpacking the phenomenon of corruption in human trafficking. It is important and necessary to elaborate the emerging concept of a crime abetting a crime, as far as corruption and trafficking go. This exercise will create a basis for the paper to engage the notion of corruption as a transnational crime expediting trafficking as an organised crime, which is a challenge in almost all parts of the global community.

Thirdly, the paper intends to examine the possible application of the existing SADC legal framework on corruption and human trafficking. It identifies the gaps that may require direct regulation of corruption in human trafficking legal instruments. It also analyses the influence of regulation at regional level upon the contents of national legal frameworks. Analysis of the regulation of this area of law is very important for determining whether it is justifiable for SADC to legislate specifically for corruption in human trafficking.

Finally, the paper will use its findings to make recommendations on possible ways to tackle the concept of crimes aiding crimes in general and corruption abetting human trafficking in the SADC region in particular. It will suggest also ways of dealing with the existing legal gaps in the area.

### **1.4 Significance of the Study**

Lack of adequate legislation in transnational corruption hampers the fight against trafficking in persons in the SADC region. Legislation in this area is one of the ways to strengthen the fight against trafficking in persons. This research is significant as it confronts the meaning, relevance and importance of regulating transnational corruption in trafficking. It justifies why the anti-trafficking legal framework should be expanded to reflect this reality. It will give recommendations on how legislation may be formulated in this area.

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18 Vienna Background Paper on Human Trafficking (2008) at 1.

## 1.5 Research Questions

The study will attempt to answer the following questions:

- What is transnational corruption in trafficking in persons?
- How can legislation on corruption in trafficking in persons contribute to the fight against human trafficking in the SADC region?
- What should legislation on corruption in trafficking encompass in order to be effective?

To help in answering the third question, the following auxiliary questions are proposed:

- What are the stages of trafficking that are affected by transnational corruption?
- Who are the actors and officers involved in this type of corruption?
- Who should be responsible for the regulation of corruption in the different stages of trafficking?
- What are the existing laws that can be applied to curb corruption in human trafficking and what are the gaps requiring further regulation?
- What are the evidential issues in prosecuting corruption as an abettor of trafficking in persons and how can these be addressed?

## 1.6 Structure of the Research Paper

The study consists of three further chapters. They are outlined below.

### Chapter Two

In Chapter Two the paper analyses critically and unpacks the phenomenon of transnational corruption in human trafficking as an organised crime. It elaborates the emerging concept of a crime abetting a crime in relation to corruption abetting trafficking. It also assesses the application of human rights law in the discourse of linkages between corruption and human trafficking.

### Chapter Three

Chapter Three examines the implementation of the existing SADC legal framework on corruption and human trafficking. It further identifies the gaps that may require direct regulation of corruption in human trafficking legal instruments. This chapter also analyses the relevance of regulation at regional level with regard to influencing the contents of national legal frameworks.

## Chapter Four

In this chapter, the paper makes recommendations on possible ways to tackle the concept of corruption abetting human trafficking through legislation in the SADC region. It suggests ways of dealing with the existing legal gaps in the area.



## CHAPTER TWO

### TRANSNATIONAL CORRUPTION AND HUMAN TRAFFICKING

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#### 2.1 Introduction

This chapter unpacks the phenomenon of corruption in human trafficking. It examines the definitions of corruption and human trafficking in both international and regional perspectives. It analyses also the links between corruption and organised crime in general and between corruption and trafficking in persons in particular. It elaborates the concept of crimes being used as tools to facilitate bigger crimes, as in organised crimes and human trafficking. Human trafficking, money laundering, drug trafficking and illicit trade in fire arms are some of the organised crimes where corruption of public officials plays a key role in insulating the perpetrators from prosecution. Corruption facilitates destruction of evidence that would be exposed if the public officials involved were not susceptible to bribery and corruption. The chapter also analyses the main causes of corruption in human trafficking and assesses the application of human rights law to the linkages between corruption and human trafficking.

#### 2.2 The Concept of Corruption

The crime of corruption is a global problem manifesting both national and transnational characteristics. The regional anti-corruption legal instruments have attempted to describe corruption rather than define it, in line with UN protocols on the subject. Most importantly, each region has tried to adopt the descriptions to fit its context. States have adopted various descriptive definitions closely related to those contained in the regional instruments. From a definitional viewpoint, corruption cannot be treated as a unitary phenomenon because it takes various forms such as grand corruption, petty corruption, bribery and embezzlement, and other acts that seek to secure undue or illegal benefits.<sup>1</sup>

The United Nations Convention against Corruption (UNCAC)<sup>2</sup> leaves the question of defining corruption and related terms to the States Parties and multilateral agreements.<sup>3</sup> This approach has allowed the regions to formulate regionally responsive definitions. The

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1 See Fletcher & Hermann (2012) at 17.

2 Adopted on 31 October 2003 and entered into force on 14 December 2005.

3 Article 61(2) of UNCAC.



Inter-American Convention against Corruption (OAS Convention),<sup>4</sup> in Article VI (1)(a)-(e), lists acts of corruption committed by public officials. These include:

the solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions.

The Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of European Union (EU Convention)<sup>5</sup> rates the fight against corruption and fraud as a top priority for the European Union (EU). Articles 2 and 3 of the EU Convention provide for both passive and active corruption, in terms of which a public official is liable for corruption if he refrains from exercising his power or actively and deliberately receives, directly or through an intermediary, an advantage of any kind, for himself or for a third party, for him to act or refrain from acting in accordance with his duty. It is an all-encompassing provision.

The African Union Convention on Preventing and Combating Corruption (AU Convention)<sup>6</sup> defines corruption as “means, acts and practices including related offences proscribed in the Convention”.<sup>7</sup> The definition extends to private persons, as captured in the phrase “and any other person” in Article 4(1)(a)-(b). That is, solicitation or acceptance, offering and granting by a public official or by any other person of something of value or advantage for himself or another person or entity. The AU Convention lists some of the acts related to corruption:

the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions.<sup>8</sup>

This definition of is almost identical to that in the OAS Convention. The only difference is that the OAS Convention refers to a government official or a person performing public functions while the AU Convention refers to both a public official and a private person. Other corrupt acts under the AU Convention include diversion

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4 Adopted on 29 March 1996 and entered into force on 6 March 1997.

5 Adopted on 26 May 1997 and entered into force on 28 September 2005.

6 Adopted on 1 July 2003 and entered into force on 5 August 2006.

7 Article 1 of the AU Convention.

8 Article 4(1)(a) of the AU Convention.

of property belonging to the state, offering or accepting an undue advantage, illicit enrichment, and concealment of proceeds of corruption.<sup>9</sup> These are some of the corrupt acts contained in Chapter III of UNCAC.

The SADC Protocol against Corruption takes a different approach and defines corruption as:

Any act referred to in Article 3 and includes bribery or any other behaviour in relation to persons entrusted with responsibilities in the public and private sectors which violate their duties as public officials, private employees, independent agents, or other relationships of that kind and aimed at obtaining undue advantage of any kind for themselves or others.<sup>10</sup>

Under Article 1 of the SADC Protocol on Combating Illicit Drug Trafficking, corruption is defined as “abuse or misuse of any office for private gain, or benefit or giving or receipt by any person of any benefit of whatever nature which is not legally due”.<sup>11</sup>

Although the definitions of corruption vary, the abuse of public office for private gain features in almost all of them. However, the instruments have not elaborated adequately the use of corruption to commit other offences.

International organisations such as Transparency International and the World Bank attempted to formulate short definitions of corruption without creating a list of offences. For instance, according to Transparency International, any act that involves the “misuse of entrusted power for private gain” amounts to corruption. The World Bank defines corruption concisely as “the abuse of public office for private gain”. Chinhamo & Shumba have criticised the Transparency International and World Bank definitions because they assume that all power is entrusted. They argue that there are other types of power, including referent power based on high levels admiration that make people loyal to the power holder.<sup>12</sup> The referent power holder also may commit corruption where he abuses such power for private gain.

The United Nations Development Programme (UNDP) recognises corruption as the misuse of public power, office, and authority for private benefit through bribery, extortion,

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9 Article 4(1)(d)-(h) of the AU Convention.

10 Article 1 of the SADC Protocol against Corruption.

11 Adopted on 24 August 1996 and entered into force on 20 March 1999.

12 Chinhamo & Shumba (2007) at 4.

influence peddling, nepotism, speed money, embezzlement and fraud.<sup>13</sup> Chinhamo & Shumba analyse various definitions of corruption and conclude that there is no uniform or universally accepted definition. Any attempt to devise a single, comprehensive and generally accepted definition of corruption will be very difficult and complex. Different cultures and traditions have diverse perceptions of what is and what is not corruption. Formulating a definition to cover every aspect of corruption would involve a long and cumbersome process.<sup>14</sup> Chinhamo & Shumba offer a definition which sees corruption as “the abuse or complicity in the abuse of private or public power, office or resources for personal gain”. This definition appears to be fairly comprehensive but it, too, may be criticised for omitting certain types of gains, such as gains for third parties. The difficulty of defining corruption signifies that most definitions omit one or more important issue(s) relating to corruption. It appears that the anti-corruption instruments simply list as corrupt activities those that were topical at the time the instruments were adopted.

### **2.3 The Phenomenon of Human Trafficking**

According to Onuoha, human trafficking became visible during the 1990s in sub-Saharan Africa from what was cross-border migration in search of economic livelihoods.<sup>15</sup> There have been trafficking activities in Senegal, Gambia, Niger, Chad, Zambia and Malawi. The trafficked persons are exploited in respect of labour, sex and other matters, both within Africa and overseas.<sup>16</sup>

Article 3(a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children defines trafficking in persons as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

The UN Protocol goes on to define exploitation to include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services,

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13 UNDP Policy against Fraud and other Corrupt Practices (2015).

14 Chinhamo & Shumba (2007) at 1.

15 Onuoha (2011) at 151.

16 Onuoha (2011) at 151.

slavery or practices similar to slavery, servitude and the removal of organs.<sup>17</sup> States Parties to the UN Protocol are obligated to criminalise all forms of conduct falling under trafficking of human beings.<sup>18</sup>

The UNODC defines human trafficking as a crime against humanity.<sup>19</sup> Trafficking in human beings was known originally as migrant trafficking, and has been described by scholars as a modern form of slavery.<sup>20</sup> According to the Community Court of Justice of the Economic Community of West African States (ECOWAS), if slavery is to qualify as an act constituting a crime against humanity, it must be part of a “widespread or systematic attack” in accordance with Article 7 of the Statute of the International Criminal Court (Rome Statute).<sup>21</sup>

The International Criminal Tribunal for the former Yugoslavia (ICTY), in *Prosecutor v Kunarac, Kovac and Vukovic*,<sup>22</sup> stated that “indications of enslavement include elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator”. It noted further that:

The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim’s position of vulnerability; detention or captivity, psychological oppression or socio-economic conditions.<sup>23</sup>

The ICTY’s description of slavery is close to the description of human trafficking in the Rome Statute. The latter recognises trafficking, especially of women and children, as a crime against humanity in the form of enslavement, which is defined as “the exercise of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children”.<sup>24</sup>

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17 Article 3 of the UN Protocol.

18 Article 5 of the UN Protocol.

19 UNODC Report (2017) at 1.

20 Roth (2012) at 2.

21 *HadijatouKoraou v The Republic of Niger* (2008) AHRLR (ECOWAS 2008) 87.

22 Trial Chamber, Judgment, Case No IT-96-23-T and 23/1, par542.

23 Trial Chamber, Judgment, Case No IT-96-23-T and 23/1, par542.

24 Article 7(2)(c) of the Rome Statute. The Statute was adopted on 17 July 1998 and entered into force on 1 July 2002.

In the case of *Malawi African Association and Others v Mauritania*, the African Commission on Human and Peoples' Rights described unremunerated work as a practice analogous to slavery and a violation of Article 5 of the African Charter on Human and Peoples' Rights.<sup>25</sup> Article 5 of the Charter provides that "all forms of exploitation and degradation of man particularly slavery shall be prohibited". According to the Court of ECOWAS:

Slavery is considered a grave violation of human dignity, and it is strictly prohibited by all the international instruments relating to human rights ...prohibition of slavery is an inviolable right, that is to say, unbreakable or a right that cannot be transgressed.<sup>26</sup>

Where human trafficking takes the form of slavery, it is a gross violation of the core values of human rights. Unpaid labour and sexual exploitation are some of the activities which slaves have been exposed to for centuries.

The description of trafficking as a form of control or ownership over another person is found also in the SADC Protocol on Gender and Development in relation to the exploitation of women and children sexually and otherwise. This Protocol defines trafficking in persons as:

the recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of amongst other things, sexual and financial exploitation.<sup>27</sup>

Article 20(5)(b) of SADC Protocol on Gender and Development obligates States Parties to put in place mechanisms by which all relevant law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks. The SADC Protocol recognises the transnational character of human trafficking and the need for mechanisms to combat it at national, regional and international levels.

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25 Communications 54/91 and 93/93 (2000) AHRLR 149 (ACHPR 2000) 135.

26 *Koraou v Niger* (2008) AHRLR (ECOWAS 2008) 75.

27 Article 1(2) of the SADC Protocol on Gender and Development. This Protocol was adopted on 17 August 2008 and entered into force on 22 February 2013.

The phenomenon of human trafficking has exercised also the minds of judges of international human rights courts. The European Court of Human Rights (ECtHR), in the matter of *Rantsev v Cyprus and Russia*,<sup>28</sup> stated that:

trafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere... It implies close surveillance of the activities of victims, whose movements are often circumscribed... It involves the use of violence and threats against victims, who live and work under poor conditions.<sup>29</sup>

As is evident from the discussion above, most descriptions of human trafficking are related closely to one another and depict power relations, exercise of ownership, the vulnerability of the victims and the various forms of exploitation to which they are subjected.

#### **2.4 Corruption and Trafficking in Transnational Organised Crime**

Corruption was viewed originally as a national crime but it long has gone well beyond national borders. The United Nations Convention against Corruption (UNCAC) describes corruption as a crime that transcends national borders and calls for international co-operation to prevent and control it effectively.<sup>30</sup>

Transnational organised crime refers to criminal activities reaching across national borders and involves both public officials and private persons. The United Nations Convention against Transnational Organised Crime (UNTOC) contains a broad range of provisions to combat organised crime and compels member states to implement it through enacting domestic legislation to that effect.<sup>31</sup>

Reichel suggests that trafficking in persons concerns all cases where human beings are exploited by organised criminal groups and where there is an element of duress involved, as well as transnational aspects such as the movement of people across borders or their exploitation within a country by a transnational organised criminal group.<sup>32</sup>

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28 ECtHR Application No 25965/04 Judgment of 7 January 2010.

29 ECtHR Application No 25965/04 para 281.

30 Article 43 of UNCAC.

31 Adopted on 15 November 2000 and entered into force on 29 September 2003.

32 Reichel (2005) at 183.

## 2.5 Linkages between Corruption and Human Trafficking

Corruption is associated with most transnational organised crimes such as human trafficking, money laundering, drug trafficking and terrorist financing.<sup>33</sup> Organised criminals in human trafficking very likely also commit related offences such as the counterfeiting of documents, the corruption of public officials, the use of compliant individuals to aid and abet traffickers by providing food and lodging for the trafficked persons, and breaches of the law of immigration.<sup>34</sup> The commission of several offences reduces the possibility of the perpetrators being caught, as each offence covers up another offence in the process.<sup>35</sup>

Corruption aims at making the crime of human trafficking invisible in its various stages, from recruitment to transportation and exploitation. It obstructs the clear recognition of cases of trafficking of human beings. It facilitates the different human trafficking circuits in a country and the re-victimisation of trafficked persons.<sup>36</sup> The SADC Report on human trafficking, as noted in Chapter One, indicates an increase in cases of human trafficking in the SADC region, despite the existence of legal and policy frameworks aimed at dealing with human trafficking. The US trafficking report estimates that 12.3 million adults and children are trafficked globally and are living in conditions of forced labour, bonded labour, or forced prostitution around the world.<sup>37</sup>

Research shows that public corruption facilitates and promotes the alarming rates of human trafficking.<sup>38</sup> According to Kendall, traffickers must rely on a network of public officials willing to accept bribes in return for their “official” assistance in secreting humans across international borders. He states that:

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>39</sup>

Although human trafficking is present also in developed countries, the crime is at especially high rates in Africa, and is exacerbated by the widening gap between the rich and the poor

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33 Fletcher & Hermann (2012) at 163.

34 Reichel (2005) at 193.

35 Reichel (2005) at 193.

36 Fletcher & Hermann at (2012) at 163.

37 Kendall (2011) at 33.

38 Kendall (2011) at 33.

39 Kendall (2011) at 33.

countries. Advances in transportation technology and the greater permeability of borders, particularly in Europe, have made illegal trafficking in humans a key transnational crime issue.<sup>40</sup> Trafficking has increased, particularly of women and children from poorer countries, many of whom hope for a better life abroad but are duped and sold into slavery or forced into prostitution. The trade appears lucrative for most traffickers, as evidenced by its increased rates since the 1990s from Southern and Eastern Europe and from the Far East.<sup>41</sup> Since 1993, when Transparency International started assessing countries around the world, African governments have performed poorly on Corruption Perceptions Index (CPI).

According to Onuoha, high-levels corruption hampers greatly the success of the fight against human trafficking.<sup>42</sup> He argues that corruption by political leaders is one of the factors that encourage massive migration and human trafficking.<sup>43</sup> When leaders are corrupt, most public resources and systems fail to serve the people who live in poverty and, as a result, they are desperate to migrate or are deceived easily into moving to other countries in search of a better life. They fall prey to human trafficking and are exploited for sex or cheap labour.

Monitoring mechanisms and reports on human trafficking by UN Rapporteurs, non-governmental organisations, government institutions and other entities tend to ignore the role played by corruption. The reports focus on activities of the traffickers and the protection of the victims.<sup>44</sup> Most of these reporting styles are derived from international protocols and agreements such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>45</sup> the Convention on the Rights of the Child (CRC),<sup>46</sup> and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol). Both CEDAW and the CRC require States Parties to submit periodic reports to show their compliance with their obligations.

Kendall argues that public corruption increases human trafficking levels not only by facilitating the transportation of victims and the willingness of public officials to accept

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40 Reichel (2005) at 16.

41 Reichel (2005) at 16.

42 Onuoha (2011) at 152.

43 Onuoha (2011) at 152.

44 Kendall (2011) at 38.

45 Adopted on 18 December 1979 and entered into force on 3 September 1981.

46 Adopted on 20 May 1989 and entered into force on 2 September 1990.



bribes, but also by cultivating a climate fertile for the rapid growth of human trafficking.<sup>47</sup> Corruption leads to mismanagement of public resources which disables the economy and leads to enormous poverty. Mostly women and children suffer immensely from the consequences of poverty, and are forced into situations which make them prime targets for traffickers.

Acts of corruption at borders happen according to a pattern of repetition rather than by chance or episodically. They present an organised scheme corresponding to the organised crime systems and undermine the essence of the law by allowing the illegal to appear legal. According to Campbell & Heyman, US border officers receive and extract favours from traffickers in order to overlook their violations of the law.<sup>48</sup> These acts breed further tolerance of illegalities such as employment of undocumented persons and sexual exploitation of the victims of trafficking.<sup>49</sup>

## 2.6 Human Rights Violations in Human Trafficking

It is important to examine whether states are party to the violation of human rights in the process of human trafficking. The Organisation for Co-operation and Development (OECD) has stated that the victimisation and exploitation of people accompanying human trafficking and facilitated by crimes involving public officers suffice as violations of human rights.<sup>50</sup> The fact that states fail to protect people from falling into these situations is a violation of human rights, both from a national and a transnational perspective. According to Article 8 of the International Covenant for Civil and Political Rights (ICCPR), no one shall be held in slavery or servitude; and no one shall be required to perform forced or compulsory labour.<sup>51</sup> The fact that people are taken into servitude with the help of public officers who receive bribes to overlook the transgressions, entails state violation of human rights.

According to the case of *Hadijatou Mani Koraou v Republic of Niger*,<sup>52</sup> the responsibility of states for the victims of human trafficking arises from passive or active tolerance of trafficking and exploitation activities within their jurisdictions:

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47 Kendall (2011) at 38.

48 Campbell & Heyman (2008) at 192.

49 Campbell & Heyman (2008) at 192.

50 OECD (2008) AHRLR 182.

51 Adopted on 16 December 1966 and entered into force 23 March 1976.

52 AHRLR 182 (ECOWAS 2008).

[T]he defendant becomes responsible under international law as well as national law for any form of human rights violations of the applicant founded on slavery because of tolerance, passivity, inaction and abstention with regard to this practice.<sup>53</sup>

In *Rantsev v Cyprus and Russia*,<sup>54</sup> the European Court of Human Rights (ECtHR) held that a state's human rights obligations include having in place legislation adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking.

Interpreting Article 4 of the European Convention on Human Rights (ECHR),<sup>55</sup> the Court stated that certain circumstances require a state to take operational measures to protect victims or potential victims of trafficking.

In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited... In the case of an answer in the affirmative, there will be a violation of Article 4 ... where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation of risk.<sup>56</sup>

According to the judgment in *CN v United Kingdom*,<sup>57</sup> Article 4 of the ECHR also entails a procedural obligation to investigate where there is a credible suspicion that an individual's rights under that Article have been violated.

The requirement to investigate does not depend on a complaint from the victim or next-of-kin; once the matter has come to the attention of the authorities they must act of their own motion.<sup>58</sup>

Whereas trafficking of human beings is not in itself a violation of human rights, the failure by the state to protect people against trafficking does violate human rights.<sup>59</sup>

In *Commissioner of Police of the Metropolis v DSD and NBV*,<sup>60</sup> the England and Wales Court of Appeal held that the rights guaranteed in the ECHR are enjoyed against the state alone and not against a private agent. However, it is surely inherent in the Convention's

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53 AHRLR 182 (ECOWAS 2008) para 85.

54 ECtHR Application No 25965/04, 2010 para 284.

55 Adopted on 4 November 1950 and entered into force on 3 September 1953.

56 ECtHR Application No 25965/04, 2010 para 286.

57 ECtHR, 13 November 2012 para 43.

58 ECtHR, 13 November 2012 para 43.

59 *Rantsev v Cyprus and Russia* Paras 284, 286.

60 EWCA [2015] Civ 646, para 43.

purpose that the state has an obligation to protect persons within its jurisdiction against such brutalities, whoever inflicts them.<sup>61</sup>

It is clear that the state cannot ignore its obligations to protect economic and social rights which, in turn, may prevent persons, especially women and children, from becoming susceptible to human trafficking. The state has to take active measures to avoid any kind of torture emanating from human trafficking for the people within its jurisdiction. It is clear also from the reasoning of the courts that passivity or negligence by state officials to prevent situations that would facilitate human trafficking suffice as violations of human rights. Although it may appear to be an extended interpretation of the application of human rights, it is necessary for obligating the state to take active legal, policy or administrative measures to avoid such occurrences.

## **2.7 Causes of Human Trafficking**

Poverty and the search for better lives elsewhere have been identified as factors that make people susceptible to being trafficked. According to the SADC Baseline Report, porous borders between South Africa and its neighbouring countries provide points for victims of human trafficking to enter or leave South Africa. The Report notes that another major factor encouraging trafficking is corruption, especially among border officers. In response stricter laws, especially on travelling with minors, were introduced to try and curb the problem, since trafficking mostly affects women and children.

In Zimbabwe, people are trafficked to Botswana, South Africa, Ethiopia, the Middle East (Kuwait) and other countries. Conversely, victims are trafficked from China, Pakistan and Rwanda to Zimbabwe. Cheap labour and sexual exploitation have been identified as key pulling factors for trafficking in persons while porous borders and corruption act as enabling factors to facilitate the transnational trafficking in and out of Zimbabwe.<sup>62</sup>

The SADC Baseline Report records an increase in cases of trafficking of human beings in Malawi due to rising demand for cheap labour in Mozambique and South Africa. Victims are trafficked also to the Middle East for sexual exploitation. Demand for human body parts is cited as one of the main causes of trafficking, with victims usually being killed to harvest

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61 EWCA [2015] Civ 646, para 43.

62 SADC Baseline report (2016).

their body parts for traditional medicines or other unknown purposes. The Report indicates that porous borders with other countries and corruption of border officers mainly facilitate the cross-border movements.<sup>63</sup>

Compromising of the law by public officers is a serious issue requiring specific attention. For example, in *Republic v Roy Michael Robson*,<sup>64</sup> a case underway in Malawi, the suspect, a 51-year-old single British male, allegedly connived with a social welfare office in Mzuzu District and the judiciary to adopt seven female children between the ages of two months and three years. The social welfare officer gave deceptive social reports on the situation of the children, regarding their guardians waiting to take them out of the orphanage as soon as they reach school-going age. The social reports indicated that the children were abandoned, with no family links at all, and recommended that the suspect be allowed to adopt them. The recommendation was contrary to the Adoption of Children Act<sup>65</sup> in Malawi, which does not allow a single man to adopt female children. The adoption judgment showed that, although the court viewed the babies during adoption application, the court went ahead, against the laws of Malawi, to grant the single British man the right to adopt the children. He was intercepted as he was about to leave the country with the children. The social welfare officer was arrested also and prosecuted for accepting bribes and misleading the court.<sup>66</sup>

These are some of the instances showing how corruption and bribery compromise the justice system and allow public officers to facilitate trafficking of human beings. The seemingly legal documents in human trafficking render the investigations complex and make it hard to trace the corruption or bribery connections. Most cases such as these are never completed for lack of tangible evidence to sustain a successful prosecution.

In 2010, the Cambodia Trafficking in Persons Report recorded that the direct and indirect involvement of police and judicial officials in trafficking continue to impede anti-trafficking efforts. Cambodian authorities failed to prosecute the former President of the

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63 SADC Baseline Report (2016) at 24.

64 Criminal Case No 251 of 2016 Lilongwe High Court Registry.

65 Section 3(2) of the Adoption of Children Act, Chapter 26.01 of the Laws of Malawi.

66 *Republic v Pindikani* Criminal Cause No 253 of 2016.

Cambodia Appeals Court who allegedly accepted \$30 000 with impunity, in exchange for the release of brothel owners who had been convicted of trafficking.<sup>67</sup>

## **2.8 Conclusion**

It is evident that various acts of corruption provide a favourable environment for the commission of human trafficking. The participation of public officers in such corruption entails the violation of the state's obligations to safeguard people from trafficking. This is an aspect of the violation of human rights emanating from the state's failure to take progressive steps for the realisation of economic and social rights for the people.



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67 Kendall (2011) at 37.

## CHAPTER THREE

### LEGAL AND POLICY FRAMEWORK TO ADDRESS CORRUPTION IN HUMAN TRAFFICKING

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#### 3.1 Introduction

This chapter examines critically the extent to which the existing international and regional legal and policy frameworks address the linkages between corruption and human trafficking. The chapter considers that the lack of directly inter-linked anti-corruption and anti-human trafficking laws and policies poses challenges for the prevention and prosecution of human trafficking. In the absence of such inter-linked laws and policies, there is no co-ordination between anti-corruption bodies and anti-human trafficking institutions.

The chapter also examines the stages of human trafficking which can be targeted for investigation of corruption or bribery. It argues that anti-corruption laws may be applicable during the recruitment stage, before the victims are taken out of the source country. However, legal complications may arise at the transportation and exploitation stages. The chapter shows also that whistleblowers can play an integral role in the human trafficking chain.

Finally, the chapter proposes that SADC, as a regional body that makes periodical action plans to prevent and combat human trafficking, is one of the best avenues to address the problem. Member states of SADC require an informed and concerted approach to broader strategies aimed at fighting human trafficking.

#### 3.2 Anti-Human Trafficking and Anti-Corruption Laws and Policies

Despite the evident linkages between corruption and human trafficking, the laws and policies aimed at fighting the two crimes run separately. They are silent on the symbiotic relationship between human trafficking and corruption and how corruption adds to the success of human trafficking.

Anti-human trafficking laws focus on the protection of victims and the prosecution of traffickers. Definitions at international and regional level focus on the use of deception and abuse by the traffickers to obtain the consent of trafficked persons or the consent of the person or official responsible for the victim's care. For instance, Article 1(2) of the SADC

Protocol on Gender and Development, in relation to exploitation of women and children, defines trafficking in persons (TIP) as:

the recruitment, transportation, harbouring or receipt of persons, by means of threat, abuse of power, position of vulnerability, force or other forms of coercion, abduction, fraud or deception to achieve the consent of a person having control over another person for the purpose of, amongst other things, sexual and financial exploitation.<sup>1</sup>

On the list of actions constituting human trafficking, nothing relates to bribery or corruption of a public official or anyone else. Only fraud aimed at deceiving a person who may have control over the trafficked person is included.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, obligates States Parties to criminalise all forms of conduct relevant to the trafficking of human beings.<sup>2</sup> These forms of conduct are linked to deception and abuse of power by the traffickers but do not necessarily encompass bribery of a public officer. This approach shields from prosecution corrupt border officers, documentation officers, and others throughout the human trafficking chain.

Article 8 of the United Nations Convention against Transnational Organised Crime (UNTOC) criminalises corruption in organised crime as it relates to laundering of corruption proceeds. However, UNTOC does not recognise corruption and bribery as an expediting mechanism for organised crimes such as human trafficking and drug trafficking. The preamble to the United Nations Convention against Corruption (UNCAC) recognises the links between corruption and other organised crimes and economic crimes, including money laundering. However, the Convention does not address corruption in human trafficking specifically. Article 21 of UNCAC criminalises bribery in the private sector when committed in the course of economic, financial or commercial activities. Of the three scenarios, none covers bribery for purposes of human trafficking or bribery to facilitate another crime in the private sector.

Regional instruments adopt the same approach and so do most of the national instruments. The African Union Convention on Preventing and Combating Corruption provides a list of offences of corruption, but apart from bribery of public officials generally, there is no direct focus on bribery that expedites organised crime or human trafficking

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1 Adopted on 17 August 2008 and entered into force on 22 February 2013.

2 Article 5 of the Protocol.

involving public officials or foreign public officials. Similarly, Article 3 of the SADC Protocol against Corruption provides for acts of corruption such as accepting or soliciting or offering anything of value by a public official for any act or omission in performance of his official duties. Other offences under the provision include diversion of property or money belonging to the state by a public official; offering, soliciting or accepting an undue advantage in the private sector in breach of duties; using improper influence to obtain an undue advantage; and concealment of any property obtained from corrupt acts. Article 3(2) of the Protocol applies also to any other acts of corruption recognised under mutual agreements between two or more SADC member states. This extension of applicable corrupt acts may be helpful where the relevant member states have extensive and exhaustive lists of the corruption offences.

Anti-corruption laws and anti-trafficking laws for most SADC member states follow the approach taken by the SADC Protocol, while some have extended the list of corruption crimes without specifically addressing corruption committed for purposes of expediting organised crime as such. For instance, the Malawi Corrupt Practices Act criminalises corruption for both private and public officials and agents. The Act provides for specific situations such as bribery for purposes of influencing the award of contracts, procuring tenders corruptly and bidding at auction sales corruptly.<sup>3</sup> None of the corrupt acts refers to aiding or abetting another crime, such as human trafficking.

By contrast, the South African law on corruption makes some effort to recognise transnational corruption. The South African Prevention and Combating of Corrupt Activities Act recognises corruption as a criminal phenomenon that crosses borders.<sup>4</sup> This is a commendable step, despite the fact that the statute gives no specific recognition to the role of corruption in expediting organised crime. Simply recognising the fact that corruption is a transnational crime is very significant in so far as its presence in organised crime is concerned.

Generally, under UNCAC and the regional and national anti-corruption statutes, the transnational aspect of corruption pertains to concealment of proceeds of corruption, which may involve depositing them in banks in foreign countries. Another scenario of

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3 Chapter IV of the Malawi Corrupt Practices Act 7 of 2004.

4 Paragraph 6 of the Preamble to the Prevention and Combating of Corrupt Activities Act 12 of 2004.



transnational corruption involves foreign public officials. The UNCAC definition of a foreign public official refers to high-level officials who might be involved in bribery for purposes of obtaining contracts. As a rule, the foreign public official will have visited another country or will have had dealings in another country whilst officially representing his nation or a public international organisation. The UNCAC definition of a foreign public official has a limited spectrum because it does not necessarily encompass low-level government officials, such as border, visa and passport officers who may facilitate human trafficking. As a result, confronting corruption in relation to transnational organised crime might require extension of the definition of a foreign public official.

Some SADC countries have developed their own lists of corrupt activities while others have adopted the SADC Protocol list *verbatim*. For instance, in Botswana, the Corruption and Economic Crime Act lists offences such as corruption of a public officer, corruption in respect of official transactions, corrupt transactions by agents, bribery for giving assistance to obtain contracts, and cheating of public revenue.<sup>5</sup> The Act provides for many offences of corruption but it does not cover corruption related to expediting organised crime or human trafficking.

In Zambia, Part III of the Anti-Corruption Act criminalises corrupt practices involving public officers and foreign public officials, corrupt transactions by private bodies and agents, abuse of authority and corruption of witnesses.<sup>6</sup> Perhaps, in the case of corruption of a witness, the investigation might lead to the discovery of corruption involving criminal syndicates and public officers or their agents. In other words, some information from the witness corruption case might unveil the presence of organised criminal activities. However, this remains hypothetical because it is not an obvious possibility for an investigator to consider a case of organised crime unless the witness provides some hints in that regard.

In sum, in their legislation on corruption most African countries have adopted the SADC Protocol approach, while some, especially South Africa, have made adjustments to recognise specific authorities such as the judiciary and prosecution authorities. This is discussed further in §3.4 below.

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5 Chapter IV of the Botswana Corruption and Economic Crime Act 8 of 2005.

6 See Sections 19, 20, 22, 24 and 25 of the Zambia Anti-Corruption Act 3 of 2010.

In America, the Foreign Corrupt Practices (FCPA) covers a wide spectrum of foreign public officials, which coverage may include low-ranking foreign public officials. According to Ropes & Ray, since corruption is an essential part of human trafficking, the FCPA potentially can be used as an anti-human trafficking tool.<sup>7</sup> The FCPA defines “foreign official” to include both high-ranking officials and low-level employees in public service “acting in an official capacity for or on behalf of any such [foreign] government or department, agency, or instrumentality”.<sup>8</sup> The low-level officials include secretaries and administrative employees such as officers who issue passports and visas.<sup>9</sup> The FCPA’s wide definition of a foreign official provides an opportunity to confront corruption that may be perpetrated in the chain of human trafficking. The chain of human trafficking typically involves low-level government employees from the source country and the destination country.

Thus, although the FCPA has never been applied in the human trafficking context, initiating FCPA enforcement actions against these bribes could potentially disrupt the human trafficking chain and encourage a rise in human trafficking compliance efforts. Indeed, the US government can and should do more, including using the Foreign Corrupt Practices Act and other federal statutes to clamp down on all companies that turn a blind eye to trafficking by their subcontractors and other agents.<sup>10</sup>

Under the FCPA, customs officers are often the recipients of bribes to allow goods of multi-national companies to be inspected and cleared. Some companies and agents may bribe the customs officials to allow trafficked persons to pass through the border or enter a country without reporting the matter. According to Ropes & Gray:

The most common recipients of bribes in the human trafficking chain likely qualify as foreign officials under the FCPA, including labour officers that grant work permits, immigration officials that issue visas and passports, and law enforcement personnel that police trafficking.<sup>11</sup>

They argue that combined efforts to implement anti-corruption laws and the laws on human trafficking<sup>12</sup> can address human trafficking comprehensively.<sup>13</sup>

Corruption involving foreign public officials is not dealt with in the SADC Protocol against Corruption. Article 1 of the Protocol defines a public official as a person employed by

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7 Ropes & Gray (2015) at 3.

8 Section 78DD1 (2B)(3) of the US Foreign Corrupt Practices Act of 1977.

9 Ropes & Gray (2015) at 7.

10 Ropes & Gray (2015) at 3.

11 Ropes & Gray (2015) at 8.

12 US Trafficking Victims’ Protection Act, 2000.

13 Ropes & Gray (2015) at 3.

the state and it does not include a foreign public official. This omission makes it difficult for the Protocol to be used as an instrument to address corruption in those stages of the chain of human trafficking which involve foreign public officers. Similarly, the African Union Convention on Preventing and Combating Corruption gives only a general definition of a public official and does not provide expressly for corruption by foreign public officials. Whether the given definition can be construed to include a foreign public official is subject to interpretation.

The omission of provisions regarding foreign public officials in the AU Convention and SADC Protocol might have occurred because they were adopted earlier than UNCAC, which does provide for corruption by foreign public officials. The African statutes, therefore, have to follow a more complex route in order to apply to human trafficking, as compared to the FCPA. It should be noted also that UNCAC's definition of a foreign public official in Article 2(b) does not indicate clearly whether low-ranking foreign public officials are included or not. The Convention focuses on officials who represent their countries or public international organisations in high-ranking positions. It thus may prove problematic to stretch its application to foreign officials such as police officers at borders. Be that as it may, after the adoption of UNCAC, both the SADC Protocol and the AU Convention ought to have been amended to align them with UNCAC, the South African anti-corruption laws and the FCPA. Indeed, all the anti-corruption statutes ought to go further than that and directly provide for corruption in human trafficking and other organised crimes.

The African Court of Justice and Human Rights, as envisaged in the Malabo Protocol, recognises both corruption and human trafficking as international core crimes of great concern for Africa.<sup>14</sup> Although the Malabo Protocol makes this significant recognition, it addresses the two crimes separately. It does not address the links between corruption and human trafficking in any way. The Malabo Protocol is one of the recent regional statutes covering both corruption and human trafficking as international crimes. As such, it would be the best statute to address the intersecting features of corruption and human trafficking or of corruption and organised crime in general. Addressing the links expressly can be useful as

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14 Articles 28A(1), 28(I) and 28(J) of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights. The Protocol was adopted on 27 June 2014 but has not entered into force yet.

the Malabo Protocol intends to complement national and regional efforts aimed at combating human trafficking.<sup>15</sup>

Thus far, none of the instruments gives express recognition to the connections between human trafficking and corruption. They do not comprehend the use of corruption as a tool to expedite human trafficking. While corruption is associated with money laundering in UNCAC, UNCTOC, the AU Convention and the Malabo Protocol, nothing of a similar nature is provided in relation to human trafficking. The statutes only recognise corruption as a predicate offence for money laundering.<sup>16</sup> Likewise, human trafficking is recognised as a predicate offence for money laundering, whereby proceeds of human trafficking may be the subject of money laundering.<sup>17</sup>

Most anti-corruption legal instruments focus on corruption by national public officials or foreign public officials. Articles 15 and 16 of UNCAC criminalise passive and active bribery of national and foreign public officials respectively. Bribery of national public officials may be applicable to corruption associated with the recruitment stage of human trafficking, before the victims are taken out of the source country. However, in cross-border transactions, when corrupt officials of various countries become involved in the trafficking of victims from different countries, the application of UNCAC or national anti-corruption laws may face challenges. Jurisdictional issues may come into play, including the political will to prosecute persons of various nationalities. In the absence of clear regulations, poor countries may not have the assertive power to demand justice in another country for its trafficked persons. For instance, when Malawian girls escaped from human traffickers in Kuwait, the government of Malawi failed to secure prosecution of the perpetrators either in Kuwait or Malawi.<sup>18</sup>

Rules of procedure on substantive and evidentiary matters also may be different in different jurisdictions. According to Snider & Kidane, the fact that the AU Convention leaves it to States Parties to determine their own offences and evidentiary rules in transnational

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15 Under Paragraph 17 of the Preamble, the Protocol aims at complementing national and continental bodies in preventing serious violations of human and people's rights.

16 Article 6(2)(b) of UNCTOC.

17 Cox (2011) at 6.

18 Ministry of Gender Report (2016) at 8.

corruption can cause inconsistency and conflicting application.<sup>19</sup> According to Cirineo, criminal activities associated with trafficking of human beings may not be included in human trafficking case files as a result of differences in classification or identification of the offences.<sup>20</sup> He considers that this usually occurs because of the failure to conduct thorough investigations into human trafficking in order to uncover the associated offences.<sup>21</sup>

Extending the application of the existing anti-corruption legal regime to human trafficking cases may be more theoretical than practical. Prosecutors use the law as it is. Therefore, it is imperative to have clear and specific definitions of the elements of the offences. Furthermore, the framers of both anti-corruption laws and anti-human trafficking laws might not have intended that corruption be considered as a supplementary element for organised crimes in this context.

As for the anti-corruption policy framework, at continental level, the African Union adopted the Ouagadougou Action Plan to prevent and combat trafficking of persons, especially women and children, by regional co-operation.<sup>22</sup> Regionally, SADC has an operative 10-year Anti-Human Trafficking Action Plan which extends to 2019. The Economic Community of West African States (ECOWAS) also adopted a Declaration on the Fight against Trafficking in Persons in 2001. All these action plans outline specific measures to deal with corruption that expedites human trafficking.

Transparency International defines corruption as the abuse of entrusted power for private gain.<sup>23</sup> However, according to Richards, corruption in the context of trafficking of people is more than abuse of power, as it leads also to human rights violations.<sup>24</sup> According to Article 5(3) of UNCAC:

Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.

The Convention acknowledges that anti-corruption law is not static because its applicability to contemporary developments is subject to assessment with a view to combating

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19 Snider & Kidane (2007) at 724.

20 Cirineo (2010) at 29–43.

21 Cirineo (2010) at 29-43.

22 African Union Action Plan (2006).

23 Transparency International Corruption Perceptions Index (2011) at 1.

24 Richards (2004) at 147-168.

corruption in all its forms. Therefore, the Convention, in this context, allows States Parties to evaluate or review the adequacy of their anti-corruption laws for preventing corruption in human trafficking.

The United Nations Office on Drugs and Crimes (UNODC) recognised the existing relationship between the two crimes in its 2011 Issue Paper.<sup>25</sup> The publication of an issue paper on the subject is a milestone in the development of legal and policy regimes in this regard. Issues captured in the paper are the subject of stakeholder discussions to devise ways of tackling the problem through legal reform, policy reform or other socio-cultural approaches.

### **3.3 Anti-Human Trafficking and Anti-Corruption Institutions**

The absence of a tangible relationship between anti-human trafficking laws and anti-corruption laws has resulted in establishment of anti-corruption bodies and anti-human trafficking entities that are independent of one another. In most States Parties to UNCAC, there is at least one body to deal with corruption,<sup>26</sup> while police agencies generally deal with human trafficking. The institutions work parallel to one another. Furthermore, countries that have adopted a unitary strategy for anti-corruption at the institutional level may find it hard to address the varieties of corruption present in almost every sector, including anti-human trafficking and its institutions.

When the law provides for collaboration, it is easy for the institutions to co-ordinate their efforts. They can formulate integrated policies and action plans. Unfortunately, there are no such established collaborations between anti-corruption and anti-human trafficking entities at national, regional or international level. Transparency International notes the importance of anti-corruption and anti-trafficking institutions working together. According to Transparency International, there will be no success in dealing with human trafficking if the linkages between corruption and human trafficking are ignored or if the two issues are tackled independently of each other.<sup>27</sup>

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25 UNODC Issue Paper (2011) at 7.

26 Article 6 of UNCAC requires the establishment of an anti-corruption body or bodies.

27 Transparency International Working Paper (2011) at 1.

Only by addressing corruption and human trafficking together will related efforts to stop human trafficking be more successful.<sup>28</sup>

According to the Organisation for Economic Co-operation and Development (OECD), anti-corruption institutions can be effective if they are linked with other public institutions.<sup>29</sup> The rationale is that if the other public institutions are defective or deficient, the anti-corruption institution is likely not to succeed in its anti-corruption efforts.<sup>30</sup> According to the 2011 UNODC Issue Paper, attention must be given to:

the inclusion of anti-corruption issues in anti-trafficking action plans, the creation of specialised multi-agency units and the organisation of multi-agency training, and the establishment of codes of conduct.<sup>31</sup>

Linking anti-corruption to anti-human trafficking action plans can be useful in the absence of specific rules and co-ordinating bodies. Establishing multi-agency bodies may be helpful also to address the gap. For instance, the South African Prevention and Combating of Corrupt Activities Act acknowledges that preventing and combating corruption and related offences require a multi-disciplinary, comprehensive and integrated approach.<sup>32</sup> The statute's approach can justify using anti-corruption mechanisms in various agencies, including the ones dealing with organised crimes and human trafficking.

### **3.4 Targeting Corruption in Human Trafficking**

Human trafficking involves many participants in an organised criminal group. Each of the roles in the process of trafficking in persons includes offences over and above human trafficking itself.

According to Graycar, each role in the human trafficking chain may have particular vulnerabilities to investigation.<sup>33</sup> He identifies the roles as: arranger or investor; transporters; corrupt public officials; informers; guides or crew members; supporting personnel and specialists; debt collectors; and money movers.<sup>34</sup> Transparency International

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28 Transparency International Working Paper (2011) at 1.

29 OECD Review of Models of Anti-Corruption Network (2008).

30 OECD (2008) at 2.

31 UNODC Issue Paper (2011) at 8.

32 Paragraph 7 of the Preamble.

33 Graycar (2002) at 34.

34 Graycar (2002) at 35.

classifies the roles according to stages, namely, recruitment, transportation and exploitation, where corruption is used to prevent the traffickers from being discovered.<sup>35</sup>

#### **3.4.1 Recruitment Stage**

During the myriad of recruitment methods, traffickers may use corruption to secure identity and travel documents for their victims.<sup>36</sup> For instance, in Russia between 1995 and 1997, the police uncovered more than 700 cases linking corrupt bureaucrats with organised crime in its various stages.<sup>37</sup> In the Philippines, government officials were arrested alongside fake recruitment agencies for allegedly trafficking about 100 people from that country.<sup>38</sup> The government officials received bribes to ignore the operations of the traffickers.<sup>39</sup>

Corruption in this stage may involve public officers facilitating irregular adoption of children who are subject to exploitation by child traffickers. Investigations by the US government into questionable adoptions of Russian orphans unveiled corrupt courts and adoption officials who allegedly falsified documents or turned a blind eye to incorrect adoption paperwork in return for bribes in Russia, the Ukraine and Romania.<sup>40</sup>

Bribery and other corrupt acts that expedite the recruitment stage of human trafficking occur in the source country. The local anti-corruption laws may be applicable. Specific legal or policy recognition of corruption at this stage can guide the investigators as to the likely offences, besides human trafficking itself, which require thorough investigation.

#### **3.4.2 Arranger or Investor**

The arranger or investor is the person who directs and finances the operations and maintains connections with high-ranking officials of government.<sup>41</sup> However, tracing those connections and any corrupt acts involved may be hard. Often, the investor uses his agents to pay bribes to public officials or perform illegal acts on his behalf. This aspect operates in terms of a form of corruption known as clientelism. The investor provides his agents with resources to ensnare the public officials into active or passive corruption.

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35 Transparency International Working Paper (2011) at 1.  
36 Glinkina (1998) at 16-23.  
37 Glinkina (1998) at 16-23.  
38 Transparency International Working Paper (2011) at 3.  
39 Transparency International Working Paper (2011) at 3.  
40 Holmes (2010) at 87.  
41 Graycar (2002) at 35.



The investor can be a person with a top public office who uses public resources to achieve these ends. In other words, a public official may act as the investor, deploying public resources as capital in order to make profit. Here corruption takes the form of embezzlement of public resources for one's own benefit or third party's benefit, contrary to Article 17 of UNCAC. The investor can use proceeds of corruption or money from other sources to commit bribery in furtherance of organised crime.

### **3.4.3 Transportation Stage**

During transportation of trafficked persons across check-points and borders, corruption is very common and very profitable.<sup>42</sup> Border officials are in a position of great power to block the trafficking chain or to allow it to proceed. If these officials are corrupt, they contribute to the success of the trafficking operations, even if it means breaking the law.

Border officials are entrusted with power and discretion which they can manipulate easily. They participate in human trafficking in two ways: either by taking bribes from the human traffickers or by directly partnering with them to guide the trafficking operations.<sup>43</sup> In this regard, they ensure that documentation for vehicles or vessels carrying trafficked persons are not inspected properly.<sup>44</sup>

In order to disrupt the transportation stage, a comprehensive legal or policy framework to combat human trafficking, including facilitative forms of corruption, is required.

### **3.4.4 Exploitation at Destination**

At destination, trafficked persons are exploited in several ways. At this stage networks of hotel owners are bribed to accommodate the victims. Local police and other public officials are bribed also to turn a blind eye to the exploitative activities.<sup>45</sup> For instance, in India human traffickers and brothel owners bribe the local police to prevent arrest or prosecution.<sup>46</sup> When arrests are made, bribes are paid to police officers, prosecutors and judges to discontinue the cases or drop the charges. There have been strong allegations of

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42 Transparency International Working Paper (2011) at 4.

43 Richards (2004) at 147-168.

44 Transparency International Working Paper (2011) at 4.

45 Transparency International Working Paper (2011) at 5.

46 Human Rights Watch Rape for Profit Report (1995) at 4.

links between judges and human traffickers for purposes of stalling or preventing investigations in Spain and Germany.<sup>47</sup>

In the destination country, corruption can be used by a whole range of participants for the exploitation of victims in order to keep the wheels of the trafficking operation turning.<sup>48</sup> Police officers, immigration officers and judicial officers may be bribed in order to shield human trafficking syndicates in the destination country. Even after being exploited and deported, trafficked people remain at risk of being re-trafficked with the assistance of corrupt officials who fear that their identities will be disclosed.

Regulations or policies that specifically target the participants in this stage will keep investigators better informed of crimes that are committed alongside human trafficking. The rationale must be to weaken the contribution which corruption makes to human trafficking and other organised crimes. Generally, organised crime is a large-scale and complex criminal activity by groups, regardless of how loosely or tightly organised they are.<sup>49</sup> Weakening these networks is a possible way of dealing with the problem. Just as opportunities for corruption exist from the beginning of the process of human trafficking to the end, so the law must target corruption in all those stages.

Corruption may flourish where action is avoided by those with an opportunity to halt human trafficking or prevent it from taking place. Such inaction may include consciously ignoring acts and circumstances that suggest a possible case of human trafficking or failing to follow up on indicators that trafficked people are exploited upon arrival in the destination country.<sup>50</sup>

### **3.4.5 Targeting the Criminal Justice System**

Corruption to facilitate human trafficking could involve officials in criminal justice system, such as prosecutors and judicial officers. According to Richards, these actors fall along a spectrum of active participants in known corrupt practices and negligent or passive persons whose behaviour allows corruption to happen.<sup>51</sup>

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47 Gounev & Bezlov (2010) at 14.

48 Richards (2004) at 147-168.

49 United Nations Fifth UN Congress (1976)A/CONF.169/15/Add.1.

50 Hagedorn *et al* (2013) at 1.

51 Richards (2004) at 147-168.

Examples of active involvement include violating duties, accepting bribes, facilitating transactions, or participating in organising trafficking schedules.<sup>52</sup> Passive participation may include omitting to act, or negligently ignoring indicators of human trafficking that may require further investigation. Both active and passive involvement in corruption may take place at any stage in the process of human trafficking, that is, at the source, in transit or at the destination.

Of course, one expects that when a case of trafficking in persons is brought to court, justice will prevail. However, the situation in practice reveals a contrary perspective. Commencing trial proceedings against human traffickers may not meet the ends of justice. Prosecution of human traffickers encounters challenges when the law enforcers are bribed to protect the traffickers. According to McCarthy, in Russia, corruption features as one of the obstacles to the successful prosecution of human traffickers.<sup>53</sup> Despite the availability of enough evidence, cases routinely are stalled and left incomplete.<sup>54</sup>

In 2015, a survey carried out in Mexico revealed that government officials are very corrupt and they hinder successful prevention and prosecution of human trafficking.<sup>55</sup> The survey revealed also the general sense of a lack of the rule of law to address the problem.<sup>56</sup> Law authorities may destroy testimonies deliberately or deport trafficked persons before evidence can be provided to support a tangible trafficking prosecution.<sup>57</sup> Hagedorn *et al* report that:

Since 1960 a total of 295 Chicago Police officers have been convicted of serious crimes, such as drug dealing, beatings of civilians, corruption, destroying evidence, protecting mobsters, theft and murder according to Chicago Police Department (CPD) Report.<sup>58</sup>

They continue:

Corruption has long persisted within the CPD and continues to be a serious problem with police aiding and abetting organised crimes.<sup>59</sup>

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52 Richards (2004) at 147-168.

53 McCarthy (2010) at 6.

54 McCarthy (2010) at 6.

55 Rietig (2015) at 14.

56 Rietig (2015) at 14.

57 Rietig (2015) at 18.

58 Hagedorn *et al* (2013) at 1.

59 Hagedorn *et al* (2013) at 2.

It is evident that the existence of links between corruption and organised crime is an old problem. Legal and policy recognition of the problem has lagged behind for centuries. This has inhibited the fight against organised crime in general and human trafficking in particular.

A court case from Argentina demonstrates some of the ways in which corruption plays a role in trafficking crimes. Some officers at the Department for Migration fraudulently issued residence permits for victims who legally were not entitled to residency.<sup>60</sup> As part of the exploitation stage, the traffickers also were “taxing” the victims in order to cover the costs connected with the bribes.<sup>61</sup>

Putting in place safeguards such as strong monitoring and reporting mechanisms for human trafficking cases may be useful. Policies can enhance free access to information about progress of the cases by, for instance, civil society organisations and the media.

The South African Prevention and Combating of Corrupt Activities Act criminalises corruption by judicial officers and prosecuting authorities. In Section 8, the Act provides for corrupt activities relating to judicial officers such as judges and magistrates. The provision criminalises abuse of a position of authority,<sup>62</sup> delaying, hindering or preventing performance of a judicial function and acting in a biased and improper manner in making judicial decisions.<sup>63</sup> Section 9 of the Act criminalises corrupt activities by members of the prosecuting authority, such as the police and the prosecutors. Delaying and hindering prosecution of cases and inadequate performance of prosecution also are criminalised. Although the Act provides for public officials in general, having specific provisions targeting vulnerable public officials is commendable in terms of ensuring that corrupt activities in those areas are addressed consciously. Public corruption not only undermines public trust in law enforcement but also corruption-related prosecutions and lawsuits.<sup>64</sup>

Offences arising from the violation of Sections 8 and 9 of the South African Act may give an indication of possible corrupt acts that may be aimed at expediting operations of organised criminal groups. The South African Act can provide guidelines for preparing implementation plans and policies that are specific to and targeted at areas of corruption

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60 UNODC (2016) at 61.

61 UNODC (2016) at 61.

62 Section 8(1)(b)(ii) of the Act.

63 Section 8(2)(c)&(e) of the Act.

64 Hagedorn *et al* (2013) at 5.

related to human trafficking. Under the South African Act, the likelihood of discovering corrupt acts in the criminal justice system is high, as compared to jurisdictions that only refer to “public officials” without identifying some of the most vulnerable ones.

Whether implementation of the South African law actually occurs is not a focus of this paper. The law is the starting point and implementation at least is possible if the law is available. However, if there is a gap in the law itself, implementation is a non-starter. The South African approach can offer valuable lessons to the SADC region and other countries. However, elaborated law encompassing organised crime and corruption remains important.

### **3.5 SADC and Transnational Corruption in Human Trafficking**

Although the focus of this paper is the SADC region, examples from all over the world have been used because the problem is not one for the SADC region alone. However, as noted in Chapter One, the problem is rampant in the SADC region. The reason for locating the study at a regional level is because the crimes under discussion have a transnational character. It follows that the strategies to address the problem must take transnational approaches.

SADC has been issuing periodical policy briefs and making action plans and laws aimed at fighting human trafficking in the region. It is important for SADC to implement the strategies against human trafficking with knowledge of the role of corruption. There is a need for visible recognition of the role of corruption in the laws, policies and action plans. The policies and action plans can be tailored to address the gap. Since both the crimes of human trafficking and corruption involve different nations, the need for enhanced international and regional co-operation must be emphasised.

International laws, conventions or treaties are a representation of the wishes of States Parties.<sup>65</sup> International law plays an integral role in framing the content of national laws. Norms adopted by global and regional organisations influence and help to harmonise national legal and policy frameworks.<sup>66</sup> In this context, SADC member states may be able to regulate corruption in human trafficking effectively.

Often, countries which withdraw from agreements across their regions tend to curtail enjoyment of certain rights by members who show loyalty to the region. Most

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65 McDougal (1959) Series Paper 2614.

66 Hansungule (2013) at 71.

international instruments also call for uniform or similar responses from States Parties in formulating laws and policies. This encourages the sharing of best practices within the regions or at international level. The regional African statutes on anti-corruption encourage also the spirit of collective responsibility among members. The AU Convention on Preventing and Combating Corruption provides for international co-operation among States Parties in the investigation of corruption crimes. In this regard, Article 19(3) of the Convention states that:

in the spirit of international co-operation, States Parties shall encourage all countries to take legislative measures to prevent corrupt public officials from enjoying ill-acquired assets by freezing their foreign accounts and facilitating the repatriation of stolen or illegally acquired monies to the countries of origin.

This is a clear acknowledgment that preventing and fighting corruption requires collective efforts among states. Similarly, Article 7 of the SADC Protocol against Corruption records the need for States Parties to harmonise their policies and laws in accordance with the Protocol.

The prevention and eradication of corruption is a responsibility of all states and they must co-operate with one another to this end. They can call upon the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations. Their combined efforts in this area can promote the prevention and combating of human trafficking effectively.

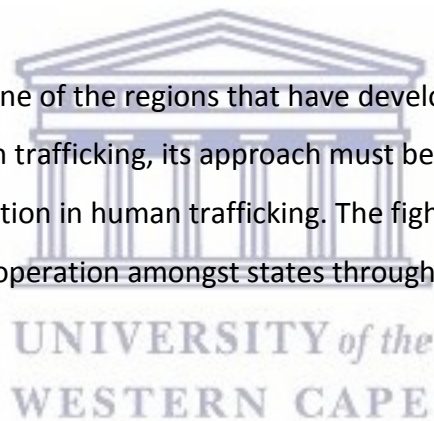
The stakeholders can deliberate on important issues, such as how to use whistle blowing effectively in dealing with these clandestine crimes. Due to powerful networks of transnational organised criminals, persons and public officials of good will may be afraid to reveal the malpractices. They choose to be passive for fear of being targeted by the criminals. Whistle blowing is covered by UNCAC but in a limited manner, as little, if any, protection is provided for whistleblowers. However, in the context of human trafficking and corruption, there must be comprehensive deliberations among the concerned states, as one of the keys to address the problem. SADC may attempt also to influence the UNODC to extend its focus on the subject and consider specific regulations aimed at dealing with corruption in human trafficking.

### 3.6 Conclusion

In a nutshell, this chapter has shown that there are wide gaps in laws and policies regarding correlations between anti-human trafficking and anti-corruption. This leads to a lack of co-ordinated action plans between bodies working in anti-corruption and anti-human trafficking in the SADC region as well as across the globe. Enhanced co-ordination among the concerned nations is one of the keys to dealing with corruption that expedites human trafficking.

Within the ambit of current laws and policies, enhanced monitoring of networks of organised crimes can assist in targeting the recruitment, transportation and exploitation stages of human trafficking in which corruption is seen. There is a need also to pursue enhanced integrity in the criminal justice system by strengthening the application of codes of conduct, including strong monitoring mechanisms for possible prosecution of human trafficking cases.

Finally, since SADC is one of the regions that have developed periodical action plans to prevent and combat human trafficking, its approach must be extended to include strategies that address corruption in human trafficking. The fight against transnational crimes is strengthened by co-operation amongst states through bilateral and other working agreements.



## CHAPTER FOUR

### CONCLUSION AND RECOMMENDATIONS

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#### 4.1 Conclusion

Human trafficking remains a lucrative crime for organised criminal groups in the SADC region. Vulnerable women, men and children in the SADC region increasingly are prone to be trafficked within and without Africa. Most African countries face plundering of public assets which has the effect of denying the public access to the most basic resources. This leads to hopelessness and desperation in people. Persons in vulnerable situations are recruited into trafficking either by their own relatives or by persons they trust. They fall prey to the conniving tactics of human traffickers who end up exploiting them through brutal sexual acts, hard labour with little or no pay, removal of organs and many other atrocities. The victims are wooed by promises of a better life elsewhere, whether within their country, in another country within Africa, or overseas in Europe, Asia and America.

The SADC region and other regions on the continent have been implementing various laws, policies and action plans to prevent and combat human trafficking. However, the problem has continued to escalate, according to the recent SADC Baseline Survey on human trafficking.<sup>1</sup> Human trafficking is profitable for most organised criminals both in Africa and overseas. The criminals operate tactically and stay ahead of law enforcers in order to avoid interception and prosecution. They ensure that their criminal acts remain clandestine. The use of corruption in human trafficking enhances the secretive nature of the crime by obscuring possible clues for investigators.

The research paper has discussed at length how corruption expedites human trafficking. It has shown that the chain of human trafficking is complex and that corruption occurs at any and every stage of the chain. Public officers accept or solicit bribes in the recruitment, transportation and exploitation stages in order to keep human traffickers from being discovered. Most of the corruption involved is petty corruption. It includes bribery, whereby a public official acquires an undue advantage in order to omit performance of public duties.<sup>2</sup> Embezzlement of public resources may be applicable to the funding criminal

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1 SADC Baseline Survey (2016).

2 See Article 3(a) & (b) of the SADC Protocol against Corruption.



groups. However, the research paper has focused on petty corruption and the advantages it adds to human trafficking. This type of corruption is used throughout the recruitment, transportation and exploitation stages. When operations are exposed and the perpetrators become subjects of the criminal justice system, corruption is used also to hinder successful prosecution of human traffickers.

The research paper has suggested that investigations into the human trafficking chain ought to consider also other possible cognate crimes. Assessment of the linkages between corruption and human trafficking suggests that fighting human trafficking successfully requires a comprehensive approach. This should include thorough investigations of human trafficking cases in order to discover criminal acts, such as corruption, that expedite human trafficking.

Human trafficking and its associated crimes violate the human rights of victims. As discussed in Chapter Two, people have the right to be secured by the state as regards freedom from all forms of torture and access to justice. States are mandated to provide protection for their people under international human rights law. When the state fails in this duty, the people are vulnerable and exposed to human traffickers and other opportunists. Further, the atrocities suffered at the hands of human traffickers have been described as crimes against humanity. Persons are exposed to torture of several types, such as cruel sexual acts, physical abuse, mutilation of human parts and exploitative labour, by organised criminals. In particular, the study unveiled the serious effects of corruption in human trafficking. The symbiotic relationship between the two crimes has been recognised in recent debates by institutions dealing with human trafficking, such as the UNODC, and those dealing with corruption, such as Transparency International. Thus, corruption, as one of the main ancillary crimes for human trafficking, requires special attention in the fight against the latter.

Definitions of human trafficking provided by various international and regional legal instruments are similar. Human trafficking virtually qualifies as modern day slavery, according to several scholars. By contrast, definitions of corruption differ significantly across the international and regional instruments. Also, states have adopted definitions of corruption to suit their diverse contexts. The key similarity between human trafficking and

corruption is that both crimes are transnational and have catastrophic effects on developing countries.

Corruption is used in most organised crimes in order to stone wall law enforcers. The aim is to prevent them from discovering that corruption is used to prevent criminals from being reported or from being prosecuted successfully. Corruption of public officials plays a key role in insulating the perpetrators of human trafficking from prosecution through destruction of evidence or omission to report suspicious acts.

Chapter Three analysed the extent to which the existing international and regional legal and policy framework addresses the linkages between corruption and human trafficking. Most anti-corruption laws and policies do not deal with corruption in human trafficking. Similarly, SADC policies and strategic plans do not address the corruption aspects involved in human trafficking. It follows that institutions working on anti-corruption issues are not linked to anti-human trafficking institutions. They work independently of one another. It is important for these institutions to collaborate in formulating an integrated approach to deal with human trafficking. Lack of directly inter-linked anti-corruption and anti-human trafficking laws, policies and institutions poses challenges for the prevention and prosecution of human trafficking.

Anti-corruption laws may be applicable during recruitment stage of human trafficking, before the victims are taken out of the source country. However, legal complications may arise at the transportation and exploitation stages, where two or more legal frameworks may be applicable. Lack of uniform laws among countries may hinder successful investigation and prosecution of human trafficking and its associated corruption.

Regional bodies such as SADC formulate periodical strategies and plans for the implementation of various laws. If SADC decides to focus on fighting corruption in human trafficking, member states may be motivated to do so as well. Regional efforts to enhance co-ordination between anti-corruption bodies and anti-human trafficking bodies almost certainly will trickle down to the member states. Recommendations made at heads of states conferences most probably will have a direct effect on their government's operations to address the common challenges in the region.

Finally, the importance of strong transnational co-operation in fighting transnational crimes cannot be overestimated. Most conventions and protocols have emphasised this requirement. In the absence of direct regulation, enhanced co-operation amongst SADC member states is the best tool for fighting human trafficking and the corruption which accompanies it.

## **4.2 Recommendations**

### **4.2.1 Inclusion of Anti-Corruption in Anti-Human Trafficking Action Plans**

It is recommended that the SADC anti-human trafficking policies and action plans include anti-corruption issues. According to the UNODC Issue Paper of 2011, this is one of the effective ways of addressing the gap. Specific areas of human trafficking that may be expedited by corruption must be researched well in order to establish properly targeted plans to address the problem successfully.

### **4.2.2 Enhanced Co-ordination between Anti-Corruption Bodies and Anti-Human Trafficking Bodies**

The research has shown that independent operations of anti-human trafficking bodies and anti-corruption bodies pose challenges to addressing corruption in human trafficking. Most anti-human trafficking personnel may not be experienced or skilled in corruption issues. Co-ordinated work plans between the two areas can help enhance the skills of both the bodies to deal with the intersections of the two crimes. The creation of specialised multi-agency units and the organisation of multi-agency training can address the linkages between corruption and human trafficking.

### **4.2.3 Review of Regional Legal Framework**

The development of background papers by the OECD and Transparency International and the Issue Paper by the UNODC constitute a good starting point for discussions of the possibilities of regulating corruption in human trafficking. Likewise, it is an opportunity for regions such as the AU and SADC to begin to consider how the gap may be addressed legally. Due to the fact that transnational crimes such as corruption and human trafficking are committed across many countries, uniform application of the law is desirable. The challenges are similar and therefore similar solutions might work.

#### **4.2.4 Strengthen Operating Standards, Ethics and Monitoring Mechanisms**

The UNODC recommends the establishment of codes of conduct for public officers who are located where corruption can expedite human trafficking.<sup>3</sup> Establishing guidelines for investigators working in both corruption and human trafficking is recommended.

Investigators must probe the finances of persons suspected of both corruption and human trafficking. There must be enhanced monitoring of the sectors at risk of aiding human trafficking in all stages of human trafficking chain.<sup>4</sup>

#### **4.2.5 Awareness-Raising Campaigns**

Regional bodies such as SADC have the power to influence the agenda of awareness campaigns that can be adopted by their member states. It is a suitable forum to publicise the campaign against human trafficking. Communities must be aware that corruption can disguise human trafficking. Most perpetrators in the recruitment stage are close relations of the victims and are motivated by the profit to be made by selling their relatives to traffickers. Awareness campaigns against this kind of corruption can keep community leaders and the general population informed of the traps of human trafficking. The campaign can condemn such actions. Sensitisation programmes can use the media in order to reach the wider community. The media are designated actors in fighting corruption under the SADC Protocol against Corruption and UNCAC. They are placed perfectly to expose and campaign against all forms of corruption.

#### **4.2.6 Enhanced Investigations into Human Trafficking and Associated Crimes**

The UNODC encourages anti-human trafficking bodies to make use of information provided by the victims of human trafficking.<sup>5</sup> Usually, the victims may know persons involved in the organised criminal groups. According to the UNODC, NGOs compile most of this kind of information. Law enforcers can use that information to guide their investigations.<sup>6</sup> The UNODC encourages the NGOs and the international community to monitor investigations into these crimes to ensure that justice systems are enhanced. According to Richards:

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3 UNODC (2011) at 8.

4 UNODC (2011) at 8.

5 UNODC (2011) at 8.

6 UNODC (2011) at 8.

Anti-people trafficking agencies working with anti-corruption bodies would be able to tap into a broader discussion in society about creating a lack of tolerance for abuse of power, which lies at the heart of both corruption and people trafficking, and abuse of human rights, which is a cause and outcome of both corruption and people trafficking.<sup>7</sup>

Corruption and human trafficking infringe respect for humanity. Educating communities about the ills of both corruption and human trafficking may instil a moral drive in people to fight both.

#### **4.2.7 Strengthen International Co-operation**

International co-operation is one of the main tools for addressing transnational challenges. According to the UNODC:

it is recommended to strengthen international co-operation and join international conventions and monitoring systems, to organise regional networks and to seek technical assistance from international organisations and bilateral donors.<sup>8</sup>

Joint international conventions and monitoring systems for implementation of the conventions and bilateral agreements are recommended. Technical assistance from international organisations such as the UNODC, Transparency International, the OECD and the AU can be helpful in strengthening both international and regional mechanisms for fighting corruption in human trafficking.

#### **4.2.8 Encouraging Whistle blowing**

Since corruption and human trafficking are both clandestine, the role of whistleblowers in exposing these crimes is vital. Whistle blowing already is provided for under the SADC Protocol against Corruption. This provision needs to be applied to corruption in human trafficking and to organised crimes in general. The law must offer adequate protection for the whistleblowers. The whistleblowers can be national and international, depending on the stage of human trafficking, and they all need adequate protection which might have to be co-ordinated among states.

#### **4.2.9 Corruption as an Indicator of Human Trafficking Risk**

According to Richards, discovering corrupt acts might work as an early warning sign that there is a risk of persons being trafficked. Where a case of bribery or corruption is made out,

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7 Richards (2010) at 147.

8 UNODC (2011) at 8.

investigators must establish the reason behind the bribery or corruption. It may assist to uncover organised criminal acts such as human trafficking. Richards states:

Locating and combating corruption will go a long way towards [weakening trafficking syndicates]. It will expose those in immigration or travel sectors who actively or passively allow corruption to occur, and this needs to be more effectively targeted as their actions may be allowing people traffickers to do their business.<sup>9</sup>

She considers that anti-corruption strategies and programmes should provide new forms of preventing and combating human trafficking.



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9 Richards (2010) 147.

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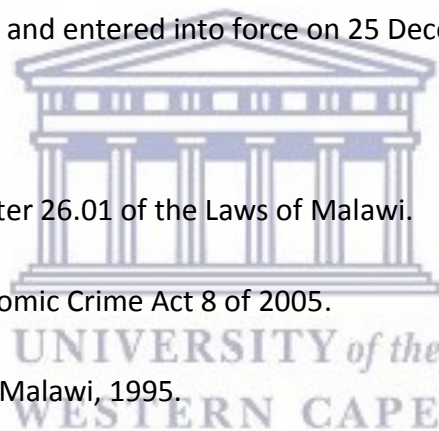
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