

Chapter 3

The Guiding Principles on Combatting Corruption related to Trafficking in Persons

Despite the close link between trafficking in persons (TIP) and corruption, there have – up until this report – not been any international instruments that aim to address these two issues jointly. This chapter presents a set of “Guiding Principles on Combatting Corruption related to Trafficking in Persons” that can guide countries intending to establish, modify or complement a framework to address TIP-related corruption.

Organised trafficking requires systematic corruption. Addressing trafficking in persons (TIP) and corruption jointly is more effective in combatting TIP-related corruption than addressing the two topics separately. The APEC Pathfinder Dialogue on “Combating Corruption and Illicit Trade across the Asia-Pacific Region” that took place in Bangkok on 23-25 September 2013, the APEC Pathfinder Dialogue II on “Strengthening the Fight Against Corruption and Illicit Trade – Partnerships for Sustainable Security” that took place in Cebu City on 26 August 2015, and the “OECD Roundtable on Combatting Corruption related to Trafficking in Persons” that took place in Cebu City on 27 August 2015 confirmed the close link between trafficking in persons and corruption, and highlighted the importance of a sound integrity framework to combat this phenomenon.

A number of countries are party to a trafficking convention (see Table 1.4 in Chapter 1) or to an anti-corruption convention. However, despite the close link between trafficking in persons and corruption, there is – up until now – no international instrument that comprehensively focuses on the important link between corruption and trafficking in persons and that aims at addressing both. This approach of addressing these two issues jointly, coupled with better cross-border co-operation, better enforcement and an increased focus on combatting corruption is key to effectively curbing trafficking in persons.

In past studies a number of gaps in preventing and combating trafficking in persons and corruption and corresponding recommendations have been identified. This section highlights the main points raised and a set of corresponding principles that can facilitate the combating of TIP-related corruption. The following Guiding Principles can provide reference for countries intending to establish, modify or complement a framework to address TIP-related corruption.

1. International co-operation and agreements

Relevant international conventions are ratified and international co-operation against corruption and trafficking in persons is promoted.

In order to address the issue of trafficking in persons efficiently, there is a need to strengthen the legal basis against corruption and trafficking in persons. This could be done by strengthening international co-operation, and by countries joining international conventions and monitoring systems. It is important that national legislation on counter-trafficking is in line with international standards concerning trafficking in persons and corruption.

Processes of international co-operation in terms of mutual legal assistance and extradition are in place and functioning.

Trafficking in persons is often transnational in nature, with 66% of detected victims being trafficked across borders (UNODC, 2014). However, the criminal justice responses to trafficking in persons generally only operate within national borders. Therefore, to efficiently be able to respond to trafficking in persons, countries would benefit from effective processes of international co-operation in terms of mutual legal assistance and extradition. An example of an initiative aimed at achieving this is the “ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases” (ASEAN,

2010) for the ASEAN region. In order to be efficient, mutual legal assistance must allow for international identification, sequestration and seizure of assets accrued by traffickers, and the procedure of mutual legal assistance should be simplified, prioritised, and accelerated. Examples of how to improve cross-border co-operation could be to link regional trafficking-in-persons focal points with regional anti-corruption focal points, and to identify and propose countermeasures to at-risk points of regional or transnational trafficking-in-persons-related corruption (for example the issuance of travel documents, border transfers and work permits). Law enforcement agencies should be encouraged to proactively share intelligence on transnational TIP networks. Law enforcement co-operation on intelligence is often an essential prerequisite to effective investigations, and it plays a complementary role to mutual legal assistance and subsequent prosecutions.

2. Jointly addressing and investigating trafficking in persons and corruption with particular focus on at-risk sectors

Strategies that address trafficking in persons and corruption, or include corruption issues in anti-trafficking plans, and vice versa, are in place.

Organised trafficking requires systemic corruption. However, few laws or strategies in place jointly address trafficking in persons and corruption. Due to the strong link between corruption/perceived levels of corruption with trafficking in persons (UNODC, 2011), countries are therefore recommended to put in place strategies that jointly address corruption and trafficking in persons, or alternatively include corruption issues in anti-trafficking plans, and vice versa. By streamlining approaches, countries can address the issue by modifying anti-corruption tools or by simply including corruption issues in existing anti-trafficking measures, in particular in trainings and strategies. The importance of ensuring sufficient levels of political will to combat trafficking-in-persons-related corruption at all levels of government should not be underestimated, and the implementation of the laws in place needs to be prioritised.

Sectors prone to trafficking-in-persons-related corruption are given priority in the implementation of relevant strategies.

When implementing the relevant strategies that address trafficking-in-persons-related corruption, countries are advised to identify and pay particular attention to vulnerable sectors and industries in their specific country context and steps that could be taken to prevent or combat the exploitation of people. This could, for example, entail regulation of labour-intensive sectors, in particular the construction, brothel, agriculture, fishing and textile industries or the foreign labour recruitment sector in a country. Countries are recommended to involve non-governmental actors as well as the private sector in the identification of at-risk sectors and the monitoring of these.

Information and resources are leveraged and shared among relevant actors.

Cases of trafficking and corruption are often dealt with separately. According to the United Nations Office on Drugs and Crime (UNODC), there is a lack of referral to the relevant authorities of 1) cases of trafficking in persons where there are indicators for corruption; and 2) referral of corruption cases where there are indicators of trafficking in persons. Co-operation is therefore essential among relevant actors to share information

and resources. This can be done through the establishment of taskforces or joint operations. It is also crucial to establish protocols between non-governmental organisations (NGOs) and law enforcement bodies to co-ordinate their activities so that both sides understand and acknowledge the efforts and responsibilities of the other.

Furthermore, anti-money laundering systems can be used to detect and prevent the financing of trafficking in persons, and assist in the confiscation of profits from trafficking in persons as well as the prevention of the reinvestment of illicit funds into the criminal trafficking networks. Financial intelligence systems that are already in place can be used to map the activities of trafficking networks and how these networks interact with corrupt officials.

Corruption is also investigated when investigating trafficking in persons.

According to the Council of Europe, investigations and prosecutions of trafficking in persons should be accompanied by investigations into corruption and finances of suspects (PACO, 2002). In order to effectively deal with trafficking-in-persons-related corruption, indicators need to be developed for actors working in the field of trafficking in persons to detect corruption when investigating trafficking cases.

Specialised multi-agency units are established and multi-agency trainings are organised.

At the national level, countries could enhance co-operation between anti-corruption and anti-trafficking practitioners, for example through multi-agency training and specialised multi-agency units staffed by prosecutors and selected police.

3. Transparency and an integrity framework for public officials at risk

Specific rules/standards of behaviour – such as guidelines or codes of conduct – with respect to corruption and trafficking for public officials at risk are in place. The violations of the codes of conduct entail sanctions.

The conduct of the international peacekeepers, civilian police, intergovernmental and non-governmental organisations' staff and diplomatic personnel has raised serious concerns in relation to trafficking in persons and corruption (PACO, 2002). According to the cases analysed by the Council of Europe, the problem is reported to be particularly widespread among the police (PACO, 2002). One way of addressing this can be to include specific rules/standards of behaviour with respect to corruption and trafficking, for example, in codes of conduct. As supervision, discipline, and accountability are key in preventing and combating corruption, effective mechanisms are needed for reporting, investigating and sanctioning the violation of these codes of conduct for officials at risk.

Many of the sectors of public officials that could play a role in trafficking in persons are already covered by codes of conduct. However, some of these codes may need to be updated in order to address the specific issues relating to trafficking in persons. UNODC has proposed a number of specific measures that countries can implement, for example requesting police staff who are conducting brothel raids to always be accompanied by one or more colleagues, preferably female staff, when conducting raids in brothels (UNODC, 2011).

The activities of staff working in sectors at risk are performed in a transparent manner.

Sectors at specific risk of corruption in the trafficking-in-persons context need to ensure that their staff's activities are performed in a transparent manner and that unnecessary bureaucracy is eliminated so that the opportunities for corrupt officials to seek bribes are limited. This is particularly relevant within law enforcement (e.g. border control, customs and immigration authorities) and criminal justice authorities. As raised by UNODC, ensuring that the staff's activities are performed in a transparent manner does not necessarily mean public disclosure of assets and private interests but rather safeguards, such as, for example, internal approval systems of tasks to be performed and avoiding having one-to-one meetings with individuals such as visa and work permit applicants, presumed trafficking victims, and suspects (UNODC, 2011). In addition, independent legal audit of trafficking cases could be conducted in order to assure that cases were handled in a correct manner.

A wider framework of integrity for public officials is promoted.

In addition to establishing rules/standards on behaviour of public officials in respect to corruption and trafficking, countries can benefit from promoting a wider framework ensuring the integrity of public officials, including: asset disclosure regime; conflict-of-interest legislation; and whistleblower protection. Of particular focus are issues such as outside positions for police officers (for example, when police officers take up positions as security guards for bars and clubs). Officials at risk should also receive general anti-corruption training that could contribute to the prevention and combating of corruption in trafficking in persons. These need to be context specific and address potential issues such as cultures of corruption and gift-giving.

Mechanisms that allow for public officials as well as the public to expose misconduct and report dishonest or illegal activity and that ensure the effective protection from retaliation are in place.

Confidential hotlines or similar measures for whistleblowers may be established so that public officials or private sector employees that witness corrupt behaviour by their colleagues can provide information about these activities. This can be established within government organisations as well as international organisations. Members of the public may also be given clear channels for exposing misconduct and reporting dishonest or illegal activity occurring in public and private sector organisations. Countries need to ensure that whistleblowers are effectively protected from retaliation and intimidation.

The recruitment process of officials is transparent, competitive and subject to independent scrutiny. Upon recruitment, officials receive training, adequate supervision and are subject to regular performance evaluations.

Recruitment of key officials, in particular those employed in anti-corruption or anti-trafficking units, prosecutors and judicial officials needs to consistently be conducted by the means of a transparent and competitive selection process that is subject to independent scrutiny. Upon recruitment, key officials would benefit from receiving training, adequate supervision and be subject to regular performance evaluations. It is important that the training does not only cover instructions relating to specific tasks and responsibilities that the employee will encounter, but also the standards of conduct and values of the organisation.

Key officials receive training so that they are able to correctly identify trafficking victims, understand the nature of the crime, and recognise warning signs throughout the different stages of the trafficking-in-persons process.

In order to correctly identify and deal with trafficking-in-persons cases, it is essential that key officials receive training. Experience shows that the first government official a victim of trafficking is likely to meet is a local police officer and not a lawmaker or diplomat, and if this local police officer has not been trained to identify trafficking victims and understand the crime, there is a heightened risk that the crime is not properly identified (US Department of State, 2012). Also, for example consular staff in countries of origin may benefit from exchanging experiences and being trained in recognising visa applications that could involve trafficking in persons.

4. Awareness-raising and prevention measures for public officials and the general public

Public awareness regarding the existence, causes, and gravity of trafficking in persons and the active participation of individuals and groups outside the public sector in the prevention of, and the fight against, trafficking-in-persons-related corruption is promoted.

The importance of prevention measures is not consistently recognised. Article 13 of the United Nations Convention against Corruption (UNCAC) (United Nations, 2003) demands that each State Party shall take the appropriate measures to promote the “active participation of individuals and groups outside the public sector, such as civil society, non-governmental organisations and community-based organisations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.” Specific measures to strengthen this participation include:

1. enhancing the transparency of, and promoting the contribution of, the public to decision-making processes
2. ensuring that the public has effective access to information
3. undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula
4. respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption.

Similarly, Article 9(2) of the United Nations (2000) “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children” establishes that State Parties shall “endeavour to undertake such measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.” The Council of Europe suggests giving particular attention to the development of special awareness programmes in schools (PACO, 2002).

In order to effectively raise awareness of the linkages between corruption and trafficking in persons, countries can involve and train media and facilitate investigative journalism on trafficking in persons and corruption. Furthermore, media can play an

important role in increasing public awareness and knowledge on TIP and corruption hotspots, deterring offenders by highlighting arrests and prosecutions, and rewarding and encouraging successful law enforcement through the publication of success stories.

Targeted awareness-raising measures for all parties involved in anti-trafficking issues are provided.

In addition to general anti-corruption measures, specific awareness-raising measures that highlight vulnerabilities, responsibilities, risks, and draw attention to how corrupt behaviour could facilitate the crime of trafficking in persons and the re-victimisation of the trafficked victims are essential to understand the links and forms of trafficking. Consequently, these measures need to be provided for all parties involved in anti-trafficking issues, including police and anti-trafficking organisations.

Preventive measures for potential victims of trafficking in persons are in place, in particular offering counselling about corruption and trafficking before and after they have undertaken a migration journey and alerting communities of early signs of corruption.

It is essential to build civic response and community awareness about the linkages between corruption and trafficking in persons. Specific measures proposed by the UNODC for potential victims of trafficking includes: 1) alerting communities that early signs of corruption in a legitimate migration journey should be considered as warning indicators that trafficking may be taking place; and 2) giving citizens access to free, confidential counselling about corruption and trafficking before and after they have undertaken a migration journey, in order to make them aware of their rights and capable of looking for help if they are infringed in a way that renders them victims of trafficking (UNODC, 2011).

5. Improvement of data collection and systematic use of information

Data on trafficking in persons are collected, analysed and used systematically.

Most countries are not systematically collecting and analysing data on investigations or prosecutions of public officials relating to trafficking in persons and corruption (UNODC, 2011). There are many reasons for the scarcity of data. Among the most important reasons highlighted by the International Organization for Migration (IOM) are the victims' reluctance to report or testify for fear of reprisals; lack of harmonisation among existing data sources; and the opposition of some countries and agencies to share data (Laczko, 2002). As a crucial step in addressing trafficking-in-persons-related corruption, countries need to focus on the collection of data and information in order to get a better insight into the problem. Because of its transnational nature, data on trafficking-in-persons-related corruption also needs to be collected and aggregated at the regional level. It should be stressed that any legal provisions or policy decisions on data collection and/or the creation of databases need to be accompanied by a commitment of resources for implementation.

Information on corruption provided by victims and NGOs can also be used more systematically. Government agencies working on anti-corruption and anti-trafficking

need to co-operate with the non-governmental sector and civil society to ensure that information and experiences from victims are collected (through, for example, interviews) and that this information is passed on to the anti-corruption and anti-trafficking units in government. By improving the data collection and systemic use of information, countries would be allowed to implement targeted responses based on facts.

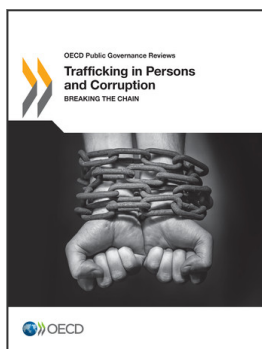
6. Lift immunity in corruption and trafficking cases

Immunity from prosecution of public officials is duly lifted to allow for effective investigation, prosecution and adjudication of corruption and trafficking-in-persons-related offences.

The purpose of immunity is to protect the independence of public officials and make sure that they will make difficult decisions without risking facing personal consequences for this decision (e.g. being sued). According to UNCAC Article 30(2), “Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.” Similarly, in cases of trafficking in persons, countries need to lift the immunity from prosecution of public officials following an allegation of corruption that is supported by evidence.

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