

Understanding Human
Trafficking, Corruption, and the
Optics of Misconduct in the
Public, Private, and
NGO Sectors
Causes, Actors, and Solutions

Luz Estella Nagle
PROFESSOR OF LAW
STETSON UNIVERSITY COLLEGE OF LAW



CAROLINA ACADEMIC PRESS

Durham, North Carolina

Contents

Foreword	xi
Preface	xv
Acknowledgments	xxi
Chapter 1 · Introduction: Understanding Human Trafficking	3
1. Distinction between Trafficking in Persons and Smuggling	8
2. Human Trafficking, Corruption, and the Millennium Development Goals	9
3. Gauging Human Trafficking Crimes Worldwide	11
4. Characteristics of Trafficking Operations	21
A. Small Local Trafficking Operations	22
B. Medium Sub-Regional Trafficking Operations	24
C. Large Transregional Trafficking Operations	25
Chapter 2 · Key International Legal Instruments Regarding Human Trafficking	27
1. UN Convention against Transnational Organized Crime and the Palermo Protocol	27
A. UN Convention against Transnational Organized Crime (UNTOC)	28
B. The Palermo Protocol	30
1. Requirement to Criminalize	42
2. Relationship between the UNTOC and the Palermo Protocol	42
Chapter 3 · Responding to Human Trafficking Crimes	45
1. Prevention	45
2. Prosecution	50

A. Country Examples	51
B. The Bigger Picture	54
3. Protection	56
Chapter 4 · Monitoring Human Trafficking	59
1. How Data Is Gathered	59
2. Challenges to Compiling Data	61
3. United States Department of State Country Reports on Trafficking in Persons	62
Chapter 5 · Corruption and Human Trafficking	67
1. Intersection of Criminal Conducts	67
2. Corruption Defined	69
3. International Legal Instruments against Corruption Applicable to Human Trafficking	71
A. The United Nations Convention against Corruption (UNCAC)	73
B. The United Nations Convention against Transnational Organized Crime (UNTOC) and Corruption	75
4. Corruption in the Context of Human Trafficking	77
5. Types of Corruption Impacting and Impacted by Human Trafficking	79
Chapter 6 · Public Corruption and Human Trafficking	83
1. Defining Public Corruption	83
2. The Corrosive Influence of Corruption on Government Institutions	85
3. Collusion and Active Participation	88
4. Bribery and Passive Participation	100
5. Coercion and Blackmail	108
6. Accountability and Transparency	109
7. Is the “System” Corrupt?	111
A. Follow the Money	113
B. Bishops and Bureaucrats	115
C. Come and Get It	119
Chapter 7 · Private Corruption and Human Trafficking	123
1. Corrupt Business Practices in Labor Recruitment	123
A. Private-to-Private Corruption	126
B. International Instruments on Private-to-Private Corruption	128

C. Acts of Private-to-Private Corruption	131
2. Private-to-Private Corruption and Human Trafficking	132
A. <i>David v. Signal International LLC</i> (United States)	138
B. Third Country Nationals and Military Contractors	140
C. <i>Adhikari v. Daoud & Partners</i>	143
D. <i>Affumicata a.s.</i> (Czech Republic)	144
3. Passive Involvement for Financial Gain	146
4. Accountability	148
Chapter 8 · Trafficking in People to Harvest Their Organs: Where Private and Public Corruption Intersect	153
1. Lack of THB/OR Cases and Data Renders Corruption Invisible	156
A. Facts that Impede the Investigation of THB/OR	157
B. International Repudiation of Commercial Organ Transplantation	160
2. Organ Trafficking and THB/OR: Two Different and Distinct Crimes	165
3. Trafficking in Organs	171
A. Convention against Trafficking in Human Organs	171
4. Trafficking in Human Beings for Organ Removal (THB/OR)	175
A. Issues of Consent and Disclosure	177
B. Proliferation	180
5. Corruption as Facilitator	181
A. Corrupt Actors	182
6. Case Examples	187
A. <i>State v. Netcare Kwa-Zulu Limited</i> (South Africa)	188
B. <i>United States v. Rosenbaum</i> (United States)	190
C. <i>Medicus Clinic</i> (Kosovo)	193
D. Costa Rica Organ Transplant Tourism	196
E. China's Lucrative Prisoner Organ Market	201
7. Recommendations to Reduce Corrupt Practices in Organ Transplantation	203
A. For Governments	203
B. For Transplant Centers and Hospitals	208
C. For Physicians	211
D. For Insurance Companies	212
Chapter 9 · The Profusion of Anti-Human Trafficking Organizations	215
1. Types and Characteristics of Human Trafficking NGOs	216

2. The Best of Intentions	217
3. Transparency, Accountability, and the Optics of Misconduct	218
A. Finding Need and Opportunity	219
4. Celebrity and Sensationalism	227
A. The Downfall and Reinvention of Somaly Mam	227
B. Chong Kim and <i>Eden</i>	230
C. The Countess	233
D. Human Trafficking and Reality Television	235
5. The Rescue Industry	242
A. It's about the Brand	243
B. It's about the Victims	245
6. Monitoring and Vetting	246
7. Accountability	260
A. Raising Public Opinion and Awareness	260
B. Toward a Code of Conduct for HT NGOs	262
Chapter 10 · Conclusions and Recommendations	265
Appendix	273
Index	285