

ARTICLE

ALL HANDS ON DECK: COLLABORATIVE GLOBAL STRATEGIES IN THE BATTLE AGAINST CORRUPTION AND HUMAN TRAFFICKING IN AFRICA

REAGAN R. DEMAS

Bribery is the enemy of justice.

—East African proverb

INTRODUCTION

An officer solicits a tourist for a bribe. A multinational corporation pays thousands of dollars to government officials to avoid onerous and uncertain legal and regulatory requirements. A human trafficker pays the police to provide protection to his illegal operation of rape for profit.

This is corruption, and the costs of corruption are felt everywhere in Africa. Millions of dollars are spent in global government funds to conduct investigations and prosecute cases of corruption. Millions more are spent by private companies on internal investigations, training, and compliance. All the while, millions of human beings are forced to labor on the African continent against their will, often without resort to law enforcement, which has been compromised by their abusers and traffickers.

The author of this paper has personally witnessed each of these frustrations of purpose. I have looked into the eyes of the trafficking victim, and of the trafficking survivor. I have stood face to face with the southern African police officer who made his living protecting exploiters instead of the exploited, and with the East African police commissioner who made the bold decision to say “no more” by firing officers who refused to enforce the law in exchange for personal pecuniary gain.

There is little disagreement today that official corruption in Africa and other developing jurisdictions is detrimental. But what specific impact does corruption have on human rights in jurisdictions where it flourishes, and what can and should be done to curtail it?

This article analyzes the effects that corruption and the lack of a rule of law have on the issue of human trafficking. It first considers the effects that corruption has on development in Africa, noting that the rule of law is not simply a Western concept and arguing that corruption is not an acceptable part of any culture. It then analyzes the impacts of corruption on human trafficking. Finally, the article addresses the broad-based initiatives necessary to curb corruption in Africa and beyond, and the benefits in the war against human trafficking that would ensue.

THE IMPORTANCE OF THE RULE OF LAW

The Effects of Corruption in Africa

A “rule of law” is generally defined as a system of justice where the law is general, clear, practicable, and consistently enforced.¹ In effect, a society with a rule of law is one where both the written law and the application of the written law is known by both those who will be held accountable to the law and those who will be enforcing the law. Corruption, on the other hand, is the arbitrary use of public powers for personal benefit.² It usually involves “behavior which deviates from the formal duties of a public role because of private . . . pecuniary or status gain.”³ Corruption breaks down the rule of law by eroding its clarity and consistency. A broken rule of law, in turn, stymies development in a society and impoverishes the populace.⁴

The effects of corruption are numerous. The absence of a rule of law as a result of corruption leads primarily to the insecurity of people, property⁵ and rights, unabated crime, instability, and even war.⁶ It also de-

1. See LON L. FULLER, *THE MORALITY OF LAW* 33–41 (rev. ed. 1969).

2. BLACK’S LAW DICTIONARY 371 (8th ed. 2004).

3. J. S. Nye, *Corruption and Political Development: A Cost-Benefit Analysis*, 61 AM. POL. SCI. REV. 417, 419 (1967).

4. See O. Lee Reed, *Law, The Rule of Law, and Property: A Foundation for the Private Market and Business Study*, 38 AM. BUS. L.J. 441, 446 (2001) (“Perhaps the single most important step that countries can take to maximize growth and make themselves attractive to global business interests is to institute the rule of law.”). See also Policy Statement, *Global Coalition for Africa – Corruption and Development in Africa*, GCA/PF/N.2/11/1997 (“Corruption in Africa is a development issue. . . . [E]ffectively addressing corruption in African countries has become a development imperative.”).

5. See Reed, *supra* note 4, at 459 (“Studies reveal that the economies of countries that enjoy secure property under a rule of law, which is the condition often termed “economic freedom,” regularly outperform the economies where property is insecure or non-existent.”).

6. See U.N. ECON. COMM’N FOR AFRICA, *AFRICAN GOVERNANCE REPORT 2005*, at 172 U.N. Sales No. E.05.IIK.7 (2005), available at <http://www.uneca.org/agr2005/chap6.pdf> (“While African countries have overwhelmingly subscribed to most international and regional human rights norms and standards, ratified numerous major human rights treaties and enshrined these norms and standards in their constitutions and national legislations, a significant gap remains in their realization. Some progress has been made on human rights, but the application of human rights standards lags behind the substantial efforts made in ratifying human rights treaties and conventions and the public statements and rhetoric of African leaders on human rights.”).

creases investment,⁷ both foreign and domestic.⁸ These conditions in turn lead to increased poverty,⁹ lower quality of health and education,¹⁰ and lower quality infrastructure.¹¹ Increased poverty, crime, and instability enhance the likelihood of unaccountable dictators or juntas using armed forces to take control of a country and pursuing policies that might further impoverish the citizenry, destabilize political and economic circumstances, and repel foreign and domestic investment. The insecure environments of Darfur today and Rwanda in 1994 are extreme—but all-too-real—examples of what can happen when the rule of law breaks down. The connection between corruption, lack of rule of law, and poverty is recognized in literature and, even more convincingly, in the suffering of millions living under corrupt regimes in the real world.¹² Corruption and the lack of a rule of law disproportionately harm the poor and vulnerable, particularly women and children, because they depend on the protections of the law against powerful forces and possess few resources to compete where protection is auctioned to the highest bidder.¹³

7. The importance of foreign direct investment in developing countries has been well documented. As one publication noted, “[T]he benefits of foreign direct investment to host countries include not only jobs, tax revenues and economic growth, but also ‘spillover benefits’ such as improvement of the quality of the local labor force and management skills, as well as the introduction of new technology and the transfer of technical know-how.” Delissa A. Ridgway & Mariya A. Talib, *Globalization and Development – Free Trade, Foreign Aid, Investment and the Rule of Law*, 33 CAL. W. INT’L L.J. 325, 334 n.59 (citing ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, FOREIGN DIRECT INVESTMENT FOR DEVELOPMENT: MAXIMIZING BENEFITS, MINIMIZING COSTS (2002), available at <http://www.oecd.org/dataoecd/47/51/1959815.pdf>).

8. See, e.g., U.N. ECON. COMM’N FOR AFRICA, STRIVING FOR GOOD GOVERNANCE IN AFRICA: SYNOPSIS OF THE 2005 AFRICAN GOVERNANCE REPORT PREPARED FOR THE AFRICAN DEVELOPMENT FORUM IV, at 21, available at <http://www.uneca.org/agr/> (noting that investment in Africa is limited by uncertain contract and property law); see also Philip M. Nichols, *Corruption as an Assurance Problem*, 19 AM. U. INT’L L. REV. 1307, 1316–17 (2004) (noting that corruption decreases foreign investment).

9. See Alhaji B. M. Marong, *Toward a Normative Consensus Against Corruption*, 30 DENV. J. INT’L L. & POL’Y 99, 107–09 (2002); Johann Graf Lambsdorff, *Consequences and Causes of Corruption – What do We Know from a Cross-Section of Countries?*, Working Paper No. V-34-05, Volkswirtschaftliche Reihe ISSN 1435-3520, 7–8, available at http://www.wiwi.uni-passau.de/fileadmin/dokumente/lehrstuehle/lambsdorff/downloads/Corr_Review.pdf (providing evidence and citations to numerous reports showing that corruption lowers growth).

10. See Marong, *supra* note 9, at 109 (noting that Africa “[lags] behind most regions of the world in terms of flows of FDI and the rate of economic growth, and lead[s] the world in rates of poverty, disease, unemployment, and general lack of development”). See also Lambsdorff, *supra* note 9, at 9–10 (providing evidence and citations to reports showing that high levels of corruption are associated with low quality of public health care provision).

11. See Paul Collier & Anke Hoeffler, *The Economic Costs of Corruption in Infrastructure*, in TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT 12 (2005).

12. A rule of law is important to a fair and just society but not itself sufficient to create or maintain one. The law and the rule being consistently applied must itself be fair and just.

13. See generally Sanjeev Gupta, Hamid Davoodi & Rosa Alonso-Terme, *Does Corruption Affect Income Inequality and Poverty?*, 3 ECON. OF GOVERNANCE 23, 23–45 (2002).

After years of corruption, stories of what could have been continue to afflict Africa.¹⁴ Despite holding some of the world's richest deposits of minerals and oil, the median African country has a gross domestic product (GDP) of only \$2 billion, roughly equivalent to a small European town.¹⁵ Oil-rich Nigeria has earned over \$350 billion from oil over the past forty years, but most of it has been siphoned away by corrupt leaders, and today the country's population is one of the poorest on earth.¹⁶ In the West African nation of Guinea, 80 percent of the country's foreign reserves and the vast percentage of its GDP derive from extremely valuable mineral mines, but little of this wealth reaches citizens of Guinea.¹⁷ It ranks as the seventh most corrupt state in the world by Transparency International and in the top twenty least-developed countries by the United Nations.¹⁸ In 2008, police in Guinea went on strike and took hostages because they had not been paid their \$11 monthly salaries for months due to empty government coffers.¹⁹ Equatorial Guinea pumps a barrel of oil per citizen daily, more per capita than Saudi Arabia, and the vast majority of GDP is derived from the oil and gas industry.²⁰ Despite this source of wealth, the country is under the control of a corrupt dictatorship, and its people are desperately poor.²¹ In this environment, even Africans do not invest in Africa. Forty percent of Africa's private wealth is held offshore.²²

Is Corruption Culturally Acceptable?

Despite the statistics illustrating the connection between corruption and development,²³ there are those who say it is inappropriate to impose anti-corruption views on other countries. They call these views western constructs, based upon western values, that are invasive and ignore African cultural traditions.²⁴ This relativist view²⁵ of corruption undermines efforts

14. For a detailed examination of the costs of corruption, see Jonathan P. Doh, Peter Rodriguez, Klaus Uhlenbruck, Jamie Collins & Lorraine Eden, *Coping with Corruption in Foreign Markets*, 17 ACAD. OF MGMT. EXEC. 114, 114–27 (2003).

15. ROBERT GUEST, *THE SHACKLED CONTINENT* 6 (2004).

16. ADAM ROBERTS, *THE WONGA COUP* 50–51 (2006).

17. See IRIN News Service, *Guinea: State of Suspended Development After 50 Years of Independence*, Oct. 2, 2008, <http://www.irinnews.org/Report.aspx?ReportId=80717>.

18. *Id.*

19. See Saliou Samb, *Guinea Police Take Commander Hostage in Pay Protest*, REUTERS, June 16, 2008, <http://www.reuters.com/article/latestCrisis/idUSL16393846>.

20. See ROBERTS, *supra* note 16, at 50–52.

21. See *id.*

22. WORLD BANK, *CAN AFRICA CLAIM THE 21ST CENTURY?* 6–17 (2000).

23. See *supra* notes 5–22.

24. See, e.g., Steven R. Salbu, *Are Extraterritorial Restrictions on Bribery a Viable and Desirable International Policy Goal Under the Global Conditions of the Late Twentieth Century?*, 24 YALE J. INT'L L. 223, 232–39, 243–46 (1999).

25. This view implies that to call something “corrupt” is to attach an inappropriate normative label to a practice from one cultural standpoint. However, a practice considered corrupt in one culture because it demonstrably stymies development, emboldens criminal enterprises, and fetters

to build a stable rule of law in Africa. It also insults Africans who want and deserve good governance, accountable leaders, and a life lived under an enforced rule of law that encompasses and protects their cultural values.²⁶

By definition, “corruption” is never culturally acceptable.²⁷ Corruption implies that a system is violated or rules are ignored, thus impairing the otherwise suitable system.²⁸ No nation is eager to admit corruption when it ranks in the top ten on Transparency International’s list of most corrupt countries on earth. While many of the most corrupt countries in the world have prominent signs on display at their airports proclaiming a commitment to end corruption, this author has yet to see a sign stating that any country is proud to have a government bureaucracy that extracts unofficial payments at every possible opportunity. Abuses that are obviously wrong cannot be practiced wantonly by societies that do not wish to be branded as global pariahs. Extortion is not an acceptable form of human interaction. The threat of bogus legal action or criminal sanction in the absence of the payment of a large bribe is not compatible with a civil society that respects human rights. The very fact that many of these practices can occur only under cover of darkness—behind denials, closed doors, obfuscation, and official cover-up—is compelling evidence that the practices are indeed unacceptable. A young child who knocks over the cookie jar while sneaking a sweet before dinner must quickly hide the broken pieces of the jar because he knows he has done something wrong. And when his parents ask how the cookie jar was broken, the family cat will likely be blamed for the incident. In the same way, few leaders are eager or even willing to admit that they are “corrupt” because it is difficult to make a non-frivolous argument for the morality of the practice.

Nigeria presents a prominent example of a country reputed to possess a “culture of corruption.”²⁹ Many who work or live in Nigeria say it is impossible to do so without paying bribes. One company described how one

free markets should be considered inappropriate in any other jurisdiction suffering the same devastating consequences.

26. When businesses or individuals with money come into poor developing countries and find it difficult to get tasks done, there is a tendency to see the payment of unofficial payments as “facilitating” needs and speeding up regular processes. Businesses, even individuals, with money can actually propagate corruption in the belief that “there is no other way to get things done.” In the end, these payments from individuals and entities play a substantial role in maintaining corruption and can, in fact, make it quite difficult to get things done without paying unofficial payments.

27. See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), CORRUPTION AND GENDER: APPROACHES AND RECOMMENDATIONS FOR TA (2004) (commissioned by Germany Federal Ministry for Economic Cooperation and Development).

28. While some developing countries lack the capacity to consistently enforce the rule of law, it does not follow that it is part of the culture to allow those with greater power or money to rule with impunity. See Natalie Bridgeman & David Hunter, *Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism*, 20 GEO. INT’L ENVTL. L. REV. 187 (2008).

29. Six years ago, Nigeria was ranked the most corrupt country on earth by Transparency International. In 2008 it improved to 121st on that list. See *Corruption: Nigeria’s Rating Im-*

Nigerian government official attempted to cloak bribes in the garb of legitimacy by printing a schedule of the unofficial payment amounts on government letterhead and boldly posting them on the wall of his office.³⁰ Other Nigerian officials have created elaborately fake (but quite official-looking) “receipts” to distribute to bribe-payers to document and “normalize” the illegal payments.³¹ Some businesses have reported being required to pay monthly payments—salaried bribes—to certain officials that dwarf the officials’ regular government pay.³² It is not difficult to see how one could make the argument that corruption is an inherent part of Nigerian culture.

The truth, however, is that Nigerian culture has never embraced bribery. In traditional Nigerian culture, local leaders or Chiefs exercised great authority. These individuals were consulted by citizens who sought solutions to problems, difficult situations, or relational quagmires. To seek a favor or advice from a traditional leader, one might bring a gift.³³ But this gift was a sign of respect, not a *quid pro quo*.³⁴ Charlatans and get-rich-quick entrepreneurs (both foreign and domestic) have exploited Nigeria’s tradition of gift-giving to fuel today’s explosion of bribery and corruption. As the former President of Nigeria has said:

In the African concept of appreciation and hospitality, a gift is a token; it is not demanded; the value is in the spirit of the giving, not the material worth. The gift is made in the open for all to see, never in secret. Where a gift is excessive it becomes an embarrassment, and is returned. . . . If anything, corruption – as practiced by exporters from the North as well as by officials in the South – has perverted positive aspects of this age-old tradition.³⁵

Bribery flourished during Nigeria’s military dictatorship because, as is the case in many countries today, an all-powerful regime unaccountable to the rule of law could and did get away with extorting bribes from the less powerful.³⁶ Bribery is not a part of Nigerian culture, but it is a significant

proves, VANGUARD ONLINE, Sept. 24, 2008, <http://www.vanguardngr.com/content/view/17745/41/>.

30. Interview with confidential client source.

31. *Id.*

32. *Id.*

33. See Oyibo E. Odinamadu, *Battling Corruption in Nigeria*, USAFRICAONLINE.COM, <http://www.usafricaonline.com/oyibo.nigeriacorrupt1.html> (last visited Feb. 23, 2009).

34. *Id.* (“[The culture of gift giving] is generally an acceptable way of life of the African and the Nigerian, in particular. In as much it must be emphasized that there is nothing wrong in gift-giving generally, but when such a gift is meant to attract favour, the gift then becomes a means to an end and not an end in itself. Perversion of this gift-giving has caused a lot of problems for Nigeria.”).

35. See Marong, *supra* note 9, at n.22 (quoting a letter from Gen. Olusegun Obasanjo to the Financial Times of London (Oct. 14, 1994)).

36. WILLIAM EASTERLY, *THE WHITE MAN’S BURDEN* 158 (2006).

part of the problem today and therefore must be the focus of any solution to Nigeria's development stagnation.³⁷

In a world where corruption is one of the leading causes of poverty and insecurity, "it's the way it's done" can no longer justify perpetuating damaging practices. Businesses may incur short-term costs associated with eschewing bribery and corruption, including loss of business and increased private security costs. But tremendous benefits will follow. Businesses will avoid investigation and prosecution by U.S. and European anti-corruption authorities, and will benefit from greater long-term development of the jurisdictions in which they operate. Private and public entities must take a holistic approach to combating corruption in Africa that encourages lawful, healthy, potentially high-reward foreign investment in the continent. This approach should include home-country tax incentives for businesses and individuals considering investment, accountability for corrupt behavior by those businesses and individuals, and the assurance of good, stable governance within the host country. In the end, the rule of law is the foundation of all other development, and maintenance of a stable rule of law requires that all parties be committed to it fully.

THE CONNECTION BETWEEN CORRUPTION AND HUMAN TRAFFICKING

The Many Forms of Trafficking

Human trafficking is many different things, and includes a set of crimes that constitute the phenomena of modern slavery and rape for profit.³⁸ Victims of these crimes around the world are compelled to live under conditions of involuntary servitude by force, fraud, and coercion.³⁹ In Uganda, a young girl is kidnapped by an older man and forced to care for

37. One African novelist has written: "The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigerian character. There is nothing wrong with the Nigerian land or climate or water or air or anything else. The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which are the hallmarks of true leadership." CHINUA ACHEBE, *THE TROUBLE WITH NIGERIA* 1 (1984).

38. The United Nations defines trafficking in persons as: "[t]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 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. Exploitation shall include at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, G.A. Res. 55/25, at 2, U.N. GAOR, 55th Sess., Annex II, U.N. Doc. A/55/25 (Nov. 15, 2000).

39. According to sources, between twelve and twenty-seven million human beings are enslaved in the world at any given time, which means there are more people in slavery today than were extracted from Africa during 400 hundred years of the trans-Atlantic slave trade. See Andrew Cockburn, *21st Century Slaves*, NAT'L GEOGRAPHIC, Sept. 2003, available at <http://ngm.nationalgeographic.com/ngm/0309/feature1/index.html>; see also U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2008), available at <http://www.state.gov/g/tip/rls/tiprpt/2008/>.

him and serve him sexually following his wife's departure.⁴⁰ In India, it is estimated that millions of human beings serve as bonded laborers to brick-kiln and rice-mill operators. The operators offered these laborers small loans at usurious interest rates at a time of desperation in exchange for a lifetime of indentured servitude.⁴¹ In Niger and other parts of West Africa, thousands of people serve as slaves simply because they were born into a family of slaves.⁴² In Southeast Asia, children and young adults are trafficked to strategic communities to service sex tourists from Asia and beyond.⁴³

Each individual story will break your heart, and the magnitude of the problem can crush the will to intervene. But there is hope in these stories of abuse because there is a cause to the problem, and there is a solution. Ultimately, it is corruption—the lack of a rule of law—that allows trafficking to thrive.⁴⁴

Corruption as a Precondition for Trafficking

Corruption is a necessary precondition for human trafficking to flourish.⁴⁵ Trafficking is a criminal act, and only transpires where the crime is allowed to occur.⁴⁶ Officials with the duty to monitor borders, protect children, patrol neighborhoods, and enforce the rights of the vulnerable must be compromised before these brutal forms of exploitation can thrive.⁴⁷ The

40. Early marriage is prevalent in Uganda and other parts of Africa and can be a brutal form of trafficking for purposes of sexual exploitation. See Noah Gottschalk, *Uganda: Early Marriage as a Form of Sexual Violence*, FORCED MIGRATION REVIEW, June 2006, at 51, available at <http://www.fmreview.org/FMRpdfs/FMR27/34.pdf>.

41. Many of these bonded slaves are paid less than the high level of interest charged on the original loan, resulting in a lifetime of slavery. In such cases the debts (and slavery) can even be passed on to children after death. See HUMAN RIGHTS WATCH, *THE SMALL HANDS OF LABOR: BONDED CHILD LABOR IN INDIA* 26, 27 (1996), available at <http://www.hrw.org/legacy/reports/1996/India3.htm>.

42. See *West Africa Slavery Still Widespread*, BBC NEWS, Oct. 27, 2008, <http://news.bbc.co.uk/2/hi/africa/7693397.stm>.

43. See *Asia's Sex Trade is Slavery*, BBC NEWS, Feb. 20, 2003, <http://news.bbc.co.uk/2/hi/asia-pacific/2783655.stm>.

44. See *infra* pp. 211–15.

45. Julio Bacio-Terracino, *Corruption as a Violation of Human Rights*, at 15 (forthcoming), available at <http://ssrn.com/abstract=1107918> (“[L]aw enforcement officials must be bribed so they turn a blind eye to these activities. When children are not protected by the state against such criminal practices, the rights of the child to be protected from all forms of sexual exploitation and sexual abuse, and from abduction, sale and trafficking are violated. Corruption is essential to carry out the violation.”).

46. See U.N. Global Initiative to Fight Human Trafficking [GIFT], Background Paper, The Vienna Forum to Fight Human Trafficking, Feb. 13–15, 2008 *020 Workshop: Corruption and Human Trafficking: The Grease that Facilitates the Crime*, 3, U.N.GIFT B.F.: 020.

47. See DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), *supra* note 27, at 12–14 (“Trafficking in human beings is in the hands of organized, internationally networked criminal groups. Bribery of officials and political corruption reaching up to the highest levels of the executive, legislative and judiciary in the home, transit and destination countries are crucial for the success of human traffickers. This entails both corruption in the individual phases of traffick-

first United States federal statute that criminalized trafficking, enacted in 2000, noted that the crime is “often aided by official corruption in countries of origin, transit, and destination, thereby threatening the rule of law.”⁴⁸ The robust connection between trafficking and the corruption of law enforcement through bribery has been confirmed by several researchers.⁴⁹ One cited corruption as the most significant indicator of human trafficking in a country.⁵⁰ Another study found that a country’s level of corruption not only correlates with its tier ranking in the U.S. State Department’s Trafficking in Persons report, but is in fact the most reliable factor for predicting a country’s ranking in the report.⁵¹ In other words, the countries with the highest perceived level of official corruption were also determined by the United States to be the most tolerant of trafficking within their borders. This is unsurprising, as the successful trafficking and enslavement of human beings requires the exercise of complete control over victims and often entails corruption in all levels of government, including immigration, customs, banking, and the police.⁵²

The fact that women are disproportionately affected by both official corruption and human trafficking intensifies the connection between corruption and human trafficking. Corruption causes more harm to the poor,⁵³ and women are disproportionately poorer than men worldwide.⁵⁴ An erosion of the rule of law disproportionately impacts poorer individuals, more vulnerable and more dependent on others for protection and survival.⁵⁵ Women are not only on average poorer, but also hold and have less access to positions of power in government or influence in law-making and enforcing, leaving them more susceptible and vulnerable to corrupt officials.⁵⁶ To

ing in women – preparing travel documents and residence work permits – and corruption to prevent effective regulation and law enforcement.”).

48. Victims of Trafficking and Violence Protection Act, Pub. L. No. 106-386, § 102(b)(8) (2000).

49. For more on this issue, see Sheldon X. Zhang & Samuel L. Pineda, *Corruption as a Causal Factor in Human Trafficking*, in ORGANIZED CRIME: CULTURE, MARKETS AND POLICIES 41 (D. Siegel & H. Nelen eds., 2008).

50. See KEVIN BALES, UNDERSTANDING GLOBAL SLAVERY: A READER (2005).

51. See Zhang & Pineda, *supra* note 49, at 50–51.

52. CORBIN B. LYDAY, 10TH ANNUAL ANTI-CORRUPTION CONFERENCE, THE SHADOW MARKET IN HUMAN BEINGS: AN ANTI-CORRUPTION PERSPECTIVE (2001), <http://www.10iacc.org/content.phtml?documents=111&art=134>.

53. See Lambsdorff, *supra* note 9, at 6–8.

54. DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), *supra* note 27, at 7–8 (noting that “[t]he majority of the 1.5 billion poor worldwide who have to live on one dollar a day or less are women”).

55. Non-governmental organizations working in Kenya and Nairobi Women’s Hospital reported that sexual exploitation rose in the wake of Kenya’s election violence in early 2008. During that time, the rule of law broke down and more than 1,000 people were killed. See *Child Prostitution Up After Kenya’s Election Bloodshed*, CNN, July 31, 2008, <http://news.myjoyonline.com/international/200808/18970.asp>.

56. DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), *supra* note 27, at 8. In the absence of a strongly-enforced rule of law, justice in many African villages is meted out

further support the connection between the disempowerment of women and corruption, research suggests that corruption decreases as the level of participation of women in government and law increases up to levels of representation that reflect their percentage of the population.⁵⁷ This research further solidifies the association between women, corruption, and human trafficking.⁵⁸

While the connection between official corruption and human trafficking is clear, it is much easier to convince one that the trafficking of human beings is a major problem facing Africa than it is to convince one that petty bribery poses a great threat. In truth, the two phenomena are linked, and small bribes cannot be viewed as petty or insignificant when they are symptomatic of a broader corrupted system. In poor societies, where government revenues are low, law enforcement salaries are low, and society's needs are great, corruption offers easy money to those law enforcement officers who would exploit others and entices them to become more powerful, wealthier, and less interested in defending the poor and vulnerable.⁵⁹ In the end, even petty corruption eventually transforms the police into guardians of the highest bidders. No longer do they defend the poor and vulnerable—those who have the greatest need for protection.

Corruption Fuels the Fire of Human Trafficking

Corruption impedes the fight against human trafficking by preventing the power of legal protection from becoming a reality in the lives of the poor and vulnerable. Good laws exist on legislative rolls worldwide, and legal warehouses are full of domestic laws and international treaties that criminalize trafficking and protect victims.⁶⁰ But laws are meaningless without enforcement, and the mere existence of anticorruption institutions and resolute rhetoric are insufficient protection.⁶¹ Therein lies one of the

by traditional leaders, who are often male and often base decisions on male-centered notions of sexual roles and human value.

57. See, e.g., Lambsdorff, *supra* note 9, at 25–26; DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), *supra* note 27, at 3.

58. This research gives good reason to think that both corruption and human trafficking could be curtailed at least in part by initiatives aimed at empowering women.

59. See Aiko Joshi, *The Face of Human Trafficking*, 13 HASTINGS WOMEN'S L.J. 31, 37–38 (2002).

60. See iKNOWpolitics, *List of Laws/Draft Laws on Gender Equality, Anti-Domestic Violence, Anti-Trafficking and Political Participation in South Asia*, May 30, 2008, <http://www.iknowpolitics.org/fr/node/5880>; see also Victims of Trafficking and Violence Protection Act, *supra* note 48, § 102(b)(8); Initiative Against Sexual Trafficking, List of Anti-Trafficking Laws in the United States, <http://www.iast.net/U.S.Anti-TraffickingLawsGovernmentReportsWebsites.htm> (last visited Feb. 21, 2009); IRIN News Service, *Togo: Anti-trafficking law alters route, not flow*, Jan. 12, 2009, <http://www.irinnews.org/report.aspx?ReportId=82319>.

61. See U.N. ECON. COMM'N FOR AFRICA, *supra* note 8, at 17 (noting that “New laws and new government agencies and commissions to control and reduce corruption have had less impact than expected at their often very public and vocal launch. . . . Anticorruption campaigns are not a substitute for the difficult tasks of public sector reform and capacity-building.”).

great tragedies of human existence. Constitutions the world over guarantee the right to equal protection under the law, and international treaties promise fair application of the rule of law. But laws are ultimately just words on paper if they do not become a reality in the lives of the most vulnerable. Without advocacy, the lofty principles of the law are everywhere, but nowhere.

Strategies to combat trafficking rely on law enforcement officers charged with enforcing strong laws and ending the practice. However, in many jurisdictions where human trafficking flourishes, law enforcement is actually complicit in the commission of the crimes.⁶² This complicity is encouraged by general levels of poverty, low police wages, lack of accountability in law enforcement, and the high payoffs traffickers can offer police. Vulnerable individuals and potential victims lack trust in the police, further corroding law enforcement efficacy. Citizens often see the police as oppressors instead of rescuers and do not report criminal activity to authorities in fear that they will not be protected from the consequences.⁶³ Moral actors are discouraged from working in law enforcement due to the high level of corruption and the negative perception of police in many jurisdictions, further eroding the effectiveness of law enforcement.⁶⁴ In the end, corruption and a fettered rule of law prevent the protections of good laws from becoming a reality in the lives of the defenseless and allow human traffickers to operate with impunity.

The Need for Credible Enforcement

Corruption short-circuits the fight against human trafficking, but the battle is not yet lost. Human trafficking is a crime of opportunity, and it is committed only when the costs of committing the crime remain lower than the benefits received.⁶⁵ These costs include the direct costs of harboring and transporting humans, but also the risk that the operation will be found out and the trafficker will be imprisoned. This risk is the trafficker's greatest cost, and the risk of being apprehended need not become a certainty before the trafficker will change his trade.⁶⁶ A credible threat of prosecu-

62. Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG., Jan. 25, 2004, at 4, (quoting Gary Haugen, President of International Justice Mission: "Sex trafficking isn't a poverty issue but a law-enforcement issue. You can only carry out this trade at significant levels with the cooperation of local law enforcement. In the developing world the police are not seen as a solution for anything. You don't run to the police; you run from the police.").

63. See Susan Rose-Ackerman, *The Political Economy of Corruption*, in CORRUPTION AND THE GLOBAL ECONOMY 31, 44 (Kimberly Ann Elliott ed., 1997).

64. See Omotunde E.G. Johnson, *An Economic Analysis of Corrupt Government, with Special Application to Less Developed Countries*, 28 KYKLOS: INT'L REV. FOR SOC. SCI. 47, 57 (1975).

65. This presumes that the trafficker is a rational economic actor who seeks to maximize economic gains.

66. The outcome of incarceration is so negative for the human trafficker that it requires a much smaller percentage chance that this outcome will take place before the expected value of

tion—perhaps even as simple as the existence of a police force that is fairly compensated, trained, and corrupted only at great cost—will lead most rational traffickers to shut down operations.⁶⁷

The rule of law changes human behavior.⁶⁸ Evidence shows that Prohibition, for example, impacted the drinking habits of Americans dramatically during its enforcement, and continued that impact for years after the amendment was repealed.⁶⁹ Because a consistently applied rule of law changes human behavior, any strategy to combat human trafficking must include an attenuation of official corruption to the point that a firm and consistent rule of law is imposed upon those who trade in human souls.⁷⁰

SOLUTION: INITIATIVES THAT BRING CONSISTENT, TANGIBLE
ACCOUNTABILITY TO THOSE WHO OFFER AND ACCEPT BRIBES

This paper has examined the significant negative consequences of corruption on development, the positive connection between corruption and human trafficking, and the need for a strong rule of law and accountability to curb both. In light of the foregoing, only global anti-corruption initiatives that bring consistent, tangible accountability to those who offer and accept bribes can curtail corruption and alleviate the scourge of human trafficking.

Existing Laws

The current landscape of global anti-corruption initiatives is dominated by several multinational instruments and the United States' Foreign Corrupt Practices Act (FCPA).⁷¹ The model multinational instrument, the Organi-

that cost will be too much for the trafficker to risk. Risk averse traffickers may shut down operations under even small or slight risk of a highly negative outcome, such as a lifetime of incarceration.

67. This is deterrence. Not all traffickers have to be caught before human trafficking comes to an end. You only need to catch a sufficient number to present a credible threat of capture to the others.

68. Notice how vehicle traffic visibly slows when approaching a known speed camera location, and then accelerates again once it passes the speed camera location. Certain knowledge of negative consequences for illegal behavior changes the behavior of rational human beings.

69. Annual per capita consumption of alcohol was 2.60 gallons from 1906 to 1910. In 1934, after the repeal of Prohibition, that figure was less than one gallon, and even in 1945 per capita consumption was only two gallons. Figures show that per capita consumption of alcohol did not rise to pre-Prohibition levels until 1975. See Norman H. Clark, *Prohibition and Temperance*, in *THE READER'S COMPANION TO AMERICAN HISTORY* 871, 873 (Eric Foner & John A. Garraty eds., 1991).

70. For more on how the rule of law changes human behavior, see NORMAN GEISLER & FRANK TUREK, *LEGISLATING MORALITY* 29 (1998).

71. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (amended by Omnibus Trade and Competitiveness Act of 1988), Pub. L. No. 100-418, 102 Stat. 1415 (amended by the International Anti-Bribery and Fair Competition Act of 1998), Pub. L. No. 105-366, 112 Stat. 3302 (codified as amended at 15 U.S.C. §§ 78m(b), 78dd-1 to -3, 78ff (1998) [hereinafter FCPA].

zation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Corruption Convention), was adopted in November 1997.⁷² Prior to that time the FCPA, adopted in 1977, was the only major legislation of global reach that focused on international corruption. The FCPA was and remains an instrument focused on regulating the corrupt behavior of global corporations in paying bribes—that is, with a focus on the supply side of corruption.⁷³ The FCPA is a domestic law that is vigorously enforced by U.S. authorities.⁷⁴ By contrast, the primary multinational instruments combating global corruption attempt to regulate both the supply and demand sides of corruption, addressing both the payment of bribes by private entities and the solicitation and acceptance of bribes by government officials. These instruments include the United Nations Convention Against Corruption (UNCAC),⁷⁵ the Inter-American Convention Against Corruption (IACAC),⁷⁶ and the African Union Convention on Preventing and Combating Corruption (AU Corruption Convention).⁷⁷ Each of these instruments contains strong prohibitions, but relies primarily on domestic laws and local enforcement officials to give the prohibitions force.⁷⁸ These instruments therefore do not, on their own, offer the solutions needed to curb corruption in impacted countries.

Similarly, other initiatives and pressures used to limit corruption, including local anticorruption commissions, task forces, and withholding of funds for aid and infrastructure, have proven to be of limited use in part because they do not serve as credible deterrents against individuals committing acts of bribery or corruption. The Democratic Republic of Congo (Zaire) provides a telling example of how pressures from international organizations to limit corruption in exchange for financing are of limited efficacy. During the brutal thirty-two-year reign of Mobutu Sese Seko, Zaire received almost \$10 billion in foreign aid, up to \$550 million per year. These funds came with repeated calls for reform and transparency, and threats to withdraw funding if changes were not instituted.⁷⁹ Despite four

72. Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, 37 I.L.M. 1.

73. See FCPA, *supra* note 71, at §§ 78dd-1(a) to -1(f)(1), -2(a).

74. The United States Department of Justice and Securities and Exchange Commission formally prosecuted thirty-eight cases under the FCPA in 2007, and was on pace to match or exceed those numbers in 2008. Gibson, Dunn, and Crutcher LLP, *2008 Mid-Year FCPA Update* July 7, 2008, <http://www.gibsondunn.com/Publications/Pages/2008Mid-YearFCPAUpdate.aspx>.

75. United Nations Convention Against Corruption, U.N. Doc. A/58/422 (Oct. 7, 2003), available at <http://www.unodc.org/pdf/crime/conventioncorruption/signing/Convention-e.pdf>.

76. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724.

77. African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5 (the AU Corruption Convention entered into force on Aug. 5, 2006).

78. Thomas R. Snider & Won Kidane, *Combating Corruption Through International Law in Africa: A Comparative Analysis*, 40 CORNELL INT'L L.J. 691, 734–39 (2007).

79. MICHELA WRONG, IN THE FOOTSTEPS OF MR. KURTZ 196 (2000).

failed International Monetary Fund (IMF) stabilization plans and an internal World Bank report in 1979 that painted Mobutu as running an unrepentant kleptocracy, noting that “there is no – I repeat no – chance on the horizon that Zaire’s many creditors will recover their funds,” it was not until 1990 that the World Bank and IMF cut off funding to Zaire. In the wake of the wreckage, Zaire’s populace was saddled with a crushing \$14.5 billion debt.⁸⁰ Transparency International estimates that Mobutu personally embezzled over \$5 billion from Zaire, making him the third most corrupt leader in history.⁸¹

Demand Side and Supply Side Efforts

Stronger domestic laws, consistently and vigorously enforced, are needed. Laws must address both the supply and demand sides of corruption and keep all relevant parties (multinational companies, governments, and government officials) committed to anticorruption principles. The need is not simply for good laws, but for enforced laws⁸² that hold all parties accountable.⁸³

Demand Side

Demand-focused anticorruption initiatives seek to hold accountable government officials and police that protect human traffickers or those who seek to profit from human trafficking. Such initiatives often focus on local law enforcement and frequently include training or other resources designed to build the capacity of law enforcement to conduct investigations or otherwise build, promote, and enforce the rule of law. These measures include efforts to build accountability within the ranks of law enforcement, such as robust internal affairs divisions, and incentives for reporting improprieties within ranks. Some specific examples of these initiatives include cross-jurisdiction training cooperation undertaken by the U.S. Department of Justice’s Overseas Prosecutorial Development, Assistance and Training (OPDAT) and the International Criminal Investigative Training Assistance Program (ICITAP).⁸⁴ The U.S. Department of Justice has also made efforts

80. *Id.* at 200–02; *see also* U.N. ECON. COMM’N FOR AFRICA, *supra* note 8.

81. TRANSPARENCY INTERNATIONAL, GLOBAL CORRUPTION REPORT (2004), *available at* http://www.transparency.org/publications/gcr/download_gcr/download_gcr_2004#download.

82. *See* Snider & Kidane, *supra* note 78. *See also* Brian Iselin, Regional Legal Expert, Human Trafficking, United Nations Office on Drugs and Crime, Remarks at the Human Rights Challenge of Globalization in Asia Pacific U.S.: Trafficking in Persons, Especially Women and Children (Nov. 13, 2002) (referencing the “yawning gap between adequate law and adequate enforcement”).

83. For more on the need to keep both governments and private entities accountable, *see* PATRICK X. DELANEY, TRANSNATIONAL CORRUPTION: REGULATION ACROSS BORDERS 13–14 (Asia Pacific School of Economics and Government 2005).

84. The U.S. Department of Justice’s Overseas Prosecutorial Development, Assistance and Training (OPDAT) section develops and administers technical assistance designed to enhance the capabilities of foreign justice sector institutions and their law enforcement personnel, so they can

to collaborate with local officials in investigations of trafficking and other cross-jurisdictional sexual offenses under the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act.⁸⁵ Most current global initiatives to combat corruption are demand-focused.⁸⁶

Supply Side

Supply-focused anticorruption initiatives seek to hold accountable those individuals or entities willing to pay bribes to protect illegal operations or avoid lawful government processes. These operations may be human trafficking operations, private foreign or multinational corporations seeking to skirt onerous legal processes or obtain a contract or an unlawful advantage, or even a foreign tourist seeking to avoid a court visit for a violation of law. The best example of a supply-focused initiative is the United States' Foreign Corrupt Practices Act, which aims to curb corrupt practices of private corporations working in countries where bribery and corruption are prevalent.⁸⁷

IMPORTANCE OF PRIVATE-ENTITY, DEMAND-SIDE EFFORTS IN COMBATING CORRUPTION

Bribery erodes both the ability and incentive of public law enforcement to do its vital job.⁸⁸ A consistent rule of law is the foundation of development in Africa, and a consistent rule of law requires full commitment from all actors. Corruption undermines the rule of law, so developing jurisdictions need foreign countries to hold their corporations accountable for acts that perpetuate corruption and hamper its eradication.

effectively partner with the Department of Justice in combating terrorism, trafficking in persons, organized crime, corruption, and financial crimes. The International Criminal Investigative Training Assistance Program (ICITAP) works with foreign governments to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism. Situated in the U.S. Department of Justice's Criminal Division, and funded primarily by the State Department, ICITAP provides international development assistance that supports both national security and foreign policy objectives.

85. Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (PROTECT) of 2003, Pub. L. No. 108-21, 117 Stat. 650 (codified in scattered sections of 18 U.S.C.).

86. See Reyes Calderon, Jose Luis Alvarez Arce & Silvia Mayoral, *Corporation as a Crucial Ally Against Corruption*, J. BUS. ETHICS (2008), <http://www.springerlink.com/content/r575486262915415/>.

87. See FCPA, *supra* note 71.

88. As an example, in one oil-rich West African nation there are no official government fees for transiting cargo through the country, or for obtaining a visa for a citizen from a country where no embassy of this West African state exists. However, a litany of unofficial payments are required to various officials in multiple government agencies in the capital before cargo can be transited or a visa will be issued. In this process state coffers receive no income from the issuance of visas locally, and therefore the citizens of this West African state receive no tangible benefit from this government service. Interview with confidential client source.

In fact, private entities have every business incentive to end their involvement in corruption and bribery.⁸⁹ Corruption costs private entities millions of dollars in transaction costs, bribes, and time lost to negotiating payoffs.⁹⁰ In the current sensitive enforcement environment, clients and customers expect companies to be vigilant in implementing anticorruption programs.⁹¹ Companies lose business and profits to corruption and related unfair business practices. Therefore, it is in the interest of all private entities to see corruption curbed and uncertainty limited.⁹² Companies should work to eradicate corruption from their ranks for the good of their own operations, as well as for the development of the jurisdictions in which they work.

It will take supply-side forces—foreign and multinational private entities—joining governments in the fight against corruption to bring about significant change, and the FCPA and other anticorruption legislation is an important part of that battle. The World Bank Governance and Anticorruption Report cites the corporation as a “crucial ally against corruption,” and the UN notes the corporation is a “key pillar of integrity” in the corruption battle.⁹³ Nevertheless, corporations have little incentive to self-enforce given global competition and need third-party accountability to help level the playing field.⁹⁴

The United States government must continue to enforce principles of fair play against corporations subject to United States law, even in the face of competition from abroad.⁹⁵ The FCPA and other supply-side anticorruption initiatives play an important role in the battle against corruption, as the FCPA can hold private players accountable without reliance upon public justice systems in jurisdictions with high levels of corruption.

CONCLUSION: ANTICORRUPTION INITIATIVES AND THEIR IMPACT ON HUMAN TRAFFICKING

Only global anticorruption initiatives that bring consistent, tangible accountability to those who offer and accept bribes can curb human rights

89. See Michael Howlett & Jeremy Rayner, *Globalization and Governance Capacity: Explaining Divergence in National Forest Programs as Instances of “Next-Generation” Regulation in Canada and Europe*, 19(2) GOVERNANCE 251 (2006).

90. See Marong, *supra* note 9, at 107. See also Calderon, *supra* note 86, at 6.

91. See Calderon, *supra* note 86, at 6.

92. See Hannah Clark, *Are Anti-Bribe Laws Working?*, FORBES, Oct. 13, 2006, http://www.forbes.com/corporategovernance/2006/10/12/leadership-bribery-scandal-lead-govern-cx_he_1013_bribe2.html (“[Forty-four percent] of American respondents said they had lost contracts because they wouldn’t pay a bribe.”).

93. See Calderon, *supra* note 86, at 5 (citing the World Bank Group, Strengthening Bank Group Engagement on Governance and Anticorruption, DC2006-0017 (2006)).

94. See *id.* at 7 (“[I]n the short-term, corruption creates lucrative opportunities with low risk for unethical corporations.”).

95. See Ben W. Heineman, Jr., & Fritz Heimann, *The Long War Against Corruption*, 85(3) FOREIGN AFF. 75 (2006).

violations in Africa like human trafficking. As corruption decreases, trafficking will decrease. With a balanced increase in credible supply- and demand-side corruption initiatives—those that increase accountability for government and law enforcement officials, and increase accountability for individuals and private entities that help perpetuate corruption—the payoffs for corrupt behavior will drop, and fewer individuals will take part in the activity. Specifically, as law enforcement officials charged with protecting vulnerable women and children from predators come to understand that the risk of accepting bribes and payments from traffickers outweighs the benefit, the protection of the law will be put behind the vulnerable instead of behind rapists and kidnappers. Once traffickers find that law enforcement officials are less likely to accept their payoffs to protect their illegal activities, they will be forced to move elsewhere or shut down their operations. When the scales tip and the full protection of the law settles on the side of victims, a key battle in the war against human trafficking will have been won.