

JOURNAL OF ANTI-CORRUPTION LAW

2023 Volume 7 Pages 1 - 19

THE GENDERED IMPACT OF CORRUPTION: WOMEN AS VICTIMS OF SEXTORTION IN SOUTH AFRICA

Kirstin Hagglund * & Franaaz Khan **

ABSTRACT

Corruption affects people differently due to a range of factors, including gender, context, race, socio-economic status, power relations and vulnerability. Research suggests that corruption can affect women more adversely than it does men.¹ This is because vulnerable groups are more susceptible to corruption, and women are often more vulnerable than men as they are viewed as easier targets. Furthermore, it follows that more vulnerable women are likely to be more adversely affected by corruption than those that are less vulnerable. The evidence generally shows that the gendered impact of corruption is related to societal gender roles, social inequality and discrimination. Thus, women's disadvantages in many areas of life result in greater vulnerability to corruption compared to men, who enjoy more power and protection, and better access to countervailing strategies. Corruption severely influences the extent to which women's rights are ensured and protected. In cases where women find themselves in a social, political, organisational or cultural context where they are more disempowered relative to men, and they are direct victims of corruption, their experiences of corruption can be more acute, and their avenues to respond to it more limited.² In this article, the law pertaining to sextortion in South Africa is explored. The authors recommend that women must be brought into the public arena and information about public services be made widely available as this can be critical in reducing the differential impacts of corruption on them.

* LLB, LLM (US), LLD candidate at Stellenbosch University kirstin.hagglund@mweb.co.za.

** LLB LLM PhD (UKZN), Senior lecturer University of Johannesburg. Admitted Attorney, franaazk@uj.ac.za.

1 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).

2 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (accessed on 18 July 2022).

1. BACKGROUND

One of the key risks of corruption that directly affects women and girls is sexual corruption. According to Lindberg and Stensöta, sexual corruption entails using sex and the human body as the currency of corruption.³ Undue advantage is intended to apply as broadly as possible, including in cases where intangible items or non-pecuniary benefits (such as sexual favours) are offered insofar as they create or may create a sense of obligation among the parties. When sexual corruption is coercive, it is sometimes called sexual extortion.⁴ Similarly, the International Association of Women Judges refers to sexual corruption as ‘sextortion’. Sexual corruption is one of many examples of how women are exposed to corruption daily. In some instances, women are pressured to pay bribes, they are often less able to afford bribes than men or have less power and authority to resist the pressure.⁵ Corrupt criminal justice institutions can further exacerbate the problem when women are unable to report cases of bribery or to seek help for victimisation. In such cases, women may be directly excluded from crucial services such as health care and education because they do not have the resources to pay the bribes.⁶

Women and men are affected by corruption differently. This may be attributed to the gender roles and stereotypes held by women which classify them as the more vulnerable group and thereby negatively impact upon their involvement and participation in decision-making processes. Additionally, globally, women are over-represented amongst the poor.⁷ The United Nations Report “Turning promises into action: Gender equality in the 2030 Agenda

3 Lindberg H and Stensöta H (2018). *Corruption as Exploitation: Feminist Exchange Theories and the Link Between Gender and Corruption*. In *Gender and Corruption: Historical Roots and New Avenues for Research*, Stensöta: Palgrave Macmillan.

4 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).

5 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020) <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).

6 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).

7 United Nations Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda For Sustainable Development* (2018), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Fact-sheet-Global-en.pdf?la=en&vs=3554> (Accessed on 19 July 2022).

for Sustainable Development”⁸ demonstrates how women are excluded from progressing in society due to the various and intersecting forms of discrimination that they face, including a lack of access to key services such as education and health,⁹ which further exposes them to corruption thereby continuing the vicious cycle of gender inequality and discrimination. A gender perspective is a key component when developing programmes to combat and prevent corruption as the United Nations has stated that gender inequality allows corrupt networks to grow and this entrenches gender inequalities.¹⁰ As such, gender equality cannot be achieved without acknowledging and tackling the differing impacts that corruption has on certain individuals. The focus of this article is on the direct and indirect impacts of corruption on women, as well as to provide strategies to help address the various impacts of corruption that women face.

2. HISTORY OF CORRUPTION

Corruption in South Africa is perhaps the country’s oldest tradition. Citizens are angered by corruption, and it is constantly part of the political debate in South Africa.¹¹ The country witnessed how affluent individuals in society enriched themselves during the Covid-19 pandemic. Corruption in South Africa dates to colonisation in 1652. Jan van Riebeeck, the Dutch East India Company employee, who was sent to colonise the Cape, was hired because he was given a second chance after he was removed for ignoring the company ban on using his office to pursue financial interests. The period of Dutch rule lasted until 1795 and was marked by tax evasion and corruption by public officials. Under British rule, which followed that of the Dutch, public spending was directed to serve private interests.¹² The most corrupt

8 Hereinafter referred to as the Report.

9 United Nations Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (2018), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Fact-sheet-Global-en.pdf?la=en&vs=3554> (Accessed on 19 July 2022)

10 United Nations office on Drugs and Crimes, *Mainstreaming Gender in Corruption Projects / Programmes Briefing Note for UNODC Staff* (2020), available at https://www.unodc.org/documents/Gender/20-05712_Corruption_Brief_ebook_cb.pdf (Accessed on 19 July 2022).

11 The Conversation, *How corruption in South Africa is deeply rooted in the country’s past and why that matters*, (2020) available at <https://theconversation.com/how-corruption-in-south-africa-is-deeply-rooted-in-the-countrys-past-and-why-that-matters-144973> (Accessed on 1 August 2022).

12 The Conversation, *How corruption in South Africa is deeply rooted in the country’s past and*

period in the country's history was the last few years of apartheid. When the first democratic elections took place in 1994, corruption had become deeply embedded in the way the government operated and in how business related to the government.¹³ The seeds of post-1994 corruption was therefore deeply planted in the country's past and carried over into what was meant to be a new society. However, none of this means that sharply reducing corruption in South Africa is impossible. These deep-rooted problems created over centuries demand thorough solutions which will take time to work.¹⁴

2.2. Definition of corruption, sex, and gender

'Corruption' is defined as the use of public office for private gain. In other words, corruption is the use of an official position, rank or status by an office bearer for their own personal benefit.¹⁵ In addition, the Prevention and Combatting of Corrupt Activities Act provides that corruption is any person who directly or indirectly accepts or agrees or offers to accept any gratification from any other person whether for the benefit of himself or for the benefit of another person.¹⁶

There are also differences between 'sex' and 'gender', which should be noted as these concepts are often conflated in discussions of gender and corruption. Whilst 'sex' is rooted in biological differences between men and women, such as genetic differences, and tends to be discussed in binary terms, 'gender' involves the social, cultural and religious meanings given to these biological differences.¹⁷ How gender is understood varies across and within societies and may relate amongst other things to an individual's identity, social norms, and expectations related to gender roles, context, and systems of power.¹⁸

why that matters, (2020) available at <https://theconversation.com/how-corruption-in-south-africa-is-deeply-rooted-in-the-countrys-past-and-why-that-matters-144973> (Accessed on 1 August 2022).

13 The Conversation, *How corruption in South Africa is deeply rooted in the country's past and why that matters*, (2020) available at <https://theconversation.com/how-corruption-in-south-africa-is-deeply-rooted-in-the-countrys-past-and-why-that-matters-144973> (Accessed on 1 August 2022).

14 The Conversation, *How corruption in South Africa is deeply rooted in the country's past and why that matters*, (2020) available at <https://theconversation.com/how-corruption-in-south-africa-is-deeply-rooted-in-the-countrys-past-and-why-that-matters-144973> (Accessed on 1 August 2022).

15 Myint U (2000) "Corruption: cases, consequences and cures". *7(2) Asia Pacific Development Journal* at 33-57.

16 Prevention of Combatting of Corrupt Activities Act 12 of 2004.

17 Myint (2000) at 45.

18 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), available at <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered->

2.3 The link between gender and corruption

Research on gender, sex, and corruption emerged in early 2000s with studies which reported a correlation between low levels of corruption and more women occupying positions in government. Studies concluded that gender difference in corrupt actions and attitudes towards corruption exist.¹⁹

2.4 Women as direct victims of corruption – ‘sextortion’

Both men and women are affected by corruption in its various forms. However, in cases where woman find themselves in social, political, organisational, or cultural contexts where they are more disempowered in comparison to men and they are direct victims of corruption²⁰, their experiences of corruption can be more acute and their avenues to seek legal recourse more limited.²¹

According to the United Nations, approximately seventy percent of the world’s poor are women²² and they face greater obstacles than men in breaking the cycle of poverty.²³ Women in Africa are the first and foremost victims of inequality and exclusion owing in large part to entrenched and pervasive corruption.²⁴

-
- 19 impacts-of-corruption.html (Accessed on 18 July 2022).
- 19 Dollar D, Raymond Fisman, and Roberta G (1999). *Are Women Really the ‘Fairer’ Sex? Corruption and Women in Government*. The PPR on Gender and Development Working Paper Series, No. 4. Washington, DC: The World Bank: Development Research Group.
- 20 Direct victims of sextortion would include circumstances where women find themselves being victims first-hand from the perpetrator, whereas indirect victims would be victims through some middle person/ agent of the perpetrator.
- 21 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), available at <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).
- 22 United Nations office on Drugs and Crimes, *Mainstreaming Gender in Corruption Projects / Programmes Briefing Note for UNODC Staff* (2020), available at https://www.unodc.org/documents/Gender/20-05712_Corruption_Brief_ebook_cb.pdf (Accessed on 19 July 2022).
- 23 Kabeer, N, *Can the MDGs Provide a Pathway to Social Justice? The Challenge of Intersecting Inequalities* (2010) New York: United Nations Development Programme (UNDP) available at http://www.mdgfund.org/sites/default/files/MDGs_and_Inequalities_Final_Report.pdf (Accessed on 23 July 2022).
- 24 Transparency International *Corruption Stands in the Way of Women Accessing Land and Basic Services in Africa: What Can Be Done?* (2022) <https://www.transparency.org/en/blog/corruption-africa-women-land-basic-services> (Accessed on 23 July 2022).

Due to the gender role occupied by women as the primary caretaker of the family they have more interaction with the provision of social services and, as such, the United Nations has acknowledged that one of the main reasons for the 'differential impact of corruption on women is that they tend to access some state services more than men do'²⁵ making them more exposed to bribery risks at the point of service delivery. In particular, women have less control over natural resources than men, and do not have the same access to funds to pay for private alternatives when public services fail or are inadequate thereby making them particularly vulnerable to the negative effects of corruption associated with the provision of social services (UNDP and UNIFEM, 2010). In 2019, Transparency International surveyed over 47,000 people in 35 African countries finding that one in four of the surveyed users of public services paid a bribe, with women comprising two-thirds of all patients in public health systems. It has been stated that even when men and women have equal access to public services, women may be perceived as the easier target in circumstances where they have less socio-economic power than men.²⁶

Due to the fact that the majority of women are poor, they are often unable to pay for bribes and, as the providers of these public services are mainly male, the currency of the bribe changes from money to sex. Sexual favours are demanded in return for basic services, such as education and health care.²⁷ This is what is referred to as 'sextortion', a term created by the International Association of Women Judges (IAWJ) in 2008, which is defined as:

...the abuse of power to obtain a sexual benefit or advantage. Sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe. It is not limited to certain countries or sectors, but can be found wherever those entrusted with power lack integrity and try to sexually exploit those who are vulnerable and dependent on their power.²⁸

25 United Nations office on Drugs and Crimes, *The Time is Now — Addressing the Gender Dimensions of Corruption* 43 available at https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf (Accessed on 24 July 2022).

26 United Nations office on Drugs and Crimes, *The Time is Now — Addressing the Gender Dimensions of Corruption* 43 available at https://www.unodc.org/documents/corruption/Publications/2020/THE_TIME_IS_NOW_2020_12_08.pdf (Accessed on 24 July 2022).

27 United Nations office on Drugs and Crimes, *Mainstreaming Gender in Corruption Projects / Programmes Briefing Note for UNODC Staff* (2020), available at https://www.unodc.org/documents/Gender/20-05712_Corruption_Brief_ebook_cb.pdf (Accessed on 19 July 2022).

28 International Association of Women Judges, *Combatting Sextortion: A Comparative Study Of Laws To Prosecute Corruption Involving Sexual Exploitation* (2015) available at <https://old.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-2.pdf> 28

Sextortion can be broken down into four components which separates it from other forms of abuse or corruption: (1) The offender is in a position of entrusted authority; (2) There is a *quid pro quo* element; (3) the benefit in the *quid pro quo* element is sexual in nature; and (4) The person must rely on the coercive power of authority rather than on physical force to obtain the sexual benefit.²⁹ Sextortion involves components of both corruption on the one hand and gender-based violence in the form of sexual harassment and abuse on the other. Because of this, 'sextortion' often occupies a 'blind spot'. Though it constitutes both a form of corruption and gender-based violence, it fits neither definition perfectly which means that it falls between lines of responsibility and continues to remain unaddressed. It has been stated that 'impunity is rampant in sextortion cases, which increases the odds of serial offenders.'³⁰ A perpetrator of sextortion is much less likely to face prosecution than someone who solicits a monetary bribe.³¹ It has been pointed out that the corruption element of sextortion relies on authority to 'coerce' sex, thereby challenging traditional notions on lack of consent. From a gender-based violence perspective, the *quid pro quo* element, and the fact that sextortion is exercised through psychological coercion rather than physical violence are particularly challenging.³²

It is important to acknowledge the unique vulnerabilities of women and how these vulnerabilities may affect their experience of corruption. Hendry from the International Association of Women Judges points out that 'vulnerability is really what makes sextortion possible. If you were not vulnerable and did not feel coerced in some measure, then what you would have is a total consensual relationship.'³³ There needs to be more awareness on the

(Accessed on 23 July 2022).

29 International Association of Women Judges (2012) *Stopping the abuse of power through sexual exploitation: Naming, Shaming and Ending Sextortion*, IAWJ.org.

30 Transparency International, Guilherme France, *Criminalising Sextortion: challenges and alternatives* (2022) available at https://knowledgehub.transparency.org/assets/uploads/kproducts/Criminalising-sexortion_final_10.06.2022.pdf 6 (Accessed on 23 July 2022).

31 Transparency International, Guilherme France, *Criminalising Sextortion: challenges and alternatives* (2022) available at https://knowledgehub.transparency.org/assets/uploads/kproducts/Criminalising-sexortion_final_10.06.2022.pdf 6 (Accessed on 23 July 2022).

32 Eldén, Å., D. Calvo, E. Bjarnegård, S. Lundgren and S. Jonsson (2020), *Sextortion: Corruption and Gender-Based Violence*, EBA Report 2020:06, the Expert Group for Aid Studies (EBA), Sweden 38.

33 Hendry, Nancy from International Association of Women Judges, participating in the panel

crime of sextortion as a form of corruption due to its far-reaching consequences in that it negatively affects the safety as well as the physical and emotional well-being of women worldwide.³⁴ The IAWJ goes on to state that it 'not only causes great individual harm, but, like other forms of corruption, has far-reaching implications for gender equity, democratic governance, economic development, and peace and stability.'³⁵ According to Sarah Gitlan (2015):

This corrupt sexual exploitation often has a far greater adverse effect on victims than monetary corruption, not only because of the act itself – which can be extremely violent and is always a violation of personal dignity and human rights – but also because of the possibility of disease, pregnancy, and, all too frequently, social ostracization, victim blaming, and loss of prospects in the marriage market.³⁶

In fragile and post-conflict states with weak governments and rule of law, corruption can exacerbate gross abuses of women's human rights in the form of rape, violence and forced displacement. Examples of gender-based discrimination and corruption can exist in many areas of society, including law enforcement, where women may be less able to present complaints without having to pay bribes or to have their complaints treated seriously.³⁷ Therefore, it has correctly been held that sextortion is a prevalent and widespread global phenomenon and that gender plays an essential part in determining vulnerability to sextortion in particular.³⁸ In a survey conducted in Zimbabwe in 2019, fifty-seven percent of the women surveyed reported that they had needed to offer sexual favours in exchange for

discussion *Corruption, Gender Inequality and the MeToo movement* (2018) available at <https://www.cfr.org/event/corruption-gender-inequality-and-metoo-movement> (visited 24 July 2022).

34 International Association of Women Judges, *Combatting Sextortion: A Comparative Study Of Laws To Prosecute Corruption Involving Sexual Exploitation* (2015) available at <https://old.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-2.pdf> 9;14 (Accessed on 23 July 2022).

35 <https://old.iawj.org/programs/corruption-and-sextortion/>.

36 Gitlin, S. *Beyond Sextortion: How Corruption Uniquely Affects Women* (2015) The Global Anticorruption Blog available at <http://goo.gl/pP5BNT> (Accessed on 23 July 2022).

37 Hossain, Naomi, Jessica, Hughes, and Musembi (2010). *Corruption Accountability and Gender: Understanding the Connections. Primers in Gender and Democratic Governance. UNDP and UNIFEM*, available at www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf (Accessed on 3 August 2022).

38 Bicker Caarten, Asleigh & Van Heugten, Loes & Merkle, Ortrun (2022) "The reckoning of sexual violence and corruption: A gendered study of sextortion in migration to South Africa," MERIT Working Papers 2022-009, United Nations University - Maastricht Economic and Social Research Institute on Innovation and Technology (MERIT) 3.

employment, health care and finding placements for their children at schools.³⁹ In the North African region, one in five people were reported to have experienced or know someone who experienced sexual extortion when accessing public services such as education or health care.⁴⁰ In a 2015 study looking at women and corruption in the water sector in Johannesburg, it was found that sextortion seems to be common in a range of situations where women require access to resources and services.⁴¹ The study found that women may be subject to unwanted requests with one woman stating that ‘if I don’t have money to bribe the water utility staff he will sexually abuse me because that’s the only valuable thing I can give him’.

More extreme cases also have a direct impact on woman, such as corrupt police forces and customs officers or politicians facilitating human trafficking which often affects women and girls. Sexual corruption targeting women can also occur during conflict and post-conflict peacekeeping and reconstruction efforts. An example of direct corruption is evident in the sex-for-food scandals where peacekeeping forces and workers supplied food and other resources on condition of sexual favours from women and children.⁴²

2.5 Women as indirect victims of corruption

Despite corruption not always having a direct impact, women often suffer from the indirect effects of corruption for at least three reasons. First, corruption undermines economic development and perpetuates or aggravates poverty. Corruption disproportionately affects the most vulnerable by increasing costs associated with and barriers to basic goods and services such as health care and education. According to data from the United Nations, most

39 Transparency International *Gender and Corruption in Zimbabwe* (2019) available at <http://www.tizim.org/wp-content/uploads/2020/07/Gender-and-Corruption-in-Zimbabwe-2019.pdf> (Accessed on 24 July 2022).

40 Transparency International Global Corruption Barometer 2019 (2019) available at <https://www.transparency.org/en/publications/global-corruption-barometer-middle-east-and-north-africa-2019> (Accessed on 24 July 2022).

41 UNDP-SIWI Water Governance Facility (2017). *Women and corruption in the water sector: Theories and experiences from Johannesburg and Bogotá*. WGF Report No. 8. Stockholm: SIWI 16.

42 Hossain, Naomi, Jessica, Hughes, and Musembi (2010). *Corruption Accountability and Gender: Understanding the Connections. Primers in Gender and Democratic Governance*. UNDP and UNIFEM, available at www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf (Accessed on 3 August 2022).

of the poor are women and children. Corruption can prohibit access to basic rights like food, clothes, housing, medical care and education and compromises economic opportunities and well-being.⁴³ Secondly, women particularly poor women are more dependent than men on public services, which are often depleted by corruption. Corruption in public procurement and contracting, chiefly for resources earmarked for marginalised groups, usually results in either higher prices for services or lower quality services.⁴⁴

Finally, corruption in political systems perpetuate gender inequalities such as discrimination against women with respect to resources, participation in politics and access to high-level positions in public administration. Male-dominated decision-making bodies can perpetuate a cycle in which fewer resources are allocated to government policies and programmes that benefit women or allow their participation in government.⁴⁵

3 LEGISLATIVE FRAMEWORK ON SEXTORTION IN SOUTH AFRICA

3.1 Criminal law

In terms of South African criminal law, corruption is defined as follows

Anybody who (a) accepts any gratification from anybody else, or (b) gives any gratification to anybody else in order to influence the receiver to conduct herself in a way which amounts to the unlawful exercise of any duties, commits corruption.⁴⁶

The Prevention and Combating of Corrupt Activities Act criminalises corruption and defines 'gratification' as including:

money, whether in cash or otherwise; (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage; (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

43 Stensöta H and Wängnerud L (2018). *Why expect a link between gender and corruption? In Gender and Corruption: Historical Roots and New Avenues for Research*: Palgrave Macmillan.

44 Goetz, A M, and Jenkins R (2005). *Reinventing Accountability: Making Democracy Work for Human Development*. Basingstoke: Palgrave Macmillan.

45 United Nations office on Drugs and Crimes, *Gendered Impacts of Corruption*, Chapter 8 (2020), available at <https://www.unodc.org/e4j/en/anti-corruption/module-8/key-issues/gendered-impacts-of-corruption.html> (Accessed on 18 July 2022).

46 This definition was cited with approval in *S v Scholtz* 2018 2 SACR 526 (SCA) par 123.

(f) any forbearance to demand any money or money's worth or valuable thing; (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; (h) any right or privilege; (i) any real or pretended aid, vote, consent, influence or abstention from voting; or (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.⁴⁷

Snyman states that the word 'gratification' has a 'very broad meaning.'⁴⁸ He submits that it is also wide enough to include sexual gratification and provides the example of where 'Y, a male traffic officer, catches X, a female motorist, committing a traffic offence, and then offers not to fine or prosecute her if she has intercourse with him'.⁴⁹ In *S v W*, the Transvaal Provincial Division found that sexual intercourse is classified as a gift or consideration.⁵⁰ However, the main hinderance in this regard is that the crime of bribery has two guilty parties and, therefore, risks the victim of sextortion being held criminally responsible. Furthermore, as the legislation does not specifically deal with sextortion as a crime of corruption and women yield to the authority of a state official thereby in effect consenting, most women and law enforcement officers are unaware of the criminality of such acts. In South Africa, sextortion or 'sexual blackmail' as it is commonly known, consists of a threat to reveal intimate information about a victim unless the victim pays money to the extorter. In this connected digital age, the information might include snippets of sexual text messages (sexts), intimate photos, and videos.⁵¹ This narrow definition of sextortion does not address a large part of the cases of sextortion that occur in society. If the scale of sextortion is measured with a definition that is too narrow, there will be a systematic underestimation of the problem at a national level and global level.⁵²

3.2 The South African Constitution

47 Section 1(ix) of the Prevention and Combating of Corrupt Activities Act 12 of 2004.

48 Snyman (2020). *Criminal Law*. 7th Edition. LexisNexis Ltd. (South Africa) 360.

49 Snyman (2020) 360.

50 *S v W* 1991 2 SACR 642 (T).

51 *Sextortion: A threat for everybody* available at <http://www.kaspensky.co.za/blog/sextortion/12716> (Accessed on 3 August 2022).

52 Eldén, Å., D. Calvo, E. Bjarnegård, S. Lundgren and S. Jonsson (2020), *Sextortion: Corruption and Gender-Based Violence*, EBA Report 2020:06, the Expert Group for Aid Studies (EBA), Sweden 108.

Section 12(1) of the Constitution affords all South Africans the right to freedom and security of person, which includes the right-

- (a) Not to be deprived of freedom arbitrarily or without just cause;
- (b) Not to be detained without trial;
- (c) To be free from all forms of violence from either public or private sources;
- (d) Not to be tortured in any way; and
- (e) Not to be treated or punished in a cruel, inhuman or degrading way.⁵³

It is evident that any form of sextortion is clearly a violation of an individual's section 12 constitutional right especially in terms sections 12 (c) and (e) and this would include being victims of sexual violence, rape, and even sexual assault. The list is not exhaustive.

3.3 The Cybercrimes Act 19 of 2020

The Cybercrimes Act is a major step towards regulating online spaces giving law enforcement the 'teeth' to go after criminals and help victims of digital misconduct to protect themselves and seek justice.⁵⁴ Cybercrime often comes to mind in the form of information or identity theft or cyber forgery. It significantly extends its scope and criminalises extortion and malicious communication. The Cybercrimes Act offers protection, but also a new level of awareness which is needed. It recognises extortion especially sextortion which includes the blackmail of images or videos of a sexual nature or sexual favours.⁵⁵ In addition, the Cybercrimes Act gives the police service and their members and investigators extensive powers to investigate, search, access and seize almost anything. If one is found guilty of a malicious communications-related crime, one can be fined or imprisoned for up to three years.⁵⁶

3.4 The Film and Publications Amendment Act 11 of 2019

The Film and Publications Board has always had the power to introduce and regulate age restrictions to ensure that South African citizens are protected from content in films, games and certain publications that could cause them moral, emotional, or psychological harm.⁵⁷

53 Section 12 of the Constitution of the Republic of South Africa, 1996.

54 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/> (Accessed on 3 August 2022).

55 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/> (Accessed on 3 August 2022).

56 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/> (Accessed on 3 August 2022).

57 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/>

The scope of the Act has expanded to include aspects from incitement to revenge pornography. The Act includes activities as offences which include sharing of private sexual photographs or films on any platform without the prior consent of the individual appearing in such photographs, also sharing content that deals with unauthorised, private sexual photos and audiovisual content depicting sexual violence and violence against children.⁵⁸ Anyone found guilty of an offence will be liable to a fine not exceeding R150 000 or a maximum of two years imprisonment or both. Where the individual's identity is revealed in photographs, this penalty increases to a R300 000 fine and or a maximum of 4 years' imprisonment.⁵⁹

4 INTERNATIONAL LAW

International conventions do not specifically use the term 'sextortion', however, there are some that include provisions that are directed at the type of coercive abuse of authority for sexual benefit that embodies sextortion. The United Nations (UN) Declaration on the Elimination of Violence against Women describes gender-based violence as follows

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.

Therefore, worldwide, it is acknowledged that gender-based violence constitutes a serious hinderance to sustainable development, democratic development and public health, economic growth and peace, and obstructs victims from being full citizens and participating in the development of their societies.⁶⁰ Article 4 of the African Union Convention on Preventing and Combating Corruption states that an act of corruption includes

the offering or granting, directly or indirectly, to 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.

(Accessed on 3 August 2022).

58 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/> (Accessed on 3 August 2022).

59 *Social media scrutiny* available at <https://beintouch.org.za/2022/04/06/social-media-scrutiny/> (Accessed on 3 August 2022).

60 Eldén, Å., D. Calvo, E. Bjarnegård, S. Lundgren and S. Jonsson (2020), *Sextortion: Corruption and Gender-Based Violence*, EBA Report 2020:06, the Expert Group for Aid Studies (EBA), Sweden 27.

The International Labour Organization (ILO) uses *quid pro quo* as a key component in their definition of sexual harassment which they define as

any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job.⁶¹

These provisions demonstrate that sextortion falls within the scope of conduct that the international community condemns as a form of corruption and of gender-based violence.⁶² However, the main issue with Article 4 of the AU Convention of Preventing and Combatting Corruption is that the granting of a favour is included within the crime of corruption thereby criminalising the victim of gender-based violence and ensuring that women do not come forward. This is the reason that sextortion as a crime of corruption needs to occupy its own place within legislative frameworks so that it protects the victim.

5 ANALYSIS AND PROPOSAL FOR LAW REFORM

Most anti-corruption efforts target and focus on financial impropriety rather than sexual impropriety. As sextortion occurs at the intersection between corruption and gender-based violence, sextortion tends to be difficult to prosecute under most anti-corruption laws, which often do not consider sex as a possible currency of a bribe, as well as under legislation dealing with sexual violence that often do not consider the corruption elements of *quid pro quo*.

Furthermore, gender-based violence laws may not consider situations in which the victim yields, although not voluntarily, to the coercive power of a corrupt authority. As such, sextortion often eludes prosecution. Therefore, a significant barrier to successful prosecutions of sextortion is in large part due to inadequate legal frameworks. As such, sextortion must be included as a specific form of corruption in policy.

61 International Labour Organization (ILO) *Violence and Harassment against Women and Men in the World of Work. Trade Union Perspectives and Actions* (2017) available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_546645.pdf (Accessed on 24 July 2022).

62 International Association of Women Judges, *Combatting Sextortion: A Comparative Study Of Laws To Prosecute Corruption Involving Sexual Exploitation* (2015) available at <https://old.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-2.pdf> (Accessed on 23 July 2022).

Dealing with sextortion as a form of corruption and characterising sexual coercion as bribery, risks positioning victims of sextortion as ‘bribe givers’, and thereby, potentially as accomplices to a criminal act. The risk of criminalising victims needs to be considered when including sextortion in the crime of corruption. Transparency International provides that a way of addressing this concern is to look at the defences that can be presented by victims of sextortion. Furthermore, when addressing sextortion within a gender-based violence framework, it has been stated that it is of utmost importance to reframe the issue of consent by acknowledging the power imbalance that is characteristic of sextortion through the abuse of authority. This is of importance in situations of extreme vulnerability such as those living in abject poverty, in post-conflict contexts and in migration. The most common term used to refer to a wide range of sexual abuse is ‘sexual favours’ and when used to describe sextortion, the use of the word ‘favour’ can indicate consent thereby contradicting the coercive nature of the sexual act that is demanded. Therefore, to adequately address ‘sextortion’ the use of the word ‘favour’ needs to be removed from its definition and how it is established so that when dealing with complaints, the practical differences between coercion and consent are evident. There is no universal definition of consent, but useful guidance for the framing the issue of consent in sextortion can be found in Rule 70 of Procedure and Evidence of the International Criminal Court which states that:

consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim’s ability to give voluntary and genuine consent.

In 2020, submissions were made to the Parliamentary Portfolio Committee on Justice and Correctional Services on the Criminal Law Sexual Offences Amendment Bill to define sextortion as a sexual offence as it will have the following advantages :

- (i) recognise the disparity of social power between different genders in SA;
- (ii) raise awareness that sextortion is a form of corruption; and
- (iii) allow victims of sextortion access to justice.

Currently, South Africa’s current anti-Gender Based Violence laws do not offer women recourse to justice for sextortion as a form of corruption. Consequently, the perpetrator of sextortion, when demanding sex as a form of currency in a bribe, can rely on the lack of reporting opportunities for victims due to the actual lack of legal and policy framework

governing it. If the submissions to the portfolio committee are received favourably, this would be another victory for women who are victims of sextortion.

Policy makers and civil society have started to acknowledge that links between gender and power are extremely important when studying and combating corruption.⁶³ Policymakers need awareness and understanding of the gendered impact of corruption to design policies that address women and men's specific concerns and experiences.⁶⁴ Transparency International, after conducting extensive research on the gendered impact of corruption, states that anti-corruption programming and policymakers should incorporate a gender equality dimension by considering the impact of anti-corruption programmes on both women and men and that anti-corruption policies should be focused on empowering women in governance to build 'governance systems that are more responsive to women's needs'.⁶⁵ Corruption undermines the fairness of institutions and processes and clouds policies.⁶⁶ As a result, corruption undermines the legitimacy of regimes leading to a loss of public support and trust for state and government institutions. Corruption impacts on the ability of the State to protect and fulfil its human rights obligations such as law enforcement, health, education, and social services. Disadvantaged groups and vulnerable persons suffer due to corruption.⁶⁷ They are often more reliant on public services and public goods and have limited or no means to look for alternative private services. Disadvantaged sectors of society typically have fewer opportunities to participate meaningfully in the design and implementation of public policies

63 Eldén, Å., D. Calvo, E. Bjarnegård, S. Lundgren and S. Jonsson (2020), *Sextortion: Corruption and Gender-Based Violence*, EBA Report 2020:06, the Expert Group for Aid Studies (EBA), Sweden 39.

64 Transparency International Anti-Corruption Helpdesk, Janna Rheinbay, Marie Chêne, *Gender and Corruption Topic Guide* (2016) available at https://www.transparency.org/files/content/corruptionqas/Topic_guide_gender_corruption_Final_2016.pdf 9 (Accessed on 24 July 2022).

65 Transparency International Anti-Corruption Helpdesk, Janna Rheinbay, Marie Chêne, *Gender and Corruption Topic Guide* (2016) available at https://www.transparency.org/files/content/corruptionqas/Topic_guide_gender_corruption_Final_2016.pdf 9 (Accessed on 24 July 2022).

66 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

67 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

and programmes.⁶⁸ They often lack the resources and knowledge to seek redress and remedies. Corruption has the effect of reinforcing marginalisation in economic life. Human rights principles and institutions are essential components of successful and sustainable anti-corruption strategies. Anti-corruption efforts are more likely to be successful if they approach corruption as a systemic problem rather than a problem of individuals alone. According to the Office of the United Nations High Commissioner for Human Rights it is suggested that a human rights-based approach to corruption calls for a comprehensive strategy to promote effective institutions, appropriate laws, good governance, and the participation of all concerned stakeholders.⁶⁹

A human rights-based approach to anti-corruption means putting the international human rights entitlements and claims of the people (the 'right-holders') and the corresponding obligations of the state (the 'duty-bearer') at the centre of the anti-corruption debate and efforts at all levels, and integrating international human rights principles including non-discrimination and equality, participation and inclusion, accountability, transparency, and the rule of law.⁷⁰

There are a number of human rights which are instrumental in the fight against corruption, in particular the rights to information, freedom of expression and assembly, an independent judiciary, and participation in public affairs.⁷¹ It is equally important to protect those involved in combatting corruption from persecution or reprisals and to build or maintain an environment in which corrupt practices can effectively be addressed. This

68 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

69 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

70 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

71 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed on 12 August 2022).

includes human rights education, witness and victim protection, a free press and protection of anti-corruption activists, including by recognising them as human rights defenders.⁷²

A human rights-based approach will make anti-corruption efforts more sustainable and effective. Such an approach can help to identify those who are the victims of corruption, those who have a specific obligation to address corrupt practices and consequently to devise effective remedies which can provide for reparation of the harm caused, including civil, criminal and administrative avenues.⁷³ Domestic, regional and international human rights mechanisms can play an important role in addressing corruption and a general reduction of gender inequalities can address the root causes of the gendered impacts of corruption. Therefore, anti-corruption programming should include an analysis of differences in gender exposure and vulnerability to corruption, while gender programmes would benefit from an anti-corruption lens. Sextortion is a serious obstacle to sustainable development and gender equity and must be dealt with in all sectors and at all levels of development cooperation. As sextortion tends to occupy a so-called blind spot, it is vital to address sextortion both within the gender-based violence agenda, and within the anti-corruption agenda, and in collaboration between the two to ensure awareness and victim protection.

6 CONCLUSION

The article sought to discuss and explore the direct and indirect impact that corruption has on women. Corruption was defined in different contexts and the legislative framework in South Africa was discussed. The article also discusses the enhancements made in respect of sextortion by international conventions which paves the way for reforms in South Africa. In the light of these various aspects highlighted in the article, it can be deduced that there needs to be a promotion of the development of new knowledge about sextortion in all sectors. From

72 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed 12 August 2022).

73 *The negative impact of corruption on the enjoyment of human rights: Submission by OHCHR* available at <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf> (Accessed 12 August 2022).

a development cooperation perspective, areas of particular concern that have been identified in various studies are education, the health sector, migration, and the justice system.⁷⁴

74 Eldén, Å., D. Calvo, E. Bjarnegård, S. Lundgren and S. Jonsson (2020), *Sextortion: Corruption and Gender-Based Violence*, EBA Report 2020:06, the Expert Group for Aid Studies (EBA), Sweden 115.