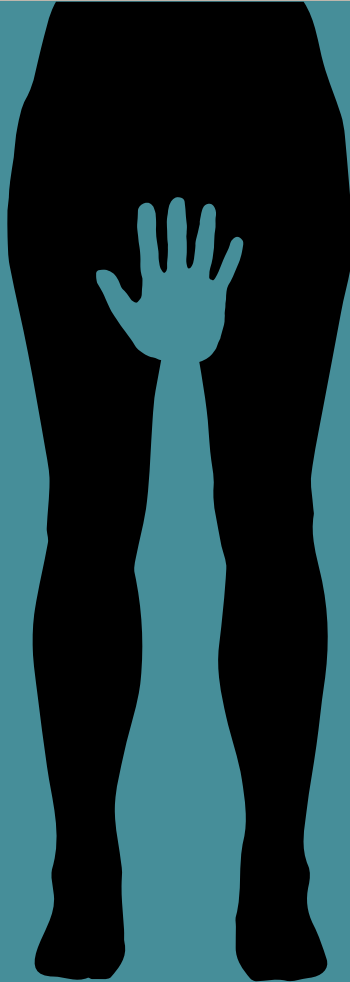




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Sextortion

**A crime of corruption
and sexual exploitation**



Sara Carnegie *Legal Director*

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Executive Summary

The primary purpose of this report is to promote awareness of sextortion from an anti-corruption perspective, consider the application of the law in response to it and chart the way forward.

The International Bar Association (IBA)'s preliminary research in eight jurisdictions highlights the barriers to addressing sextortion within existing legal frameworks.¹ The findings from that research underscore the extent to which anti-corruption laws have not focused on sexual favours, and laws dealing with sexual offences have not focused on the possibility of a corruption component to the offence. The result has been an imprecise fit and a patchwork of potentially applicable laws that might reach some, but not all sextortion conduct, leaving gaps that contribute to impunity.

There is a need for clarity and consistency in respect of how this crime is defined and what sanctions should apply, in accordance with the underlying requirements of the rule of law. Policy-makers and legislators should be encouraged to consider bespoke legislation to identify and criminalise such conduct within their jurisdiction.

The aim of this report is to complement the extensive work carried out by other organisations, such as the International Association of Women Judges (IAWJ), Thomson Reuters and the Organisation for Economic Co-operation and Development (OECD), and to pave the way for further international and domestic dialogue.

1 Preliminary research was carried out in Brazil, India, Nigeria, Romania, South Africa, South Korea, UK and the USA.

Introduction

Scene setting: a harsh reality

In March 2019,² a deadly cyclone in Mozambique destroyed homes and villages, in addition to claiming many lives. Tens of thousands of people were displaced and destitute, faced with a desperate need to feed and care for their families. Aid arrived within days, and providers, in some instances, determined that food and medicine would be available in return for sexual favours. So-called ‘humanitarian aid’ actually increased the human horror.

This was the recent reality for some survivors of Cyclone Idai, which caused catastrophic damage in Mozambique, Zimbabwe and Malawi. Assistance and provisions were offered to vulnerable women in return for sexual favours. There was no genuine consent on the part of the target, only desperation to ensure survival. One aid worker reported that, in some of the villages, the women and children had not seen any food for weeks and ‘would do anything for food, including sleeping with men in charge of the food distribution’.

In July 2019,³ Norwegian ex-cabinet minister Svein Ludvigsen was sentenced to five years imprisonment for sexually abusing three asylum seekers. The three young men targeted believed their response to his demands for sex could either result in being deported or securing permanent residency.

The events took place between 2011 and 2017, during which time Ludvigsen was the governor of Troms. He offered them housing and jobs in exchange for sexual favours.

2 Human Rights Watch, *Mozambique: ‘Cyclone Victims Forced to Trade Sex for Food’* (25 April 2019) www.hrw.org/news/2019/04/25/mozambique-cyclone-victims-forced-trade-sex-food accessed 30 July 2019.

3 ‘Norway ex-minister Svein Ludvigsen guilty of sexually abusing asylum seekers’ (BBC, 5 July 2019) www.bbc.co.uk/news/world-europe-48880551 accessed 30 July 2019.

The court said that the defendant had taken advantage of his status and it was an extreme breach of trust and misuse of power.

A former Canadian immigration judge was found guilty of breach of trust by a public officer under the Criminal Code, as well as violating the Immigration and Refugee Protection Act.⁴ Stevan Ellis, a member of the Immigration and Refugee Board, sought a sexual relationship with a South Korean refugee claimant in return for a favourable decision.

During sentencing, the presiding judge stated that Ellis had undermined public confidence in the integrity of the Canadian immigration system and that '[h]is actions call for denunciation in the strongest terms'. Ellis received a sentence of 18 months imprisonment.

The presiding judge focused on the power imbalance, and the violation of the 'significant trust' placed in Ellis as an immigration adjudicator: 'Mr Ellis had enormous power over Ms Kim. Her entire future rested on him'.

These seemingly disparate examples are part of a broader pattern of abuse of authority for the purposes of sexual exploitation – a pervasive, but comparatively unrecognised phenomenon called 'sextortion'.

4 *R v Ellis* (S), (2013) 312 OAC 328 (CA), 'Canadian immigration judge found guilty in sex for asylum case' Telegraph (London, 21 April 2010) www.telegraph.co.uk/news/worldnews/northamerica/canada/7615401/Canadian-immigration-judge-found-guilty-in-sex-for-asylum-case.html accessed 30 July 2019.

Defining Sextortion

For this report, the concept of sextortion is analysed from an anti-corruption perspective – the focus being on the conduct rather than the name. The IAWJ has defined sextortion in the following terms:⁵

‘[A] form of sexual exploitation and corruption that occurs when people in positions of authority whether government officials, judges, educators, law enforcement personnel, or employers seek to extort sexual favours in exchange for something within their power to grant or withhold. In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.’

This definition is not limited to specific jurisdictions. This form of abuse of power exists in advanced and developing countries, imposed by government officials, judges, prosecutors, law enforcement, doctors, teachers and employers, and across all fields. It is the abuse of authority or position to exploit someone who is vulnerable or dependent on their power. It must contain both a *corruption component* and a *sexually abusive component*:

- **corruption component:** the abuse of a position of authority by seeking a personal benefit in exchange for the exercise of that entrusted power; and
- **sexually abusive component:** the request to engage in unwanted sexual activity/provide a sexual favour.⁶

It is important to distinguish this definition of sextortion, as a form of corruption, from technology-aided sexual blackmail, which is a form of conduct given the same label in some jurisdictions. In the United Kingdom, the National Crime Agency refers to sextortion as a form of webcam blackmail, where criminals befriend victims online by using a fake identity and persuade them to perform sexual acts in front of their webcams.

5 IAWJ, *Twenty Five Years of Judging for Equality* (2016) 179.

6 IAWJ, *Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion* (2012) 9 (the ‘IAWJ Toolkit’).

The criminals then threaten to share the images with the victims' friends and family.⁷ A similar definition applies in the United States, where the focus has been primarily on online activity and extortion.⁸

This report will focus on *sextortion as a form of corruption*, where sex rather than money is the currency of the bribe. This can be illustrated using two parallel scenarios:

- In the first, 'Mr Smith' attends a government office to seek a permit. After reviewing the paperwork, the relevant official demands a \$100 bribe to process the permit.
- In the second, 'Ms Smith' attends the same government office for the same permit. This time, the government official tells Ms Smith that he will only grant her the permit if she performs oral sex.⁹

Mr Smith's case is an archetypal example of bribery. Most jurisdictions have anti-bribery laws that prohibit the official's demand. If Mr Smith reported the bribe, then the official may face prosecution. While the strength of anti-corruption laws varies by jurisdiction, and the enforcement of such prohibitions depends on political will and prosecutorial resources, the law is largely settled. There are few countries in the world where the government official's demand for a financial bribe would be anything other than illegal, even if such conduct is endemic and regarded as a 'way of life'.

7 National Crime Agency, 'Sextortion (webcam blackmail)' (National Crime Agency, 2019) www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/kidnap-and-extortion/sextortion-webcam-blackmail accessed 15 July 2019.

8 The term 'sextortion' has, for many years, been used to describe inappropriate sexual conduct. One of the earliest uses of the term arises in a case reported in the Los Angeles Times in April 1950. Two women were on trial for conspiring to intimidate a government witness, and it was alleged that they had tried to blackmail him into 'going easy' in his evidence. Failure to do so would result in them telling his wife that he had been intimate with them. The women denied that they had taken part in the alleged 'sextortion' scheme (as reported).

9 The gender choice of the protagonists is deliberate: while sextortion is not exclusively a gendered issue and there are cases of male victims, it has a disproportionate impact on women.

From a governance standpoint, the conduct of the government official in Ms Smith’s case is as reprehensible as in Mr Smith’s case and, from a human rights standpoint, arguably more so. However, the legal and policy frameworks for addressing sextortion are inconsistent and far less developed than those that address financial corruption. When drafting existing statutes, legislators were not considering the nexus between corruption and sexual exploitation, so it was not addressed comprehensively, or in many instances, at all.

The following chart illustrates the range of circumstances in which sextortion might arise. It underscores the need to ensure that the behaviour, and therefore perpetrators and victims, are identified in a consistent way in respect of conduct that is fundamentally the same – abuse of entrusted power for personal sexual benefit.

Demand Sexual act



Research carried out by a number of organisations, including the IAWJ and others referenced in this report, has not identified any jurisdictions with legislation that specifically and comprehensively prohibits this behaviour.

In 2018, Jammu and Kashmir became the first Indian state to criminalise behaviour that amounts to sextortion in relation to female targets. In India, the Prevention of Corruption Act 1988 was enacted to combat corruption and prosecute public servants. The Prevention of Corruption Act (Amendment) Act 2018 came into force in July of that year, in an attempt to bring the original Act in line with the United Nations Convention against Corruption 2005, ratified by India in 2011. Section 2 of the amended Act defined ‘undue advantage’ as ‘any gratification whatever, other than legal remuneration’ and confirmed that this was not limited to financial benefits, or those measured in money. This legislation could in effect, capture cases of

sextortion by a public official, but not sextortion involving private parties or unrelated to the exercise of a public duty.¹⁰

In October 2018, the Jammu and Kashmir High Court issued an order directing the administration to criminalise sextortion. It referred to the crime lying ‘*at the intersection of sex and extortion under the overarching ambit of corruption*’ and being ‘*an institutionalised system of blatant abuse of power*’.¹¹

This led to the Jammu and Kashmir Criminal Laws (Amendment) Act 2018,¹² which makes it an offence for any person,

‘in a position of authority or in a fiduciary relationship to employ a physical or non-physical form of coercion to extort, request or demand sexual favours from any woman in exchange of some benefits or favours that such person is empowered to grant or withhold’.¹³

It is no defence that the sexual benefit occurred with the victim’s consent. While this legislation is more specific than the 1988 and 2018 Prevention of Corruption Acts, it only protects female victims. There have been no cases brought under this provision to date.

10 *The Prevention of Corruption (Amendment) Act, 2018 (India)* s 8. The offence is punishable by imprisonment not less than three years and up to seven years, and a fine.

11 *Court of its own motion v State of JK & Anr* [2018] High Court of Jammu and Kashmir at Srinagar CMP No 31/2012.

12 The law came into effect in the state of Jammu and Kashmir in December 2018.

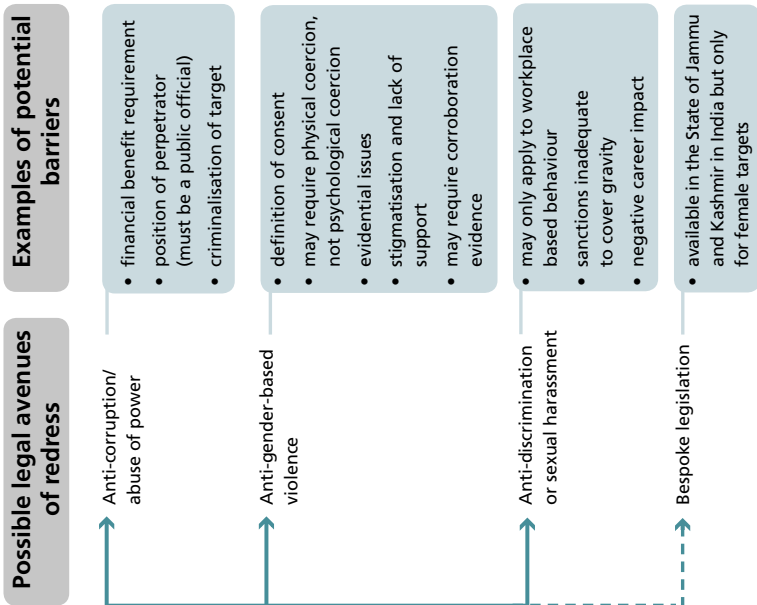
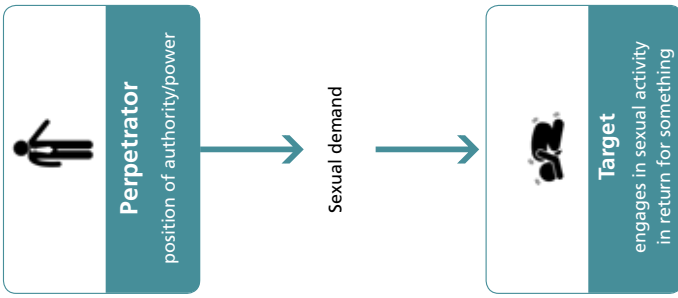
13 *Ibid.*

Background references

Reports published by the IAWJ, United Nations Office on Drugs and Crime (UNODC), Thomson Reuters, Transparency International (TI) and the OECD show that criminalising activity which falls under the ‘sextortion’ heading is complex. Identification and prosecution of the behaviour face a variety of obstacles depending on the jurisdiction in question, notwithstanding the common denominator: the corrupt abuse of power by an authority figure. It is not fully understood, it is under-reported and as a result it is not captured by meaningful data.

The following diagram attempts to simplify the issues that define the concept and can paralyse the ability to provide an effective response:

Sextortion



Relevant studies

A number of reports addressing sextortion that highlight the range of circumstances where sextortion can arise have been considered for this report. The reports drawn on, together with a short summary of each, are set out below:

- 2009 TI report *State of Research on Gender and Corruption*¹⁴ (the ‘2009 TI Report’) and 2016 TI report *Gender and Corruption: Topic Guide* (the ‘2016 TI Report’).¹⁵
- 2012 IAWJ toolkit: *Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion* (the ‘IAWJ Toolkit’).¹⁶
- 2015 IAWJ, Marval O’Farrell Mairal and Thomson Reuters Foundation, *Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation* (the ‘IAWJ Report’).¹⁷
- 2016–2019 Henry J Leir Institute at Tufts University’s blog series *Corruption in Fragile States*.¹⁸
- 2017 International Association of Lawyers’ Institute for the Rule of Law (UIA-IROL) report *Naming, Shaming, and Ending Sextortion* (the ‘UIA-IROL Report’).
- Sextortion in the aid sector – relevant references drawn from three recent reports.

14 Farzana Nawaz, *State of Research on Gender and Corruption* (TI: U4 Helpdesk Report, 24 June 2009) (the ‘2009 TI Report’).

15 Janna Rheinbay and Marie Chêne, *Gender and Corruption: Topic Guide* (TI: March 2016) (the ‘2016 TI Report’).

16 See n 6 above.

17 IAWJ, Marval O’Farrell Mairal and Thomson Reuters Foundation, *Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation* (10 April 2015) (the ‘IAWJ Report’).

18 Cheyanne Scharbatke-Church (editor in chief), *Corruption in Fragile States Blog Series* (Tufts University Henry J Leir Institute, 2016–2019) <https://sites.tufts.edu/ihs/blog/the-corruption-in-fragile-states-series> accessed 16 July 2019.

2009 TI Report: State of Research on Gender and Corruption¹⁹

The 2009 TI Report does not use the term ‘sextortion’, but identifies the disproportionate impact of corruption on women, especially when it involves sexual extortion and trafficking.²⁰ It states that the definition of corruption is evolving to include sexual extortion and exploitation, but these are not referenced in international instruments tackling corruption, such as the UN Convention against Corruption.

The gendered impact of corruption manifests itself through women’s reduced access to decision-making power and ability to change their own situation, society’s failure to ensure and protect women’s rights, and women’s limited access to resources (eg, healthcare, water and education).²¹

There is a specific focus on the issues associated with underreporting and the failure to conceptualise sextortion as a form of corruption in policy responses. The 2009 TI Report identifies a number of strategies employed to increase gender-responsive anti-corruption reforms, and explicitly notes the need for these reforms to take place in a broader policy context that strives towards gender equality.²²

The report also notes the lack of information on sextortion cases in developing, conflict and post-conflict countries, where institutional weakness and poverty allow for corruption to manifest in human rights abuses. One example is ‘sex-for-food’ scandals in the aid sector.²³

2016 TI Report: Gender and Corruption: Topic Guide

The 2016 TI Report refers to the phenomenon of ‘sextortion’ gaining prominence over recent years, and that this form of corruption is not

19 See n 14.

20 *Ibid* 1 and 3. See also n 15, p 7

21 See n 14, pp 3–4.

22 *Ibid* 4–5. The importance of a gendered approach to anti-corruption was reaffirmed by TI in its 2016 Report: *Gender and Corruption: Topic Guide*, pp 8–10 (see n 15 above).

23 *Ibid* 5–6.

always recognised as such and is less likely to be reported due to a culture of shaming and victim blaming.

*2012 IAWJ toolkit: Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion*²⁴

The IAWJ prepared the 2012 Toolkit in response to the findings from their programme in Bosnia and Herzegovina, the Philippines and Tanzania to name, shame and end sextortion. This toolkit intends to raise awareness and provide the ‘tools’ – guidance, information and resources – with which to address sextortion. It aims to give the problem a name, identify existing legal provisions, identify institutional and other barriers to effective prosecution, and formulate an action plan.

A range of case studies were referenced, which show the breadth of circumstances where sextortion can arise. Examples include:²⁵

- a Canadian immigration adjudicator who tried to extort sex in return for approving a young woman’s refugee application;
- a US immigration officer who coerced oral sex from a young woman seeking a green card;
- a Tanzanian teacher who demanded sexual favours from a female student in exchange for high marks in his class and other preferential treatment;
- a Chinese professor who accepted a sexual bribe from a female student seeking admission to the prestigious PhD programme he oversaw; and
- a Tanzanian police officer who engaged in sex with a female inmate in exchange for a promise to release her from jail.

24 See n 6 above.

25 *Ibid* 22–27.

*2015 IAWJ, Marval O’Farrell Mairal and Thomson Reuters Foundation, Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation*²⁶

The 2015 IAWJ Report defines sextortion and identifies challenges to prosecution in domestic and international law. It reviews the existing legislative schemes and practices in nine jurisdictions representative of diverse cultural and legal backgrounds to determine:

- situations where sextortion occurs in each country;
- the existing legal framework to address sextortion in each country and under international law, including criminal law and ethical codes for disciplinary proceedings;
- the reality of responses to sextortion offences in the criminal justice system, including legal barriers, societal pressures and capacity of the criminal justice system; and
- available resources for victims of sextortion in each country.

2016–2019 Tufts University’s blog series: Corruption in Fragile States

*Tufts University’s blog series: How the Séléka/Anti-Balaka Crisis Has Been Gas on the Fire of Corruption in the Central African Republic*²⁷

This blog claims that sextortion is the second-most common form of corruption experienced by women in the criminal justice system of the Central African Republic (CAR), second only to extortion/bribery. Reportedly, ‘criminal justice actors like policemen, judges or prison guards, demand and accept payments, including sexual favours, in return for a service, privilege or outcome... for basic functions such as to file a complaint or receive food in prison’.

26 See n 17 above.

27 Cheyanne Scharbatke-Church, *How the Séléka/Anti-Balaka Crisis Has Been Gas on the Fire of Corruption in the Central African Republic* (Tufts University Henry J Leir Institute: *Corruption in Fragile States Blog Series*, 10 October 2017) <https://sites.tufts.edu/ihs/how-the-selekaanti-balaka-crisis-has-been-gas-on-the-fire-of-corruption-the-central-african-republic> accessed 16 July 2019.

The Séléka/anti-Balaka crisis has a profound impact on society and those employed by and subject to the criminal justice system. Among other things, the crisis destroyed infrastructure, eroded government effectiveness and availability of resources, and led to unpaid wages and massive personal loss of wealth. During the crisis, sexual favours became a currency for individuals employed in the criminal justice system to obtain advancement to assignments offering the possibility of extra income or actually being paid wages owed. This is still a common occurrence.

*Tufts University's blog series: A View on Corruption and Gender in Lubumbashi (2016)*²⁸

The author of this blog interviewed two professionals – a Burundian ex-judge and practicing lawyer in the Democratic Republic of Congo (DRC) – working with a network of anti-corruption actors in Lubumbashi.

It was claimed that women in Lubumbashi are ‘under-served compared to men’ when attempting to access public services and often experience sextortion to obtain access. Many women refuse to prostitute themselves to access a service, so will simply go without. Women who experience sextortion might talk about their experience to other women, but not more widely or formally.

The professionals expressed dismay at the way in which sextortion has a significant and detrimental effect on gender roles, opportunities and rights in society.

*Tufts University's blog series: How Might Gender Roles Affect Whether You Engage in, or Hold Back from, Corruption?*²⁹

This blog explores the key findings for anti-corruption policies developed through an analysis of data from the DRC.

28 Kiely Barnard-Webster, *A View on Corruption and Gender in Lubumbashi* (Tufts University Henry J Leir Institute: *Corruption in Fragile States Blog Series*, 27 September 2016) <https://sites.tufts.edu/ihs/a-view-on-corruption-and-gender-in-lubumbashi> accessed 16 July 2019.

29 Kiely Barnard-Webster, *How Might Gender Roles Affect Whether You Engage in, or Hold Back from, Corruption?* (Tufts University Henry J Leir Institute: *Corruption in Fragile States Blog Series*, 13 July 2017) <https://sites.tufts.edu/ihs/how-might-gender-roles-affect-whether-you-engage-or-hold-back-from-corruption> accessed 16 July 2019.

The research found that ‘men expect to maintain their privileged position of control... [and that] when this expectation is not met many experience frustration’. Around 50 per cent of the men interviewed as part of the research thought ‘it was unfair that women can use their sex for personal advantage in a way in which men cannot’, and that ‘a woman without enough money [to pay a bribe] could usually negotiate to pay with her body to get what she needed’.

The research also noted ‘that women will face much *greater consequence* (eg, more severe or frequent social shaming) when caught offering or otherwise engaging in sexual favours’.

2017 UIA-IROL Report: Naming, Shaming, and Ending Sextortion³⁰

The UIA-IROL Report explores the laws and practices regarding sextortion in ten jurisdictions and cites case examples including:

- a French policeman who demanded sexual favours from ten women in exchange for the promise not to sanction them;
- a Greek lieutenant who abused his position of authority to extract sexual favours – soldiers consented to intercourse out of fear that they would lose their positions;
- the mayor of an Italian city who only agreed to grant two women’s request for economic assistance in exchange for sexual favours;
- students in Italy who were told they would not receive good marks if they did not perform sexual favours for their teacher (they were also told he had friends in the police force and would not be found guilty of any crime);
- a Polish city mayor who demanded that employees engage in sexual activity, implying that if they were to refuse, they would lose their jobs;
- a Portuguese military official who kept documents from a female citizen during traffic control and refused to return them until she performed sexual favours; and

30 The UIA-IROL Report.

- a businessman from Portugal who demanded sexual favours from a female employee in exchange for her keeping her job.

Sextortion in the aid sector

Certain forms of corruption, namely when basic public services are withheld instead of provided by right, have a disproportionate impact on women who are disempowered, whether on an economic, cultural or, most frequently, dual basis. The currency of corruption may be sexualised, with women and girls often asked to pay bribes in the form of sexual favours.³¹ Women's disempowerment and their dependence on public service delivery mechanisms for access to essential services (eg, health, water and education) increases their vulnerability to the consequences of corruption-related service provision.

*'Sexual Exploitation and Abuse by Peacekeepers: Understanding Variation, International Interactions' (2013)*³²

This article recounts the various instances in which peacekeepers engaged in sexual exploitation and abuse of local women:

'One of the first operations to become known for sexual violence and harassment toward local women by operative personnel was the United Nations operation in Cambodia 1992–1993 and Somalia in 1992. Since then, reports have surfaced related to operations in Kosovo, Sierra Leone, Liberia, Côte d'Ivoire, Haiti, Sudan, Guinea, the Democratic Republic of Congo, and Burundi. International peacekeeping missions have since been accused of sometimes creating a predatory sexual culture, where reports involve everything from peacekeepers coercing vulnerable individuals to provide sexual favors in exchange for food or meager pay...'

31 See n 15, p 18 citing Naomi Hossain and Celestine Nyamu Musembi, *Corruption, Accountability and Gender: Understanding the Connections* (2010).

32 Ragnhild Nordås and Siri CA Rustad (2013) 'Sexual Exploitation and Abuse by Peacekeepers: Understanding Variation' 39(4) *International Interactions* 512.

*House of Commons International Development Committee's oral evidence of sexual exploitation in the aid sector (2018)*³³

The House of Commons International Development Committee (the 'Committee') compiled evidence of sexual exploitation in the aid sector. In its summary, the Committee acknowledged that criminal sexual exploitation by aid workers and peacekeepers was not uncommon, particularly in humanitarian crises. While the precise scale was impossible to measure, this should not be a cause for inaction.³⁴ The Committee called for a change in the industry culture, especially surrounding sensitive issues, such as sexual harassment, assault and exploitation, and stated that there needed to be positive and sustained action to prevent victims and whistleblowers feeling penalised.

The evidence shows that while girls and young women are the most common victims, sexual exploitation knows no gender, and there is evidence that young men and boys are also victims of sextortion. Refugees described being unable to get aid without sexual favours: a refugee child said, 'it's difficult to escape the trap of those [Aid Agency] people; they use the food as bait to get you to sex with them'.³⁵

The Committee recommends a sustained and vastly improved response from the international aid sector to tackle this endemic abuse, ensuring that the approach is victim centred, with appropriate support services available. Reporting mechanisms must be improved and funding allocated to allow for this. Safeguarding and employment practices must also change to include a global register of aid workers recruited following full reference checks. It is acknowledged that this is unlikely to cover locally engaged aid workers, but would be of value in conjunction with other measures to improve oversight and monitoring processes.

33 House of Commons International Development Committee, *Sexual Exploitation and Abuse in the Aid Sector* (31 July 2018) <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/840/84002.htm> accessed 30 July 2019.

34 *Ibid* 2.

35 'Aid-for-Sex Children Speak Out' (BBC, 27 February 2002) <http://news.bbc.co.uk/2/hi/africa/1843930.stm> accessed 18 July 2019.

*Voices from Syria (2018)*³⁶

Voices from Syria highlights the gender-based violence protection needs of each of Syria's 14 governorates. The report found that '[c]amps were also identified as locations that increase the risk of sexual exploitation of women and girls... Participants described scenarios in which men in positions of power abuse their authority to make sexual advances on women and girls in exchange for goods or services necessary for survival...'

Sextortion is not just limited to aid, but also affects those attempting to secure housing. One woman recounts, '[a local woman] could not pay the rent of the house she was living in, yet the property owner allowed her to live there for free providing that he could sleep with her daughters, whenever he wanted'.³⁷ Research from Thomson Reuters reported this scenario also occurs in Africa,³⁸ indicating sextortion for housing security is not region-specific.

36 UN Population Fund, *Voices from Syria* (2018) www.humanitarianresponse.info/en/operations/whole-of-syria/document/gbv-voices-syria-wos-hno-2018-booklet-format accessed 30 July 2019.

37 *Ibid* 30.

38 'Women Forced to Trade Sex for Land Rights, Global Research Finds' (Thomson Reuters, 16 March 2016) www.reuters.com/article/us-women-landrights-sex-idUSKCN0WI2RC accessed 30 July 2019.

Response to Sextortion

Mainstreaming gender in an anti-corruption context

A broader point emerges from the above discussion of sextortion: gender has, in general, been largely ignored in the anti-corruption context. As much is evident from the fact that the word ‘gender’ is not found once in the OECD Anti-Bribery Convention or the 2009 OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This is problematic for multiple reasons. First, we cannot fully understand the nature, extent and impact of something that is not measured. As such, when organisations, such as the OECD or the World Bank, continue to define and gather data against the background of a gender-ignorant anti-corruption framework, the marginalisation of gender concerns – and conduct such as sextortion – persists. When research highlights that corruption costs the global economy \$X per year, what is really being said is that financial corruption equates to that cost. Until we disaggregate the concept and adopt a broader understanding of the manifold forms of corruption, we will fail to appreciate other, equally or more harmful, forms of this type of criminal behaviour.

Second, this prevailing conceptualisation entrenches the status of corruption as an economic phenomenon, which makes efforts to address sextortion even harder. As highlighted above, while some anti-corruption frameworks are broadly drafted, such that they could encompass sextortion,³⁹ we know from discussions with prosecutors and judges and the dearth of relevant case law, that relevant decision-makers retain an economic mindset in assessing corruption.

39 For example, where the relevant legislation refers to a benefit, something of value or an advantage.

The stereotypes and attitudes that view demands for sexual favours as different from demands for cash are deeply entrenched and shape the way corruption is defined and interpreted in laws, national action plans, anti-corruption policies, public information materials and research efforts. When gender is not part of the discussion, we do not ask the right questions, gather the correct information or even see the true nature and scope of the impact corruption has on everyday lives. Nor can we develop effective strategies for combating corruption when we are operating with flawed or incomplete information.

In the UK, the police service has identified a rise in the number of instances of sextortion committed by officers against witnesses, victims or suspects. Sextortion is thought to be rife in informal migrant/asylum seeker routes in North Africa and the Middle East. Even the IBA Legal Policy & Research Unit (LPRU)'s recent survey on sexual harassment in the legal profession indicated the prevalence of employment-related sextortion – *quid pro quo* sexual harassment in exchange for work employment or promotion.

Disproportionate gender impact is a key consideration for many global policy initiatives, with a notable focus on violence against women and girls. This should be extended to cover all areas that have a disproportionate impact on women, including corruption (both domestic and foreign), and seen as part of that wider agenda.

Legislative frameworks and barriers

The IAWJ has identified three types of legislation that are capable of punishing acts of sextortion in most jurisdictions:

1. anti-corruption and abuse of power legislation;
2. anti-gender-based violence legislation;⁴⁰ and
3. anti-discrimination/anti-harassment legislation.

40 See n 3 above, pp 16–19.

In each of the eight jurisdictions considered for this report, opportunities for and barriers to prosecution under each legislative heading were considered. Examples from these jurisdictions illustrate the extent to which different legislative provisions are tailored to address sextortion conduct and how effective they may be.

Barriers

Sextortion (in the anti-corruption context) is not formally identified or articulated as a specific offence in most jurisdictions. As a result, many targets fail to identify themselves as the victim of a crime – a problem exacerbated by a lack of information and awareness, and perceived limitations on how or where to report. The vulnerability of a victim of sexual abuse and the belief that they effectively ‘consented’ to what took place, combined with the power of the abuser, can also create significant barriers to reporting.

In the absence of bespoke laws defining sextortion, the remaining legislative options are often inadequate and fail to reflect the full extent of the crime. In addition to these limitations, there may also be evidential hurdles; potential criminalisation of the target; inadequate institutional frameworks lacking capacity or resources to effectively investigate or prosecute the conduct;⁴¹ and inadequate or non-existent reporting and support services for victims.

The IBA’s preliminary research indicates that certain bribery laws could be interpreted to include sextortion, but are not or have only rarely been used for this purpose. While sexual assault or sexual harassment legislation may reach some cases of sextortion, they generally afford more limited coverage and less severe penalties than anti-corruption laws.

41 See n 17 above, reference to institutional corruption as a significant hurdle to prosecuting public officials in some jurisdictions, p 29.

Many jurisdictions have approached corruption offences with a focus on financial bribes

Although the language of most anti-bribery legislation is broad, most jurisdictions do not specify whether sexual activity can constitute the currency of a bribe. Whether this legislation applies to such cases of sextortion has been tested infrequently through case law.

In the UK, the Bribery Act criminalises receiving ‘a financial *or other advantage*’ [emphasis author’s own].⁴² While this language appears broad enough to capture a sexual advantage, in practice, the Crown Prosecution Service guidance indicates that the Act’s ‘clear focus [is] on commercial bribery’.⁴³

In other jurisdictions, anti-corruption laws prohibit certain persons from obtaining an ‘undue advantage’ (India);⁴⁴ ‘benefit of any kind’ (Nigeria);⁴⁵ or ‘gratification’ (South Africa).⁴⁶ While these provisions in theory *could* be interpreted to include sexual activity, there is an absence of case law supporting this conclusion.

In Romania, abuse of power for sexual gain is explicitly criminalised in the Criminal Code.⁴⁷ This offence applies where, for the purpose of performing or not performing, speeding up or delaying the performance of a professional act, a public servant ‘solicits or is awarded sexual favours by a person who has a direct or indirect vested interest in that professional act’. The legislation also makes the solicitation by or award of sexual favours to a public servant who ‘takes

42 Bribery Act 2010 (UK) s 2.

43 Bribery Act 2010: Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions www.cps.gov.uk/legal-guidance/bribery-act-2010-joint-prosecution-guidance-director-serious-fraud-office-and accessed 21 July 2019.

44 The Prevention of Corruption Act 1988 s2.

45 Criminal Code Act 1990 s 98.

46 Corrupt Practice and Other Related Offences Act 2000 s 98A.

47 Law No 286 of 17 July 2009 of the Criminal Code s 299.

advantage of a situation of authority or power over the victim, arising from the office held’ an offence.

In the US, crimes that would have amounted to sextortion have, on occasion, been prosecuted as ‘extortion’ under chapter 41 of the US Code, which does not take into account the sexual exploitation component.⁴⁸ Chapter 11 of the US Code criminalises the corrupt demands for or seeking of ‘anything of value’ (as the currency of the bribe) by a public official in the exercise of their duties.⁴⁹ The Court of Appeals for the Eleventh Circuit in Atlanta, Georgia, has delivered two relevant judgments on the definition of a ‘thing of value’ exchanged in bribery charge under section 201 of chapter 11: a ‘thing of value’ can be an intangible consideration generally,⁵⁰ and a sexual act specifically.⁵¹ Section 201 of Title 18 of the US Code could provide scope for sextortion cases to be prosecuted under a bribery charge, and encapsulate the sexual element of the offence, provided the corrupt individual is a public official as defined in the US Code and other elements of the offence are met.

There is a risk that the victim may be criminalised for their role in an act that falls under the definition of ‘bribery’

Of the jurisdictions considered, all criminalised the offer or provision of a bribe. In theory, this legislation could be used to prosecute the victim of sextortion. In some jurisdictions, a defence may be available to the victim, but even this can be restricted by limited reporting timeframes.

In Nigeria, offences of corruption and abuse of office (which involve bribery) criminalise the person giving the bribe.⁵² This offence is punishable by imprisonment of up to seven years.⁵³ In South Africa, it is an offence to offer or agree to give any ‘gratification’ in a corruption

48 The US Code Chapter 41; see, eg, *United States v Petrovic* 701 F.3d 849 (8th Cir 2012).

49 The US Code Chapter 11, s.201(b).

50 *United States v Nilsen*, 967 F.2d 539, 542 (11th Cir 1992).

51 *United States v Moore* 525 F.3d 1033 (11th Cir 2008).

52 C 12 of the Criminal Code Act ss 98 and 98A

53 The Criminal Code s 98A.

context, punishable by a fine or imprisonment.⁵⁴ In the Republic of Korea, legislation penalising persons who ‘promise, offer or declare their intention to offer a bribe’ could include those engaging in a sexual act in exchange for a duty performed.⁵⁵

A similar offence, of bribing a public servant, applies in India. There is a defence available if the person is compelled to offer the bribe and reports the matter within seven days.⁵⁶ This limited reporting timeframe may be unhelpful to those who have experienced sexual exploitation. Experience has shown that women are often reluctant to report sexual offences and when they do feel strong enough to come forward, it may be some time after the offence occurred.

In a case involving corrupt US police officers who demanded sex from a female if she wanted to avoid arrest, the jury was instructed that as a matter of law the woman was an accomplice to the offence of receiving a bribe.⁵⁷

The requirement to be a ‘public official’

This proviso applies to anti-bribery laws in many jurisdictions. Sextortion cases involving perpetrators who are employers, teachers or doctors would therefore be excluded in many anti-corruption legislative frameworks.

In Nigeria, gratification by an official falls under the Corrupt Practices and Other Related Offences Act 2000, which prohibits the asking,

54 Prevention and Combating of Corrupt Activities Act 12 of 2004 ss 3 and 26. The act defines ‘gratification’ as ‘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’.

55 Penal Code (1953) (Republic of Korea) Art 133. Punishable by imprisonment for up to five years or a fine not exceeding KRW 20m.

56 The Prevention of Corruption (Amendment) Act, 2018 (India) s 8. The offence is punishable by imprisonment not less than three years and up to seven years, and a fine.

57 *The People of the State of New York, Respondent, v Steven Teitelbaum and Jeffrey Starroff*, Appellants 138 A.D.2d 647 (1988). The woman in question was not charged in that case, but the observation was made by the judge to the jury.

receipt or obtaining of a ‘benefit of any kind’ in the discharge of official duties or functions.⁵⁸ The definition of ‘official’ under the Act is quite broad, and captures anyone working ‘in the public service or other public body, or in any private organisation’.⁵⁹

In the UK, sextortion perpetrators who hold a public position may be charged with Misconduct in Public Office (MiPO). This covers a wide range of conduct, and has been used as a practical method of dealing with sexual offending by a person in public office. The consequences following a sexual offence conviction do not apply (eg, being registered on the sex offenders register, Sexual Harm Prevention Orders or Sexual Risk Orders) unless a further offence, such as rape, is charged.⁶⁰ MiPO is effectively providing a non-sexual, less serious alternative offence in cases where the defendant is in public office, which is not available to a defendant who is not in public office. This results in the paradoxical situation where those whose offending is aggravated by their public office end up with convictions for a lesser offence, unless the offence of rape is also charged.⁶¹

EXAMPLES OF BARRIERS AND LIMITATIONS UNDER ANTI-GENDER-BASED VIOLENCE LEGISLATION

The issue of ‘consent’

This is a complex consideration in sexual assault legislation. In some jurisdictions, to prove sexual assault, there must be evidence of physical force and clear refusal by the victim. Psychological coercion may be insufficient.

58 Corrupt Practices and Other Related Offences Act 2000 ss 8(1) and 19.

59 *Ibid* s 2.

60 *R v Lomax* [2019] EWCA Crim 254. A police officer convicted of both MiPO and rape in respect of events that had occurred 40 years earlier, in 1978.

61 Catarina Sjolín and Helen Edwards, ‘When Misconduct in Public Office is Really a Sexual Offence’ (2017) 81(4) *Journal of Criminal Law* 292–302. The Law Commission of England and Wales is currently looking at the scope and potential codification of MiPO and will publish its report following a consultation and review process in autumn 2019.

In South Korea, the level of assault or threat in rape cases must make it ‘extremely difficult or impossible to resist’. Overwhelming force must be present to suppress free will. The threshold is high, and recent case law suggests it could exclude many sextortion cases.⁶²

The Penal Code in India criminalises rape,⁶³ including situations in which certain sexual acts are performed on a woman without her consent, or with her consent if that consent is obtained by ‘causing her fear of death or hurt for herself or for someone she knows’.⁶⁴ Consent is defined in the Penal Code as ‘unequivocal voluntary agreement [to the sex act by] words, gestures or any form of verbal or non-verbal communication’.⁶⁵ While this definition indicates that there must be explicit, communicated consent, in practice, some courts have found that a lack of express consent and even ‘a feeble no’ may amount to consent.⁶⁶ It may therefore be difficult to argue lack of consent in sextortion cases, which are characterised by a *quid pro quo* exchange.⁶⁷ Given that sextortion relies on coercive power rather than physical threats, it may also be difficult to establish that there was fear of death or hurt.

62 Wooyoung Lee, ‘Ex- Governor Acquitted in South Korea’s First #MeToo Trial’ (UPI, 14 August 2018) www.upi.com/Top_News/World-News/2018/08/14/Ex-governor-acquitted-in-South-Koreas-first-MeToo-trial/6481534226962 accessed 18 July 2019. The case on ex-governor was overturned at the appeal stage - <https://apnews.com/d7f55ab7f0ff4b26aec9f75b22d7411a> but is currently pending before the Supreme Court.

63 Penal Code, 1860 (India) s 375.

64 *Ibid* s 375(d).

65 *Ibid* s 375, Explanation 2.

66 See Manasi Chaudhari, ‘Aziz Ansari, Mohammad Farooqui and the Dangerous Myth of a “Right” Way to Resist’ (2018) 53 Economic & Political Weekly www.epw.in/node/151337/pdf accessed 30 July 2019. Eg, in *Mahmood Farooqui v State of NCT of Delhi*, the accused was acquitted because the victim did not physically resist, feigned an orgasm and vocally resisted ‘feebly’. The court stated that in some cases, ‘a feeble “no” may mean a “yes”’: *Mahmood Farooqui v State* (Govt of NCT of Delhi) [2017] CRLA. 944 of 2016, [78].

67 See n 5, 11.

Corroboration

The requirement for additional evidence beyond the word of the victim may be necessary to bring a prosecution.

In Nigeria, various sections of the Criminal Code Act address anti-gender-based violence offences; however, in some instances, there can be no conviction based on the uncorroborated testimony of one witness.⁶⁸

Given that sexual assault is a criminal offence, the standard of proof in many jurisdictions make prosecuting sextortion without some corroborating evidence difficult, when typically there may be no evidence aside from the witness statement of the complainant.

Gender limitation

In some jurisdictions, sexual assault legislation applies only to assaults committed against women. This limit applies in India and Nigeria.⁶⁹

Lack of support for the victim

This barrier is not limited to anti-gender-based violence legislation and appropriate support for the victim is necessary no matter which type of legislation is used. This lack of support may derive from a failure to appreciate that this is also a sexual crime, and is likely to be more problematic in jurisdictions where there is less sensitivity around the needs and rights of women, or broader support/empathy for victims of sexual offences.

Sexual offence victims are traumatised and particular types of support, in addition to sensitive handling by law enforcement or investigators, should be in place. These processes will often be absent in sextortion cases.

68 The US Code s 224.

69 See the Criminal Code Act 1990 (Nigeria) and Penal Code (India) and the Jammu and Kashmir Criminal Laws (Amendment) Act 2018.

A fear of intimidation and stigmatisation, particularly in light of the victim's vulnerability, is also likely to account for significant under-reporting.

EXAMPLES OF BARRIERS AND LIMITATIONS UNDER ANTI-HARASSMENT LEGISLATION

Workplace restriction

In many jurisdictions, this is restricted to events in the workplace where someone is an employee. It can include behaviour that takes place at social events organised by the employer, but generally only applies to those working for a particular employer in a range of linked locations that may constitute the workplace.

The National Industrial Court of Nigeria (Civil Procedure) Rules 2017⁷⁰ allow a claimant who experiences sexual harassment in the workplace to reference *quid pro quo* harassment, but it is limited to workplace incidents.

In India, the 2015 *Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (the 'Indian Handbook on Sexual Harassment of Women')⁷¹ references a *quid pro quo* form of workplace sexual harassment where there is an implied or explicit threat or promise of detrimental or preferential treatment in employment. It provides example scenarios, but does not directly reference situations in which the target 'consents' to the unwelcome sexual request.

Sanctions

In sexual harassment cases, the available sanction may be much lower or inadequate, and the matter may be a civil rather than

70 National Industrial Court of Nigeria (Civil Procedure) Rules 2017 Order 1(10)(2) defines 'sexual harassment' for the purpose of those rules.

71 'Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013', issued by the Government of India, Ministry of Women and Child Development, November 2015.

criminal matter in some jurisdictions. Either way, the penalties tend to be much lower than those available in anti-corruption or sexual offence prosecutions.

In Brazil, sexual harassment is classified as a criminal offence when the perpetrator ‘obtain[s] sexual advantage or favour using the authority inherent in [their] position’.⁷² This is punishable by imprisonment for one to two years, which is lower than sanctions applied to sexual offences or corruption.

Romania has sought to criminalise sexual harassment, such that ‘harassing a person through threats or constraints in order to obtain sexual satisfaction by a person who abuses his/her authority or his/her influence given by his position in the workplace’ is punishable by prison from three months to two years or a fine.⁷³

In the US, a number of cases that would otherwise amount to sextortion (if a specific offence existed) have been addressed in the justice system as a civil dispute between an employer and employee.⁷⁴

Timeframes for reporting may be limited⁷⁵

In India, complaints about sexual harassment in the workplace must be made within three months of the last incident and are only applicable to female complainants. There is no provision with regard to male targets of sexual harassment.⁷⁶

72 The Penal Code 1940 (Brazil), Art 216-A.

73 Criminal Code 2014, Article 223; and see <https://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/romania-sexual-harassment> last accessed 24 July 2019.

74 See, eg, *McMiller v Metro* (2016); *Davenport v Edward Jones Company* (2018); and *Tillett v Autozoners LLC et al* (2018).

75 Also see The Prevention of Corruption (Amendment) Act, 2018 (India) s 8, defence if ‘bribe-giver’ reports within seven days.

76 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 s 3.

Consequences

A fear of stigmatisation and adverse consequences will apply in virtually all cases of sextortion where the power imbalance inevitably leaves a victim in a position of greater vulnerability.

In the workplace, the victim may fear reprisals and adverse career impact, particularly if support networks are insufficient or absent. This was found to be a significant concern as evidenced by the IBA global survey of 135 countries and 7,000 respondents. 49 per cent of those who did not report harassment cited this concern as a reason for being unwilling to do so.⁷⁷

⁷⁷ IBA, *Us Too? Bullying and Harassment in the Legal Profession*, May 2019.

Moving Forward

The IBA carried out this further research to gain further understanding of the issues, raise awareness and seek to affect change. For many years, the wider anti-corruption agenda has been at the forefront of our work, and more recently, our attention and concern has looked at behaviour and culture in the legal profession.⁷⁸ Sextortion sits within that spectrum. There is no doubt that it is a global problem, occurring in virtually every sector, regardless of the location and economic ranking or stability of the country in question. From educational establishments to the workplace, from law enforcement to humanitarian disaster zones, corruption – where sex is the currency of the bribe – is happening to people in a position of vulnerability in every jurisdiction.

By carrying out further research and highlighting the issues, the IBA hopes that this report will prompt further reflection on what constitutes a best practice approach. Greater awareness and understanding should lead to improved methods of data gathering to identify the scope of the problem and a potential solution.

Research from a large number of diverse jurisdictions shows that there is inconsistency and varying success rates in prosecuting offences that fall under the IAWJ definition of ‘sextortion’. Without specific legislation criminalising this form of corruption, perpetrators will often: (1) escape punishment – in full or in part – due to the lack of awareness and recognition of it being a crime; or (2) be punished for a limited aspect of their behaviour, depending on how the matter is charged (eg, as extortion, bribery or a sexual offence).

Prosecutions often attempt to shoehorn sextortion into existing legislation, which fails to recognise the wider scope and application of when and how sextortion can occur.

78 *Ibid.*

Sextortion is not purely about power imbalance and sexual abuse: it is about **corruption**, meaning there has to be a *quid pro quo* in the context of an exercise of entrusted authority.

There is a need for clarity and consistency in the definition of every crime and the applicable sanctions, in accordance with the underlying requirements of the rule of law. The lack of a specifically defined sextortion offence, encapsulating the sexual and corruption elements, creates a gap in the anti-corruption framework.

Below are some suggestions on how we can increase momentum, recognise the full extent of this crime, and provide clarity and consistency of approach.

- 1. Raise awareness of the issue and ensure that people know this conduct is punishable.**

The culture of perpetrators acting with impunity must change. Victims and the wider community (both national and international) need to acknowledge that this behaviour is unlawful, and to report it will not lead to stigmatisation or repercussions. This will require appropriate confidential, gender-sensitive reporting mechanisms to be in place to generate confidence and trust on the part of victims, and encourage them to report in a safe way.

- 2. Consider corruption and gender as interlinked issues.**

Corrupt behaviour should not be measured by financial gain alone. Failing to consider the gendered aspects of corruption leads to policy and law-makers creating processes that are deficient and do not address the full range of corrupt behaviour. Data collection is thereby flawed, and the problem not measured.

Abuse of power takes many forms, and recognising this by elevating the cost of human dignity to its rightful level is an important step. The collection of reliable data (particularly gender disaggregated data) will assist policy-makers to design targeted and more effective anti-corruption policies.

3. Enact bespoke legislation to cover the conduct and recognise the nature of the crime.

Legal frameworks are inadequate and may lead to difficulties in mounting successful prosecutions in many jurisdictions. Law-makers should incorporate the concept of sextortion into existing anti-corruption legal frameworks using specific language to recognise the nature of the offence to cover both elements of corruption and sexual exploitation. Any potential risk of criminalising the target in such cases should be removed.

4. Change institutional cultures by expressly noting sextortion in codes of conduct and ensuring that there are appropriate support structures in place.

In the same way that internal policies reference sexual harassment, there should be direct reference to *quid pro quo* requests for sexual favours in the workplace. The Indian Handbook on Sexual Harassment of Women provides detailed examples of behaviour that constitutes sexual harassment in the workplace, in addition to examples of how welcome and unwelcome behaviour is experienced.⁷⁹ Bars and law firms can lead the way by incorporating this explicitly into their codes of conduct.

5. Identify ways to overcome barriers faced by victims to enable access to justice.

Victims of sextortion may face a variety of barriers to accessing justice. This starts with ignorance of their rights, but then encompasses a fear of reprisals, a lack of legal assistance and inadequate legal frameworks.

Bars have a role to play in alleviating these concerns and helping to overcome such obstacles. Awareness campaigns and proactive discussions with national and international

⁷⁹ See n 72 above; however, as the title confirms, this relates to harassment of women not men. One example is '[a]buse of authority or power to threaten a person's job or undermine her performance against sexual favours'.

organisations and policy-makers would assist in drawing attention to the issue, formally identifying it and finding ways of overcoming the barriers.

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