JOURNAL OF ANTI-CORRUPTION LAW

2026 Volume 10(1) Pages 80 - 105

Sexual Corruption as a Form of Gender-Based Violence: Rethinking Corruption Through a Human Rights Lens In South Africa

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ABSTRACT

Corruption is an insidious plague that undermines democratic institutions and erodes public trust. When intertwined with gender-based violence, it results in profound violations of human rights. This research explores the phenomenon of sexual corruption (sextortion) and examines its impact on access to basic services and the protection of fundamental human rights. This paper details the systemic discrimination and the profound legal gaps that leave vulnerable individuals without protection or justice. Sexual corruption remains largely unrecognised in our current legislative framework, allowing those in power to exploit women and marginalised individuals by demanding sexual favours in exchange for basic services, employment, or legal status. Sexual corruption is not just a moral or ethical issue; it is a gross violation of fundamental human rights, including dignity, bodily integrity and equality. Yet, South Africa's anti-corruption legal framework does not recognise sexual corruption as a distinct offence. The Prevention and Combating of Corrupt Activities Act 12 of 2004 primarily focuses on financial corruption, criminalising both the corruptor and the corruptee. This framework fails to address cases where sexual favours, rather than money, are the currency of corruption. This paper examines international frameworks and also the approaches adopted in foreign jurisdictions, particularly in relation to the application of human rights protections in order to bring about legal reform in South Africa. Drawing on these comparative insights and best practices, the paper will propose context-sensitive recommendations tailored to South Africa's unique social and legal landscape. The paper adopts a doctrinal and comparative analysis methodology, integrating empirical insights from reports and surveys. It clearly demonstrates the failure of South Africa's legal and policy frameworks to recognise and address sexual corruption as both a form of corruption and

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gender-based violence. The paper concludes by calling for the criminalisation of sexual corruption, excluding the risk of prosecuting the victim.

Keywords: *Anti-corruption, Corruption, Human rights, Gender-Based Violence, Sexual corruption*

1. INTRODUCTION

Corruption is widely recognised as a serious obstacle to democratic governance, development, and the protection of human rights. Yet, its intersection with Gender-Based Violence (GBV) remains under-explored in both legal and policy discourse in South Africa. One of the most troubling forms of this intersection is sexual corruption, also referred to as sextortion, which is a form of abuse where those in power demand sexual favours in exchange for access to services, benefits, or opportunities that individuals are entitled to.[1] It is a form of GBV that disproportionately affects women and girls, reinforcing existing power imbalances and limiting their access to opportunities and essential services.[2] This reflects the broader reality that gender inequality is not just a consequence but also a key driver of sexual corruption, with deeply entrenched social norms around power, gender roles and economic dependency creating conditions in which such abuse thrives.[3]

Sexual corruption does not fit neatly into existing categories of either corruption or GBV, yet it bears the characteristics of both. It involves an abuse of entrusted power for personal gain, a core element of corruption, while also amounting to coercive sexual conduct and a violation of bodily autonomy, which places it squarely within the spectrum of GBV. Sexual corruption has three components: *abuse of authority* (power is abused by someone with entrusted authority for personal gain), *quid pro quo exchange* (a service or benefit connected to the entrusted authority is conditioned on a favour), and *sex as a currency* (the currency of the transaction is a sexual favour).[4] This definition differentiates sexual corruption

1 The term sextortion was coined in 2008 by the International Association of Women Judges during its work on judicial integrity and gender-based corruption.
2 Elden A *et al* (2020) *Sextortion: Corruption and Gender-Based Violence* Sweden: Expert Group for Aid Studies at 40.
3 Elden (2020) at 40.
4 GIZ (2025) *Sexual Corruption in South Africa, Understanding Prevalence and Context* GIZ at 2.

from sexual harassment (the presence of a conditionality is required) and from prostitution (no abuse of entrusted power).[5] Despite its prevalence, sexual corruption remains largely invisible in South Africa's legal and policy frameworks, leaving victims without effective avenues for redress and accountability.

This paper argues that the absence of explicit recognition of sexual corruption in South African law contributes to ongoing impunity and the normalisation of abuse, particularly in public service sectors such as basic services, housing, education, and access to social grants. Women, especially those living in poverty or already marginalised by unfavourable socio-economic realities, are disproportionately affected, often having to choose between enduring sexual exploitation or being denied essential services. By framing sexual corruption as both a corruption issue and a form of GBV, this paper seeks to rethink traditional understandings of corruption through a human rights lens. Rethinking corruption through a human rights lens means going beyond narrow definitions focused solely on abuse of public office for private gain and instead recognising how corruption, particularly sexual corruption, violates fundamental rights, reinforces inequality, and disproportionately harms already marginalised groups, especially women. This paper aims to demonstrate how such a lens can help close legal and policy gaps, ensure more effective protection for victims, and promote accountability. Therefore, the paper demonstrates that existing anti-corruption and GBV frameworks are not adequately equipped to respond to sexual corruption and considers whether specific legislative or policy reforms are required to confront the phenomenon meaningfully.

In doing so, the research contributes to a growing body of international work calling for a gender-sensitive approach to anti-corruption efforts, one that recognises how power and vulnerability are differently experienced and exploited. It argues for an integrated legal response that places dignity, access to services and justice at the centre of anti-corruption strategies.

5 Stone C & Owasanoye B (2024) "Reducing the Harms of Corruption: How a Harm Reduction Strategy can Focus the Fight against Corruption Where it Can Do the Most Good", *The Chandler Session Papers* at 8.

Recognising sexual corruption as a form of GBV compels a broader understanding of corruption, one that places human dignity, equality and vulnerability at the centre of the analysis. With this foundation in mind, the next section turns to the South African legal context to examine how current legal frameworks and anti-corruption measures are ill-equipped to respond to this intersectional harm.

2. SOUTH AFRICAN LEGAL CONTEXT

In the South African context, corruption is primarily governed by the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA). The Act defines corruption broadly as the abuse of a position of authority, a breach of trust or the violation of a legal duty in order to obtain a benefit for oneself or another. Section 3 of PRECCA sets out the general offence of corruption, providing that any person who, directly or indirectly, gives or accepts any gratification[6] in order to influence the actions of another person in the performance of their duties is guilty of corruption. While this definition is meant to be expansive, it is framed in economic or material terms and does not explicitly recognise non-monetary benefits, such as sexual favours, as corrupt transactions. Williams notes that sexual acts are often not explicitly included in the definition of gratification, advantage or thing of value, leaving sexual acts outside the ostensible ambit of anti-corruption.[7] This creates a critical blind spot in the legal framework. Sexual corruption, where individuals in positions of power solicit or demand sexual acts in exchange for access to services, employment opportunities, or basic needs, is

6 According to PRECCA gratification includes, money, whether in cash or otherwise, 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, the avoidance of loss, liability, penalty, forfeiture, punishment or other disadvantage, 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, any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part, any forbearance to demand any money or money's worth or valuable thing, 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, any right or privilege, any real or pretended aid, vote, consent, influence or abstention from voting or any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage.

7 Williams S (2024a) "Extricating Sexual Corruption from the Shadow" 25(2-3), *International Criminal Review* 470-492 at 473.

not formally recognised as corruption under the Act. Williams supports this assertion, writing that

> although the meaning of gratification and the general offence of bribery may be interpreted as covering sexual corruption, one of the challenges with reading sexual corruption into the Act (Section 3 of PRECCA) is that it criminalises both the giver and the receiver in a corrupt transaction.[8]

Whilst there are good reasons for doing so in relation to pecuniary corruption, this creates challenges in relation to sexual corruption, where the asymmetry of power, the psychological coercion and threats of deprivation mean that the perpetrator and the victim should not be equally culpable under the law. Williams proposes that

> reading a sexual corruption offence into Section 3 of PRECCA includes the criminalisation of victims, which will significantly limit reporting and thus prosecution of an already underreported crime and will only lead to reports where the victim did not acquiesce to the demand.[9]

Often sexual corruption is mistaken for sexual harassment; however, sexual harassment is defined in South African law, particularly in labour and equality legislation, as unwelcome conduct of a sexual nature that violates a person's dignity. Sexual harassment differs from sexual corruption in key respects. The reciprocity inherent in sexual corruption differentiates it from sexual harassment and other forms of sexual abuse.[10] Sexual corruption is transactional and coercive, often arising in unequal power relationships where the person targeted is pressured into compliance to secure essential rights or services.[11] This legal distinction has practical implications, leaving many victims of sexual corruption without adequate legal recourse. Considering these legal gaps, it is important to consider how widespread the problem is in practice. A 2025 study sheds light on the extent to which sexual corruption is experienced and perceived across South Africa. This national study, conducted by the Deutsche Gesellschaft fur Internationale Zusammenarbeit (GIZ), used a rigorous random probability sampling method to ensure adequate representation and to reduce

8 Williams (2024a) at 473.
9 Williams (2024a) at 473.
10 Williams (2024a) at 474.
11 GIZ (2025) at 16.

potential bias. The researchers engaged participants from a wide range of geographical locations and demographic backgrounds across South Africa to understand the prevalence and context of sexual corruption.[12] The study achieved an unweighted sample of 1 560 respondents, representing a weighted population of 42 692 575.[13] Alarmingly, 84% of those interviewed described sexual corruption as either a somewhat common or very common practice in the country, highlighting the widespread perception and normalisation of this form of abuse.[14]

As evidenced by the current legal frameworks rooted largely in economic and administrative understandings of corruption, these laws are insufficient to address the lived realities of sexual corruption. Therefore, it is important to look at sexual corruption through a human rights lens as that will offer a more victim-centred, power-aware and transformative framework. Rethinking traditional understandings of corruption through a human rights lens requires a shift from viewing corruption solely as a transactional abuse of power for private gain, to recognising its broader social and structural harms, particularly when it intersects with gender. A human rights approach centres the lived experiences of those most affected, particularly women and girls, and foregrounds the rights to dignity, equality, freedom from violence and access to essential services. This perspective is especially important in light of the findings from the GIZ report, which reveals that the most vulnerable group to sexual corruption are young women aged 18 to 24 years, followed by those aged 25 to 34 years.[15] Respondents also identified government as the sector most associated with sexual corruption, whether in the context of service delivery or within the workplace.[16] These insights highlight how sexual corruption not only reflects existing power imbalances, but also deepens exclusion and distrust in public institutions, making a rights-based approach all the more necessary. This framing makes visible the harm of sexual corruption not only as a breach of public trust, but as a violation of fundamental rights.

12 GIZ (2025) at 16.
13 GIZ (2025) at 16.
14 GIZ (2025) at 16.
15 GIZ (2025) at 16.
16 GIZ (2025) at 16.

By anchoring anti-corruption responses in constitutional and international human rights obligations, the state is compelled to take more proactive and victim-responsive measures moving beyond the punitive approach to include prevention, protection and remedy. Such a lens also highlights the accountability gap that exists when sexual corruption falls between the cracks of anti-corruption and GBV frameworks, and it opens the door for legal and policy reform that explicitly names and addresses the unique nature of sexual corruption. In doing so, it promotes a more coherent, inclusive and justice-oriented response to corruption in all its forms. To address this, we will turn to international law and foreign jurisdictions to explore how South Africa might formulate a measured and rights-based response to sexual corruption as a distinct form of GBV.

3. INTERNATIONAL INSTRUMENTS

When interpreting the Bill of Rights, the South African Constitution in Section 39(1)(b) requires that international law must be considered. In addition, Section 233 of the Constitution contains an obligatory international-law-favouring interpretative injunction.[17] Therefore, it is not sufficient to interpret any domestic legislation in a manner that is reasonable and textually appropriate; courts must also interpret the legislation to accord with international law.[18] It is within this context that we detail the international instruments that are relevant to sexual corruption.

The Universal Declaration on Human Rights was adopted on 10 December 1948 by the United Nations General Assembly. It is a milestone document as it is the first to set out universally inherent and fundamental human rights. It also paved the way for the many human rights treaties that followed, including, the United Nations Declaration on the Elimination of Violence against Women and the Convention on the Elimination of all forms of Discrimination against Women.

17 Coutsoudis A & Du Plessis M (2020) "We Are All International Lawyers; Now What? Taking Seriously the Constitutional Injunction to Integrate International Law Obligations into South African Law" 10 *Constitutional Court Review* 155–195 at 155.

18 Coutsoudis & Du Plessis (2020) at 157.

The United Nations Convention against Corruption, 2003 (UNCAC) is the only legally binding anti-corruption universal treaty. It was adopted by the United Nations General Assembly on 31 October 2003. South Africa ratified UNCAC in 2004.

As Kofi Annan, the former United Nations Secretary General, wrote in the Foreword to the UNCAC:

> Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries – big and small, rich and poor – but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.[19]

Article 15 of UNCAC deals with bribery of national public officials and states:

> Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
> (a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
> (b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

UNCAC, however, does not define corruption, and as such, its use of "an undue advantage" should logically extend to sexual favours.[20]Article 33 of UNCAC, which deals with "Protection of reporting persons", then states:

> Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

19 Stone & Owasanoye (2024) at 8.

20 Bauhr M, Owasanoye B & Petherick A (2024) "Sexual Corruption: Emerging Directions in Research and Policy", *The Chandler Session Papers* at 13.

Similarly, the use of the words "protection against unjustified treatment" in relation to the reporting of offences would benefit from further clarity. Logically, the meaning of unjustified treatment should extend to sexual favours.

The legal uncertainty surrounding the ever-present occurrence of sexual corruption was partially addressed by the passing of Resolution 10/10 in December 2023. At the 10th Conference of States Parties to UNCAC, Resolution 10/10, titled "Addressing the societal impacts of corruption", is the first resolution to specifically mention legislative gaps in order to prevent and prosecute sexual corruption.[21]

The Resolution acknowledges the gendered dimensions of corruption and encourages states parties to integrate gender perspectives into anti-corruption policies, strengthen protection for those affected by corruption, promote research on the relationship between corruption and gender equality, and improve anti-corruption education and awareness. Most significantly, the Resolution encourages states parties to recognise that the demand for sex or acts of a sexual nature through the abuse of authority may constitute a particular form of corruption. It further calls on states to address legislative gaps where necessary and to adopt measures to prevent and effectively prosecute such conduct. Although Resolution 10/10 does not create a binding international obligation to criminalise sexual corruption, it represents the first formal acknowledgement within the UNCAC framework that sexual corruption warrants specific legal attention. It therefore provides important normative support for recognising sexual corruption as a distinct manifestation of corruption and underscores the need for domestic legal reform to ensure that such conduct is adequately addressed.

The authors of this paper consider the Resolution an overdue and great success to gender and anti-corruption. Not only did the Resolution recognise sexual corruption as a particular form of corruption, it also encourages states to close the legislative gaps that allow sexual corruption to fester and thrive. The Resolution acknowledges the reality that women and children make up the majority of victims of the crime of sexual corruption. Commentary, however, on the Resolution found it to be lacking in some areas, particularly when it comes

21 Bjarnegård E et al (2024) "Sexual Corruption is Abuse of Power – and There's More to it Than 'Sextortion' Alone", available at https://www.cmi.no/publications/9251-sexual-corruption-is-abuse-of-power-and-theres-more-to-it-than-sextortion-alone (visited 30 June 2026).

to the absence of a more inclusive approach that embraces all marginalised groups. However, despite its weaknesses, there were calls for its celebration as a "good enough" foundation for mainstreaming gender in anti-corruption initiatives.[22]

In dealing with the intersection of gender and corruption, the Resolution also aligns with the Sustainable Development Goals (SDGs). SDG five is geared towards the achievement of gender equality and the empowerment of all women and girls. Target 5.2 specifically aims to "eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation gender". SDG 16 is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and to build effective and accountable institutions at all levels. Target 16.5 aims to substantially reduce corruption and bribery in all their forms. The international instruments mentioned above demonstrate the importance and urgency that all countries must adopt in their response to sexual corruption.

4. FOREIGN JURISDICTIONS

In interpreting the Bill of Rights, the South African Constitution explicitly encourages courts to engage with foreign law. Section 39 (1)(c) provides that when interpreting the Bill of Rights, courts "may consider foreign law". This permissive wording reflects an openness to comparative insights rather than an obligation to follow them. Drawing on foreign jurisdictions can offer valuable perspectives, particularly where South Africa is addressing novel constitutional questions or seeking to promote values such as dignity, equality and freedom. However, Ackerman, in his paper, "Constitutional Comparativism in South Africa",[23] notes that it is not in any sense binding the court that refers to it. There seems to be the fear that in referring to foreign law, one is bowing to foreign authority and thereby endangering

22 Kirya M (8 March 2024) "Gender and corruption resolution at UNCAC–COSP: Progress underway, yet paths to inclusion remain", available at https://www.u4.no/blog/the-uncac-cosp-10-gender-and-corruption-resolution-three-cheers-for-progress-but-still-some-way-to-go-on-inclusion (visited 30 June 2026).

23 Ackerman LW (2006) "Constitutional Comparativism in South Africa" 123 *The South African Law Journal* 497 -515 at 507.

the national sovereignty of one's own legal system.[24] This is manifestly not so. One may be seeking information, guidance, stimulation, clarification or even enlightenment, but never authority binding on one's own decision. One is doing no more than keeping the judicial mind open to new ideas, problems, arguments and solutions.[25] While foreign law is never binding, its use can enrich constitutional interpretation by offering tested solutions, highlighting alternative approaches, or confirming the principled direction of local jurisprudence. With this in mind, attention now turns to how foreign jurisdictions have approached the issue of sexual corruption. Examining these comparative frameworks may offer valuable guidance for shaping appropriate legal reforms to address sexual corruption within the South African context.

Several countries have taken concrete steps to criminalise sexual corruption by either expanding existing anti-corruption laws or introducing offences that recognise sexual favours as a form of corrupt exchange. These jurisdictions offer lessons to South Africa on how a legal system can evolve to protect the dignity and equality of victims by recognising that corruption is not always financial. The countries discussed below are not an exhaustive list, but they offer valuable insights into how South Africa might address the issue of sexual corruption. The focus will be on the approaches adopted by Tanzania, Brazil, and the Philippines.

We will begin on the continent. Tanzania, for example, explicitly includes sexual favours within its definition of corruption. Section 25 of the Prevention and Combating of Corruption Act, CAP. 329 R.E 2023, provides that:

> [a]ny person being in a position of power or authority who in the exercise of his authority, demands or imposes sexual favours or any other favour on any person as a condition for giving employment, a promotion, a right, a privilege or any preferential treatment, commits an offence and shall be liable on conviction to a fine not exceeding (Tsh) five million shillings or to imprisonment for a term not exceeding three years or to both.[26]

24 Ackerman (2006) at 507.
25 Ackerman (2006) at 507.
26 Prevention and Combating of Corruption (Amendment) Act 11 of 2024.

This provision not only criminalises the specified conduct but also acknowledges the power dynamics at play in sexual corruption, focusing specifically on penalising the actions of the person in a position of power. Williams comments on this provision, noting the

> provision specifies the reciprocity, the abuse of authority, as well as the demand for a sexual act. Although it avoids the criminalisation of the victim, it requires the exchange to be for the conferment of a benefit or advantage and not the avoidance of a detriment, which occurs in many sexual corruption cases.[27]

The Philippines has also taken steps to criminalise sexual corruption, though not under anti-corruption legislation. Instead, sexual corruption is addressed through sexual harassment laws, which prohibit the abuse of authority or influence to solicit sexual favours. In terms of Section 3 of the Anti-Sexual Harassment Act, 1995, sexual harassment occurs when a person in a position of authority in a workplace, educational, or training environment demands or requests a sexual favour, regardless of whether the request is accepted.[28] While framed as harassment rather than corruption, the Philippines' approach still captures the abusive power dynamics that are central to sexual corruption and allows for prosecution under existing law.

Then in 2019, the Philippines enacted the Safe Spaces Act (Republic Act No. 11313), which, in its long title, defines gender-based sexual harassment in streets, public spaces, online platforms, workplaces and educational or training institutions. The Act provides for protective measures and prescribes penalties for such acts.[29] Section 2 of the Safe Spaces Act sets out the declaration of policies. It affirms that "it is the policy of the State to value the dignity of every human person and guarantee full respect for human rights".[30] The Section further recognises that both men and women are entitled to equality, security, and safety, not only in private spaces, but also on the streets, in public spaces, online, in workplaces and in educational or training institutions.[31]

At its core, the fight against sexual corruption is about exactly that: protecting dignity, advancing equality, and ensuring safety. By criminalising sexual corruption, a state signals that

27 Williams (2024a) at 473.
28 Republic Act No. 7877 also known as Anti-Harassment Act, 1995.
29 Republic Act No. 11313 known as Safe Spaces Act, 2019.
30 Republic Act No. 11313 known as Safe Spaces Act, 2019.
31 Republic Act No. 11313 known as Safe Spaces Act, 2019.

it takes these values seriously and is willing to confront the abuse of power that undermines them. South Africa can take important lessons from the Philippines' example by adopting a similarly clear legal stance and ensuring accountability in all spheres where sexual corruption occurs.

Together, the above acts form a layered legal shield in the Philippines, while the Anti-Sexual Harassment Act addresses formal abuse of power in schools and workplaces, the Safe Spaces Act expands protection to include everyday and digital harassment, even when the power imbalance is informal. These Acts are not mutually exclusive, rather they are complementary, and in cases like sexual corruption, you can often invoke both to build a stronger case. An important lesson from the Philippines' legal framework is that its layered approach to sexual corruption demonstrates a recognition that sexual corruption operates across multiple contexts: private and public. This multi-tiered legal structure acknowledges that sexual corruption is not simply a matter of morality or misconduct, but a form of gendered abuse of power that intersects with corruption, violence, and inequality.

In Brazil, much like in South Africa, existing anti-corruption laws are not easily interpreted to cover the kind of sexual bribery that characterises sexual corruption. For example, Brazil's primary anti-corruption law (Law No 12.846/2013 of 1 August 2013) and the Penal Code provide for passive and active corruption, focusing primarily on financial bribes which require the trading of money in exchange for the exercise of official authority.[32] This framework fails to explicitly cover non-monetary benefits like sexual favours. As a result, prosecuting sexual corruption under these laws is difficult.

The approach that Brazil has adopted is to look to existing laws that criminalise the abuse of authority. Brazil's law on abuse of authority provides the necessary framework to address acts that violate a person's dignity or honour, which can cover sexual corruption, but not as a corruption offence per se. Sexual corruption can fall under the definition of an abusive act in terms of Section 4 (h) of Brazil's Law on Abuse of Authority (*Le de Abuso de Autoridade* Law No. 4.898/1965*)*,[33] which states that any act by a public official that harms

32 Thomson Reuters Foundation & International Association of Women Judges (2015) *Combating Sextortion: A Comparative Study of Laws to Prosecute Corruption Involving Sexual Exploitation* at 78.

33 Law No. 4.898/1965 was repealed in 2019 and replaced by No. 13.869 of 5 September 2019. It is

the honour or dignity of a person, and is carried out through abuse or misuse of power, constitutes an abusive act subject to civil and/or criminal sanctions.[34] It is therefore reasonable to conclude that the solicitation of sexual favours in exchange for the performance of official duties, duties which a public official is already legally obligated to carry out, may fall within the scope of the Abuse of Authority Law and could be prosecuted in a Brazilian court under this statute as an abuse of power.[35] Most importantly, the law provides for a range of remedies and sanctions, from warnings and suspension of official duties to dismissal from public office.[36] In more serious cases, the perpetrator may also face imprisonment for up to six months.[37]

Although Brazil does not have laws that specifically address sexual corruption[38], its legal system does provide a framework through various administrative, civil, and criminal statutes that could be used to prosecute and sanction public officials who engage in such conduct.[39] While there is currently no case law demonstrating how these provisions have been applied to instances of sexual corruption, the existence of this legal framework at least creates the potential for such cases to be pursued within the existing system. The inclusion of clear and enforceable sanctions is essential not only for deterrence but also for affirming the seriousness of the misconduct and reinforcing accountability within public institutions.

As mentioned above, South Africa's Constitution expressly permits the consideration of foreign law when interpreting the Bill of Rights.[40] This opens important space for learning from how other jurisdictions have tackled complex and emerging forms of human rights violations, including sextortion, which remains unrecognised in South African law as a distinct offence. Examining how countries like Tanzania, the Philippines and Brazil have responded to

important to note that, although Law No. 4.898/1965 has since been repealed, the manner in which the offence was framed remains instructive. Its wording provides a useful conceptual foundation for future legislative iterations of the offence.

34 Thomson Reuters Foundation & International Association of Women Judges (2015) at 78.

35 Thomson Reuters Foundation & International Association of Women Judges (2015) at 78.

36 Thomson Reuters Foundation & International Association of Women Judges (2015) at 78.

37 Thomson Reuters Foundation & International Association of Women Judges (2015) at 78.

38 Brazil has introduced Bill No. 4534/2021 which aims to criminalise quid pro quo sexual coercion by public officials and figures in positions of authority. It is important to note that it still under consideration and has not been promulgated.

39 Ibid.

40 Section 39(1)(c) of the Constitution of the Republic of South Africa, 1996.

sexual corruption provides valuable insights for legislative reform grounded in dignity, equality and accountability.

Tanzania stands out for its explicit inclusion of sexual favours within its anti-corruption legislative framework. By recognising that bribery can take both material and non-material forms, Tanzania has provided a clear legal route for prosecuting public officials who solicit acts in exchange for access to services or the exercise of official duties. This approach aligns well with the lived experiences of many victims and reflects a realistic understanding of how power is often abused in gendered and coercive ways. The approach adopted in Tanzania has yielded positive outcomes. For example, a lecturer from the University of Dodoma, Faculty of Social Sciences was arrested in late 2019 by Anti-Corruption Officers while in a hotel room with a student whom he demanded sexual favours from to help her with the examinations.[41] This arrest marked a significant accountability moment in cases of sexual corruption, where a person in a position of power demands sexual favours in exchange for academic or professional advancement.

The arrest not only affirmed that such abuse of power is a serious form of corruption, but it also demonstrated that the law can and should respond decisively. This case was more than just an individual being held to account, but it served as a public demonstration that justice can be done, and importantly, be seen to be done. It sent a powerful message to both victims and perpetrators: that abusing power for sexual gain is not a private matter to be swept under the rug, but a public wrong that warrants legal consequences. In a context where such cases are often silenced or ignored, this was a significant victory for transparency, accountability and the rule of law.

In the Philippines, although sexual corruption is not prosecuted under anti-corruption laws, it is addressed through sexual harassment legislation, notably the Anti-Sexual Harassment Act and the more recent Safe Spaces Act. These laws extend protection to victims in both public and private spheres and criminalise conduct where authority or influence is used to extract sexual favours. This route recognises sexual corruption as a form of GBV and

41 Elden et al (2020) at 74.

situates the offences within a broader framework of human rights protection, rather than limiting it to financial misconduct.

As illustrated above, Brazil provides yet another model, where sexual corruption could potentially be prosecuted under the Law on Abuse of Authority. While this law does not expressly reference sexual corruption, its broad language penalising officials who use their position to harm the dignity or honour of others creates a legal foundation that could accommodate sexual corruption cases. Though case law is currently lacking, the statutory tools exist, and the framework sends a strong message about accountability and abuse of power.

These jurisdictions offer three distinct but complementary lessons. The frameworks of these countries play a crucial role in protecting vulnerable individuals, especially women, young people, and those dependent on public services who are most at risk of falling victim to sexual corruption due to power imbalances and limited access to remedies. Tanzania shows the value of direct recognition of sexual corruption in anti-corruption law. The Philippines illustrates how existing frameworks on harassment and GBV can be used to hold perpetrators accountable, whilst Brazil demonstrates how abuse of authority statutes can be adapted to meet evolving understandings of corruption that go beyond money. Together, they show that sexual corruption is not legally invisible by necessity, but only by choice. South Africa has yet to make that choice.

While the South African Constitution does not explicitly prohibit corruption, conduct of this nature clearly undermines the foundational values set out in Section 195(1), which requires public administration to be accountable, transparent and governed by high ethical standards.[42] Similarly, although the Constitution does not refer directly to GBV, such conduct constitutes a violation of several entrenched rights. Yet, there remains a notable gap in how these constitutional protections are operationalised in the context of sexual corruption. Drawing on foreign examples, and in line with the reasoning in rethinking corruption through a human rights lens, it is clear that South Africa should consider legislative reform that recognises sexual corruption as a specific and punishable offence. Such a step would not only

42 Constitution of the Republic of South Africa, 1996.

close the legal gap, it would also affirm the dignity and equality of those most vulnerable to exploitation by those in power. This is because criminalising sexual corruption through clearly defined statutes, rather than merely imposing harsher realities, can strengthen deterrence. Furthermore, predictable and credible enforcement increases offenders' perception that they are likely to be caught. As Tonry notes in his paper "Learning from the Limitations of Deterrence Research", increases in the certainty of apprehension and punishment demonstrate a significant deterrent effect.[43]

5. REGIONAL INSTRUMENTS ADDRESSING CORRUPTION AND VIOLENCE AGAINST WOMEN

Two key African Union instruments are relevant to framing sexual corruption within a human rights context: the African Union Convention on Preventing and Combating Corruption (AUCPCC) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (commonly known as the Maputo Protocol).[44]

The AUCPCC, adopted in 2003 and ratified by South Africa in 2005, is a binding regional treaty that obliges state parties to prevent, detect, punish and eradicate corruption in both the public and private sectors.[45] Article 4(1) outlines the scope of corrupt practices, including "the solicitation or acceptance, directly or indirectly, of any goods of monetary value or other benefit" in exchange for an act or omission in the discharge of duties. This broad framing arguably allows for an interpretation that sexual extortion by public officials constitutes a corrupt practice. Further, Articles 5(1) and 5(2) of the AUCPCC require state parties to adopt legislative and other measures to give effect to the Convention, including establishing mechanisms for transparency, accountability and prevention.

The Maputo Protocol, also adopted in 2003 and binding on South Africa, is more explicit in addressing violence against women as a human rights violation. It obliges states to protect women from all forms of abuse, discrimination and exploitation, whether perpetrated

43 Tonry M (2008) "Learning from the Limitations of Deterrence Research" 37 *Crime and Justice* 279 - 311 at 282.

44 Protocol To the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted on 11 July 2003, entered into force 2005).

45 Article 2(1) of the African Union Convention on Preventing and Combating Corruption (adopted on 11 July 2003, entered into 16 March 2004, ratified on 11 November 2005).

by state actors or in private contexts. Although the Protocol does not refer to corruption directly, it covers conduct that overlaps with sexual corruption, particularly under Article 4 (right to life, integrity and security of the person) and Article 13 (economic and social welfare rights). When a woman is coerced into providing sexual favours in exchange for a public service or benefit, this can be read as both a violation of her rights under the Maputo Protocol and a form of GBV facilitated through corruption.

Together, these instruments provide a regional legal framework for recognising sexual corruption as both a corruption offence and a gendered human rights violation. These instruments are binding on South Africa, which has ratified both, and thus create obligations on the state to prevent, investigate and remedy such practices through domestic law and institutional accountability.

6. A HUMAN RIGHTS LENS FOR SEXUAL CORRUPTION?

South Africa's constitutional democracy is rooted in the recognition of human dignity, equality and freedom as foundational values.[46] These principles are not merely aspirational; they are enforceable rights, entrenched in the Bill of Rights, which forms the cornerstone of democratic governance and social justice.[47] As such, the Constitution provides a powerful framework for addressing injustices that disproportionately affect vulnerable and marginalised groups, including GBV.

The European Commission defines GBV as violence directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately.[48] The Domestic Violence Act 116 of 1998, as amended, confirms that GBV includes not only physical and sexual violence, but also psychological, economic and structural harms rooted in unequal power dynamics. In this context, sexual corruption, the abuse of power to demand sexual favours, is a form of GBV. It manifests through coercion,

46 Section 1 (a) of the Constitution of the Republic of South Africa, 1996.
47 Section 7 (1) of the Constitution of the Republic of South Africa, 1996.
48 European Commission (2024) *What is Gender-Based Violence?* available at https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en (visited 30 June 2026).

manipulation and exploitation, often within institutional settings where power imbalances are entrenched.

While GBV is a social scourge experienced worldwide, South Africa "contends with some of the globe's highest homicide data, and some suggest the country has one of the highest rates of GBV, encompassing intimate femicide, rape, and intimate partner violence".[49] The President of South Africa acknowledged that GBV is a severe socio-economic problem, which is fundamentally rooted in unequal power dynamics between women and men.[50] Violence against women has been acknowledged as a "national crisis" and a "second pandemic".[51]

In a country such as South Africa with a clear GBV pandemic, it is critical that the legal frameworks offer the necessary protections and support for victims of GBV. While the term "sexual corruption" is not explicitly used in South African legislation, its elements reflect violations of a range of constitutional rights, including the rights to dignity (Section 10), equality (Section 9), and freedom and security of the person (Section 12). Moreover, these violations often occur in ways that silence, stigmatise, and further disempower survivors, particularly women and girls and those dependent on public services.

Approaching sexual corruption through a human rights lens reveals its deeper harm: not merely the transaction of power for sex, but the erosion of an individual's right to bodily integrity, autonomy, and equal moral worth. It is precisely this erosion that places sexual corruption firmly within the category of GBV and demands that it be treated as such both legally and institutionally.

Human rights are the articulation of the need for justice, tolerance, mutual respect, and human dignity in all of our activities.[52] To violate the most basic human rights, on the other hand, is to deny individuals their fundamental moral entitlements.[53] It is, in a sense, to

49 Zungu NP et al (2024) *The First South African National Gender-Based Violence Study, 2022: A Baseline Survey on Victimisation and Perpetration* Cape Town: Human Sciences Research Council at 2.
50 Zungu et al (2024) at 2.
51 Zungu et al (2024) at 2.
52 Maiese M (2013) *Human Rights Violations*, available at https://www.beyondintractability.org/essay/human_rights_violations%20 (visited 16 July 2025).
53 Maiese M (2013) *Human Rights Violations*.

treat them as if they are less than human and undeserving of respect and dignity.[54] As this paper has explained, what is distinct about sexual corruption is the currency of the transaction. In monetary corruption, the currency and the bribe are separate from the person paying the bribe; in sexual corruption, however, the body of the service seeker is the bribe. Therefore, the bribe is inseparable from the person paying it.[55] The impact of the corruption is then a violation of basic human rights.

Gitlin writes, sexual corruption has "a far greater and adverse effect on victims than money 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 ostracisation, victim blaming, and loss of prospects in the marriage market".[56] The innate human rights violation that one experiences through sexual corruption is then exacerbated by the various socio-economic and societal factors. For example, it is significantly more challenging for individuals from poor and vulnerable communities to access legal, health and psychosocial services than it is for individuals from more affluent backgrounds.

Having examined sexual corruption through the human rights lens, it is now appropriate to consider how it manifests across different sectors of society. Summatively, it has been demonstrated that the human rights violations discussed above are not merely theoretical but arise in a wide range of everyday contexts. While research shows that corruption occurs in many different sectors, including employment, education, religious institutions and public services, the power structure seems to take advantage of women who do not have the financial means.[57] Sundrstrom and Wangnerud write, "in some instances sex may become the currency because providers lack economic resources, however, sex may also become the currency when money is not accepted as a substitute".[58] It would be a fair

54 Maiese M (2013) *Human Rights Violations*.
55 Bjarnegård et al (2024).
56 Gitlin S (2015) *Beyond Sextortion: How Corruption Uniquely Affects Women,* available at https://globalanticorruptionblog.com/2015/01/02/beyond-sextortion-how-corruption-uniquely-affects-women/ (visited 30 June 2026).
57 GIZ (2025) at 19.
58 Bauhr, Owasanoye & Petherick (2024) at 8.

assumption that the chances of the latter occurring frequently are higher in poorer communities.

One examination of sexual crimes committed by police officers shows how those with the least power tend to be targeted.[59] Quotes from the study, conducted for the United Nations Development Programme and the Stockholm International Water Institute, are instructive.[60] In a Johannesburg focus group, one woman explained the coercive nature of some interactions: "He [a water utility staffer] will sexually abuse me because that's the only valuable thing I can give him".[61] A participant in a GIZ survey says,

> [h]aving your back against the wall makes you desperate. Poverty makes people desperate, and they feel like this is the only way they can get what they need. There are not many opportunities for women and poverty can make that worse. [62]

The impact of sexual corruption is not only felt when one partakes in the exchange of sexual favours. As set out above, our current legal framework offers no protection to a victim of sexual corruption who declined to partake in the exchange of a sexual favour. To illustrate this gap, consider a real-life example shared by Williams[63] from the University of Stellenbosch:

> There is a woman who had been on the list for an RDP house in one of the provinces up north for about 10 years. An official came to her house a few years ago and said, 'look, you're now at the top of the list. So, we're going to allocate you a house'. But then he walked into her house and said, 'to make sure you get the house. I'll be waiting here on your bed'. The woman was shocked when she realised he expected to have sexual intercourse with her. She immediately asked him to leave. She never got her house. She is still living in the shack today.[64]

This example highlights the systemic power imbalances that enable sexual corruption to thrive. Sexual corruption is not a private sexual matter; it is a corrupt abuse of power that

59 Bauhr, Owasanoye & Petherick (2024) at 10.
60 Bauhr, Owasanoye & Petherick (2024) at 9.
61 Bauhr, Owasanoye & Petherick (2024) at 9.
62 GIZ (2023) *Sextortion Gendered Corruption in the Context of Gauteng, South Africa: An introductory study* at 68.
63 Professor Sope Williams is a Professor and Head of Department of Mercantile Law, and the deputy director of the African Procurement Law Unit, Stellenbosch.
64 Williams S (2024b) "Prof Sope Williams exposes the ugly truth of sexual corruption" *Stellenbosch University*, available at https://www.su.ac.za/en/node/19584 (visited 17 July 2025).

must be criminalised separately from financial corruption. No woman should have to choose between her dignity and accessing essential public services.

Lastly, it would be remiss of us not to acknowledge that sexual corruption thrives in South Africa, an environment that is so heavily rooted in cultural tradition. Authors reinforce the argument that informal, descriptive norms about masculinity "contribute to the perpetration of sexual corruption, by emphasising ideas that men are entitled to sex, that the transactional aspect can be interpreted as reciprocity and consent rather than coercion, and that there is a probability of impunity".[65] This coupled with the informal descriptive norms about female sexual behaviour "are, to a much greater extent, injunctive, suggesting, in many contexts, that sexual activity is shameful, stigmatised, and best kept secret".[66]

7. THE OFFER AND THE DEMAND: A DIFFERENT PERSPECTIVE

Sexual corruption refers to the abuse of power where access to a service, job or benefit is made conditional on the performance of a sexual act. It occurs when sexual conduct becomes the currency of exchange in place of lawful processes or merit-based systems.

Some scholars[67] have argued that liability for sexual corruption should extend to the person who offers a sexual favour in exchange for an advantage, even when that person holds no power. They reason that such conduct, regardless of status, undermines integrity and fairness in public and private institutions.

However, this argument overlooks the fundamental imbalance that defines sexual corruption. When a person without power initiates or offers a sexual favour, the person in authority can refuse without suffering loss or harm. Their position, dignity and access to resources remain intact. By contrast, when a person in power demands or accepts sexual favours in exchange for a service or opportunity they are obligated to provide, the harm is not merely transactional, it is exploitative. The victim risks reputation, livelihood, and personal dignity while the perpetrator abuses entrusted power for personal gratification.

65 Bauhr, Owasanoye & Petherick (2024) at 10.
66 Bauhr, Owasanoye & Petherick (2024) at 10.
67 This perspective was canvassed during our presentation at the Colloquium on Corruption and Human Rights held at the University of the Free State on 18 and 19 September 2025.

Ultimately, while both acts may appear to involve consent or negotiation, the core of sexual corruption lies in the misuse of authority. The offence is not symmetrical. It is the exploitation of structural and social inequality that transforms sexual exchange into a form of coercion and violation of human rights.

8. RECOMMENDATIONS

8.1 Criminalisation of sexual corruption

The primary objective of the paper is to ensure that South Africa formally recognises and criminalises sexual corruption (sextortion) as a distinct offence that targets the abuse of power to solicit sexual favours. This must be done in a way that does not criminalise or stigmatise the person from whom the favour is demanded. The current framework, such as PRECCA, risks treating the victim as a co-conspirator. This paper argues and, in turn, recommends that the victim should be spared criminalisation. Once the legislation is amended and implemented, it will act as a deterrent, clearly demonstrating that abusing power for sexual gain is not a private matter to be swept under the rug but a public wrong that warrants legal consequences. Legal reform must focus squarely on the perpetrator's abuse of entrusted power. Before a person can be convicted of a crime, certain foundational requirements must be met. These include legality, meaning that both the offence and the corresponding punishment must exist in law at the time of the conduct; *actus reus*, which refers to the unlawful act or omission itself, and *mens rea*, which concerns the fault element, either intent or negligence on the part of the accused.

When examined through the criminal law lens, sexual corruption satisfies each of these elements. The *actus reus* manifests in the unlawful exchange or solicitation of sexual favours in return for performing or omitting to perform an official duty. It represents a concrete act that contravenes both anti-corruption and GBV norms. The *mens rea* is reflected in the conscious misuse of authority: the deliberate decision by a person in power to exploit their position for sexual gratification or personal benefit. This intentional abuse distinguishes sexual corruption from mere moral misconduct. Finally, the principle of legality requires that such conduct be expressly recognised as criminal within domestic law. Where the law remains

silent, victims are left without redress, and perpetrators evade accountability under the guise of legal ambiguity.

As previously discussed, sexual corruption combines three defining features: abuse of authority, quid pro quo exchange, and sex as a currency, each of which aligns with the legal structure of a criminal offence. Recognising how these elements fit within established principles of criminal law strengthens the argument for reform: sexual corruption should not be treated as a matter of morality or discipline alone but as a prosecutable abuse of power grounded in the fundamental elements of crime.

This paper essentially argues that South Africa should adopt a similar approach to that adopted in Tanzania. In the Tanzanian context, as set out above, the offence of sexual corruption meets the three essential requirements of a criminal act. It is legally defined (legality), involves a clearly unlawful act (*actus reus*), and is committed with intentional abuse of authority (*mens rea*). The offence is not about sexual morality, but about the corrupt use of power, where sex becomes the transactional medium of exploitation. Recognising this alignment between the legal structure of crime and the realities of sexual corruption, strengthens the case for treating such conduct as a serious criminal offence rather than a disciplinary or ethical breach, as demonstrated in the Brazilian and Philippines approaches.

These positive legal reforms would be in line with recommendations to party states through Resolution 10/10 of UNCAC. What this paper sets out to demonstrate is that legal reform geared towards a distinct criminal offence for sexual corruption that excludes criminalisation of the victim is recommended through our binding international instruments. The paper further demonstrates that in interpreting our Bill of Rights, the South African Constitution mandates consideration of international law and encourages consideration of foreign law.

8.2 Advocacy efforts towards a changed discourse

Legal reform must be supported by sustained advocacy to change the way sexual corruption is understood and discussed. Advocacy efforts should challenge narratives that centre on sexual conduct and the exchange of favours and instead highlight the coercive abuse of power and its human rights implications.

Academics have called out the emphasis on sex and on the providers of sexual favours that popular, media-friendly phrases such as "sex for jobs" and "sex for grades" tend to promote, and argued for conscious emphasis on the abuse of entrusted power – on the unethical and unprofessional elements of the individual with typically much greater power.[68] This framing risks reinforcing harmful stereotypes and obscuring the reality that sexual corruption always involves a victim, whether you say yes or no. The focus needs to be on the abuse of power because the defining features are coercion and power imbalance.

It is therefore critical that public and institutional responses to sexual corruption adopt a victim-centred approach. This means recognising the power asymmetries involved, ensuring that those who experience sexual corruption are treated with dignity and respect and creating safe, confidential and accessible mechanisms for reporting. Victims often fear retaliation, reputational harm, or disbelief, especially when the perpetrator holds institutional or state power. Reporting processes must therefore be independent, trauma-informed and responsive to the needs of those who come forward.

8.3 Multi-stakeholder collaboration

A multi-stakeholder approach is essential for meaningful reform. Addressing sexual corruption as a form of GBV requires the collaboration of multiple sectors, including government departments, Chapter 9 institutions, the judiciary, law enforcement, civil society, and academia. Legislative reform alone is not enough. A coordinated effort is needed to ensure that laws are properly implemented, survivors are supported, awareness is raised and that reporting mechanisms are accessible and safe. Training is essential. The South African Police Service, as those who will be tasked with receiving and investigating these complaints, must be trained to handle sexual corruption cases sensitively in line with best practices for handling GBV.

Each stakeholder plays a unique role: lawmakers must craft clear and enforceable laws, SAPS and the National Prosecuting Authority must be trained to identify and handle cases of sexual corruption sensitively and civil society organisations must continue to

68 Bauhr, Owasanoye & Petherick (2024) at 6.

advocate, monitor state compliance and support survivors. Without such a collaborative and sustained approach, legal reform risks becoming symbolic rather than transformative.

9. CONCLUSION

Traditionally, corruption has been conceptualised primarily as a breach of fiduciary duty or a distortion of public administration, an economic or institutional harm that undermines governance. However, such a narrow conception fails to account for the lived experiences of those who suffer corruption in forms that are coercive, exploitative, and deeply gendered. Sexual corruption where access to services or opportunities is made conditional on the performance of sexual acts is not merely a governance issue; it is a violation of dignity, equality, and bodily integrity.

Rethinking corruption through a human rights lens allows for a more holistic understanding of harm. It centres the experience of victims, recognises the intersection of power, gender, and socio-economic inequality, and acknowledges that corruption can manifest as a form of GBV. This approach urges the state not only to sanction perpetrators and correct institutional failures but also to fulfil its obligations to respect, protect, and promote the rights of those most vulnerable to abuse. As such, a rights-based approach challenges the existing frameworks by linking anti-corruption efforts to broader goals of gender justice, access to services and non-discrimination.