Stopping the Abuse of Power through Sexual Exploitation:

Naming, Shaming, and Ending Sextortion

International Association of Women Judges
ACKNOWLEDGMENTS

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STOPPING THE ABUSE OF POWER THROUGH SEXUAL EXPLOITATION: NAMING, SHAMING, AND ENDING Sextortion
I. INTRODUCTION

For millennia, people who occupy positions of authority and public trust have sometimes abused their power and sought to take advantage of those who are dependent on their favor.

Whether they are government officials, judges, educators, law enforcement personnel, border guards, or employers, their power to grant or withhold something of importance – a visa, favorable court decision, good grade, dismissal of a traffic ticket, passage across a border, or overtime at work – makes others vulnerable to their corrupt attempts to extort money or other things of value in exchange for the desired action.

When that abuse of power takes the form of a demand for sexual favors, we are naming it “sextortion.”

SEXTORTION IS THE ABUSE OF POWER TO OBTAIN A SEXUAL BENEFIT OR ADVANTAGE.

In effect, sextortion is a form of corruption in which sex, rather than money, is the currency of the bribe.

Through a generous grant from the Government of the Netherlands (through its MDG3 Fund), the International Association of Women Judges (IAWJ), in partnership with the Association of Women Judges in Bosnia and Herzegovina, the Philippine Women Judges Association, and the Tanzania Women Judges Association, undertook a three-year program on “Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion.” At the outset of the program, people in Bosnia-Herzegovina, the Philippines, and Tanzania were not familiar with the term “sextortion,” nor was it a matter for public discussion or active concern within the justice sector. Today, that is no longer the case. This Toolkit captures what we have learned from their experiences, so that you and others committed to gender equality can follow in their footsteps and work to name, shame, and end sextortion in your country.

Steve Ellis sentenced to 18 months for seeking sexual favours

Ellis, a former immigration adjudicator and onetime Toronto city councillor, was jailed 18 months for breach of trust. In attendance was [the victim], the South Korean woman from whom he sought sexual favours in exchange for a favourable immigration ruling.

She and her now-husband nabbed Ellis by secretly videotaping his demands, and then going to the police.

“I hope this sends a message to those who work for the public, who are in a position of power,” [she] said . . . .

A. WHY YOU SHOULD READ THIS TOOLKIT

For three years, the International Association of Women Judges (IAWJ) and its partner associations in Bosnia and Herzegovina, the Philippines, and Tanzania have worked to understand sextortion and identify ways to combat it. We have heard story after story of power abused and vulnerability exploited – and victims who believe that the courts either do not care or will not help.

Laws exist that could be used to prosecute and deter the abuse of power to obtain sex.

- Many anti-corruption laws are written in terms broad enough to encompass bribes that take the form of non-pecuniary “advantages” or “benefits,” and could be used to prosecute officials who demand sexual bribes.
- In the workplace, sexual harassment laws prohibit supervisors from seeking sexual favors as a quid pro quo for employment benefits. Some sexual harassment laws also reach conduct beyond the workplace.
- Statutory rape laws or defilement statutes could be used to prosecute teachers who trade sex for grades with underage minors, and statutes that recognize rape by coercion, sexual extortion, or sexual harassment in educational settings might afford redress for victims past the age of majority.

However, even with such laws in place, relatively few sextortion cases appear to be prosecuted outside the employment context. One reason may be precisely what distinguishes sextortion from other corrupt and abusive conduct, namely that it has both a sexual component and a corruption component.

Paradoxically, the combination of both forms of abuse seems to make prosecution less likely under either theory.

- That is, viewed through a gender-based violence lens, a case in which a person in a position of power offers to trade that power for a sexual favor may be dismissed as “consensual” (and therefore non-violent).
- Viewed through a corruption lens, the same offer – an offer that would readily be perceived as corrupt if the “favor” were financial – may not be viewed as corrupt when the favor is “merely” sex. Yet, the psychological harm to the victim may be greater and more lasting when “merely” sex is involved.

A second part of the problem is victims’ perception that if they came forward to complain, nothing good would happen. At one seminar in Tanzania, a court employee asked the judges (in Swahili), “If we complain, how do we know that you will protect us?” It is a fair question: The statutes may be adequate, but statutes alone do not a legal culture make.

The barriers to bringing a successful complaint are real and substantial.

- For victims of sextortion, the shame and stigma associated with sexual offenses compound the difficulty of coming forward. When a woman or girl (or, in some cases, a boy or man) is asked for a sexual bribe rather than a monetary bribe, s/he may experience the same kind of shame that rape and other sexual violence victims experience, and s/he may fear that revealing what happened will incur the same kind of social stigma.
- The dearth of witnesses is also a barrier to coming forward. In most cases, the person who seeks a sexual favor and the person from whom the favor is sought are the only witnesses. For this reason, e-mails, text messages, and other technology documenting these interactions can be significant when cases go to court.

Notwithstanding these and other barriers, legal cultures can change. In the course of the project, we have seen the difference that judges and others can make – and have made – through their efforts to name, shame, and end sextortion.

- Toward that end, it is important that members of the public be informed that sextortion is unlawful.
• It is important that they be encouraged to report abuses of power, to preserve and share corroborating information.
• And, when victims do come forward, it is important that they receive appropriate support and that their complaints are handled properly at each step of the legal process – from police, to prosecutors, to the courts.

**Most of all, it is important to break the silence that makes it so easy for sextortion to continue unchallenged.**
The personal and social costs of that silence are great, and, in countries where HIV is prevalent, silence can even be fatal. We are aware of one instance in which the sextortion was exposed only after an entire office of about ten women had been infected. No case was ever brought, as the perpetrator and his victims all succumbed to the disease.

**BREAKING THE SILENCE STARTS WITH EACH OF US AND WITH READING THIS TOOLKIT.**

**B. HOW TO USE THIS TOOLKIT**

**WHAT IS THE PURPOSE OF THE TOOLKIT?**
The Toolkit is intended to raise awareness about sextortion and provide the “tools” – guidance, information, and resources – with which to address a pervasive, but often hidden, form of corruption that degrades its victims and undermines social institutions around the world.

• **Give the problem a name.** That effort starts with naming the phenomenon: sextortion. Without a name, the diverse circumstances in which sextortion occurs and the different legal theories under which it might be charged work to obscure the similarities among sextortion cases, masking the nature and extent of the problem and isolating the victims. Naming sextortion is the first step in shedding light on the problem. The Toolkit’s definition of sextortion gives us the common vocabulary needed to facilitate the discussion, analysis, data collection, coalition building, and action that will eventually lead to the changes in attitude and behavior required to shame and end sextortion.

• **Identify existing legal provisions.** The existing legal and institutional framework for addressing sextortion will vary from country to country. The Toolkit explains how to identify the existing legal provisions in your country that might be used to prosecute sextortion.

• **Identify institutional and other barriers to effective prosecution.** An adequate legal framework is the first requirement for successful prosecution of sextortion, but it is not sufficient if the system for receiving complaints and protecting complainants is inadequate or if the existing institutional and budgetary framework lacks the capacity to support those prosecutions. The Toolkit also explains how to identify the barriers to effective prosecution that may exist in your country.

• **Formulate an action plan.** Assessing the existing legal and institutional framework for prosecuting sextortion will reveal both where the opportunities exist to take action to end sextortion and where the obstacles lie. Completing that assessment will allow you to make informed decisions about the steps that can be taken to address sextortion within your country’s existing framework and, where appropriate, the steps that may need to be taken to change that framework.
<table>
<thead>
<tr>
<th>WHAT IS IN THE TOOLKIT?</th>
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<tr>
<td><strong>What Is Sextortion?</strong></td>
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<tr>
<td>Defines the term “sextortion” and explains what distinguishes it from other types of</td>
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<td>sexually abusive conduct.</td>
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<td><strong>What You Can Do To Combat Sextortion</strong></td>
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<td>Outlines steps that you can take to address sextortion in your country.</td>
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<td><strong>How To Assess the Legal Framework for Prosecuting Sextortion</strong></td>
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<td>Provides guidance about how to assess the adequacy of the existing national and</td>
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<td>international legal framework for prosecuting sextortion in your country.</td>
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<td><strong>How To Assess the Institutional Framework for Prosecuting Sextortion</strong></td>
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<tr>
<td>Offers guidance about how to assess whether the institutional framework in your</td>
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<td>country has the capacity to support successful prosecution of sextortion. Focuses</td>
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<td>on the procedural, social, and other barriers that may thwart efforts to combat</td>
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<td>sextortion.</td>
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<td><strong>Changing Attitudes, Changing Behavior</strong></td>
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<td>Discusses what it will take to shame and end sextortion.</td>
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<td><strong>Frequently Asked Questions</strong></td>
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<td>Asks and answers basic questions about the meaning and use of the term “sextortion.”</td>
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<td><strong>Appendix of Resources</strong></td>
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<tr>
<td>Contains information about where to find resources to help you take steps to combat</td>
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<td>sextortion, including:</td>
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<tr>
<td>• Getting Started Checklist – Initial Consultation for Naming, Shaming, and Ending</td>
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<td>Sextortion</td>
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<tr>
<td>• Checklist of Existing Laws</td>
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<td>• Checklist of Barriers to Enforcing the Law</td>
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<td>• Resources Available – people, agencies, and organizations that could provide</td>
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<td>professional expertise, financial assistance, or institutional support for</td>
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<tr>
<td>efforts to combat sextortion; and written materials on sextortion, sexual</td>
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<td>exploitation, and corruption.</td>
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II. WHAT IS SEXTORTION?

There are many forms of sexual abuse, harassment, exploitation, and discrimination – all of which are of serious concern to people who care about human rights and gender equality, and all of which need to be addressed and ended. What distinguishes sextortion from other types of sexually abusive conduct is that it has both a sexual component and a corruption component. Conduct that does not include both components is not sextortion.

A. SEXUAL COMPONENT

Sextortion involves a request – whether explicit or implicit – to engage in sexual activity. The form of sexual activity need not involve sexual intercourse or even physical touching, but could be any form of unwanted sexual activity, such as exposing private body parts, posing for sexual photographs, participating in phone sex, or submitting to inappropriate touching.

Sextortion does not include conduct or activity of a nonsexual nature. An official who agrees to grant a government benefit in exchange for free, personal services is guilty of corruption. If those services involve sexual favors, the official is also guilty of sextortion. But if the services are of a nonsexual nature – such as a nonpecuniary “gift” of housekeeping or landscaping services – the official is only guilty of corruption, not sextortion.

B. CORRUPTION COMPONENT

Not all improper – or even criminal – sexual conduct involves sextortion. To constitute sextortion, there must also be a corruption component: The perpetrator must occupy a position of authority and must abuse that authority by endeavoring to exact, or by accepting, a sexual favor in exchange for exercise of the power entrusted to him.

Just as there are many forms of sexual abuse, there are many forms of corruption. While sextortion may – and often does – involve official corruption, it also involves corruption in the broader sense of the word: people who exercise the authority entrusted to them for personal benefit rather than with the integrity, fairness, and impartiality expected of their position. In each case, however, the corruption component of sextortion has three distinct features: abuse of authority; a quid pro quo exchange; and psychological coercion rather than physical force.

ABUSE OF AUTHORITY

Authority is exercised in many ways, but “abuse” occurs only when someone who has legitimately been entrusted with power seeks to use that power for personal benefit rather than in the manner and for the purposes that it was entrusted.

A classic example would be a government official who is required to issue a visa in accordance with criteria established by law and, instead, requests sex as a condition of obtaining the visa. In that case, it would be clear that the official is abusing his lawful authority if he makes the decision to grant or deny the visa on the basis of a personal, sexual benefit rather than on the legal merits of the application.

“Corruption is operationally defined as the abuse of entrusted power for private gain.”

In other cases, the proper scope of entrusted power may be defined by codes of professional responsibility, social norms, or community expectations rather than by laws or regulations. All of these, however, serve to distinguish an appropriate use of authority from a corrupt and unethical abuse. For example, a teacher is entrusted with authority to grade a student’s work, but not to make that grade dependent on sexual favors rather than academic achievement. An employer is entrusted with authority to make promotion decisions, but not to base those decisions on factors, such as sexual favors, that are extrinsic to the employee’s performance.

### ABUSE OF “ENTRUSTED POWER” TAKES MANY FORMS

<table>
<thead>
<tr>
<th>Person Entrusted with Power</th>
<th>Quid Pro Quo</th>
<th>Sextortion Victim</th>
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<tbody>
<tr>
<td>Judge</td>
<td>Grant Asylum</td>
<td>Refugee</td>
</tr>
<tr>
<td></td>
<td>Secret Affair</td>
<td></td>
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<tr>
<td>Teacher</td>
<td>Good Grade</td>
<td>Student</td>
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<td></td>
<td>Sexual Favor</td>
<td></td>
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<tr>
<td>Police Officer</td>
<td>Decline To Charge</td>
<td>Driver</td>
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<tr>
<td></td>
<td>Expose Breasts</td>
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<tr>
<td>Supervisor</td>
<td>Promotion</td>
<td>Employee</td>
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<td></td>
<td>Sexual Relationship</td>
<td></td>
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<tr>
<td>Government Official</td>
<td>Work Permit</td>
<td>Immigrant</td>
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<td></td>
<td>Oral Sex</td>
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QUID PRO QUO EXCHANGE

The abuse of authority to obtain a sexual favor implies an exchange or quid pro quo (a Latin phrase meaning “this for that”). In the employment context, quid pro quo sexual harassment occurs when an employment benefit or detriment is conditioned on the employee’s response to a sexual request. Sextortion involves the same kind of exchange, but is not limited to the workplace. As in sexual harassment cases, the exchange may occur at any point along a continuum that ranges from explicit to implicit, depending on the subtlety with which the person in authority extorts the sexual favor.

Whether explicit or implicit, it is the “this-for-that” exchange – a sexual favor in exchange for some benefit that the person in authority is empowered to withhold or confer – that is central to the corruption component of sextortion.

For these purposes, it is no defense to allege that the benefit sought by the victim accrued to a third party. A prison guard is equally guilty of sextortion whether he tries to extract sex from an inmate’s wife by threatening to withhold medicines from her husband or by threatening to deprive her of her visitation right.

PSYCHOLOGICAL COERCION RATHER THAN PHYSICAL FORCE

Sextortion relies on the coercive power of authority rather than physical violence or force to obtain sexual favors. The abuse of authority implies an imbalance of power between the perpetrator and the victim. This imbalance allows the perpetrator to exert coercive pressure on the victim to accede to sexual demands.

An immigration judge, for example, holds a victim’s entire future in his hands when he decides whether to grant her application for refugee status. Where the perpetrator’s power is so great, and the victim so powerless, no physical restraint or force is needed to extort sexual favors.

The psychological coercion inherent in sextortion is a figurative knife that can be every bit as powerful as a real knife held to the victim’s throat. The difference is that a government official who abuses his authority by demanding sex in exchange for a green card is guilty of sextortion, whereas the stranger who forces a woman to engage in sex at knife-point is guilty of rape.
III. WHAT YOU CAN DO TO COMBAT SEXTORTION

🛈 HOLD AN INITIAL CONSULTATION

An initial meeting of interested stakeholders – judges, prosecutors, NGO representatives, academics, or others – is an important and useful first step in addressing the problem of sextortion. This could be as simple as a group of colleagues getting together over lunch to explore the contexts in which they have encountered sextortion in their personal or professional lives, or as formal as a multi-sectoral consultation organized at the national level. Judges are especially well positioned to convene such a meeting and to command the attention of those in the justice sector with the ability to do something about sextortion.

The goal of this initial meeting should be to bring the problem to light and begin to explore what could be done to address it. Start by making sure that everyone involved understands what is meant by the term “sextortion” – see Section II “What Is Sextortion?” and Section VII “Frequently Asked Questions” for a definition and answers to common questions about sextortion.

🛈 MAKE EFFORTS TO LEARN MORE ABOUT SEXTORTION IN YOUR COUNTRY AND HOW SEXTORTION CASES ARE HANDLED

Once everyone understands what behaviors constitute sextortion, the next step is to learn about instances of sextortion in your country. If your experience is anything like that of the three pilot countries, you will be stunned by the extent of the problem.

Assess how effectively your justice sector is dealing with sextortion cases. Are prosecutors bringing these cases? If so, are they obtaining convictions? If not, what is preventing them from doing so? Are the laws inadequate? See the Checklist of Existing Laws (Appendix B) to determine what laws might be used to prosecute sextortion.

If the legal framework is adequate, but cases are not being brought, what are the reasons? Are prosecutors failing to take the cases seriously? Are police failing to investigate charges? Are victims afraid to come forward? Are there social or procedural barriers? See Checklist of Barriers to Enforcing the Law (Appendix C) to help you assess where the obstacles lie and what might be done to overcome them.

🛈 DEVELOP A COURSE OF ACTION

The next step is to develop a course of action suited to your organizational strengths and tailored to the specific problems you have identified. You can use the resources in Appendix D to identify organizations that might be interested in collaborating on efforts to combat sextortion and to find additional information and models for materials to use in those efforts.
There is much that you and others can do to make a difference:

- **Get the word out – literally.** Without a vocabulary it is difficult to conceptualize, discuss, and analyze a problem, let alone solve it. The word “sextortion” creates a vocabulary to describe a pervasive phenomenon. “Sextortion” is the abuse of power to obtain sexual favors. Name it. Shame it. End it. Simply by using the word, talking about it, explaining it to others, you are working not only to create a vocabulary, but also to change how others respond to the reality that the word describes.

- **Hold public education programs on sextortion.** Empower people to claim their rights by providing know-your-rights materials to the public via radio, public speaking, or other means authorized by your domestic laws, traditions, or codes of judicial conduct.

- If you are involved in teaching the next generation – as a law professor, ethics advisor, judicial trainer, or public speaker – **consider incorporating sextortion into your educational work whenever appropriate.**

- If you are involved in efforts to combat the spread of HIV/AIDS, **help people to understand the link between sextortion and HIV.**

- **Look at the ways in which civil servants in your country become aware of their legal and ethical obligation not to engage in corrupt or sexually abusive conduct.** Consider whether the ethical rules, codes of conduct, or other regulations applicable to civil servants clearly and effectively proscribe sextortion and, if not, what could be done to remedy the situation. Could relevant training or manuals be modified to ensure that sextortion is adequately addressed?

- **Look, too, at the rules governing ethical and appropriate conduct within particular professions and organizations.** If you are involved in developing, interpreting, revising, or disseminating such rules, consider whether they are adequate to address and redress sextortion and, if not, what could be done to remedy the situation.

- **If you are a judge, look at your own court’s rules and procedures.** Do they make clear that sexual as well as monetary bribes are corrupt? Are there rules against sexual harassment, and is everyone who works for or comes before the court covered by them? If a court employee were being pressured for sexual favors, would s/he have a clear, open, and effective grievance procedure to follow? Consider the supervisory role that judges can and do play in court personnel issues.

- **Look at your country’s anti-corruption and gender-based violence laws.** Are they adequate to address and redress sextortion, or do they need to be amended? In many countries, judges are not only permitted to testify before parliaments, but encouraged to draw parliament’s attention to gaps in domestic law.
IV. HOW TO ASSESS THE LEGAL FRAMEWORK FOR PROSECUTING SEXTORTION

Although there are no statutes that name “sextortion” as an offense, that does not mean it cannot be prosecuted. Although the number of cases remains small, sextortion has been prosecuted successfully under a variety of statutes. In virtually all countries, multiple laws, criminal and civil, cover the conduct that we are naming sextortion. By collecting these laws and examining them under the rubric of sextortion, it is possible to identify ways in which the existing laws might be used to combat an issue that is too often trivialized, marginalized, and ignored. See Appendix B for a checklist of potentially applicable laws.

A. WHAT TO LOOK FOR IN EXISTING LAWS

Sextortion occurs at the crossroads between corruption and sexual exploitation and, therefore, might be prosecuted either under laws that address corruption and abuse of power or under laws that address gender-based violence and sexual discrimination and harassment. However, the IAWJ believes that it is precisely because sextortion has elements of both corruption and sexual exploitation that it often eludes prosecution as either. On one hand, the corruption element of sextortion – which relies on authority rather than force to “coerce” sex – challenges traditional notions of physical force and lack of consent in sexual assault and rape laws and tends to undermine the seriousness with which the sexual abuse is treated. On the other hand, the sexual element of sextortion challenges traditional notions of financial harm in anti-corruption laws and tends to undermine the seriousness with which the corruption is treated. In assessing the adequacy of your country’s legal framework for prosecuting sextortion, it is important to examine both types of laws.

THE SEXUAL COMPONENT

The sexual conduct involved in sextortion brings these cases within the potential reach of the many gender-based violence and anti-discrimination and harassment statutes that proscribe different types of sexual conduct.

- **Type of sexual conduct.** Depending on the type of sexual conduct involved in a sextortion case, one or more gender-based violence statutes might apply. For example, if the conduct involved sexual intercourse, the rape statute might apply; if it involved inappropriate sexual touching, the indecent assault statute might apply; and if it involved posing for nude photographs, the pornography statute might apply.

- **Specified victims or perpetrators.** Some sexual abuse statutes apply only to particular victims or perpetrators. In a specific case, this may be advantageous: For example, some countries have statutes that apply specifically to perpetrators who abuse their position of authority to engage in sexual intercourse with those entrusted to their care. In other cases, it may be a limitation, as, for example, in countries where sexual
harassment statutes only cover abuses that occur in employment or educational settings or only cover sexual harassment of minors.

- **“Consent.”** With some notable exceptions – for example, statutes still on the books that cover sodomy, and adultery – the criminal law does not seek to punish consensual sex. Traditionally, rape statutes made absence of consent an express element of the sexual offense. Today, even where it is not an express element, the woman’s willingness to engage in sexual conduct, her capacity to consent, and whether she, in fact, consented, are often the principal focus of a sexual assault or rape trial.

The issue of consent poses particular challenges in prosecuting sextortion cases because victims who accede to the perpetrator’s request for a sexual favor may be viewed as having “consented” to the sexual conduct. Therefore, it is important to focus on whether “consent” is a defense under the statute and, if so, how it is defined.

At common law, rape victims typically had to show that they physically resisted their assailants, and their failure to do so could be construed as “consent” to the ensuing sexual activity. Even under these laws, however, there were circumstances in which the absence of resistance was not treated as evidence of consent. It blinks reality to hold that a woman with a knife to her throat or a gun to her head should be required to fend off her attacker with only her hands.

More recently, rape reform efforts have expanded the circumstances in which failure to resist cannot be equated with consent. In some countries, the courts and legislators have recognized that there are situations, short of knifepoint, in which the disparity in power is so great that the “consent” is, in fact, coerced and not true or meaningful consent. Look to see whether the statutes in your country recognize psychological coercion, threats, abuse of authority, or other forms of “coerced” consent that would invalidate a sextortion victim’s apparent “consent” to the sexual conduct. Note that, even if the law recognizes coerced “consent,” prosecutors may not treat gender-based violence cases as seriously if they involve psychological rather than physical coercion, and victims may not be able to obtain the same legal redress.

- **Evidence of physical injury or physical coercion.** Historically, sexual crimes have been treated as most serious, and the victim as most aggrieved, when they involve physical force on the part of the perpetrator and vigorous resistance on the part of the victim. Many statutes reflect this bias and require evidence of physical injury or coercion. Such evidence is seen as important corroboration of the victim’s lack of consent.

Requiring evidence of physical injury or physical coercion poses particular challenges in sextortion cases. In a sextortion case, it is the coercive power of authority rather than the physical power of force that leads the victim to accede to a demand for sex. Consequently, there will not be any evidence of physical coercion, nor is there likely to be evidence of physical injury.

Reform efforts have led to modification of the physical injury and physical coercion requirements in some sexual assault and rape laws. Look to see whether the laws in your country limit “coercion” to physical force or define it more broadly to include psychological coercion, the coercive power of authority, threats and intimidation, or other forms of duress that might be applicable to sextortion cases. In addition, look to see whether those laws require evidence of physical injury or whether they recognize other types of harm, including the psychological injury that is more likely to be found in sextortion cases.

- **Sexual discrimination and harassment.** Sexual discrimination and harassment laws often target precisely the kind of abuse that is involved in sextortion. For example, the supervisor who abuses his authority to extort sex from employees who want to augment their pay with overtime assignments is engaging in both quid pro quo sexual harassment and sextortion. The fact that the employee “consented” to the sex in order to receive overtime would not exonerate the employer. Nor would the absence of physical injuries or lack of physical
resistance be dispositive – or even legally relevant. In short, sexual harassment statutes may be used to reach sextortion conduct that is not covered by sexual assault laws.

Pay careful attention, however, to whether the statute is applicable to sextortion cases that might arise in a wide variety of settings – in some countries, sexual harassment may be limited to employment and educational settings.

In addition, be aware of the statute’s penalties – in some countries, sexual harassment is a civil rather than a criminal offense.

THE CORRUPTION COMPONENT

Focusing on the corruption element in sextortion cases eliminates many of the challenges in prosecuting sextortion under laws that address sexual conduct. When sextortion is viewed through a corruption lens, “consent,” physical coercion, and physical injury cease to be relevant. The coercive power of authority that characterizes sextortion cases is precisely the type of coercion found in corruption cases. In a corruption case, no one would argue that the victim’s “consent” to paying a bribe should excuse the official’s misconduct. Nor would anyone contend that it ceases to be corruption because the official used the coercive power of his authority rather than physical force to extort the bribe. However, when the corruption involves sex rather than money, there is a risk that it will be taken less seriously.

Look carefully at the language that describes the people covered by the statute and the type of harm it is intended to redress. Anti-corruption statutes may limit the types of perpetrators and harms to which they apply.

- **Evidence of financial harm.** Anti-corruption efforts have traditionally targeted financial impropriety, such as bribery, kickbacks, embezzlement, and favorable business arrangements, rather than sexual impropriety. While corruption statutes do not require evidence of physical harm, they may require evidence of financial harm. Focus on whether the statutory language is broad enough to include personal “benefits,” things of “value,” or “advantages” that do not involve property or money.

- **Public officials.** Look to see whether the corruption statute applies only to public officials or whether it reaches others in a position of authority who may not be governmental employees.

B. NATIONAL LAWS

1. ANTI-CORRUPTION LAWS

Sextortion is a form of corruption in which the quid pro quo is sex rather than money. Therefore it is important to assess whether any of your country’s anti-corruption laws can be construed to cover sextortion. These laws may have different names, including: extortion; bribery; criminal coercion; abuse of office; official oppression; and corruption. Whatever the name of the anti-corruption statute, focus on whether its language is broad enough to encompass sexual favors.

- **Express language regarding sexual favors or activity.** Some anti-corruption statutes expressly address the abuse of power in exchange for sex. For example, Section 27 of the Tanzanian Prevention and Combating of Corruption Act of 2007, makes it an offense for “any person in position of power or authority” to “demand[] or impose[] sexual favours” as a condition of the exercise of that authority.
• Broad language regarding “benefits” or inducements. Some anti-corruption statutes do not explicitly mention sex, but use language that is broad enough to encompass non-financial inducements, such as sexual favors.

In a 1986 case, the U.S. Court of Appeals for the Fifth Circuit upheld the racketeering conviction of a union official found guilty of threatening two female workers with economic loss unless they acceded to his sexual demands:

To establish extortion under the laws of Louisiana, it is not necessary to show that the threat was successful in obtaining property, but only that the threat was made to the victim to obtain something of value from her. In State v. Moore, 419 So. 2d 963, 967 (La. 1982), the Louisiana Supreme Court held that sexual favors are a thing of value within the meaning of the [Louisiana extortion] statute.

United States v. Carlock, 806 F.2d 535, 543 (5th Cir. 1986) (citation omitted) (emphasis added).

In the Philippines, Section 3(e) of the Anti-Graft and Corrupt Practices Act of 1960 (Rep. Act No 3019) covers actions by public officers in the discharge of their functions that cause “undue injury” or give a private party “unwarranted benefits, advantage or preference.”

• Language requiring payment of money or some other form of “property.” Anti-corruption statutes that make property gain or financial harm an element of the corruption offense will not encompass acts of sextortion, as the benefit exchanged in sextortion cases is neither property nor money, but sex.

Be sure to consider all of the relevant statutory provisions. In some cases, the broad language in one provision may be considerably narrowed by another provision. Article 380 of the Criminal Code of the Federation of Bosnia and Herzegovina, for example, uses broad language – “a gift or any other benefit” – in setting forth the elements of the criminal offense of bribery:

An official or responsible person . . . who demands or accepts a gift or any other benefit . . . in order to perform within the scope of his authority something which he ought not perform, or for omitting something which he ought perform, shall be punished . . . (emphasis added).

However, another statutory provision further limits the type of gift or benefit to tangible property that can be “seized.”

2. SEX DISCRIMINATION AND SEXUAL HARASSMENT LAWS

As many victims of sextortion are women and girls, and many perpetrators are men, it is important to review any civil or criminal laws that your country may have concerning sex discrimination and determine whether they might be relevant in a sextortion case.

In the United States, for example, sexual harassment laws would cover many types of sextortion that occur in educational or employment settings, but would not reach sextortion in other settings, and the penalties would be civil rather than criminal.

• Education. Teachers who engage in sextortion by offering students good grades in exchange for sex could be charged with quid pro quo harassment, a prohibited type of sex discrimination under Title IX of the United States Education Amendments of 1972 and its implementing regulations. According to the U.S. Department

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1 This is not to say that authority is never used to extract sex from unwilling males. See, e.g., Karen Terry et al., The Nature and Scope of the Problem of Sexual Abuse of Minors by Priests and Deacons, prepared by the John Jay College of Criminal Justice (2004), available at http://www.bishopaccountability.org/reports/2004_02_27_JohnJay/index.html. Still less is it to say that the IAWJ is only concerned with female victims. Rather, the IAWJ believes that this kind of abuse is what the CEDAW expert committee defined in its General Recommendation 19 (Violence Against Women) as “gender-based violence” – that is, “violence that is directed against a woman because she is a woman or that affects women disproportionately.” U.N. Committee on the Elimination of Discrimination Against Women, General Recommendation No. 19 (eleventh session, 1992), available at http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm. (emphasis added).
of Education Office for Civil Rights’ Sexual Harassment Guidance 1997, when a school employee “explicitly or implicitly conditions a student’s participation in an education program or activity or bases an education decision on the student’s submission to unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature,” that employee has committed quid pro quo harassment. The Guidance continues: “Quid pro quo harassment is equally unlawful whether the student resists and suffers the threatened harm or submits and thus avoids the threatened harm.” (Emphasis added.)

• Employment. Sextortion in the employment context could also qualify as sexual harassment, which is a violation of Title VII of the United States Civil Rights Act of 1964. U.S. Department of Labor regulations explain: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute harassment when . . . submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment . . . .” 29 C.F.R. § 1604.11 (2009).

In some countries, the sexual harassment laws may be broader than in the United States and include criminal penalties. In other countries, they may be narrower.

• In Zambia, the sexual harassment law only protects children and appears to be limited to fact patterns that involve physical coercion:

(1) Any person who practices sexual harassment in a workplace, institution of learning or elsewhere on a child commits a felony.

. . . .

(3) in this section, sexual harassment means

. . . .

(d) sexual imposition using forceful behavior or assault in an attempt to gain physical sexual contact.

Section 137A of the Penal Code (2005 Amendments) (emphasis added).

3. ANTI-GENDER-BASED VIOLENCE LAWS

Sextortion involves sexual conduct, and the Criminal or Civil Codes in most countries have provisions making various kinds of gender-based violence unlawful. Although many of these statutes may include language that will limit their usefulness in prosecuting sextortion cases, you may find others that specifically address sexual offenses by people in positions of authority.

• The Criminal Codes of the Federation of Bosnia and Herzegovina and the Republika Srpska include the offense of “Sexual Intercourse by Abuse of Position.”

BOSNIA AND HERZEGOVINA  SEXUAL INTERCOURSE BY ABUSE OF POSITION

(1) Whoever, by abusing his position, induces into sexual intercourse or equivalent sexual act a person who is in a dependent position in relation to him due to the person’s financial, family, social, health or other condition or straightened circumstances . . . .


(1) Whoever induces into sexual intercourse or any other sex act a person who is in a subordinate or dependent position . . . .

• The Philippine Anti-Rape Law of 1997 covers rape by means of “grave abuse of authority.”

• The Tanzania Sexual Offences Special Provisions Act of 1998 applies to a person “who takes advantage of his official position” to commit rape.

However, even statutes that are designed to reach the abuse of authority to obtain sex are unlikely to encompass all types of sextortion. The Philippine statute, for example, only applies to situations involving “carnal knowledge.” The Tanzania statute only applies to situations involving the “rape” of a girl or woman in the person’s “official custody.” None of the four statutes would appear to reach attempted sextortion, where the person in authority seeks to pressure a woman into providing sexual favors, but the woman refuses to comply.

Although sextortion is an old phenomenon, the name is new, and the IAWJ is not aware of any country that has adopted laws specifically designed to reach all of the conduct encompassed by the term “sextortion.” Therefore, in reviewing your country’s gender-based violence laws, focus on how the statutory elements – type of sexual conduct (e.g., rape, touching, consummated acts, attempts), type of perpetrator (e.g., official, employer, teacher), type of victim (e.g., age, gender, ward), type of “force” required to override “consent,” type of injury, penalties – would or would not apply to different sextortion scenarios. You are likely to find at least some laws that would apply to some sextortion fact patterns. This review will also allow you to identify whether there are any gaps in the existing legal framework for prosecuting sextortion and lay the foundation for future steps to close those gaps.

C. INTERNATIONAL LAW

If, after reviewing the national laws available for prosecuting sextortion, you find gaps in the reach of your country’s corruption and gender-based violence statutes, consider whether international law might help to fill those gaps. As the status of international law in domestic courts is, itself, a matter of domestic law, you will first need to assess its applicability in your courts.

• Judicial decisions. Look at whether your country’s courts have issued decisions incorporating international human rights law.

• Constitutional provisions. Look at whether your country’s Constitution addresses the domestic status of international law. For example, Article 9(f) of the Tanzanian Constitution provides that “the state authority and all its agencies are obliged to direct their policies and programmes towards ensuring . . . that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights.” Even if the courts in your country do not treat international law as binding, it may still be an effective advocacy tool. Although international conventions do not use the term “sextortion,” some of them include provisions that are directed at precisely the type of abuse of authority for sexual benefit that characterizes sextortion. These provisions help to underscore that sextortion falls within the scope of conduct that the international community condemns as a form of corruption and of gender-based violence. See Appendix B for a checklist of potentially applicable international conventions.
1. CORRUPTION
There are a number of international conventions against corruption, but, of course, none of them was drafted with sextortion as a discrete and separate offense in mind. As with the national laws, it is important to look carefully at the wording and interpretation of these treaties to determine whether and to what extent they might encompass sextortion.

The IAWJ has not identified any corruption convention that expressly refers to sexual favors, but some conventions employ language that is broad enough to cover the solicitation or acceptance of non-monetary benefits or inducements – language that would include the sexual favors involved in sextortion. These broad definitions reflect international recognition that, when people in positions of authority seek to trade their power for personal benefits, it makes no difference whether the benefit is financial or something else, it is still corruption. Insofar as the absence of financial injury or advantage remains a barrier to prosecuting sextortion under some national anti-corruption laws, these international conventions may help to address that issue. For example:

- Article 4 of the African Union Convention on Preventing and Combating Corruption defines corruption to include not only “goods of monetary value,” but also other types of “benefit,” “favour,” or “advantage” – terms that could be construed to cover the non-monetary, sexual benefit in a sextortion case.


2. GENDER-BASED VIOLENCE
Sexual exploitation and abuse are forms of gender-based violence that disproportionately affect women and girls. See, e.g., G.A. Res. 64/145, preamble, U.N. Doc. A/RES/64/145 (Dec. 18, 2009). Although the international conventions that address gender-based violence do not use the term “sextortion,” a number of them define gender-based violence, sexual exploitation, and sexual abuse in terms that would encompass sextortion. Some of these international definitions may be helpful in addressing the gaps in traditional gender-based violence laws through which sextortion cases might otherwise slip.
One such gap arises because sextortion relies on the coercive power of authority rather on physical violence or force; thus, it cannot be prosecuted under gender-based violence statutes that require threatened or actual physical force. The UN definitions of “sexual exploitation” and “sexual abuse” fill this gap by recognizing the coercive force of an unequal power relationship. “Sexual exploitation” is defined as “abuse of a position of vulnerability, differential power, or trust, for sexual purposes” – in other words, the very imbalance of power between perpetrator and victim that makes physical violence or force unnecessary in sextortion cases. Similarly, the UN definition of “sexual abuse” includes sexual intrusion “under unequal or coercive conditions.”

Another gap can arise because sextortion typically involves greater psychological than physical harm, making prosecution difficult under statutes that require evidence of physical injury. However, under the Declaration on the Elimination of Violence against Women, (DEVAW) Article 1, 1993 (A/RES/48/104), the definition of “violence against women” encompasses the kind of psychological harm and coercive pressure that characterize sextortion:

> The term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, **sexual or psychological harm or suffering to women**, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

As DEVAV recognizes, women and girls are vulnerable to myriad forms of sexual coercion, which may or may not be physical, and, as a result, suffer harm that may or may not be physical, including sexual, psychological, economic, or sociocultural harm. That recognition is critical to the successful prosecution of sextortion as a form of gender-based violence in which both the coercion and harm are real, but not necessarily physical.

### D. ETHICAL RULES AND PROFESSIONAL CODES OF CONDUCT

As an abuse of power, sextortion involves a fundamental breach of the ethical standards to which those with “entrusted power” are generally held. These ethical standards are typically set forth in government accountability rules and professional ethics codes. Although these rules and codes of conduct do not use the term “sextortion,” they may proscribe the types of exploitative and abusive conduct involved in sextortion. For example, they may impose obligations on officials or professionals:

- Not to abuse the authority entrusted to them.
- Not to exploit the vulnerability of those with whom they deal in their official or professional capacity.
- To protect those entrusted to their care and not take undue advantage of them.
- To exercise their authority in accordance with law.
- To act in the public interest and not for personal benefit or gain.
- To adhere to standards of propriety and integrity.
To behave in a professional manner and comport themselves as befits their office or profession.

To uphold certain standards of personal conduct and refrain from conduct that would reflect badly on the individual, agency, or profession.

To refrain from engaging in conduct that would violate certain laws, such as the laws against corruption, discrimination, and sexual harassment.

Enforcement of these codes and rules is often through administrative bodies rather than through the courts. Although these administrative bodies may not be able to impose criminal sanctions, they may have authority to impose a suspension from duty, license revocation, or removal from office. Stripping someone of the authority that he abused is not only a significant punishment, but it also protects the future victims who might have experienced similar abuse at his hands, and it deters others in authority from engaging in such abuse.

A complaint based on a violation of ethical rules or a code of professional conduct offers an alternative path to redress, and some victims may choose to pursue multiple paths – criminal, civil, and administrative – simultaneously. In other cases, the administrative path may be the only one that offers relief. Depending on the existing legal framework in each country, there may be situations in which, notwithstanding widespread consensus that the sextortion conduct was improper, unethical, and wrong, the conduct cannot be prosecuted successfully, as it does not fit within the precise language of the available statutes. In these cases, ethical rules and professional codes of conduct may help to fill gaps in the existing legal framework and afford redress that would not otherwise be available.

E. Sextortion Cases

A significant challenge in identifying sextortion cases is that there are currently no “sextortion” laws. Sextortion cases have to be brought under statutes that encompass the kind of conduct involved in sextortion but call it by different names – for example, corruption, bribery, obstruction of justice, breach of trust, blackmail, deprivation of honest services, violation of civil rights, sexual harassment, rape by coercion, or statutory rape. In each category, the facts in some of the cases may constitute sextortion as the IAWJ defines it, but the facts in other cases may not. This is, of course, one reason why the IAWJ believes it is so important to give sextortion cases a common name.

The following cases came to the IAWJ’s attention during the course of its three-year project to address sextortion. It is by no means an exhaustive list. Rather, it is designed to show that:

- Sextortion is a world-wide phenomenon.
- Sextortion arises in a wide variety of settings.
- Some sextortion cases are being brought, albeit under a different name.

People Forum Discussion: Should Sex Bribery Be Punished as a Crime?

In October 2010, as part of a Chinese People Forum discussion, a number of contributors commented on a self-disciplinary decree, adopted by the Ministry of Public Security, prohibiting firefighters from trading power for sex. Part of an anti-corruption campaign, it was the first state decree on sex bribery.

Tang Guangcheng (The Beijing News) commented: “The Ministry of Public Security leads in the fight against sex bribery since any form of non-material bribe is banned in firefighting units in pursuant to the newly released decree. The newly issued ban conforms to stipulations in international pacts like the United Nations Convention Against Corruption, which also suggest the inclusion of non-material bribes. Only tangible bribes are currently seen as evidence for prosecution in China, leaving a loophole in the legal system for illegal possession or trading of something intangible. The decree is a good supplement when criminal laws are incapable of reacting.”

Even without sextortion statutes, prosecutions are proceeding under a wide variety of legal theories.

Some of those prosecutions are successful and result in convictions; others underscore the challenges that remain in obtaining redress for sextortion.

Canadian Immigration Adjudicator Sentenced to 18 Months in Jail for Trying to Extort Sex in Return for Approving a Young Woman’s Refugee Application.

A young, South Korean woman had filed an application for refugee status in Canada. Her case was heard by Steve Ellis, an immigration adjudicator and former Toronto city councilor. Weeks after the hearing, Ellis arranged to meet the woman in a coffee shop. He told her that he planned to deny her application but, if they “could do things on the side,” he could issue a favorable decision, as long as she kept the proposed affair secret.¹ The young woman’s boyfriend secretly videotaped the meeting and took the tape to the police.

Ellis was convicted of breach of trust under the Criminal Code and of violating the Immigration and Refugee Protection Act. At his sentencing, Ontario Superior Court Justice Thea Herman stated that “Mr. Ellis has undermined public confidence in the integrity of the Canadian immigration system” and that “his actions call for denunciation in the strongest terms.”² She focused on the power imbalance between Ellis and the young woman and his violation of the “significant trust” placed in him as an immigration adjudicator, observing that “Mr. Ellis had enormous power over [the young woman]. Her entire future rested on him.”³ Afterward, the young woman stated, “I hope this sends a message to those who work for the public, who are in a position of power.”⁴

It took almost four years – from the September 2006 meeting in the coffee shop until the July 29, 2010 sentencing – to bring Ellis to justice. The videotape was the centerpiece of the case against him. The couple made the videotape because they thought it was the only way that people would believe the young woman.⁵ Just five days after he was jailed, Ellis was released on bail.

U.S. Immigration Officer Plead Guilty to Coercing Oral Sex from a Young Woman Seeking a Green Card.

A young Columbian woman applied for a green card as the wife of an American citizen. Three days after her interview, the immigration officer, Isaac Baichu, called and hinted that he had the power to deny her

AN AGENT, A GREEN CARD, AND A DEMAND FOR SEX

“The 16-minute recording . . . suggests the vast power of low-level immigration law enforcers, and a growing desperation on the part of immigrants seeking legal status. The aftermath, which included the arrest of an immigration agent last week, underscores the difficulty and danger of making a complaint, even in the rare case when abuse of power may have been caught on tape.

“No one knows how widespread sexual blackmail is, but the case echoes other instances of sexual coercion that have surfaced in recent years, including agents criminally charged in Atlanta, Miami and Santa Ana, Calif. And it raises broader questions about the system’s vulnerability to corruption at a time when millions of noncitizens live in a kind of legal no-man’s land, increasingly fearful of seeking the law’s protection.”


² id.  
³ id.  
⁴ id.  
⁵ id.  
⁶ id.
green card and have her relatives deported. He asked her to meet him in his car. She secretly recorded the meeting on her digital camera. During that meeting, he told her, “I want sex. One or two times. That’s all. You get your green card. You won’t have to see me anymore.” When she tried to leave, he demanded oral sex “now.” The young woman took the recording to the district attorney, and investigators arranged to record a second meeting with Baichu, at which he told her he expected her to do “just like the last time.”

Mr. Baichu pleaded guilty to felony charges of receiving a bribe and receiving a reward for official misconduct, and to misdemeanor charges of sexual misconduct, coercion, and official misconduct. The plea was entered in exchange for a sentence of 1 to 4 years in prison. At the sentencing, Justice James P. Griffin, Queens County Supreme Court, stated, “I am particularly offended by the nature of this offense. A government officer preying, using his position to prey on people who are trying to do the right thing when they apply for citizenship.”

PHILIPPINE JUDGE DEMANDED, AS A CONDITION OF SIGNING A BOOKBINDER’S APPOINTMENT PAPERS, THAT SHE BE HIS GIRLFRIEND AND GIVE HIM A DAILY KISS.

The mayor appointed a young woman as bookbinder in the Municipal Trial Court in Cities (Cabanatuan City). She repeatedly asked her supervisor, Judge Esteban, to sign her appointment papers, but he failed to act. When she again asked him to sign the papers, he told her, “What can you give me in exchange for my signature? From now on, you are my girlfriend. You will enter my office everyday, and everyday, give me a kiss.” When the young woman refused, he signed the papers and kissed her. Thereafter, she sought to avoid the judge, but one day she was summoned to his office and asked if she were receiving her bookbinder’s salary. When she answered in the affirmative, he said, “So, you’ve been receiving your salary already. Why did you not come to my chambers? Didn’t I tell you, you are already my girlfriend?” The woman protested, but the judge embraced and kissed her and touched her breast.

Judge Esteban was convicted of sexual harassment under Sections 3 and 7 of R.A. 7877, The Anti-Sexual Harassment Act of 1995, and of committing acts of lasciviousness under Article 336 of the Revised Penal Code. The court observed that, “The gravamen of the offense of sexual harassment is not the violation of the employee’s sexuality but the abuse of power by the employer or superior. . . . Sexual harassment in the workplace is not about a man taking advantage of a woman by reason of sexual desire; it is about power being exercised by a superior officer over his women subordinates.” The court fined Judge Esteban and sentenced him to more than two years in prison. The Supreme Court of the Philippines subsequently found that Judge Esteban’s conduct violated the Code of Judicial Conduct and dismissed him from the service, with forfeiture of all retirement benefits and leave credits and with prejudice to reemployment in any branch or instrumentality of the government.

TANZANIAN TEACHER DEMANDED SEXUAL FAVORS FROM A FEMALE STUDENT IN EXCHANGE FOR HIGH MARKS IN HIS CLASS AND OTHER PREFERENTIAL TREATMENT.

Michael Ngilangwa, a secondary school teacher, requested that his 14-year-old student make love with him so that she could receive high marks in his class. He endeavored to arrange a rendezvous in Iringa Town. The girl told her mother, who initially did not believe her and had the girl call Ngilangwa, using a speakerphone, to confirm the proposed plan to meet in Iringa. The mother then reported the matter to the police. The police arranged to catch Ngilangwa. They recorded further telephone conversations between Ngilangwa and the girl and then accompanied

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8 Id.
9 Id.
11 *People v. Esteban*, Crim. Cases Nos. 24490, 24702-04 (Sandiganbayan, Quezon City, 1st Div, Apr. 15, 2008). (Phil.)
12 Id.
her to the guest house where Ngilangwa was waiting. The police apprehended Ngilangwa after he had taken the girl to his room and given her some tablets that he said would prevent pregnancy. The girl’s mobile phone contained numerous messages from Ngilangwa regarding the planned rendezvous.

The court convicted Ngilangwa of demanding sexual favors under Section 25 of the Prevention and Combating of Corruption Act of 2007, and of attempted rape under Section 132(2)(b) of the Penal Code, Cap. 16 R.E. 2002, which provides that “[a] person attempts to commit rape if, with the intent to procure prohibited sexual intercourse with any girl or woman, he manifests his intention by . . . (b) being a person of authority or influence in relation to the girl or woman, applying any act of intimidation over her for sexual purposes . . . .” Ngilangwa was sentenced to five years in jail.14

**BOSNIAN ART TEACHER USED HIS POSITION OF TRUST AND AUTHORITY TO SEXUALLY EXPLOIT A YOUNG STUDENT.**

An art teacher, Jelenko Janji´c, offered to give a young Bosnian girl free art lessons and references that would allow her to enroll in the Academy of Fine Arts. He induced her to have sex with him and threatened to prevent her from enrolling in the Academy of Fine Arts if she told her parents or refused to continue the sexual relationship.

The Court of Bosnia and Herzegovina convicted Janji´c of Trafficking in Persons in violation of Article 186(2) of the Criminal Code of Bosnia and Herzegovina and sentenced him to five years in prison. The court emphasized that “he misused and abused the trust and his status of a teacher in the Secondary School” and took advantage of the victim’s vulnerability.15

**CHINESE PROFESSOR ACCEPTED SEXUAL BRIBE FROM FEMALE STUDENT SEEKING ADMISSION TO THE PRESTIGIOUS PH.D. PROGRAM HE OVERSAW.**

As reported in the Epoch Times:

A 70-year-old professor from Beijing’s prestigious Central Conservatory of Music confessed on August 18 to accepting sexual and monetary bribes from a prospective female student. The case led to a flurry of comments from Chinese netizens and the loss of the professor’s teaching privileges.

Professor Liang Maochun was approached by a Masters student from the Shenyang Conservatory of Music, Zou Jiahong, who was seeking entry into the Ph.D. program he oversaw. She paid 50,000 yuan (US$7,315) tuition, then later directly gave Prof. Liang another 50,000 yuan and engaged in sexual intercourse with the professor. She said Liang could keep the money if she was accepted into the Ph.D. program.

Liang later chose not to enroll Zou out of fear that she would expose the transaction, and confessed his deeds to the Conservatory, returning the bribe money. The institution later banned Prof. Liang from teaching and enrolling students, according to the China Daily.16

**TANZANIAN POLICE OFFICER ENGAGED IN SEX WITH A FEMALE INMATE IN EXCHANGE FOR A PROMISE TO RELEASE HER FROM JAIL.**

The Court of Appeal of Tanzania upheld the conviction of a police officer who promised to release a 14-year-old girl, in custody on a theft charge, if she would have sex with him. He wrote a “release note” for her and engaged in sex, but he did not release her. She complained. A medical examination revealed evidence of intercourse, and the police officer was eventually convicted and sentenced to 30 years imprisonment and 24 strokes of the cane.17

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15 Court of Bosnia and Herzegovina Sarajevo, Number K-76/08, (Sarajevo, Sept. 11, 2009).
PHILIPPINE DOCTOR MADE A YOUNG NURSING GRADUATE SUBMIT TO SEXUAL ADVANCES IN ORDER TO OBTAIN EMPLOYMENT WITH A FAMILY-PLANNING RESEARCH PROJECT.

A young nursing graduate met with Dr. Rico S. Jacutin, City Health Officer of Cagayan de Oro City, to enlist his help in obtaining a job. Dr. Jacutin offered her a job with a family-planning research project, but told her that her cooperation in undergoing a physical examination would be part of the research. Despite her misgivings, Dr. Jacutin persuaded her that there were no other jobs available and that the physical examination was a legitimate part of the job. Believing that she would be accompanying him to the clinic where the research would be conducted, she entered his car. Leading her to believe it was part of the required physical examination, he groped and fondled her. Shocked, she angrily told him she was through with the research and got out of the car. A week later, after telling her mother about the incident, she attempted to slit her wrist.

The Supreme Court of the Philippines upheld the conviction of Dr. Jacutin for the crime of sexual harassment under Sections 3 and 7 of Republic Act No. 7877. He was fined and sentenced to six months imprisonment.\(^{18}\)

HIGH SCHOOL PRINCIPAL IN MONTANA ALLEGEDLY THREATENED TO WITHHOLD A STUDENT’S DIPLOMA UNLESS SHE ENGAGED IN ORAL SEX WITH HIM.

A female high school student alleged that her principal coerced her into engaging in oral sex by threatening to keep her from graduating. The principal was charged with sexual intercourse without consent and with sexual assault. The Supreme Court of Montana affirmed the trial court’s dismissal of the sexual intercourse without consent charges on the grounds that the facts, as alleged, could not support a conviction.

The court rejected the argument that the principal had deprived the student of consent to the oral sex by threatening to prevent her from graduating. The court found that the term “without consent” required evidence that the victim was compelled to submit “by force or by threat of imminent death, bodily injury, or kidnapping.”\(^{19}\) The court considered and rejected the argument that “force” includes intimidation, fear, or apprehension, that “threat of bodily injury” includes threats that lead to psychological impairment, and that a threat is “imminent” when the consequence – failure to graduate – is still months away. The court was clearly troubled by the fact that this construction of Montana law left the student without any redress:

This case is one of considerable difficulty for us, as indeed it must have been for the District Court judge. The alleged facts, if true, show disgusting acts of taking advantage of a young person by an adult who occupied a position of authority over the young person. If we could rewrite the statutes to define the alleged acts here as sexual intercourse without consent, we would willingly do so. The business of courts, however, is to interpret statutes, not to rewrite them, nor to insert words not put there by the legislature. With a good deal of reluctance, and with strong condemnation of the alleged acts, we affirm the District Court.\(^{20}\)

\(^{18}\) Jacutin v. People, G.R. No. 140604, 378 SCRA 453, 463 (S.C., Mar. 6, 2002). (Phil.)

\(^{19}\) State v. Thompson, 243 Mont. 28, 31 (1990), overruled on other grounds by State v. Spreadbury, 361 Mont. 253, 256 (2011).

\(^{20}\) Id. at 33.
Wisconsin District Attorney Sought Relationship With a Young Woman Whose Abuser He Was Prosecuting.

In the fall of 2009, a victim of domestic violence met with Kenneth Kratz, the district attorney responsible for prosecuting the man who tried to strangle her. The victim alleged that Kratz told her he was considering reducing the charges, which she didn’t want him to do. After that meeting, she received the first in a series of 30 increasingly explicit text messages from the prosecutor – describing her as a “tall, young, hot nymph” and asking whether she “likes secret contact with an older, married, elected DA . . . the riskier the better?” On the third day, she went to the police. The interviewing officer recorded that she “feels afraid that if she doesn’t do what he wants Kratz will throw out her whole case.”

Kratz maintained he did nothing wrong, claiming that “[o]ther than providing a few compliments to this young lady,” the text messages “[d]o not appear to be sexual at all.”

Kratz resigned as Chair of the Crime Victims Rights’ Board, an agency that can reprimand prosecutors and others who mistreat crime victims. The Wisconsin Department of Justice and Office of Lawyer Regulation (OLR) looked into the matter and concluded that no action was warranted against Kratz for unlawful or unethical conduct. In the fall of 2010, after press reports appeared about the story, other complainants came forward, and OLR reopened its case “amid a barrage of criticism against Kratz following the AP’s stories.”

Kratz resigned as DA. After further investigation, OLR filed a complaint alleging eleven violations of the code of conduct for attorneys, including sexual harassment and conflict of interest for allegedly using his position to pressure a crime victim into a sexual relationship.

The Wisconsin Department of Justice investigated 15 complaints against Kratz, “eight of which involved an ‘identifiable criminal offense,’” but did not pursue criminal charges because “prosecutors have concluded that they can not prove beyond a reasonable doubt that he committed a specific violation of a criminal law.”

The domestic violence victim filed a lawsuit alleging that Kratz violated her right to equal protection under the U.S. Constitution. Kratz sought to dismiss the suit, claiming the text messages were merely “flirtatious” and that he was immune from suit because he sent them during his tenure as a public official. The judge denied the motion to dismiss, finding that Kratz “has not established that pressing [the victim] for a sexual relationship through inappropriate text messages is somehow a form of conduct so ‘intimately associated’ with legitimate prosecutorial functions.” At the time of printing this Toolkit, neither the civil rights case nor the OLR matter has been resolved.

23 id.
V. HOW TO ASSESS THE INSTITUTIONAL FRAMEWORK FOR PROSECUTING SEXTORTION

Identifying the relevant legal provisions only reveals how the law is supposed to work. The laws demonstrate that the country has taken a stance that this conduct is beyond the pale, and that people who are guilty of it should be sanctioned. As anyone working in gender knows, having laws on the books is necessary but not sufficient to combat sextortion. That legal framework needs to be supported by an institutional framework with the resources and capacity to receive and prosecute sextortion complaints, protect the complainants, and provide effective redress. It is in these other areas that barriers to effective enforcement of the laws are often found.

While the assessment of your country’s legal framework can be undertaken by a knowledgeable individual with access to national and international laws, the assessment of the institutional framework is best undertaken as a multi-sectoral and collaborative process. It is important to bring people together who understand and are in a position to improve how the justice sector functions. Judges have the ability to convene meetings with prosecutors and others to discuss these issues and work on possible solutions.

In collaboration with its partner associations of women judges in the Philippines, Tanzania, and Bosnia and Herzegovina, the IAWJ piloted different approaches to conducting this institutional assessment. In the Philippines, the women judges held a multi-sectoral consultation with representatives from the five pillars of the Philippine judicial system – the courts, prosecutors, law enforcement, correctional institutions, and the community – to document each stage of the process that a sextortion victim would have to follow to obtain redress. In Bosnia and Herzegovina, they convened roundtables to discuss sextortion with judges, prosecutors, and others in half a dozen cities throughout the country. In Tanzania, they developed case studies and training materials to guide seminar discussions with judges in different regions of the country. Whatever process you choose to gather this information, the goal is to understand and document:

- the official processes that exist for bringing and hearing sextortion complaints; and
- the legal, social, economic, or other barriers that may keep victims either from availing themselves of those processes or from obtaining effective redress.

A. EXISTING COMPLAINT PROCESS

There are usually multiple paths available for sextortion victims who wish to bring a complaint. These may include a criminal process, civil process, ombudsman process, other administrative process, or community dispute resolution process. While these multiple paths may increase access to justice and allow victims to choose the one that will provide the most effective redress, they may also make the complaint process appear more complex and daunting. Understanding and documenting the different steps and alternative options in the process will make it easier to assess whether there are ways in which the process needs to be:
• clarified so that people understand how to access it;
• streamlined so that it delivers justice faster and more efficiently;
• modified to eliminate procedural roadblocks; or
• augmented to provide greater support and protection for complainants.

B. BARRIERS TO EFFECTIVE PROSECUTION OF SEXTORTION

Even with the best complaint process, there may be many reasons why sextortion victims remain reluctant to come forward or why, when they do come forward, they are unable to obtain effective redress.

Think of how difficult it is for rape victims to come forward, knowing that they may find themselves and their conduct put on trial. Then think about how much harder it is to complain when:

• The perpetrator is in a position of power – and the only evidence is likely to be his word against hers.
• There is not likely to be any evidence of physical injury.
• The woman did not resist to the utmost, but succumbed to the coercive power of authority and, therefore, might be seen as having “consented.”
• The perpetrator may be threatening – and in a position to take – retaliatory action.

In addition to these very real concerns, there may be other barriers to effective prosecution of sextortion, including:

• Shame and fear of social stigma;
• Lack of information about where and how to get help;
• Inability to pay legal, medical, or other expenses required to prosecute a complaint;
• Lack of empathy and support from police, prosecutors, or others who don’t take sextortion seriously;
• Law enforcement and social service systems that lack the resources to provide effective assistance.

The underreporting of sexual exploitation and abuse “is a challenge for the international community. A 2008 Save the Children UK report concluded that sexual exploitation and abuse is chronically underreported. This assessment was shared by a 2008 HAP International study ‘To complain or not to complain’. Several factors explain the underreporting of sexual exploitation and abuse:

• “Trading sex for food or other forms of support has become a survival tactic for the most vulnerable populations. As a result people will not speak out or report the abuse for fear of losing much-needed material assistance.
• “The under-reporting is also related to the fear of stigmatization. Victims of abuse will refuse to report it for fear of being rejected or discriminated against by family or the community
• “A common deterrent against reporting abuse is the threat of retribution or retaliation.
• “In most cases people lack knowledge on how to report an allegation of sexual exploitation and abuse.
• “Vulnerable groups feel powerless to report an abuse. Victims fear authorities will not believe them, that they will not receive the support of the family or they will be denied physical access to contact managers of the perpetrators’ organization.”

See Appendix C for a checklist of possible barriers to help you assess the adequacy of your country’s institutional framework for supporting victims who bring complaints of sextortion and for assuring that the perpetrators do not evade punishment.

In light of these daunting, complex, and systemic factors, it is not surprising to find victims who believe that, if they were to complain, nothing good would come of it. Whether victims perceive themselves as victims of gender-based violence or of corruption, leveling an accusation against a person in authority is a risky proposition. The issue of credibility, the absence of corroborating witnesses or physical evidence, and the fear of retaliation are significant concerns.

Further complicating the decision to come forward is the victim's perceived role in the sextortion – did the victim resist, yield to, or even initiate the sextortion?

- **Resistance: refusing to provide a sexual favor.** On one hand, a victim who resists sextortion cannot be accused of having initiated, encouraged, or consented to the exchange of sex for a benefit. On the other hand, if the person in authority failed to obtain any sexual favor, the complaint may be taken less seriously and the victim perceived as not having suffered real harm.

  In part, this reflects the different treatment society accords sex and money. Attempts to extort a financial bribe are condemned, whether the attempt is successful or not. But when sex is involved, the situation may be seen as more ambiguous – perhaps the victim encouraged the advance, perhaps it was motivated by romantic feeling, men can’t be blamed for trying to win a woman’s favor, and what harm is done if the woman refuses? These excuses ignore the often significant psychological damage from being forced to receive and rebuff unwelcome sexual advances from someone in a position of authority and trust, who holds the power to grant or deny something the victim needs and wants.

- **Yielding: “consenting” to the request for a sexual favor.** If, however, the victim yields to the coercive power of authority, the victim may believe that, because there was no physical duress, the sex will be viewed as consensual. Victims may blame themselves for not resisting, feel more ashamed, and fear greater social stigma when sex is obtained without physical force.

*Because society treats sex and money differently, the victim who accedes to a demand for a sexual bribe is likely to be viewed differently – by herself, by society, and by the law – than a victim who accedes to a demand for a financial bribe. The stigma, shame, and psychological damage associated with sexual bribery are different from and greater than financial bribery. Legal culpability, on the other hand, may be greater if money is involved.*

When the focus is on sexual abuse, it is generally a defense to say that the woman consented to the sexual activity and, if the activity is consensual, neither the woman nor the man is seen as culpable or prosecuted. When the focus is on financial corruption, it is no defense to say that the victim consented to paying the bribe, and corruption laws prohibit both the payment and receipt of bribes.
• **Initiating: offering a sexual bribe.** Although both the payor and recipient of the bribe are seen as culpable and vulnerable to prosecution, depending on the laws, the prosecutor, and the court, different treatment may be accorded those who initiate bribes and those who pay them under duress,\(^{30}\) those who obtain undeserved gains from paying a bribe and those who receive something to which they are entitled,\(^{31}\) those who seek to perpetuate and conceal corruption and those who cooperate in exposing it.\(^{32}\)

National laws and policies vary, but at least some courts have drawn a distinction in culpability (not a complete defense, but a distinction) between those who offer bribes, unsolicited, and those who accede to shakedowns at the hands of corrupt officials.\(^{33}\) This distinction would seem important in sextortion cases. If a woman (or for that matter, a man) **initiates** an offer of sexual favors in exchange for a benefit, s/he is engaging in the same kind of corruption as a person who offers a financial bribe, and s/he may be treated in the same way. Further, in both cases, if the bribe is accepted, the person who accepts it is also culpable.

If, on the other hand, a person is simply doing her job, studying at a university, or applying for a visa, license, or other benefit, when someone in authority pressures her for sex as part of a quid pro quo exchange, the IAWJ believes she is a “victim,” just as the person in the less powerful position in a sexual harassment case is considered a victim.

**Power matters.**

As a practical matter, if the law is interpreted so that a person in a vulnerable position can be prosecuted for acceding to a demand for sex, then the “victim” of this kind of importuning will have even greater disincentives to complain than she already does. Suppose, for example, that a police officer agrees not to arrest a woman if she exposes her breasts to him. She is young and scared and alone at night in a bad neighborhood; she exposes herself and is sent on her way. The next day, she is wracked with remorse and wants to report the policeman to his superiors. In such a case, there should be flexibility not to prosecute the complaining witness. A corrupt policeman who perpetrates a “shakedown” of a frightened arrestee is more worthy of reproach – and criminal punishment – than the arrestee who accedes to the shakedown. The arrestee has ample reason to fear – she already knows that the policeman is corrupt (or he wouldn’t have solicited the transaction) – and can perhaps be excused for not having the courage to test how far the corruption could extend.

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Corruption can only flourish if people in authority believe they can solicit and accept financial and sexual bribes with impunity. To end sextortion, it is important to encourage and support victims who are willing to come forward and expose those who abuse their authority for personal benefit and sexual gratification.

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30 Although duress is a recognized defense to a charge of criminal conduct, that defense is most readily available when the form of coercion is a threat of death or bodily harm. Whether psychological, economic, or other non-physical forms of coercion will be viewed as sympathetically may depend on the particular facts, the applicable law, and the court.

31 In defining corruption, Transparency International “differentiates between ‘according to rule’ corruption and ‘against the rule’ corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute the former. The latter, on the other hand, is a bribe paid to obtain services the bribe receiver is prohibited from providing.” Transparency International, Frequently Asked Questions About Corruption, available at http://www.transparency.org/news_room/faq/corruption_faq#faqcorr1.

32 For example, the chapter on bribery in the Criminal Code of the Federation of Bosnia and Herzegovina provides that, if “[t]he perpetrator of criminal offence referred to in paragraphs 1 and 2 of this Article who gives the bribe on the request of an official or responsible person in the Federation, including also a foreign official person, and reports the criminal offence before it is discovered or before he realises that the offence has been discovered, may be released from punishment.” Criminal Code of the Federation of Bosnia and Herzegovina, art. 380(3), Aug. 1, 2003, available at http://www.tuzilastvobih.gov.ba/files/docs/zakoni/FBH_CRIMINAL_CODE_36_03.pdf.

33 See, e.g., U.S. v. Barash, 365 F.2d 395, 401-02 (2d Cir. 1966) (“We think that if a government officer threatens serious economic loss unless paid for giving a citizen his due, the latter is entitled to have the jury consider this, not as a complete defense like duress but as bearing on the specific intent required for the commission of bribery.”).
VI. CHANGING ATTITUDES, CHANGING BEHAVIOR

Naming the problem – sextortion – helps to shine a light on this specific type of abuse, eliminate barriers to its successful prosecution, and, ultimately, make it as unacceptable for people in authority to abuse their power to obtain sex as it is to obtain money. But it is just the first step.

Changing attitudes is challenging and requires that people recognize that the problem exists, that the conduct is wrong, and that there is a remedy available.

Sexual harassment law offers an instructive parallel. Like sextortion, sexual harassment was commonplace long before the term “sexual harassment” was coined to describe offensive and discriminatory workplace conduct. But there were few cases addressing this conduct because people did not perceive a remedy. In part, this reflected the absence of laws or policies specifically addressing this conduct. However, it also reflected a discriminatory attitude that devalued the harm that women suffer from unwanted sexual attention – particularly when it does not result in any physical injury.

Prior to the development of sexual harassment laws and policies, unwanted sexual attention in the workplace was often dismissed as something that women brought upon themselves by the way they dressed and acted, that was flattering rather than harmful, and that could always be rebuffed if the woman had no interest in the man from whom she was receiving the attention.

In the same way that naming and shaming sexual harassment has led to significant changes in the workplace, naming and shaming sextortion are the first steps towards changing the discriminatory attitudes that allow this conduct to go largely unchallenged.

Each country’s circumstances will differ, and, after assessing the opportunities and obstacles in your country, you will have to decide what is most important to do, what is feasible, and how best to allocate your time, energy, and resources.

There are many ways to involve and educate others about sextortion. In Bosnia and Herzegovina, the Philippines, and Tanzania, the associations of women judges organized workshops, roundtables, and training seminars with judges, prosecutors, law enforcement personnel, NGO representatives,

At a roundtable on sextortion in Bosnia and Herzegovina, a police official drew a comparison to the situation in his town a decade earlier, when similar discussions were held about domestic violence. He observed that, at the time, there were no cases of domestic violence, and people didn’t think it was a problem in their community. Today, the community has about 20 domestic violence cases per year. It wasn’t that domestic violence didn’t exist 10 years ago, but only that people were not aware of the problem and didn’t perceive a remedy. He expressed the hope that initiating this discussion about sextortion would achieve a similar result.
and others to raise awareness about sextortion and develop strategies for combating it. In each case, the strategies were tailored to meet local needs:

- After becoming aware of a sextortion case involving non-judicial personnel in the courts, the Tanzanian judges organized seminars for non-judicial personnel in all of the country’s High Court Centers to educate them about their right not to be subjected to sextortion and what to do if they encounter it.

- Judges in the Philippines focused on the role of the barangay – the smallest political unit in the country – as the first place sextortion victims might go for assistance, and they organized seminars designed to build the capacity of barangay leaders to deal with sextortion complaints more effectively.

- In Bosnia and Herzegovina, the association of women judges worked with a local journalist to develop a public service announcement designed to educate a larger, general audience about sextortion.

It is important not to overlook the role that ethical rules and professional codes of conduct can play in changing attitudes and behavior. These rules and codes help to educate those entrusted with power about what constitutes an abuse of that power and create a culture that condemns or condones particular conduct. In the United States, for example, it is regarded as unethical, unprofessional, and improper for teachers to have any sexual relationship with a student. As a result, teachers often go to great lengths to avoid even the appearance of impropriety. That is not to say that sextortion never occurs, but only that a powerful culture exists that condemns it in the educational setting. In countries where sextortion is more prevalent in educational institutions, that culture may not yet exist. When a student who has been pressured for sex by a teacher seeks help, it matters greatly whether the person from whom she seeks help sees sextortion as wrong, or whether that person turns a blind eye to the teacher’s conduct. If ethical rules and professional codes of conduct are drafted, interpreted, and applied to address – and redress – the abuse of power involved in sextortion, it will go a long way towards assuring that officials charged with professional discipline – whether for teachers or others – will not turn a blind eye in these cases.

Shaming and ending sextortion will take time, but there is much that can be done in every country to advance that goal. Some of the problems you identify can be solved. Ignorance can be remedied.

- Brochures can be developed telling people where to file complaints.
- Complaint procedures can be simplified.
- Misapprehensions as to evidentiary requirements can be corrected.
- Record keeping can be improved.

It is by systematically addressing and removing each barrier that the long-term goal will eventually be achieved.

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**Five things you can do to name, shame, and end SEXTORTION:**

1. **Talk about sextortion.**
   Sextortion thrives on silence; spread knowledge. Talk to two people and ask them to spread the word to two more. Keep the chain going.

2. **Get the WORD out.**
   Without a name – SEXTORTION – it is difficult to lift an abuse out of the realm of bad things we know happen and passively accept as the way of the world, and into the realm of things we will no longer tolerate and actively seek to change.

3. **Learn more about sextortion.**
   Once you become aware of sextortion, you see how pervasive it is. Gather and share information about sextortion. Visit websites for survivors of sexual abuse by persons in authority.

4. **Examine your existing legal framework.**
   Assess the adequacy of your country’s legal framework for prosecuting sextortion. Do sexual harassment laws cover non-employment cases? Do corruption laws cover non-financial injury or favors? Do rape laws cover coercion that does not involve physical force?

5. **Mainstream gender concerns into anti-corruption efforts – and vice versa.**
   Whether you work on women’s rights or anti-corruption efforts, focus on the interface between sexual abuse and corruption/bribery – this is the area where sextortion flourishes.
VII. FREQUENTLY ASKED QUESTIONS

Why does it matter whether we call this abuse of power “sextortion” or something else?

It is hard to conceive of – much less discuss – matters for which we have no vocabulary. Naming the phenomenon – sextortion – will make it easier to shine a light on the problem and take steps to address it.

When I look on the Internet, I see other definitions of sextortion. Are those wrong?

The IAWJ coined the term “sextortion”– a word that combines sex and extortion – because it captures and conveys the essence of the abuse of authority to extort sex. You can find other terms – “sexual extortion” or “sexual bribery” – used to describe the abuse of authority to extort sex. However, it is precisely because there is no common vocabulary for this type of abuse that it is so important to give it a name: sextortion.

You can also find “sextortion” used as a catchy way to describe the attempt to extort money by revealing a sexual affair. That is an altogether different meaning of the word and should not be confused with cases in which it is sex, not money, being extorted.

Are all victims of sextortion female?

While many victims are female and many perpetrators are male, males can also be victims of sextortion. A university football coach who runs a prestigious training camp is engaging in sextortion if he demands sex from a boy as a condition of remaining in the program and gaining access to prized athletic opportunities.

If a person extorts a sexual favor by deceiving the victim about his authority, is it sextortion?

No. Sextortion involves abuse of authority, and a person cannot abuse authority he does not have. If a man impersonates a senior civil servant and tells a woman he will help her acquire a government-built apartment if she sleeps with him, he may be guilty of fraud or even rape by fraud, but not sextortion.

If a woman receives money in exchange for sex, does that “quid pro quo” make it sextortion?

Not necessarily. A quid pro quo – sex in exchange for a benefit – is a key component of sextortion, but not the only requirement. To constitute sextortion, there must also be an abuse of authority. Thus, if a woman agrees to have sex with a stranger in exchange for money, it may be prostitution, but it is not sextortion. Because the stranger does not occupy a position of authority vis-a-vis the woman, he is not abusing any position of authority by engaging in sex with her.
What if a woman willingly offers a sexual favor in order to obtain something she wants from someone in a position of authority – is that sextortion?

In a corruption case, if an official accepts a monetary bribe, it is no defense to say that he did not solicit the bribe. Nor is it a defense to say that the person paid it willingly. Whether the official solicits or merely accepts the bribe, it is still punishable as corruption. It is no different when the currency of the bribe is sex rather than money. It is still corruption and an abuse of power to accept a sexual favor in exchange for exercising official authority in a way that will benefit the person who offered the sexual favor. Corruption in any form undermines a society based on merit and the rule of law, and it is important to assure that those who accept bribes – of whatever kind – do not escape with impunity.

Whether the person who offered the bribe also deserves punishment is a separate question. The law may treat those who are coerced into paying a bribe differently from those who initiate the bribe. However, people often offer bribes because they believe they will be accepted or perhaps even expected. A culture of corruption encourages this behavior, but it can only flourish if the people in authority accept the bribes that are offered. From a prosecution standpoint, to end sextortion – or any other form of corruption – the primary focus must be on the perpetrator’s abuse of authority.
GETTING STARTED CHECKLIST
INITIAL CONSULTATION FOR NAMING, SHAMING, AND ENDING Sextortion

☐ SET UP INITIAL CONSULTATION:
  - Decide whom to invite:
    - Judges
    - Judicial staff
    - Academics
    - Prosecutors
    - Police
  - Issue invitations
  - Find a meeting venue

☐ NAMING Sextortion:
  Make sure everyone involved understands what sextortion means.
  🔄 See Section I “What is Sextortion?” and Section VII “Frequently Asked Questions.”

☐ SHAMING Sextortion:
  Bring the problem to light. Questions to ask:
  - Are prosecutors failing to bring cases? If yes, ask:
    - Are laws inadequate? If so, are there existing laws that can still be used, even though they are not perfect?
      🔄 See Checklist of Existing Laws, Appendix B.
  - Are police failing to investigate charges?
  - Are victims afraid to come forward?
  - Are there social or procedural barriers?
    🔄 See Checklist of Barriers to Enforcing the Law, Appendix C.

☐ ENDING Sextortion:
  Develop an action plan appropriate to your organizational or individual strengths and needs. For example, an academic might develop a research agenda; a police group might do public service announcements or speak to school children; an NGO might want to propose changes in legislation or evidence rules.
  🔄 See Resources Available, Appendix D.
CHECKLIST OF EXISTING LAWS

Each country’s laws will be different, and the list below is not intended to be exhaustive; it does, however, highlight the different types of laws that should be reviewed for their relevance to sextortion. In each case, check to see if the statutory language is broad enough to encompass sextortion. If the language has been construed by the courts, prosecutors, or other officials in a decision, decree, or memorandum, that may help you determine its applicability to sextortion.

倪 NATIONAL LAWS

- **ANTI-CORRUPTION LAWS.** There are multiple terms for multiple forms of corruption, and the terms used in one country may not be the same as those used in another country. Common names for corruption offenses include, but are not limited to:
  - Abuse of office
  - Bribery
  - Corruption
  - Criminal coercion
  - Extortion
  - Official oppression

- **ANTI-DISCRIMINATION/ANTI-HARASSMENT LAWS.** Anti-discrimination provisions are commonly found in:
  - Constitutional provisions that promise the right to:
    - Equal protection of the laws
    - Non-discrimination on the basis of sex
    - Equality generally
  - Statutes, regulations, executive orders, or the like barring discrimination in:
    - The workplace
    - Educational settings
    - Matters of public authority, governance, or public contracting

- **ANTI-GENDER-BASED VIOLENCE LAWS.** Criminal or Civil Code provisions applicable to sexual conduct include:
  - Sexual assault/indecent assault
  - Rape
  - Sexual harassment in the workplace
  - Sexual harassment in educational settings
  - Human trafficking for sexual purposes
INTERNATIONAL LAW

Note that the status of international law in domestic courts is, itself, a matter of domestic law, so you will first need to assess its applicability in your country’s courts. Even if your domestic courts do not feel bound by international law, it can often be used to buttress the moral authority of your position as consistent with international norms. Determine whether your country is a party to these international conventions:

CORRUPTION. International conventions against corruption include:

  - Article 8.1 Criminalization of corruption: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - (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.”
  (Emphasis added.)

- **United Nations Convention Against Corruption (2003):**
  - Article 15 Bribery of national public officials: “Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
    - (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.”
  (Emphasis added.)

- **African Union Convention on Preventing and Combating Corruption (2003):**
  - Article 4.1: “This Convention is applicable to the following acts of corruption and related offences:
    - (a) the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
    - (c) any act or omission in the discharge of his or her duties by a public official or any other person for the purpose of illicitly obtaining benefits for himself or herself or for a third party . . . .”
  (Emphasis added.)

- **SADC (Southern African Development Community) Protocol Against Corruption (2001):**
  - Article 3.1 Acts of Corruption: “This Protocol is applicable to the following acts of corruption:
    - a) the solicitation or acceptance, directly or indirectly, by a public official, of any article of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
    - c) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party; . . . .
e) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for anyone else, for him or her to act, or refrain from acting, in breach of his or her duties . . . .”

(Emphasis added.)

Council of Europe Criminal Law Convention on Corruption (1999):
Requires Parties to establish as criminal offenses “the request or receipt” “directly or indirectly” of any “undue advantage” or the “acceptance of an offer or promise of such an advantage, to act or refrain from acting in the exercise of his or her functions” by:

- Article 3: Public officials
- Article 4: Members of domestic public assemblies
- Article 5: Foreign public officials
- Article 6: Members of foreign public assemblies
- Article 8: Persons who direct or work for private sector entities
- Article 9: Officials of international organizations
- Article 10: Members of international parliamentary assemblies
- Article 11: Judges and officials of international courts

(Emphasis added.)

Council of Europe Civil Law Convention on Corruption (1999):

- Article 1 requires Parties to provide for effective remedies for “persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.”
- Article 2 defines “corruption” as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behavior required of the recipient of the bribe, the undue advantage or the prospect thereof.”

(Emphasis added.)

The Inter-American Convention Against Corruption (1996):

- Article 6.1: “This Convention is applicable to the following acts of corruption:
  a. The solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit, such as a gift, favor, promise or advantage for himself or for another person or entity, in exchange for any act or omission in the performance of his public functions …
  c. Any act or omission in the discharge of his duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for himself or for a third party ....”

(Emphasis added.)
ANTI-DISCRIMINATION/ANTI-HARASSMENT. The following treaties and conventions require States Parties to adopt measures against sex discrimination:

- **UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979)**
- **International Covenant on Civil and Political Rights (ICCPR) (1966)**
- **International Covenant on Economic, Social, and Cultural Rights (ICESCR) (1966)**
- **International Labor Organization (ILO) Convention Concerning Discrimination in Respect of Employment and Occupation (1958)**

GENDER-BASED VIOLENCE. International treaties that deal with gender-based violence, include:

- **SADC Protocol on Gender and Development (2008):**
  - **Article 19:** “States Parties shall review, adopt and implement legislative, administrative and other appropriate measures to ensure . . . the eradication of occupational segregation and all forms of employment discrimination . . . .”
  - **Article 20:** “States Parties shall . . . ensure that perpetrators of gender based violence, including domestic violence, rape, femicide, sexual harassment, female genital mutilation and all other forms of gender based violence are tried by a court of competent jurisdiction.”
  - **Article 21:** “States Parties shall take measures including legislation, where appropriate, to discourage traditional norms, including social, economic, cultural and political practices which legitimize and exacerbate the persistence and tolerance of gender based violence with a view to eliminate them.”
  - **Article 22:** “States Parties shall, by 2015, enact legislative provisions, and adopt and implement policies, strategies and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.” (Emphasis added.)

- **Protocol to the Banjul Charter on the Rights of Women in Africa (2003):**
  - **Article 2:** Requires States Parties to combat all forms of discrimination against women.
  - **Article 4:** Requires States Parties to take appropriate and effective measures to eradicate and punish all forms of violence against women.
  - **Article 5:** Requires States Parties to eliminate “harmful practices,” defined as “all behavior, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity” (Article 1).
  - **Article 12:** Requires States Parties to take appropriate measures to “eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training”.
  - **Article 13:** Requires States Parties to take measures to “protect [women] from exploitation by their employers violating and exploiting their fundamental rights as recognized and guaranteed by conventions, laws and regulations in force”.
  - **Article 14:** Requires States Parties to ensure the right to health of women, including “the right to self protection and to be protected against sexually transmitted infections, including HIV/AIDS.”
The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para) (1994):

- **Article 2** defines violence against women “to include physical, sexual and psychological violence . . . that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place . . . .” *(Emphasis added.)*

- **Article 6** states that every woman has the right to be free from violence.

- **Article 7** requires States Parties to pursue policies to prevent, punish and eradicate violence against women.

**OTHER (NON-TREATY) SOURCES OF INTERNATIONAL LAW**

- **UN General Assembly Resolution 48/104 (1993)**, calling for States to prevent, investigate, and punish acts of violence against women, defines “violence against women” broadly to encompass, inter alia, “sexual harassment and intimidation at work, in educational institutions, and elsewhere.” *(Emphasis added.)*

- **Fourth World Conference on Women Beijing Platform for Action (1995) paragraph 178(b)**, calling on “Governments, employers, employees, trade unions and women’s organizations . . . [to] enact and enforce laws and introduce implementing measures, including means of redress and access to justice in cases of non-compliance, to prohibit direct and indirect discrimination on grounds of sex, including by reference to marital or family status, in relation to access to employment, conditions of employment, including training, promotion, health and safety, as well as termination of employment and social security of workers, including legal protection against sexual and racial harassment . . . .”

**LEGAL RESEARCH**

Because “sextortion” statutes as such do not exist, when a sextortion case is brought, it could be under a variety of different statutes. This can make it challenging to identify these cases, as there are no data bases of cases titled “sextortion.” To the extent, however, that you can identify these cases, they offer additional insight into the adequacy of your country’s legal framework for prosecuting sextortion successfully.

**What cases have been brought in your country that include all the elements of a sextortion offense?**

In each case:

- Was it a criminal or civil case?
- What statute(s) was the case brought under?
- Who brought the case – was it a named plaintiff, an NGO, a public prosecutor?
- What was the outcome of the case?
- What can be learned from its success or failure?
APPENDIX C

CHECKLIST OF BARRIERS TO ENFORCING THE LAW

☐ BARRIERS THAT PREVENT THE VICTIM FROM COMING FORWARD AND, THEREFORE, PREVENT THE CASE FROM EVER REACHING A COURT:

☐ Shame
☐ Fear of retaliation from the perpetrator
☐ Lack of knowledge about where and how to file a complaint
☐ Belief that if s/he successfully resisted the demands, no crime has been committed
☐ Belief that if s/he failed to resist the demands, there was no crime because s/he “consented”
☐ Lack of resources, such as: transportation; money to pay for fees – or “fees,” e.g., charged by police for opening a file, making an arrest, transporting the defendant to jail; charged by doctors for the medical exam or forensic tests; charged by registrars/clerks for opening a docket or filing a motion; legal assistance
☐ Belief that if s/he comes forward, nothing good will happen, and s/he will not obtain effective redress

☐ BARRIERS THAT PREVENT THE VICTIM FROM RECEIVING NECESSARY AND PROPER SUPPORT AND, THEREFORE, PREVENT PROPER RESOLUTION OF THE CASE ON ITS MerITS:

☐ Inadequate assistance from law enforcement officials responsible for supporting victims. In particular, law enforcers:
  • May themselves be the perpetrators;
  • May provide misinformation due to poor training;
  • May provide misinformation due to corruption (e.g., desire to protect the perpetrator, desire to obtain a bribe for doing their job);
  • May not give the victim the proper paperwork;
  • May not understand the elements of the offense well enough to conduct a proper investigation.

☐ Inadequate assistance from other personnel responsible for supporting victims. In particular, health personnel:
  • May themselves be the perpetrators;
  • May provide misinformation due to poor training;
  • May provide misinformation due to corruption (e.g., desire to protect the perpetrator, desire to obtain a bribe for doing their job);
  • May not give the victim the proper paperwork;
  • May not understand the forensic evidence rules well enough to fill out the required forms or help the court.

☐ Inadequate assistance from court personnel (clerks, registrars, magistrates, judges). In particular, court personnel:
  • May themselves be the perpetrators;
  • May provide misinformation due to poor training;
- May provide misinformation due to corruption (e.g., desire to protect the perpetrator, desire to obtain a bribe for doing their job);
- May not understand the rules of evidence;
- May misapply the substantive law;
- May not have the authority – or may not believe they have the authority – to waive filing fees and the like when a complainant is poor.

- Lack of social services, psychological counseling, legal aid

**BARRIERS THAT PREVENT EFFECTIVE OPERATION OF THE JUSTICE SYSTEM AND, THEREFORE, PREVENT THE CASE FROM RECEIVING PROPER ATTENTION AND HANDLING:**

- The entire system may be under-resourced.
- Poor record-keeping systems, lack of technology, and corruption make it easy for files to “walk away.”
- Lack of communication between different parts of the system can result in confusion as to what the law or rules require. For example, if a victim goes to the doctor, he may tell her/him (incorrectly) that he can't examine her/him until s/he goes to the police and obtains the evidence form.
- “Sextortion” may not be a priority of police, prosecutors, or court personnel, and they may allow the case to languish. Moreover, if they communicate, in words or action, that they do not take the victim’s complaint seriously, s/he is unlikely to pursue the matter.

**LEGAL BARRIERS THAT PREVENT THE VICTIM FROM OBTAINING JUSTICE:**

- Inadequate legal framework – gaps in the existing statutes fail to encompass all sextortion conduct.
- Inadequate framework for obtaining redress – criminal statutes may fail to compensate the victim for harm suffered, civil statutes may not accord with her sense of justice.

**SUBSTANTIve AND EVIDENTIARY BARRIERS THAT PREVENT THE VICTIM FROM OBTAINING APPROPRIATE REDRESS:**

- Downgrading or trivializing the offense. The multiple laws under which sextortion could be prosecuted should give police and prosecutors tools to ensure that this conduct is taken seriously. But it can also have the opposite effect. For example, government officials who try to extract sex from their subordinates might be prosecuted for sexual harassment and receive less severe sanctions than if they were prosecuted for corruption. Teachers who could be prosecuted for rape of an underage student might be prosecuted under a statute that bars impregnating a school girl and carries a milder penalty.
- Negative stereotyping of women who claim to be victims of sexual assault. For example, do judges apply a “special cautionary rule,” reminding themselves that these are allegations that are “easy to make” – even as they acknowledge that due to societal shame, most women are deeply reluctant to make them?
- Corroboration requirements for sexual assault, often formalized into requiring specific categories of corroboration, such as requiring that a particular type of medical specialist testify about forensic evidence, instead of a general practitioner, or refusing to allow the testimony of physician’s assistants, nurses, technicians, etc., even if they have training, certification, or knowledge adequate to the task.
- Not allowing or crediting the testimony of children because of uncertainty about what is required in voir dire before a child can testify.
- Absence of witnesses. As sextortion typically occurs outside the presence of witnesses, the case may rest on the word of the victim against that of the perpetrator.
RESOURCES AVAILABLE

PEOPLE, AGENCIES, AND ORGANIZATIONS WORKING ON SEXTORTION AND RELATED ISSUES

Anti-Corruption Resources:
- Center for Public Integrity: www.publicintegrity.com
- Transparency International: www.transparency.org
- U4 Anti-Corruption Resource Center: http://www.u4.no/index.cfm

Anti-Discrimination and Anti-Gender-Based Violence Resources:
- Equal Rights Advocates, Resources on Sex Discrimination: http://www.equalrights.org/publications/kyr/sexdiscrim.asp
- Equality Now: http://www.equalitynow.org
- United Nations Secretary-General’s Campaign to End Violence Against Women, Virtual Knowledge Center: http://www.endvawnow.org/en

MATERIALS ON SEXTORTION AND RELATED ISSUES

Sextortion Toolkits:
- Bosnia-Herzegovina Toolkit (www.iawj.org/resources.html)
- Philippines Toolkit (www.iawj.org/resources.html)
- Tanzania Toolkit (www.iawj.org/resources.html)

Research on Sexual Exploitation:
Anti-Corruption Toolkits and Materials:


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