

The Spotlight on Public Accountability and Gender: An Analysis of the Philippine Anti-Corruption Framework

Cathleen Terry E. Caga-anan*

I. INTRODUCTION.....	401
II. CORRUPTION: INTERNATIONAL AND DOMESTIC PERSPECTIVES	402
A. <i>Corruption and Human Rights</i>	
B. <i>Gender and Corruption</i>	
III. THE LEGAL AND INSTITUTIONAL FRAMEWORK OF ANTI-CORRUPTION IN THE PHILIPPINES.....	414
A. <i>Laws Relating to Anti-Graft and Corruption</i>	
B. <i>The Office of the Ombudsman</i>	
IV. EVALUATING THE ANTI-CORRUPTION FRAMEWORK OF THE PHILIPPINES	418
V. CONCLUSION AND WAYS FORWARD	427

I. INTRODUCTION

The opening statement of the United Nations Convention Against Corruption (UNCAC)¹ did not mince words when it condemned corruption, as such — “[it] is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of

* ’14 J.D., Ateneo de Manila University School of Law. The Author was the recipient of the Roberto A. Gana Service Award. She is a Field Program Coordinator for the International Development Law Organization and a Research Fellow of the Ateneo Graduate Legal Studies Institute. She previously co-wrote *Decent Work for Domestic Workers in the Philippines: A Look at Standards and Issues*, 60 ATENEO L.J. 126 (2015) with Atty. Ryan Jeremiah D. Quan.

Cite as 63 ATENEO L.J. 401 (2018).

1. United Nations Convention Against Corruption, *ratified* Nov. 8, 2006, 2349 U.N.T.S. 41 [hereinafter UNCAC].

life, and allows organized crime, terrorism, and other threats to human security to flourish.”²

The numbers are harrowing. According to a Global Financial Integrity (GFI) study, the Philippines lost over US\$132.9 billion in illicit financial outflows from crime, corruption, and tax evasion over the 52-year period of study.³ Globally, from 2004 to 2013, another GFI study found that the developing world lost US\$7.8 trillion.⁴

But these numbers do not illustrate the disturbing effects of corruption on democracy and the rule of law, and violations of human rights, especially of women.

II. CORRUPTION: INTERNATIONAL AND DOMESTIC PERSPECTIVES

There is no fixed definition for corruption. However, there is a mutual understanding on how it unfolds. Institutions, such as the World Bank, define corruption as “the abuse of public office for private gain.”⁵

-
2. Kofi Annan, Former Secretary-General of the United Nations, Statement on the Adoption by the General Assembly of the United Nations Convention Against Corruption, Remarks at the Convention Against Corruption, New York City (Oct. 31, 2003) (transcript *available at* <https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general-speech.html> (last accessed Nov. 30, 2018)).
 3. Dev Kar & Brien LaBlanc, Illicit Financial Flows to and from the Philippines: A Study in Dynamic Simulation, 1960-2011 (An Analysis Published Online by Global Financial of Illicit Financial Flows Affecting the Philippines’ Integrity) at ix, *available at* <http://philippines.gfintegrity.org/Illicit-Financial-Flows-to-and-from-the-Philippines-Final-Report.pdf> (last accessed Nov. 30, 2018).
 4. Dev Kar & Joseph Spanjers, Illicit Financial Flows from Developing Countries: 2004-2013 (A Study Published Online by Global Financial Integrity Estimating the Country-Level and Aggregated Global Volume of Illicit Money Being Siphoned Out of Poor and Emerging Market Nations) at 23, *available at* https://www.gfintegrity.org/wp-content/uploads/2015/12/IFF-Update_2015-Final-1.pdf (last accessed Nov. 30, 2018).
 5. The World Bank Group, Helping Countries Combat Corruption: The Role of the World Bank at 8, *available at* <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf> (last accessed Nov. 30, 2018) (citing Ibrahim F.I. Shihata, *Corruption-A General Review With an Emphasis on the Role of the World Bank*, 15 PENN ST. INT’L L. REV. 451, 459 (1997)) (emphasis omitted).

Under the UNCAC, corruption was not formally defined to maintain its objectivity and respect for the different political contexts among member States.⁶ UNCAC specifies these corrupt practices and acts contributing and relating to corruption affiliated with the “public official.”⁷ However, the UNCAC definition of corruption does not limit the term public official to an individual working under the government, i.e., in a legislative, administrative, or executive position.⁸ A public official may also refer to those in the private sector who are under a government contract or who transact with government agencies.⁹

There are two recognized forms of corruption, namely: spontaneous and institutionalized (or systematic). Spontaneous corruption involves an individual who commits an act of low-level corruption which may not affect anything or anyone greatly but contributes to the cultural normalization or acceptability of it.¹⁰ Institutional corruption involves people in power or with the highest authority, which directly influence the creation of laws and resource allocation to create an institutional environment that favors their private interests.¹¹ The influence in the institutional level directly affects different sectors in state functioning.¹²

In discussions of corruption, the financial aspect is highlighted — primarily due to the perception that only transactional corruption persists. This is also brought about by the limited resources and the gaps in equality. It is best to note that corruption, however, has vast ramifications to the promotion and protection of human rights.

6. UNCAC, *supra* note 1, art. 6I, ¶ 2.

7. *Id.* art. 2 (a).

8. *Id.*

9. *Id.*

10. George Economakis, et al., *Patterns of Corruption*, J. ECON. & BUS., Volume No. 13, No. 2, at 26.

11. *Id.* at 24-26.

12. Susan Rose-Ackerman, *The Institutional Economics of Corruption*, in THE GOOD CAUSE: THEORETICAL PERSPECTIVES ON CORRUPTION 53 (Gjalt de Graaf, et al. eds., 2010).

A. Corruption and Human Rights

An increasing attention has been given to the negative impacts of corruption on the enjoyment of human rights.¹³ In particular, the United Nations Human Rights Council (UNHRC) has made numerous recommendations to member States with the aim to prevent and suppress corruption.¹⁴ Corruption is seen to have negative impacts on the availability, quality, and accessibility of human rights-related goods and services.¹⁵ According to the United Nations (U.N.), corruption also “undermines the functioning and legitimacy and processes, the rule of law, and ultimately the State itself.”¹⁶ Furthermore, “[w]hile acts tainted by corruption can constitute human rights violations, corruption itself is best seen as a structural obstacle to the enjoyment of human rights.”¹⁷

Civil, political, economic, social, and cultural rights are affected by corruption. One of the key messages on corruption and human rights, as indicated by the Office of the United Nations High Commissioner for Human Rights (OHCHR), is that “corruption is an enormous obstacle to the realization of all human rights — civil, political, economic, social, and cultural, as well as the right to development.”¹⁸

Article 2 of the International Covenant on Economic, Social, and Cultural Rights obligates State Parties to undertake steps “to [maximize] its available resources, with a view to achieving progressively the full realization of the rights recognized in [the] Covenant.”¹⁹

13. Office of the High Commissioner for Human Rights, *The Human Rights Case Against Corruption* at 4, available at <https://www.ohchr.org/Documents/Issues/Development/GoodGovernance/Corruption/HRCaseAgainstCorruption.pdf> (last accessed Nov. 30, 2018) [hereinafter Office of the High Commissioner for Human Rights, Human Rights Case].

14. Office of the High Commissioner for Human Rights, *Corruption and Human Rights*, available at <https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx> (last accessed Nov. 30, 2018).

15. *Id.*

16. *Id.*

17. *Id.*

18. Office of the High Commissioner for Human Rights, *Human Rights Case*, *supra* note 13, at 7.

19. International Covenant on Economic, Social and Cultural Rights art. 2, ¶ 1, adopted Dec. 16, 1966, 993 U.N.T.S. 3.

With corruption, the State is unable to fulfill its human rights obligations to maximize such resources for the progressive realization of rights.²⁰ Instead of directing resources in human rights programs and initiatives, these resources are instead illegally diverted for private gain. Corrupt management also “compromises the State’s ability to deliver services, including health, education, and welfare, which are essential for the realization of economic, social, and cultural rights.”²¹

There is no shortage of studies that confirm the harmful effects of corruption to the realization of human rights. For example, research supported by a grant from the World Bank and financed by the Netherlands Trust Fund concluded that corruption clearly undermines the delivery of health services in the Philippines.²² In another study by the World Bank, it was found that corruption reduces access to services, especially for poor individuals and communities.²³ “Unofficial payments” demanded by public employees and officers were oftentimes seen as necessities for expediting or ensuring the delivery of services.²⁴ In Kazakhstan, it was found that “the poor were much more likely than the rich to say that they were paying bribes in order to receive the benefits they are entitled to and to avoid

20. Office of the High Commissioner for Human Rights, Human Rights Case, *supra* note 13, at 2. Progressive realization pertains to “a State’s compliance with its obligation to take appropriate measures is assessed in the light of the resources — financial and others — available to it.” Office of the United Nations High Commissioner for Human Rights, Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No. 33 at 13, *available at* <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf> (last accessed Nov. 30, 2018).

21. Office of the High Commissioner for Human Rights, Human Rights Case, *supra* note 13, at 2.

22. Omar Azfar & Tugrul Gurgur, *Does Corruption Affect Health and Education Outcomes in the Philippines?*, 9 *ECONOMICS OF GOVERNANCE* 197, 222 (2008).

23. James Anderson, et al., *Service Delivery, Poverty, and Corruption – Common Threads from Diagnostic Surveys (A Background Paper for the 2004 World Development Report, World Bank, Washington, D.C., June 27, 2004)* at 20, *available at* http://documents.worldbank.org/curated/en/114571468781754043/310436360_20050276022113/additional/28010.pdf (last accessed Nov. 30, 2018).

24. *Id.* at 19.

problems[.]”²⁵ Meanwhile, households in Latin America did not use public services because of the need to pay a bribe.²⁶

In 2013, the Office of the Ombudsman of the Philippines conducted a study. Some of their findings include:

1. During the survey period, only [one] of 20 families has been solicited for bribe or grease money when transacting business in a government agency. *More families have been asked to pay bribe or grease money when availing of social services.*
2. The agencies that are more vulnerable to bribery are those involved in the delivery of basic social services, such as educational institutions, health facilities, social security agencies, and agencies providing employment and livelihood opportunities.²⁷

Moreover, the Office of the High Commissioner has provided —

Corruption leads to discriminatory access to public service in [favor] of those [who are] able to influence authorities, including by offering bribes. Economically and politically disadvantaged groups and persons suffer disproportionately in these circumstances, because they are most dependent on public services but [are] least able to influence State policies and corrupt officials.²⁸

Rule of law²⁹ is also adversely affected by corruption.³⁰ Widespread corruption erodes transparency and accountability in the enactment of laws.

25. *Id.* at 20.

26. *Id.*

27. Office of the Ombudsman, 2013 National Household Survey on Experience with Corruption in the Philippines (A Survey to Measure the Extent of Pervasiveness of Petty or Bureaucratic Corruption in the Philippines) at 19–20, available at <http://www.ombudsman.gov.ph/docs/caravan/2013OMBCorruptionSurveyReport.pdf> (last accessed Nov. 30, 2018) (emphasis supplied).

28. Office of the High Commissioner for Human Rights, Human Rights Case, *supra* note 13, at 4.

29. The European Commission for Democracy Through Law (Venice Commission) conclude that rule of law comprises of the following components:

- (1) legality, including a transparent, accountable, and democratic process for enacting law;
- (2) legal certainty;
- (3) prohibition of arbitrariness;

Instead of equal implementation, it becomes selective to those who can afford it,³¹ which also results in mistrust in the government and its institutions. Furthermore, access to justice is limited to those who can engage with corrupt public officials or the judiciary.³²

B. Gender and Corruption

Corruption appears to be a phenomenon that affects both women and men equally. However, numerous studies have indicated that women experience corruption differently from men.³³ This is also a reflection of the strong

-
- (4) access to justice before independent and impartial courts, including judicial review of administrative acts;
 - (5) respect for human rights; and
 - (6) non-discrimination before the law.

European Commission for Democracy Through Law (Venice Commission), Venice, Italy, Mar. 11-12, 2016, *Rule of Law Checklist*, ¶ 18, CDL-AD(2016)007 (Mar. 18 2016).

30. *Id.* ¶¶ 37-43.

31. Erica Razook, Associate Legal Officer of the Open Society Justice Initiative, declared before the Parliamentary Assembly of the Council of Europe that

[w]hen left unaddressed, large-scale money laundering and related corrupt acts through pristine appearing financial instruments and institutions undermine the rule of law and respect for human rights, by allowing certain wealthy and politically powerful elites to take and self-deal amongst themselves [—] to the detriment of the people [—] at will and often with impunity.

Erica Razook, Associate Legal Officer, Anti-Corruption of the Open Society Justice Initiative, *Corruption as a Threat to the Rule of Law: Abuse of the Corporate Entity, Secrecy Jurisdiction Arbitrage and Under-Regulated Financial Services*, Remarks before the Parliamentary Assembly of the Council of Europe (Mar. 19, 2013), (transcript available at <https://www.opensocietyfoundations.org/sites/default/files/razook-pace-corruption-testimony.pdf> (last accessed Nov. 30, 2018)).

32. See Petter Langseth, *Judicial Integrity and its Capacity to Enhance the Public Interest* (published online by the Global Programme Against Corruption, Centre for International Crime Prevention, Office of Drug Control and Crime Prevention, United Nations Office at Vienna, Austria) at 5 available at https://www.unodc.org/documents/corruption/Publications/2002/Judicial_Integrity_and_its_Capacity_to_Enhance_the_Public_Interest.pdf (last accessed Nov. 30, 2018).

33. See Transparency International, *Gender and Corruption Topic Guide* (A publication compiled by the Anti-Corruption Helpdesk on key corruption and anti-corruption issues) at 4, available at <https://www.transparency.org/files/>

implications that gender has over human experience, whether it be access to rights and justice or daily life.

According to Transparency International, unequal power relations between women and men increase the vulnerability of women to corruption.³⁴ Gender-differential effects of corruption are found in three areas:

- (1) Access to public services and financial resources;³⁵
- (2) Application of the rule of law in advancing rights and protection from abuse;³⁶ and
- (3) Access to decision-making, including political participation as citizens and legislators and civil servants.³⁷

For access to public services and financial resources, women are more vulnerable to corruption because, as a marginalized group, they require more access to such services and resources.³⁸ Poor women also “disproportionately

content/corruptionqas/Topic_guide_gender_corruption_Final_2016.pdf (last accessed Nov. 30, 2018) [hereinafter Transparency International, Gender and Corruption].

34. Transparency International, Gender, Equality, and Corruption: What are the Linkages? (A Policy Brief) at 4, *available at* https://www.transparency.org/whatwedo/publication/policy_position_01_2014_gender_equality_and_corruption_what_are_the_linkage (last accessed Nov. 30, 2018).
35. United Nations Development Programme & United Nations Development Fund for Women, Corruption, Accountability, and Gender: Understanding the Connections at 9, *available at* <http://www.undp.org/content/dam/aplaws/publication/en/publications/womens-empowerment/corruption-accountability-and-gender-understanding-the-connection/Corruption-accountability-and-gender.pdf> (last accessed Nov. 30, 2018) (citing Transparency International, Transparency International Corruption Perceptions Index (CPI) Database, *available at* http://www.transparency.org/policy_research (last accessed Nov. 30, 2018)).
36. *Id.*
37. *Id.*
38. United Nations Development Programme & United Nations Development Fund for Women, Corruption, Accountability, and Gender: Understanding the Connections, *supra* note 37, at 10.

feel the impacts of high-level or ‘grand’ corruption.”³⁹ Corruption in this scale often occurs with resources for marginalized groups, “because these institutions lack a remit to respond to the needs of the poor, or because institutions erect obstacles to those who might try to demand answers of public authorities or ask that punishments be imposed on people and institutions that violate their rights.”⁴⁰

Women also seek protection of their rights from abuses, necessitating contact with law enforcement and the justice system. When there is corruption, women are unable to demand accountability and seek effective remedies.⁴¹ Furthermore, corruption creates an enabling environment for systematic abuses, such as trafficking, to occur.⁴² According to a study commissioned by the Federal Ministry for Economic Cooperation and Development of Germany, “[the] [b]ribery of officials and political corruption reaching up the highest levels of the executive, legislative, and judiciary in the home, transit, and destination countries are crucial for the success of human traffickers.”⁴³

Under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),⁴⁴ several provisions are violated due to corruption, to wit:

- (1) Article 1 — Freedom from Discrimination;⁴⁵

39. According to United Nations Development Fund for Women (UNIFEM) and United Nations Development Programme (UNDP), “[g]rand corruption often occurs in the form of illicit commissions at the point of procurement, which reduce the overall amount of public resources available for distribution and affects the equitable distribution among different population segments.”

Id.

40. ANNE MARIE GOETZ & ROB JENKINS, *REINVENTING ACCOUNTABILITY: MAKING DEMOCRACY WORK FOR HUMAN DEVELOPMENT* 75 (2005).

41. United Nations Development Programme & United Nations Development Fund for Women, *supra* note 37, at 14.

42. *Id.* at 14-15.

43. *Id.* at 15 (citing BIANCA SCHIMMEL & BIRGIT PECH, *CORRUPTION AND GENDER. APPROACHES AND RECOMMENDATIONS FOR TECHNICAL ASSISTANCE. FOCAL THEME: CORRUPTION AND TRAFFICKING IN WOMEN* 13 (2004)).

44. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

- (2) Article 11— Right to Work;⁴⁶
- (3) Article 12 — Right to Health;⁴⁷
- (4) Article 13 — Equality in all areas of Economic and Social Life;⁴⁸
- (5) Article 14 — the Rights of Rural Women;⁴⁹ and
- (6) Article 15 — Right to Equality before the Law.⁵⁰

CEDAW expounds on corruption and its link to gender equality in General Recommendation No. 33. The document recognizes the intrinsic connection between women’s access to justice and the realization of rights under CEDAW. This includes “the fight against impunity and corruption[.]”⁵¹ It is noted the presence of corruption also erodes the quality of justice systems, preventing women from accessing justice.⁵²

Taking these into consideration, the Committee recommends that all States Parties should “[t]ackle corruption in justice systems as an important element of eliminating discrimination against women on access to justice.

The right to work and the right to equality before the law are impaired when there is corruption. Women are unable to enter into safe working environments. They are also unable to gain access to adequate remedies under the law.

Under Article 12 of CEDAW, States Parties are mandated to “take all appropriate measures to eliminate discrimination against women in the field of health [], in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”⁵³ Article 13 obligates States Parties to recognize the rights of women to family

45. *Id.* art. 1.

46. *Id.* art. 11.

47. *Id.* art. 12.

48. *Id.* art. 13.

49. *Id.* art. 14.

50. CEDAW, *supra* note 44, art. 15.

51. Committee on the Elimination of Discrimination against Women, *General Recommendation No. 33: General Recommendation on Women’s Access to Justice*, U.N. Doc CEDAW/C/GC/33 (2015), ¶1.

52. *Id.* ¶13.

53. *Id.* art. 12 (1).

benefits, and the right to bank loans, mortgages, and other forms of financial credit.⁵⁴ Article 14 mandates the recognition of the rights of rural women, and States Parties are mandated to ensure rural women's rights in development planning, access to adequate health care facilities, benefits from social security programs, and adequate living conditions, among others.⁵⁵

Articles 12 to 14 of CEDAW acknowledge the disproportionate role of women in relation to health and economic social life and seek to address these issues by mandating States Parties to provide adequate and responsive services. Unfortunately, it is through the need for public services that women are subjected to corruption. Women are considered as the “primary users of public services,”⁵⁶ not only for their individual needs, but also in relation to their families' needs and the necessities for childcare. According to Transparency International, in the Philippines, corrupted public health services lead to “the delayed treatment of patients, discouraged use of clinics, reduced satisfaction of households with services received, and increased waiting times for patients.”⁵⁷

An insidious form of corruption that affects women disproportionately is “sextortion.”⁵⁸ Sexual harassment, exploitation, and the use of sex as a “form of payment” in return for public services are specifically “gendered” forms of corruption.⁵⁹

The International Association of Women Judges (IAWJ) defines sextortion as “the abuse of power to obtain a sexual benefit or advantage.”⁶⁰

54. *Id.* art. 13.

55. *Id.* art. 14 (2).

56. Transparency International, *Corruption and Gender in Service Delivery: The Unequal Impacts* (A Working Paper) at 3, available at http://issuu.com/transparencyinternational/docs/2010_wp_genderinservicedelivery_en?mode=window&backgroundcolor=%23222222 (last accessed Nov. 30, 2018) [hereinafter *Transparency International, Service Delivery*] (citing Azfar & Gurgur, *supra* note 22).

57. *Id.* at 3.

58. Transparency International, *Gender and Corruption*, *supra* note 33, at 7.

59. Transparency International, *Service Delivery*, *supra* note 56, at 4.

60. International Association of Women Judges, *Stopping the Abuse of Power through Sexual Exploitation: Naming, Shaming, and Ending Sextortion*, at 5, available at <http://www.iawj.org/wp-content/uploads/2017/04/Corruption-and-Sextortion-Resource-1.pdf> (last accessed Nov. 30, 2018).

There are two components for this abusive conduct: the sexual component and the corruption component.⁶¹

Similar to sexual harassment, sextortion involves a request or demand for a sexual favor — which may or may not be sexual intercourse — or any kind of unwanted sexual activity.⁶²

The corruption component is where sextortion differs from sexual harassment. For an act to qualify as sextortion, “[t]he 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 [the] exercise of power entrusted to him [or her].”⁶³ Instead of acting on integrity, fairness, and impartiality expected of public employees and officers, the perpetrator acts based on personal benefit. The IAWJ identifies three distinct features: abuse of authority, a *quid pro quo* exchange, and psychological coercion rather than physical force.⁶⁴

The Tool Kit on Sextortion by the Philippine Women Judges Association further identifies the elements of the crime, as follows:

- (1) Sexual Conduct — any form of sexual contact, from inappropriate touching to intercourse;
- (2) Abuse of Authority — the person who requires or demands sex has the authority to give the victim some favor or benefit, e.g. a student passing a mark, or an employee a raise, or an applicant a visa; and
- (3) *Quid Pro Quo* — “this for that” or “*kaliwaan*[.]” In other words, the victim will get what she needs when she complies with the sexual demand.⁶⁵

The *quid pro quo* exchange is elaborated as such — “Whether explicit or implicit, it is the “this-for-that” exchange, [which is] a sexual favor in exchange for some benefit that the person in authority is empowered to

61. *Id.* at 6.

62. *Id.* at 9.

63. *Id.*

64. *Id.*

65. Philippine Women Judges Association, Tool-Kit on Sextortion at 2, *available at* https://aboutphilippines.org/files/Philippine_Toolkit_Sextortion.pdf (last accessed Nov. 30, 2018).

withhold or confer[,] that is central to the corruption component of sextortion.”⁶⁶

This phenomenon is not unheard of in the Philippines. In 2015, cases were filed against current and former Philippine embassy staff for collaborating with an alleged sex-for-flight scheme targeting female Filipino workers in Saudi Arabia.⁶⁷ According to reports, distressed female Filipino workers are propositioned for sex in exchange for money.⁶⁸ Such money will then be used to pay for airplane tickets, payment of fees or penalties, and payment of reimbursement for deployment costs.⁶⁹ These Filipino workers are at risk for these schemes because most of the distressed and runaway overseas Filipino workers do not have money. Allegations for sex-for-flight schemes were reported, not just in Saudi Arabia, but also in Kuwait, Syria, and Jordan. Investigations were also made in other diplomatic posts with large concentrations of overseas Filipino workers, such as Hong Kong, Singapore, and Malaysia.⁷⁰

In the Philippine context, awareness of the prevalence of corruption and measures of prevention has been done through the creation of anti-graft bodies such as the Office of the Ombudsman and the Sandiganbayan.⁷¹

66. International Association of Women Judges, *supra* note 60, at 11.

67. Paterno Esmacquel II, Charges set vs embassy staff over ‘sex for flight’, *available at* <https://www.rappler.com/nation/61619-charges-set-embassy-staff-sex-flight> (last accessed Nov. 30, 2018).

68. ABS-CBN News, How the ‘sex-for-flight’ scheme works, *available at* <https://news.abs-cbn.com/global-filipino/06/21/13/how-sex-flight-scheme-works> (last accessed Nov. 30, 2018).

69. *Id.*

70. Michaela del Callar, Three alleged victims have confirmed ‘sex for flight’ scheme – DFA, *available at* <http://www.gmanetwork.com/news/news/pinoyabroad/314275/three-alleged-victims-have-confirmed-sex-for-flight-scheme-dfa/story> (last accessed Nov. 30, 2018).

71. Eric C. Batalla, *De-institutionalizing Corruption in the Philippines: Identifying Strategic Requirements for Reinventing Institutions*, in COMBATING CORRUPTION IN EAST ASIA 48 (Antonio C. Pedro, Jr. ed. 2001).

III. THE LEGAL AND INSTITUTIONAL FRAMEWORK OF ANTI-CORRUPTION IN THE PHILIPPINES

A. Laws Relating to Anti-Graft and Corruption

The legal framework on anti-corruption is considered “strong”⁷² due to the enactment of several laws on anti-corruption such as the Anti-Graft and Corrupt Practices Act⁷³ and the Code of Conduct and Ethical Standards of Public Officials and Employees.⁷⁴

The objective of the Anti-Graft and Corrupt Practices Act is “to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices, or which may lead thereto.”⁷⁵ This is a direct response to the provisions of the 1987 Constitution, which states that “public office is a public trust.”⁷⁶

Section 3 of this law enumerates the corrupt practices of public officers. These acts include, among others:

- (1) requesting or receiving gifts or benefits;⁷⁷
- (2) causing undue injury to any party through manifest partiality, evident bad faith, or gross inexcusable negligence;⁷⁸ and

72. Global Integrity, Global Integrity Report 2010 (A Report Evaluating both Anti-Corruption Legal Frameworks and the Practical Implementation and Enforcement of Those Frameworks), *available at* <https://www.globalintegrity.org/research/reports/global-integrity-report/global-integrity-report-2010> (last accessed Nov. 30, 2018).

73. Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1960).

74. An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes [Code of Conduct and Ethical Standards for Public Officials and Employees], Republic Act No. 6713 (1989).

75. Anti-Graft and Corrupt Practices Act, § 1.

76. PHIL. CONST. art. XI, § 1.

77. Anti-Graft and Corrupt Practices Act, § 3 (b) & (c).

78. *Id.* § 3 (e).

- (3) having material interest in any transaction or act requiring the approval of a board, panel[,] or group of which the public officer is a member.⁷⁹

Of the enumerated prohibited acts, Section 3 (e) is the offense that is most filed.⁸⁰ Furthermore, the frequent use of Anti-Graft and Corrupt Practices Act in complaints against public officials demonstrates its importance to the framework of anti-corruption in the country. Any discussion with regard to the adequacy of anti-corruption laws in responsiveness necessarily includes this statute.

The Code of Conduct and Ethical Standards for Public Officials and Employees is another law that provides standards for public officials and employees in the course of their responsibilities. This law covers all officials and employees in the government: elective and appointive, permanent and temporary, whether in the career or non-career service (including military and police personnel), and whether or not they receive compensation, regardless of the amount.⁸¹ The law reflects the public policy of the State to promote high standards of ethics in public service.⁸²

The law echoes the call for public trust under the Philippine Constitution. The law opens with the following declaration —

It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.⁸³

79. *Id.* § 3 (i).

80. In 2017, the Office of the Ombudsman filed 612 cases out of 2,447 total cases filed (25%) for violation of Section 3 (e) of the Anti-Graft and Corrupt Practices Act. This number is close to the most common offense filed, which is Falsification under Article 171, Paragraph 4 of the Revised Penal Code. Office of the Ombudsman, Annual Report 2017 at 15, available at <http://www.ombudsman.gov.ph/wp-content/uploads/2018/07/Annual-Report-2017.pdf> (last accessed Nov. 30, 2018).

81. Code of Conduct and Ethical Standards for Public Officials and Employees, § 3 (b).

82. *Id.* § 3 (b).

83. *Id.* § 2.

This is further elaborated by the norms of conduct of public officials and employees, which are:

- (1) commitment to public interest;⁸⁴
- (2) professionalism;⁸⁵
- (3) justness and sincerity;⁸⁶
- (4) political neutrality;⁸⁷
- (5) responsiveness to the public;⁸⁸
- (6) nationalism and patriotism;⁸⁹
- (7) commitment to democracy;⁹⁰ and
- (8) simple living.⁹¹

Crimes committed by public officers are also covered in the Revised Penal Code, under Title Seven, Book Two.⁹² Article 210 defines the crime of direct bribery, as follows —

Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift[,] or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.⁹³

84. *Id.* § 4 (a).

85. *Id.* § 4 (b).

86. *Id.* § 4 (c).

87. Code of Conduct and Ethical Standards for Public Officials and Employees, § 4 (d).

88. *Id.* § 4 (e).

89. *Id.* § 4 (f).

90. *Id.* § 4 (g).

91. *Id.* § 4 (h).

92. An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], Act No. 3815, arts. 203-45 (1932).

93. *Id.* art. 210.

B. *The Office of the Ombudsman*

The Philippines also has a unique institutional framework on anti-corruption, mostly due to the mandate given to the primary anti-corruption agency, the Office of the Ombudsman. However, it is in this regard that the Philippines is different from other jurisdictions because it does not follow the classical model of an Ombudsman. The International Bar Association defines the Ombudsman as

[a]n office provided by the [C]onstitution or by action of the legislature or Parliament and headed by an independent high-level public official who receives complaints from aggrieved persons against other government agencies, officials, and employers who acts on his or her own motion, and has the power to investigate, recommend corrective actions, and issue reports.⁹⁴

The Philippine model differs significantly due to the power given to the Office of the Ombudsman to prosecute. Under the Ombudsman Act of 1989,⁹⁵ the Ombudsman can

[i]nvestigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee or agency ... [i]t has primary jurisdiction over cases cognizable by the Sandiganbayan and, *in the exercise of [its] primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.*⁹⁶

The Office of the Ombudsman also contributes to the realization of gender equality through the Ombudsman Gender and Development (GAD) Focal Point System (OMB-GFPS).⁹⁷ Some of the tasks of the OMB-GFPS include:

94. 9th IOI World Conference Paper by Dean M. Gottehrer, *Fundamental Elements of an Effective Ombudsman Institution* (June 2009), available at http://www.theioi.org/downloads/934ch/Stockholm%20Conference_15.%20Plenary%20Session%20II_Dear%20Gottehrer.pdf (last accessed Nov. 30, 2018) (citing Ombudsman Committee, International Bar Association Resolution, Vancouver (1974)).

95. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes [The Ombudsman Act of 1989], Republic Act No. 6770 (1989).

96. *Id.* § 15 (1) (emphasis supplied).

97. Office of the Ombudsman, About Gender and Development (GAD) at 2, available at <http://www.ombudsman.gov.ph/GAD/About%20OMB%20GAD/About%20OMB%20GAD.pdf> (last accessed Nov. 30, 2018).

- (1) the facilitation of the implementation of the gender mainstreaming efforts of the agency through the GAD planning and budgeting process;⁹⁸ and
- (2) the formulation of agency GAD plans, programs, and budget in response to the gender gaps and issues faced by clients and constituencies, and female and male employees.⁹⁹

IV. EVALUATING THE ANTI-CORRUPTION FRAMEWORK OF THE PHILIPPINES

Responsiveness to gender issues is a key feature that will be considered in evaluating the Philippine anti-corruption framework. Laws should be able to cover gender-specific corruption, such as sextortion, and provide a spotlight on how corruption affects women disproportionately and differently. It is because the absence of key elements in the law addressing gender-specific corruption and sextortion can lead to impunity and the inability to bring these cases to court.¹⁰⁰

The two main questions that will guide the analysis are the following:

- (1) Does the law cover gender-specific corruption explicitly?
- (2) If not, is the language of the law broad enough to cover gender-specific corruption and sextortion?

When there is a use of clear and unambiguous language, gender-specific corruption unequivocally falls under the metes and bounds of the law, providing victims with access to justice and remedies. It also departs from the traditional notion that corruption involves “financial harm.”¹⁰¹ When laws do not have explicit language referring to the use of authority to coerce sex, it should be broad enough to cover such acts.

The Anti-Graft and Corrupt Practices Act enumerates the corrupt practices of public officers, which involve directly or indirectly requesting or receiving a gift, present, share, percentage, or benefit, to wit:

- (b) *Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit for [himself or herself] or for any other person, in connection*

98. *Id.*

99. *Id.*

100. International Association of Women Judges, *supra* note 60, at 14.

101. *Id.*

with any contract or transaction between the [g]overnment or any other party, wherein the public officer in [his or her] official capacity has to intervene under the law.

- (c) *Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit* for [himself or herself] or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any [g]overnment permit or license, in consideration for the help given or to be given, without prejudice to Section [13] of this Act.

...

- (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before [him or her] *for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage*, or for the purpose of favoring [his or her] own interest or giving undue advantage in favor of or discriminating against the interested party.¹⁰²

These practices all involve a request or receipt of a gift or benefit and imply that such transactions involve material or financial gain. Jurisprudence does not provide for a definition or elaboration of what is a “gift” under the Anti-Graft and Corrupt Practices Act. However, a quick survey of cases demonstrates that violations of the Anti-Graft and Corrupt Practices Act involve financial gains.

In *Merencillo v. People*,¹⁰³ the accused was found guilty of violating Section 3 (b) when he demanded the amount of ₱20,000 in exchange for the release of certain documents.¹⁰⁴ Another case involved the demand and receipt of ₱177,400 as grease money in government transactions.¹⁰⁵ Specific to Section 3 (b), these violations are also in connection with a contract or transaction between the government or any other party, wherein the public officer has the official capacity to intervene under the law.

102. Anti-Graft and Corrupt Practices Act, § 3 (b), (c), & (f) (emphases supplied).

103. *Merencillo v. People*, 521 SCRA 31 (2007). *See also* *Peligrino v. People*, 362 SCRA 863 (2001) (wherein an officer of the Bureau of Internal Revenue demanded the amount ₱200,000 in exchange of a lower payment for deficiency income tax).

104. *Merencillo*, 521 SCRA at 34-40.

105. *See* *Cadiao-Palacios v. People*, 582 SCRA 713 (2009).

Section 3 (e) does not involve a demand or receipt of a gift or benefit, but involves undue injury caused to another person, to wit —

- (e) Causing *undue injury* to any party, including the [g]overnment, or *giving any private party any unwarranted benefits, advantage or preference* in the discharge of [his or her] official, administrative, or judicial functions through *manifest partiality, evident bad faith, or gross inexcusable negligence*.¹⁰⁶

The Supreme Court views “undue injury” with a meaning akin to the civil law concept of “actual damage.”¹⁰⁷ Hence, undue injury involves a pecuniary loss which entitles one to adequate compensation.¹⁰⁸ The Court elaborated this in *Llorente v. Sandiganbayan*,¹⁰⁹ when it declared that “*it is required that the undue injury be specified, quantified, and proven to the point of moral certainty.*”¹¹⁰ In determining the existence of undue injury, “the [C]ourt cannot rely on mere assertions, speculations, conjectures[,] or guesswork, but must depend on competent proof on the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damage.”¹¹¹ If no proof is offered for the specific amount of damage, the case is bound to be dismissed for failure to prove an element of the crime.¹¹² Clearly, violations of the Anti-Graft and Corrupt Practices Act involve a financial aspect, wherein the benefit or injury is material in nature and quantifiable.

The Code of Conduct and Ethical Standards for Public Officials and Employees, apart from prescribing the norms of conduct, also enumerates prohibited acts and transactions. With regard to the solicitation or acceptance of gifts, the law states that

106. Anti-Graft and Corrupt Practices Act, § 3 (e) (emphases supplied).

107. *Santos v. People*, 485 SCRA 185, 197 (2006) (citing *Llorente v. Sandiganbayan*, 287 SCRA 382, 399 (1998)). *See also* *Guadines v. Sandiganbayan*, 650 SCRA 422 (2011).

108. *Santos*, 485 SCRA at 197.

109. *Llorente v. Sandiganbayan*, 287 SCRA 382 (1998).

110. *Id.* at 399 (emphasis supplied).

111. *Soriano v. Marcelo*, 577 SCRA 312, 320 (2009) (citing *Ilao-Oreta v. Ronquillo*, 535 SCRA 633, 633-42 (2007) & *MCC Industrial Sales Corporation v. Ssangyong Corporation*, 436 SCRA 408, 468 (2007)).

112. *See Santos*, 650 SCRA at 197.

[p]ublic officials and employees shall not solicit or accept, directly, or indirectly, any gift, gratuity, favor, entertainment, loan, or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.¹¹³

The law also defines the term “gift” as a “thing or right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it[.]”¹¹⁴ A look into jurisprudence reveals the same trend as the cases relating to the Anti-Graft and Corrupt Practices Act — such gifts or benefits are perceived to be financial or material in nature.¹¹⁵

Both the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees do not specifically cover sextortion. Prohibited acts are couched in general and gender-blind terms that do not refer to sexual conduct. Unfortunately, while at first glance, the text of the law can be construed as broad enough to cover gender-specific corruption and sextortion, jurisprudence says otherwise.

Violations of the Anti-Graft and Corrupt Practices Act, Section 3 (e) are pecuniary in nature, and involves a sum of money, ruling out the possibility of using “undue injury” to equate to sexual harassment or assault in sextortion cases. As already stated, the Court has said that undue injury is akin to the civil law definition of actual damages.¹¹⁶ Violations of sexual harassment are awarded moral damages, which include “physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.”¹¹⁷

113. Code of Conduct and Ethical Standards for Public Officials and Employees, § 7 (d).

114. *Id.* § 3 (c).

115. In *Martinez v. Villanueva*, the benefit in question involved the solicitation of a loan despite disqualification, and the use of influence to transfer the loan without paying any money. In *Añonuevo, Jr. v. Court of Appeals*, the Supreme Court found the accused Customs officials guilty of violating Section 7 (d) of the Code of Conduct and Ethical Standards for Public Officials and Employees when they received money directly handed to them. See *Martinez v. Villanueva*, 653 SCRA 556 (2011) & *Añonuevo, Jr. v. Court of Appeals*, 411 SCRA 621 (2003).

116. *Santos*, 650 SCRA at 197.

117. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386, art. 2217 (1950).

Section 3 (f) also rules out sexual favors as a kind of gift or benefit. The law states that the violation is committed for the purpose of obtaining, directly or indirectly, “from any person interested in the matter *some pecuniary or material benefit or advantage.*”¹¹⁸

Section 3 (b) and (c) may still be open to interpretation. Both Sections state that there must be a direct or indirect request or receipt of any gift, present, share, percentage, or benefit.¹¹⁹ Jurisprudence shows that financial and material benefits were part of the facts of the case; however, there is yet to be a case that alleges a gift or benefit that is not financial or material in nature.¹²⁰ This Section can be considered broad enough to cover sextortion.

Direct bribery under the Revised Penal Code may be a more applicable statute when alleging gender-specific corruption and sextortion.¹²¹ The law states that the public officer agrees to perform an act “in consideration of any offer, promise, gift or present received by such officer.”¹²² Jurisprudence, once more, demonstrates a line of cases that involve an exchange of money.¹²³ But, similar to Section 3 (b) and (c) of Anti-Graft and Corrupt Practices Act, other kinds of promises and offers have not yet been tested in court. The language of the law, however, is broad enough to cover offers and promises that are not pecuniary in nature — hence, can be applied to the extortion of sexual favors in exchange for committing a crime, an unjust act, or for refraining to proceed with one’s public duty.

The table below provides side-by-side comparisons of the responsiveness of the Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, and Direct Bribery to sextortion and gender-specific corruption:

118. Anti-Graft and Corrupt Practices Act, § 3 (f) (emphasis supplied).

119. *Id.* § 3 (b) & (c).

120. *Compare Santos*, 650 SCRA at 197 *with* Anti-Graft and Corrupt Practices Act, § 3 (b).

121. REVISED PENAL CODE, art. 210.

122. *Id.*

123. For example, in *Marifosque v. People*, the accused public officer, a member of the Police Force of Legazpi City, was found guilty of direct bribery for demanding the amount of ₱7,200.00 in exchange for the recovery of lost items. *Marifosque v. People*, 435 SCRA 332, 336-41 (2004).

	Sexual Conduct		Abuse of Authority	<i>Quid Pro Quo</i>
	Explicit mention of sexual conduct?	Broad enough to cover the demand or request for sexual favors?		
Anti-Graft and Corrupt Practices Act, Section 3 (b)	x	✓	✓	✓
Republic Act No. 3019, Section 3 (c)	x	✓	✓	✓
Anti-Graft and Corrupt Practices Act, Section 3 (f)	x	x	✓	✓
Anti-Graft and Corrupt Practices Act, Section 3 (e)	x	x	✓	x
Code of Conduct and Ethical Standards for Public Officials and Employees, Section 7 (d)	x	x	✓	✓
Revised Penal Code, Article 210	x	✓	✓	✓

For the first test, both laws do not mention sexual conduct, but involve abuse of authority. A *quid pro quo* exists for all except Section 3 (e) of Anti-Graft and Corrupt Practices Act. For the second test on the broadness of language, Section 3 (b) and (c), and the Revised Penal Code's Article 210 are the only provisions that can be understood as broad enough to cover sextortion, taking into consideration the text of the law and jurisprudence.

The Philippine anti-corruption framework can accommodate cases of sextortion and similar cases of gender-specific corruption. However, it fails to point the spotlight on such issues. The language of the laws and existing jurisprudence heavily imply that violations of these anti-corruption laws should involve a financial or material gain.

Another law that may be used to address sextortion is Republic Act No. 7877, or the Anti-Sexual Harassment Act.¹²⁴ Under this law, it is clear that the elements involve sexual conduct, abuse of authority, and *quid pro quo*, to wit —

Work, education or training-related sexual harassment is committed by an employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or *any other person who, having authority, influence[,] or moral ascendancy over another in a work or training or education environment, demands, requests[,] or otherwise requires any sexual favor from the other*, regardless of whether the demand, request[,] or requirement for submission is accepted by the object of said Act.¹²⁵

The case of *Jacutin v. People*¹²⁶ is instructive of how the authority of a public officer can be used to sexually assault a woman. In this case, the accused was the City Health Officer of Cagayan De Oro, which is considered a high ranking official.¹²⁷ The accused committed the offense by demanding that the victim — a fresh graduate seeking employment in the office of the accused — “expose her body and allow her private parts to be mashed and stimulated by the accused ... as a condition for [her employment.]”¹²⁸

This is clearly a case of sextortion. The authority contemplated in this case, is the perceived power of the accused to hire the victim.¹²⁹ The offense was also committed in relation to his official functions as City Health Officer.¹³⁰ The *quid pro quo* is the employment.¹³¹ The corruption

124. An Act Declaring Sexual Harassment Unlawful in the Employment, Education or Training Environment, and for Other Purposes [Anti-Sexual Harassment Act of 1995], Republic Act No. 7877 (1995).

125. *Id.* § 3 (emphasis supplied).

126. *Jacutin v. People*, 378 SCRA 453 (2003).

127. *Id.* at 455.

128. *Id.*

129. *See Jacutin*, 378 SCRA at 455.

130. *Id.*

131. *Id.*

component is clear because the sexual harassment would not have happened had it not been for his position.¹³² The sexual favor was also in exchange for the exercise of power entrusted to him — the act of hiring.¹³³

The defense of the accused was that he did not have the proper authority to hire employees; such power is only with the City Mayor.¹³⁴ The Court rejected this defense, explaining that the accused had portrayed himself as someone with precisely the authority to facilitate the employment.¹³⁵ It also went without saying that the opinion of the City Health Officer carries some weight in the employment of personnel in the municipal health office.¹³⁶

The accused was found guilty of sexual harassment, as the sexual favor was made a condition in the hiring or in the employment of an individual.¹³⁷ While the Information was filed in the Sandiganbayan by virtue of the accused's high rank as a public official, there was no discussion on corruption. Moral and exemplary damages were awarded to the victim, but there was no mention of disqualification from public office.¹³⁸

While the Anti-Sexual Harassment Act of 1995 was successfully utilized to indict the accused, the law has its limitations. First, it can only cover situations wherein the sexual harassment occurred in a work-related or employment environment or an education or training environment.¹³⁹ Women who are victimized in other contexts, such as the request for access to welfare services or documents from government officials have no other means of remedy. Second, it does not highlight the corruption component, and how the use of public authority is especially egregious and harmful.¹⁴⁰

132. *Id.*

133. *Id.*

134. *Id.* at 461.

135. *Jacutin*, 378 SCRA at 461.

136. *Id.*

137. *Id.* at 463.

138. *Id.* See also *Esteban v. Sandiganbayan*, 453 SCRA 236 (2005) In *Esteban*, the Court awarded moral and exemplary damages but did not rule on the disqualification from public office.

139. See Anti-Sexual Harassment Act of 1995, § 3.

140. *Id.*

It is important to name the offense of extortion because it gives the victims the opportunity to seek redress and emphasizes how public officers can use their authority to commit abuse.

Naming the offense as sextortion or gender-specific corruption is vital in the fight against corruption. This can be done through government institutions like the Sandiganbayan and the Office of the Ombudsman. As the institution at the forefront in the fight against corruption, the Office of the Ombudsman will have the mandate to prosecute gender-specific corruption and sextortion cases. The institution also has the unique opportunity to identify cases of sextortion, and to raise awareness as to its existence. The Office of the Ombudsman already has a GAD office that addresses gender issues; however, more work is required to bring awareness to the issue of gender and corruption.

On 3 August 2018, the GAD committee submitted the Annual Gender and Development Accomplishment Report for 2017.¹⁴¹ The report cited lack of awareness and understanding of Ombudsman officials and employees on GAD issues and principles. The Office, therefore, made it an objective to increase the awareness and understanding of Ombudsman officials and employees on such issues and principles by:

- (1) “Introducing GAD work [that is] mainstreamed with institutional strengthening and team building activities[.]”¹⁴²
- (2) “Conduct[ing] seminars on GAD-related laws [such as] violence against women, sexual harassment, women leadership, gender-fair language, and”¹⁴³
- (3) “[O]ther related trainings[.]” and briefing of mid-level managers on GAD issues and principles.¹⁴⁴

The modules included topics on the differences between sex and gender.

While there are no supporting documents on the actual content of the module, the GAD accomplishment report makes no mention of modules

141. Annual Gender and Development (GAD) Accomplishment Report, 2017, Office of the Ombudsman, *available at* http://www.ombudsman.gov.ph/wp-content/uploads/2017/03/OMB_GAD_AR2017_PCWaccepted.pdf (last accessed Nov. 30, 2018).

142. *Id.* at 2.

143. *Id.* at 3.

144. *Id.*

linking gender and corruption. A challenge for government agencies, not limited to the Office of the Ombudsman, is that there is difficulty in linking the agency's mandate to gender issues.

The Office has reported that all Ombudsman employees have been introduced to GAD work; however, the next step would necessarily be to increase awareness of GAD issues and principles as it relates to the agency's mandate: anti-corruption and integrity initiatives. Once officials and employees are able to identify the link between gender and corruption, they will be more capable in identifying other cases of gender-specific corruption and sextortion, and to provide effective remedies for victims.¹⁴⁵

V. CONCLUSION AND WAYS FORWARD

The legal framework of anti-corruption is useful for a myriad of offenses and prohibited acts. It also prescribes guidelines for public officers and employees, making sure that they exude integrity and professionalism in the conduct of their responsibilities. However, despite the presence of such laws, the legal framework lacks acknowledgement of the gender dimension of corruption. For the existing legal system, corruption is gender-blind, but the reality is that women are affected disproportionately and differently by corruption.

The Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, and Article 210 on Direct Bribery of the Revised Penal Code — while valuable in the pursuit against corruption— tend to acknowledge corruption only when it involves financial or material gain. Jurisprudence for these laws involved demands or requests for an exchange of money with services. Some provisions in such laws can be considered as broad enough to cover sextortion; however, lack of awareness on the issue, the impression that corruption is a financial transaction, and the lack of precedent in non-financial forms of corruption impede their potential use as a form of redress for gender-specific corruption and sextortion.

The Anti-Sexual Harassment Act of 1995 may also be used as a means to seek redress in sextortion, but the absence lies in that the corruption

145. Notably, it is also the mandate of the Office of the Ombudsman to “[d]etermine causes of inefficiency, red tape, mismanagement, fraud, and corruption in the [g]overnment, and make recommendations for their elimination and the observance of high standards of ethics and efficiency[.]” The Ombudsman Act of 1989, § 15 (7).

component does not highlight the abuse of *public authority*. It is also limited in scope: violations may only happen in specific environments such as work, employment, and education.

Furthermore, without awareness of corruption other than those of the financial nature, victims are discouraged from filing cases or seeking redress. Others may also be unaware of the corruption that had already happened. The straightforward response to the existence of sextortion is to enact a law that pronounces the act as a crime, either as a standalone law or a law that amends Anti-Graft and Corrupt Practices Act to include the prohibited act. However, the legislative process may be long and convoluted, and the lack of information may be a hindrance to lobbying such a bill.

The Office of the Ombudsman can respond to the issue of gender-specific corruption by *pronouncing sextortion as a crime*, which can fall under either the Anti-Graft and Corrupt Practices Act, Code of Conduct and Ethical Standards for Public Officials and Employees, Anti-Sexual Harassment Act of 1995, or Article 210 of the Revised Penal Code. While these laws do not encompass all the elements of sextortion, they can still provide redress for victims. It is important, however, to highlight the corruption component, so as to change the attitude on corruption in general.

There need not be a pursuit in criminal action to raise awareness on the gender dimension of corruption. According to the IAWJ, “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 unacceptable for people in authority to abuse their power to obtain sex as it is to obtain money.”¹⁴⁶ Shedding light on gender issues pave the way for legal and structural changes in society. For example, the growing consciousness of sexual harassment in the workplace and in public spaces have helped in the creation of anti-sexual harassment policies and anti-catcalling ordinances.¹⁴⁷

To support awareness-raising initiatives, *gender-specific data is necessary in furthering the response of the Philippines to gender and corruption*. According to the Philippine Plan for Gender Responsive Development, lack of gender-

146. International Association of Women Judges, *supra* note 60, at 32 (emphasis omitted).

147. GMA News Online, Manila passes ordinance vs. catcalling, wolf-whistling, available at <http://www.gmanetwork.com/news/news/metro/658961/manila-passes-ordinance-vs-cat-calling-wolf-whistling/story> (last accessed Nov. 30, 2018).

specific data, collaboration among the executive, judiciary, and legislative branches of government, lengthy and humiliating investigation processes, insensitive law enforcers and the judiciary, and the lack of support systems exacerbate the victimization of women.¹⁴⁸

Reports from the Office of the Ombudsman also lack gender-specific data, and further study is needed on the occurrence of corrupt practices specifically directed towards women. The existence of such data will substantiate the need to revisit anti-graft and corruption laws, as well as the existing investigation, preliminary investigation, and prosecution procedures. Mainstreaming gender into reporting is also in line with the function of the Ombudsman to determine the causes of corruption in government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.¹⁴⁹

The link between gender and corruption is often overlooked by policy and implementation. To stop this “insidious plague,” laws and policies must be gender-responsive, and recognize how women and men have different behaviors and attitudes towards corruption, and how different groups are affected differently. It is only then that societies will be able to eradicate corruption, uphold democracy, the rule of law, and improve the quality of life of both women and men.

148. Philippine Plan for Gender-Responsive Development (1995 – 2025), National Commission on the Role of Filipino Women (NCRFW), 3d printing, 1998.

149. The Ombudsman Act of 1989, § 15.