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Gender-Based Violence Bills

1. Introduction

1.1 Corruption Watch is a civil society organisation that was launched in January 2012¹. We encourage and provide platforms to the public to report incidents of corruption to us and we use these reports as an important source of information to fight corruption in South Africa and to hold our leaders accountable. We achieve this through research, policy advocacy, public mobilisation campaigns, strategic litigation, mass communications, and select investigations.

1.2 In recent years, the need for conducting gendered anti-corruption work has become increasingly recognised and actioned. Transparency International (TI) has started to collect gender disaggregated data in its Global Corruption Barometer Reports² and some chapters of TI, such as the Zimbabwean Chapter, have undertaken their own research into investigating the links between gender and corruption.³

1.3 In our work as an anti-corruption organisation, we receive reports in relation to gender-based violence (GBV). These reports demonstrate two areas for concern: the extortion of sex or sexual favours for the purpose of corruption; and corruption experienced when accessing justice for incidents of GBV, particularly in relation to the police. This submission will comment on the bills and related matters, in relation to these two themes.

2. Comment on GBV Bills

2.1 Prescription in Civil and Criminal Matters (Sexual Offences) Amendment Bill

2.1.1 Corruption Watch welcomes the removal of prescription from the common law offence of bribery, from the offence in section 1 of the Corruption Act 1994, and in the offences contained in Parts 1 to 4 of the Prevention and Combating of Corrupt Activities Act (PRECCA).

¹ Corruption Watch is registered as a non-profit company in terms of the Companies Act 71 of 2008.

² (Transparency International, 2019)

³ (Transparency International Zimbabwe, 2019)

We believe that this is an important move towards addressing the scourge of corruption facing our nation, as it reiterates the seriousness with which the criminal justice system will handle corruption matters, as well as extend the ability for victims to obtain relief. It also enables past corruption to be prosecuted, reinforcing deterrence and access to justice.

- 2.1.2 Given our proposal to establish sextortion as an offence, Corruption Watch further welcomes the removal of prescription on sexual offences, as it will further support access to justice for survivors of sexual violence.

2.2 Sextortion

- 2.2.1 'Sextortion', a term coined by the International Association of Women judges, refers to the extortion of sex or sexual favours as a benefit exchanged in a corrupt transaction.⁴ It is both a form of corruption and sexual violence, and exists in between laws against corruption and laws regulating sexual offences.⁵ Global research shows that women are disproportionately victims of sextortion.⁶ An extensive report released by TI in 2020 highlights that sextortion primarily targets marginalised groups, in relation to many sectors including policing, education and access to basic needs and services. It also shows that sextortion usually goes unreported, due to stigmas and the difficulty in proving coercion, as well as the risk of being prosecuted for participation in corruption, due to inadequate laws.⁷

- 2.2.2 Corruption Watch has received reports of sextortion taking place in schools, with teachers and principals soliciting sexual favours from learners in exchange for marks.⁸ We have also heard anecdotal accounts from women, of instances where government officials demand sexual favours in exchange for access to housing.⁹ Furthermore, we have been told of police demanding sexual favours from sex workers, in order for them to avoid arrest.¹⁰ Whilst more research is needed in South Africa to determine the extent of the problem, these incidents show sextortion occurring in at least three different sectors, and may therefore be extremely widespread.

⁴ (International Association of Women Judges, n.d.)

⁵ (Hendry, 2020)

⁶ (Elks, 2020)

⁷ (Transparency International, 2020)

⁸ (Davis, 2019)

⁹ (Motala, Rampant corruption impedes women's rights, 2019)

¹⁰ (Motala, The terrible consequences of police corruption, 2019)

- 2.2.3 Sextortion has physical, psychological and socio-economic consequences. The physical effects of unwanted pregnancy, sexually transmitted disease, injury, can be compounded by the loss of dignity, harm to mental health, as well as social stigmas and victim-blaming.¹¹
- 2.2.4 Sextortion operates in a space of legal invisibility, recognised neither by anti-corruption laws, nor anti-GBV laws. Laws defining corruption and bribery in South Africa use the words “gratification” and “benefit” when talking about corruption, terms which are broad enough to include sex or sexual favours in their interpretation.¹² However, the application of this law is arguably problematic in relation to sextortion. PRECCA places both the corruptor and corruptee on equal footing, allowing for the prosecution of both or all parties to the act – evident through the use of words related to both offering and accepting, or agreeing to participate in a bribe or other corruption. This assumption of equal power between parties to a corrupt act does not take into consideration uneven patriarchal power dynamics that exist in South Africa and contribute greatly to GBV¹³, and may result in the exploitation of women by men. The criminalisation of sextortion as a corruption offence would also criminalise a victim who may have been coerced, or offered, or accepted to participate in a sexual act, due to these unequal power dynamics. Though section 21 of PRECCA allows for prosecution for coercing another person to participate in an offence of corruption, it does not prevent parties who have been coerced into corruption from being prosecuted, as it is not a defence within the statute. Extortion of sex or sexual favours in exchange for a benefit is not seen as a crime with a victim, but under our current laws, is a mutual exchange with equal benefit. This deficiency in law excludes victims of sextortion from fairly accessing justice and exacerbates GBV.
- 2.2.5 Even with the current amendments proposed in the anti-GBV bills, South Africa’s current anti-GBV laws do not allow women recourse to justice for sextortion. They do not take into account the intersection of gender-related power dynamics with corruption. Sextortion is too consensual to be considered rape or sexual assault or harassment, and not generally understood as corruption, considering that the corruption is commonly understood as involving the exchange of money or benefits of monetary value. This gap can be addressed by the establishment of sextortion as an offence.

¹¹ (Gitlin, 2015)

¹² Prevention and Combatting of Corrupt Activities Act, 2004

¹³ (Mkhize, 2017)

- 2.2.6 In line with recommendations from the Transparency International report¹⁴, we submit that legal reform is necessary for the purposes of establishing a legal definition of sextortion, categorising it as both a crime, to enable its prosecution and to protect victims. We submit that sextortion should be established as a sexual offence and a corruption offence, by the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill, as a crime with a victim rather than a crime of equal parties and to enforce the recognition of this crime as both one of GBV and of corruption.
- 2.2.7 Naming sextortion as an offence will have several benefits. Firstly, it would recognise the disparity of social power between gender in South African society, and acknowledge the need for a gendered approach to anti-corruption. Secondly, it would raise awareness of sextortion as a form of corruption, legitimising the experiences of victims and protecting them, as well as empowering it to be reported as a crime. Thirdly, it would allow victims of sextortion to access justice, and restore dignity to survivors of this particular form of GBV.

2.3 Role of Police

- 2.3.1 Much research has highlighted the continued complicity of police in preventing access to justice for survivors of GBV. It should be noted that both Corruption Watch data and Transparency International's Global Corruption Barometer Africa 2019 Report¹⁵ confirm that the police are the least trusted institution in South Africa. From Corruption Watch data, police have been highlighted as the institution from which we received the most reports, at 12% of our total reports.¹⁶
- 2.3.2 Corruption Watch's *Corruption in Uniform* report highlights how women tend to suffer at the hands of corrupt, abusive, or even violent police officers, detailing how 'disappeared' dockets (usually after payment of a bribe by the suspect, or because of the suspect's nepotistic links to the investigating officer) can delay justice for rape and domestic violence survivors, and how police officers have assaulted women while they were in holding cells.¹⁷ How can women expect to access safety and justice, when the custodians of safety and justice are perpetrators themselves?
- 2.3.3 To this end, Corruption Watch submits that it is necessary for the police to be acknowledged as part of the problem of GBV. Alongside the implementation of stronger laws around GBV,

¹⁴ (Transparency International, 2020)

¹⁵ (Transparency International, 2019)

¹⁶ *The Writing is On the Wall*, Corruption Watch Annual Report 2019, (Corruption Watch, 2019)

¹⁷ (Ncala, 2019)

the police must receive training on how to implement them. Safe reporting mechanisms must be made available those who have been victims of GBV at the hands of police officers, so that they may be held accountable as well. Ultimately, corruption in the police must urgently be addressed as women are, more often than not, disproportionate victims of abuse of power, bribery and patriarchy, that results in the failure to prosecute cases of GBV.

3. Conclusion

3.1 Corruption Watch firmly believes that in order to provide sufficient protection to victims and GBV, to provide adequate access to justice for victims of sextortion, and to further address the endemic GBV in our country, these bills are a step in the right direction. However, more needs to be done in terms of recognising sextortion as a crime of corruption as well as GBV. Furthermore, it must also be recognised that the police play a crucial role in the enforcement of GBV legislation, and therefore their commitment to implementing legislation, free from patriarchal attitudes and corruption, is absolutely essential.

3.2 Bibliography

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