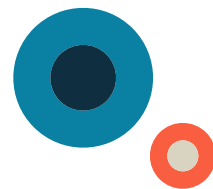


CORRUPTION, GENDER, AND HUMAN RIGHTS



Embajada Británica
Colombia





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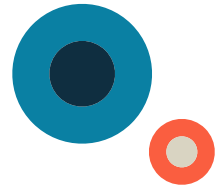
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1. Introduction:

Document overview, general information on corruption, human rights, and gender.



This report presents a proposal to identify and render visible women and LGBTQ+ persons as victims of corruption and to improve their access to reporting and reparation for the damages caused by such acts. To this end, this brief (i) consolidates the reports prepared by Transparencia por Colombia (TpC) on corruption damages and victim reparation during the 2018–2020 period, (ii) it proposes an analytical framework for applying the gender perspective to cases of victims of corruption, (iii) it offers recommendations on how to incorporate gender analysis in cases of reparation to victims of corruption and in terms of reporting.

This document serves as a starting point and as an effort to combine three approaches: (i) the fight against corruption, (ii) making the victims of corruption visible, and (iii) a gender perspective. This is something new and, therefore, ongoing, and the Transparencia por Colombia team is aware that the issue is far from being resolved. This will be discussed below with the presentation of the results of the literature review and the collection of primary information.

Indeed, recent literature has explained the reasons why the phenomenon of corruption needs to be analysed from a gender perspective. Research has focused on questions such as: do women suffer more as a result of acts of corruption than men, do women experience different forms of corruption to men, and how might a gender perspective affect public policy strategies on corruption?



As in the rest of the world, anticorruption policies in Colombia are permeated by images and social constructions about the role of women and their relationship with corruption. For example, in 2018, a study was conducted on perceptions regarding acts of corruption in the National Police, according to which “policewomen are much stricter than men in deeming a circumstance inappropriate, or believing that a certain conduct constitutes a violation of their duties and functions. Women are also much more assertive regarding the sanctions they think should be applied” (Mesa Suárez, 2020). Likewise, there are generalised perceptions about Colombian women’s low proclivity to corruption. For example, in 2014, the mayor of the city of Valledupar stated that 70% of his cabinet consisted of women and that they were in charge of portfolios usually exposed to corruption (UNDP, 2014). Some recent data, collected by the Global Corruption Barometer for Latin America and the Caribbean produced by Transparency International (2019), supports that corruption disproportionately affects women. However, historically, there is little data on how exactly it affects them. By way of example, the barometer found that: (i) women are more likely to pay bribes for health services; (ii) women with higher levels of education are more likely to pay bribes in state schools; and (iii) poorer women are more likely to pay bribes in judicial services than better-off women. In addition, one in five people have experienced sexual extortion or know someone who has.

In an analysis conducted by Transparencia por Colombia’s Anti-Corruption Legal Advice Centre (ALAC)¹, it was found that 71 percent of the reports of possible corruption cases were made by men, while the remaining 29 percent were submitted by women. This finding raised the following questions: Why do men report more than women; is there more interest in reporting among men; or is there greater difficulty, disinterest, or a greater sense of vulnerability among women who do report? There are no definitive answers to these questions, but this document provides an opportunity to approach possible hypotheses that may answer them.

This document explores the issues outlined above in five sections, including this introduction. The second section synthesizes TPC’s previous work on victim reparations and whistleblowing. The third section presents the conceptual and analytical framework on the intersection between corruption, gender, and human rights. The fourth chapter presents the various manifestations of the relationship between gender, corruption, and human rights identified to date. Section five presents a number of recommendations for analysis and action for TPC in relation to gender and corruption activities. The following definitions will be used in this document:

¹ *Citizens denounce corruption. Balance of the Anti-Corruption Legal Advice Centre ALAC, and special report in times of pandemic.*

Gender “refers to socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences. This gives rise to hierarchical relations between men and women and the distribution of powers and rights in favour of men and to the detriment of women. The place occupied by women and men in society depends on political, economic, cultural, social, religious, ideological, and environmental factors that culture, society, and community can change” (CEDAW, 2010, pg. 2).

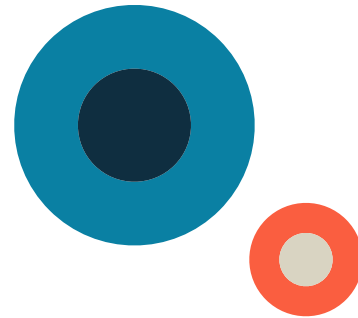
Gender identity “refers to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth,⁴⁵ including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function through medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms” (International Commission of Jurists, 2007).

Gender perspective “is a perspective of analysis that takes gender as a fundamental tool. Gender, in turn, is an analytical category that distinguishes between people’s biological differences by virtue of their sex, and those that are socially and culturally constructed. In this sense, it refers to those cultural constructions, that are historically and contextually constructed and serve to define a way of being for men and another for women” (González and Guzmán, 2013).

Human rights-based approach “is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people being left behind.

Under the HRBA, the plans, policies and procedures of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political, and social rights, and the right to development” (United Nations Sustainable Development Group, 2021).

Corruption is understood as the abuse of positions of power or trust, for private benefit to the detriment of the collective interest, through offering or requesting, delivering, or receiving goods or money in kind, services or benefits, in exchange for actions, decisions or omissions. (Transparencia por Colombia, 2003). A broad concept is adopted “beyond criminal law, encompassing the complexity of acts and interrelationships at different scales and between different State agents and private individuals. However, it is considered corruption if it meets the following characteristics:



(i) it affects cherished collective rights such as public property and administrative morality, and on many occasions, access to public services or their efficient and timely provision, or it affects free competition; (ii) it affects a heterogeneous universe of victims, since there are damages caused to an individual, collective, and social dimension; (iii) it is carried out by different corrupting agents (perpetrators), both public and private, and at different scales of participation or obtaining of gains” (Transparencia por Colombia, 2020b).

Macrocorruption is the “systematic, planned, and coordinated participation of multiple, distinctly powerful agents in the political, economic and social structure —public and private, individuals or organisations such as private companies with oligopolistic power, and legal, illegal or grey/opaque— to manipulate norms and procedures —such as public contracting procedures— and to engage in multiple illegal or at least illegitimate actions under the guise of legality, depending on whether or not they are analysed as components of a comprehensive illegal procedure —such as money laundering, front companies, offshore financial resource placement— or not as components of a comprehensive illegal procedure —such as money laundering, front companies, placement of offshore financial resources—. This is carried out with a view to obtaining relatively long-lasting and not merely short-term profits” (Fundación Vortex, 2018, p. 54).



2. Background:

Documents prepared by Transparencia por Colombia and applicable international framework



Since 2018, Transparencia por Colombia has been striving to address the need to make the victims of corruption visible, by identifying the individual, collective and social impacts and the consequent definition of measures to provide reparation. To this end, TpC has prepared a series of internal and published documents² that have framed the norms and institutions available to date in Colombia in order to promote an informed dialogue with all relevant stakeholders.

This work coincides with international acknowledgement of the intersection between corruption and human rights violations. For example, during this period, the Inter-American Commission on Human Rights (IACHR, 2019) published a thematic report analysing corruption from a human rights-based approach. In it, among other aspects, the IACHR establishes i) the connection between violations of economic, social, and cultural rights and freedom of expression, with the commission of acts of corruption; ii) the obligations of the State for acts of corruption; iii) the role of the judiciary and the electoral system; iv) individuals and groups of special concern; and v) the role of public policies in the fight against corruption.

² The following are the documents produced by Transparencia por Colombia: (i) In 2018, “Approach paper: Social harm related to corruption offences (conceptualisation, contextualisation, and review of identified international experiences)” and “Report on Colombian criminal policy and the search for compensation for social harm in corruption—related offences”; (ii) In 2019, “Reparation for victims of corruption in Colombia approach, exploration of legal route, and elements for an appraisal methodology”; (iii) In 2020, “Legal framework and reference initiatives on reparation for victims of corruption”, “Definition and structuring of a Strategic Route for the Reparation of Damages for Corruption — Roadmap Proposal for Transparency for Colombia”, and “Articulation of the vision of the victims of corruption in the definition of the routes for the appraisal and reparation of the damage caused”. The Vortex Foundation has also produced the following documents as part of its partnership with Transparencia por Colombia between 2018 and 2019: “Analysis, identification, and calculation of damages caused by some forms of corruption in Colombia” (2018); “Case Study of Integral Reparation of Damages Caused by Corruption: Impersonation of Haemophilia Patients in Córdoba, Colombia” (2019).

Corruption has also been analysed by the United Nations Working Group on Business and Human Rights, which, in June 2020, published a report on the connection of the Human Rights and Business and Anti-Corruption agendas, primarily identifying i) ii) that a preventive approach to acts of corruption can deter and mitigate human rights abuses arising from the activities of business enterprises; iii) that the implementation of the Protect, Respect and Remedy Framework contained in the United Nations Guiding Principles on Business and Human Rights (2011) is complementary to anti-corruption efforts; iv) that for public policies to be coherent, human rights due diligence must be taken into account and that there must be a shift from a “business risk” to a “human rights risk”; and v) that States must guarantee access to reparation.

On the other hand, in 2019, Claudio Nash Rojas and Marie-Christine Fuchs, supported by the Rule of Law Programme for Latin America of the Konrad Adenauer Stiftung organisation, published the document titled “Corruption, Rule of Law, and Human Rights”³, intended

to serve as a “case manual” comprising three parts: i) a general study on the relationship between corruption, rule of law, and human rights; ii) national case studies; and iii) contributions of the Inter-American Human Rights System to address corruption and to analyse it from a human rights-based approach. The document highlights that *“making emblematic cases visible serves to reveal specific acts of corruption in light of a legal analysis that establishes the rights violated, the characteristics of the victims, and the typologies of the acts of corruption. This also involves the determination of whether these acts have been perpetrated by a private entity or by the State, and whether they are violations of rights by action or by omission. This analysis characterizes the duty of the State vis-à-vis acts of corruption and, at the same time, makes it possible to establish causal and predictable links between acts of corruption and human rights violations.”*⁴

3 Please see <https://www.kas.de/documents/271408/4530743/CORRUPCION+ESTADO+DE+DERECHO+y+DDHH.pdf/187ecd1d-fc23-bd0f-eb20-e4fd64608c20?version=1.0&t=1575379627339>

4 *Ibíd.*, p. 6.

Finally, this procedure has profited from the international development of a body of binding and non-legally binding benchmarks and standards aimed at compensating for the negative effects and impacts of corruption on individuals, groups, and communities from a human rights-based perspective.⁵

Based on this background, Transparencia por Colombia will briefly present some of the results of the research conducted since 2018 on the following issues: (i) the concept of damage and current debates in this regard; (ii) the concept of comprehensive reparation for damage caused by acts of corruption; (iii) the possible routes of access to compensatory measures existing in Colombia.

i. The concept of damage according to Colombian law

According to the Colombian Civil Code (Art. 2341), “he who has committed a crime or fault, which has caused damage to another, is obliged to pay compensation, without prejudice to the principal penalty that the law imposes for the fault or crime committed”. In matters of State liability, which is one of the approaches from which the reparation of victims in cases of corruption can be analysed, there is a distinction between damage and anti-juridical damage. On the one hand, damage is a broad concept, as it is usually understood as a natural phenomenon that produces a loss, diminution, or impairment to a legal entity (Transparencia por

⁵ For example, internationally, there have been several initiatives that have positioned the reparation of victims of corruption and have advanced discussions on control, punishment, and assessment of damages (Transparencia por Colombia, 2020c). These include: (i) **the Foreign Corrupt Practices Act (1977)**, issued in the 1970s in the United States as was the first relevant experience in the region, as it showed the importance of giving an international scope to the issue of corruption; (ii) **United Nations Convention against Corruption (UNCAC)**. Articles 34 and 35 UNCAC deal, respectively, with the consequences of acts of corruption and general compensation for the act of corruption. On the one hand, States Parties are required to address the consequences of corruption by taking remedial measures and eliminating the consequences of acts of corruption (Art. 34 UNCAC). On the other, states are required to ensure that those harmed as a result of an act of corruption have the right to initiate proceedings against those responsible (Art. 35 UNCAC). However, although there is an international obligation to redress the harm, this must be ensured by each state at domestic level. The UNCAC does not provide more concrete elements to identify the active or passive legitimation of the right to reparation of the damage caused by acts of corruption, leaving jurisdiction in the hands of each state within its internal sphere; (iii) **Council of Europe Civil Law Convention against Corruption (ETS 174)**. Although Colombia is not a member state of this body, nor is it a state party to the Civil Law Convention on Corruption (ETS 174), it is important to point out that this instrument addresses the issue of reparation for damage caused by acts of corruption and, unlike the UNCAC, contains more precise elements on the definition of corruption, liability, and compensation for acts of corruption; (iv) **Guidelines for a Human Rights Framework for Asset Recovery (2016)**. The Office of the United Nations High Commissioner for Human Rights recently published draft Guidelines for a Human Rights Framework for Asset Recovery (OHCHR, 2016). Article 6 of the guidelines provides that persons whose human rights have been violated as a result of corruption are entitled to an effective remedy (victims); (v) **Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation (2016)**. This paper by the United Nations Office on Drugs and Crime (UNODC) presents different approaches used by some states on the definition of victims, legal routes to access compensation, how harm is assessed and how compensation is determined, as well as some “good practices” where victim compensation was sought.

Colombia, 2020c). On the other hand, the damage is unlawful in those cases in which the person who suffers it was under no obligation to bear it and the conduct is not covered by the legal system.

As in other countries in the world, in Colombia, damage is usually divided into two categories: pecuniary damage and non-pecuniary damage.

Pecuniary damage is that which affects the assets that constitute the victim's patrimony, and is thus susceptible of being quantified by its economic value and can be repaired through "the specific reconstitution of the situation prior to the damage, or by means of monetary compensation" (Transparencia por Colombia, 2018a). In turn, pecuniary damage is subdivided into consequential damage and loss of profits. The former consists of "an effective and immediate decrease in the victim's assets as a result of the unlawful conduct, it is what the victim effectively lost. The measurement of the emerging damage is, therefore, the difference in value of the legal property prior to and after the unlawful conduct" (Transparencia por Colombia, 2018a). The latter "reflects the future of the anti-judicial conduct vis—à—vis the victim's assets. Thus, greater care is required in its characterisation and adjustment. It is the loss of an expected value, in the thwarting of the expectation of a gain, or in the potential decrease of the victim's patrimony" (Transparencia por Colombia, 2018a).

Non-pecuniary damage affects "fundamental individual or collective rights, as well as producing pain and suffering derived from such affectations" (Fundación Vórtex, 2018). This, according to the jurisprudence on liability in Colombia, is subdivided into three categories (Transparencia por Colombia, 2020c). The first is moral damage, which is "that which affects the personality and, in some way, offends the morality and dignity of the victim. The moral injury that someone has suffered must be proven by force of the acts themselves that caused the injury. Thus, it is not necessary to present evidence that proves the moral offense: the fact itself already configures the damage and the results are presumed" (Transparencia por Colombia, 2018a, pg. 4). The second involves the affectation or violation of conventionally and constitutionally protected goods or rights, which "implies a slight departure from the dogmatic elements legally established within liability, to recognize other postulates that are part of what today is known as the constitutionalization and internationalisation of law", in order to "fully restore the victim in the exercise of his or her rights" (Durán, 2016, pg. 198). The third is damage to health —physiological or biological damage—, derived from a bodily or psychophysical injury, which "is recognised as coming from an affectation to one's psychophysical integrity (...) reduces to one category the physical, psychological, sexual, etc., in such a way that whenever the damage consists of an injury to health, it will be appropriate to determine the degree of affectation of the constitutional and fundamental right" (Council of State of Colombia, 2011).

Transparencia por Colombia has also made an important effort to specify that there are at least three categories of damages: (i) individual, (ii) collective, and (iii) social.

Social damage resulting from acts of corruption.

Social damage “is a figure intended to eliminate the consequences of any socially reproachable conduct that generates transindividual damage” (Fundación Vortex, 2018, pg. 12), such as the loss of public trust and the erosion of institutional quality (Transparencia por Colombia, 2020b). It is, then, “the possibility of demanding reparation for damages caused when public interests are harmed. Thus, reparation for social damage is intended to: (i) materially restitute the object of the crime, and (ii) repair the damages caused. It is, therefore, the merging of the application of the material and moral damage caused by an unlawful act against a social interest” (Fundación Vortex, 2018, pg. 12).

Social harm is based, in turn, on the notion of social interest. Social interest is “an intermediary figure between public interests (...) and private interests. It is an interest that is not restricted to those of the State itself, but that goes beyond purely individual interests”. Accordingly, social interest is transindividual in nature” (Fundación Vortex, 2018, pg. 10).

Social interest can be classified into three categories: diffuse rights, collective rights and individual rights (Fundación Vórtex, 2018). These categories can be subject to analysis and quantification, as has been

explored in cases such as Haemophilia Patients victims of corruption in Cordoba (Fundación Vórtex, 2019). There are also international experiences, such as those of Costa Rica, in which the existence of social harm has been admitted. In effect, it was established that social damage is the “(...) reduction of the community’s peace of mind, equivalent to the injury of non-pecuniary collective interests, resulting from the damage caused to an asset catalogued as being of a common or collective nature” (Transparencia por Colombia, 2020c). In contrast, Colombia does not have a legal concept of social damage, although it has been developed doctrinally.

Finally, Bill 341/20 (Senate) “Whereby measures are adopted regarding transparency, prevention, and the fight against corruption” is currently being debated in the Congress of the Republic. As explained by Transparencia por Colombia (2020b), in the last week of October 2020, the National Government, headed by the Vice-Presidency of the Republic, presented a Bill intended to “adopt provisions to prevent acts of corruption, to strengthen the organisation and coordination of State entities and to recover the damages caused by such acts in order to ensure the promotion of a culture of legality and integrity and to recover citizen trust and respect for the public”.

In particular, Chapter No. 9 of the referred Bill is called “Provisions on Damages and Reparations for those affected by acts of corruption” and comprises from Article No. 51 to No. 56, as follows:

Article 51. Damage derived from acts of corruption.

This article includes the threat of definitive injury, continued and consummated damages resulting from irregular acts of abuse or deviation of power in favour of a private benefit. In particular, damages caused by corruption are those derived from conducts considered crimes against the Public Administration that result in a detriment to the State's assets in favour of private interests.

Article 52. Those affected by acts of corruption.

Those affected by acts of corruption are the holders of collective rights, the person or group of persons whose rights, whether individual or collective, divisible or indivisible, have been violated as a result of acts of corruption. In the event of identifying, in the course of the procedures, those affected by acts of corruption whose fundamental rights have been violated by such acts, it is the duty of all competent authorities to make an explicit mention of them when adopting substantive decisions related to such acts.

Article 53. Pecuniary compensation for damages against collective rights due to corruption.

In the case of events that affect indivisible collective rights, those who caused the damage or jointly and severally all those who participated in the acts of corruption that caused the damage will be obliged to compensate the State, once such acts have been proven and resolved in an administrative, judicial, disciplinary, fiscal, or criminal sanctioning process.

In the event that the competent authority has the power to impose compensation for damages, the decision it issues shall include the compensation referred to in this article. Indivisible collective damages shall be assessed, including consequential damages and loss of profits. To assess this compensation, the authority may request such evidence as it deems pertinent. The entity in charge of the violated collective interests shall assist the petition in the event that it was not the party that initiated the respective action.

In the event that the competent authority does not have such authority, the entity in charge of the violated collective interests or, failing that, the National Agency for the Legal Defense of the State, or whoever takes its place, shall be obliged to initiate the corresponding popular action or any other mechanism that guarantees compensation for damages to collective rights derived from acts of corruption. This compensation may also be requested by the Office of the Attorney General of the Nation.

Article 54. Punitive damages for corruption.

The sanctioning authority that takes cognizance of acts of corruption may decree punitive damages as an exemplary measure, when the seriousness of the conduct or conducts and their consequences on violated rights require a strong message to be sent to society regarding the reproachfulness of the conduct, for which it must be proven that the conduct was intentional or grossly negligent.

The entity in charge of the violated collective rights or, in its absence, the National Agency for the Legal Defence of the State, or whoever takes its place, may request this compensation. It may also be requested by the Office of the Attorney General of the Nation.

When a fine has been imposed on the person who participated in the act of corruption for the acts subject to punitive damages, the amount of the punitive damages may not exceed the remainder, after deducting the fine, to reach the maximum value that can be assumed by the natural or legal person without falling into a situation of insolvency. If such ceiling has been reached with the fine, the corresponding decision will decree the punitive damage with merely symbolic effects.

Article 55. Fund for the reparation of those affected by acts of corruption. Establish a Fund-Account for the administration of the resources from the payment of compensation for acts of corruption referred to in Articles 50 and 51 of this Law, except for the compensation derived from popular actions, which are governed by Law 472 of 1998 and are destined to the Fund for the Defence of Collective Rights and Interests, under the responsibility of the Ombudsman's Office.

The Fund shall guarantee the restoration of the indivisible collective rights affected by acts of corruption, and the integral non-pecuniary reparation of those affected individually and collectively as referred to in Article 49 of the present law, as the case may be. The Fund shall be administered by the Office of the Attorney General of the Nation.

Article 56. Non-pecuniary reparation for those affected by acts of corruption. In addition to the judicial actions existing in the Colombian legal system for the claim of pecuniary compensation for individual or collective damages derived from unlawful acts, those affected by acts of corruption as defined in article 49 of the present law, may request before the authority in charge of the acts of corruption, to order the execution of non-pecuniary measures that guarantee the comprehensive reparation of their damages, without the possibility of double reparation.

The non-pecuniary measures of comprehensive reparation may include cessation of the illicit act, rehabilitation, non-pecuniary restitution, satisfaction and guarantees of non-repetition, and may be charged to those who participated in the acts of corruption, or to the Fund referred to in Article 52 of this law, depending on the nature of the measure.

Paragraph. The compensation and reparation measures referred to in this chapter may be decreed and ordered respecting the expiration and prescription periods of the action and the sanctioning procedures in the framework of which the facts are known by the authority with jurisdiction to impose reparation. In the event that a popular action or any different action is initiated because the authority hearing the facts does not have the competence to impose reparations, the time periods shall be those provided by law for the corresponding action”.

If this Bill is approved, it would be the first time in Colombia and in Latin America that the existence of the category of persons affected by corruption is

recognised by means of a law formally issued by the Congress of the Republic. This would be a huge step towards the possibility of working with victims of corruption. In the event that this bill becomes a law of the Republic, it would formally recognize the rights holders, in their individual and collective dimension, against those whose rights have been violated as a result of acts of corruption. Below is a list of other elements of the Bill that should be monitored and analysed:

First, this Bill provides that, in the case of acts affecting indivisible collective rights, whoever caused the damage must compensate the State. As it is foreseen that in this case the compensation must be addressed to the State, this provision may facilitate the discussion on the concept of social damage arising from acts of corruption.

Second, the Bill does not explicitly foresee NGOs and civil society organisations' capacity to file claims (legal standing), as it seems that only State entities have standing to seek compensation for damages caused by corruption.

It is necessary for victims, victims' organisations, and NGOs to be able to activate the jurisdiction, denounce, sue, provide evidence, etc. Currently, victims and civil society organisations can denounce acts of corruption and provide the evidence they

have in their possession regarding such acts, either before the Prosecutor's Office, the Attorney General's Office, or the Comptroller's Office. As for claims for the reparation of damages, in this case only the victims are entitled to initiate these procedures.

Third, it must be ensured that the resources from fines and punitive damages go to the victims, given that, currently there is a risk that these resources will remain with the State. Although the State is also a victim, it cannot be the sole/last recipient of the resources from fines and punitive damages. For the time being, the possibility of creating a fund for the reparation of those affected by acts of corruption, to be managed by the Attorney General's Office (PGN), as well as the acknowledgement of non-pecuniary reparation measures, are a significant step forward in terms of the visibility of the victims and their possibilities of being repaired with comprehensive criteria. One could recommend that the Bill's article should establish that the Fund—account will only administer the resources coming from the payment of compensation for damages to indivisible collective rights and/or social rights, but not from compensation for individual or divisible collective damages, so as not to deprive individual victims of their compensation.

ii. Damage reparation

Who are the victims of corruption? For TpC (2020b), the reparation of damages for corruption should be framed from the need to strengthen the rule of law and human rights. This is due to the fact that corruption often leads to real human rights violations, which places victims at the Centre of the debate.

For TpC (2020b) “any person —or group— who individually or collectively has suffered —or claims to have suffered— damage as a consequence of the act of corruption shall be considered a victim”.

This definition is adopted in the absence of a legal definition of victims of corruption —both nationally and internationally— and under the assumption that the phenomenon of corruption, which is very complex, can involve a large number of victims in each specific case, which, moreover, can be highly heterogeneous. These victims of corruption may include individuals, groups, communities, private and public companies, public entities, among others.

In other words, corruption can also victimize powerful actors such as contractors or even agents of the financial sector, provided that it is proven that

such actors have suffered harm as a result of such corruption. TpC has also queried to what extent it is possible for a natural person and a legal entity to be both victims and perpetrators (victim and perpetrator) at the same time, as happens, for example, in the case of state-owned companies or those with capital stock. In this case, how and which could be the route to fully repair the damages suffered, and to undertake the legal responsibilities (fiscal, disciplinary, civil, and criminal) that may correspond before the competent authorities, remains to be determined.⁶

Based on developments in international human rights law, for TPC, victims of corruption should also have the following rights (entitlements), which are recognised for victims of human rights violations: Fair, efficient, and timely access to justice; access to relevant information required to obtain compensation for the damages suffered; appropriate and effective legal assistance throughout the entire process; exemption from litigation costs and general litigation costs; access to funds earmarked for victims, where possible; access to appropriate diplomatic or consular mechanisms, where required; the right to be treated with special consideration and care to avoid re-victimisation (Pilgrau and Iglesias, 2019).

6 *However, we must also bear in mind that there is a principle of law according to which “A party may not derive an advantage from its own unlawful acts”. On this principle, the Constitutional Court in Judgment T–122/17 stated the following: “For the Court, no one can go to court to ask for their rights to be protected while being aware that their behaviour is not in line with the law (...) The Constitutional Court has maintained a line of jurisprudence regarding the aphorism “no one can be heard to invoke his own turpitude”, through which it maintains that the judge cannot protect situations where the infringement of the fundamental rights of the plaintiff derives from negligence, malice or bad faith. When this occurs, that is, when the private individual or public authority seeks to take advantage of its own error, malice, or fault, the application of this principle has been justified as a way of preventing access to undue or undeserved advantages within the legal system. Therefore, it is prima facie impossible for the individual to obtain benefits arising from his or her wilful misconduct”.*

Thus, any person who suffers harm as a result of corruption will be considered a victim and will have a series of rights, where full reparation is, in itself, a right, which must be guaranteed by the State. In other words, TpC stresses the importance of understanding the victims of corruption as authentic “subjects of rights”, under a human rights-based approach; this means that the effects identified must be based on the international human rights framework.

However, not all persons could fit into the category of victims of corruption; according to contentious administrative jurisprudence, the damage must be personal and certain. The personal aspect refers to the ownership of the legally protected property for which reparation is sought, and which is commonly referred to as “legal standing in the cause of action”. The damage must be personal because it can only be repaired to the person who has been harmed by the act of corruption. At present, it is not possible to have certain information on the extent to which such considerations on personal and certain damage could determine —and perhaps limit— the claim for recognition of the three dimensions —individual, collective, and social, respectively— in the case of damage caused by corruption.

What is reparation? Reparation is a constitutional, fundamental, and autonomous right that is based on provisions of national and international law and can be satisfied both through judicial and administrative means. In Colombia, it is based, particularly, on the provisions of Article 250 of the Political Constitution, according to which the Attorney General’s Office has

the duty to provide comprehensive reparation to those affected by the crime. Thus, the right to reparation arises pursuant to constitutional jurisprudence:

- i) The very concept of human dignity intended to restore the victims to the conditions prior to the unlawful act (article 1 of the Constitution, ii) the duty of the public authorities to protect the life, honour, and property of the residents and to guarantee the full effectiveness of their rights (article 2 of the Charter), iii) the principle of participation and involvement in decisions that affect them (article 2 of the Constitution), iv) the express consecration of the State’s duty of protection, assistance, comprehensive reparation and reestablishment of the rights of the victims (Article 250, paragraphs 6 and 7, idem); and, v) the right of access to the courts to enforce rights, by means of agile and effective remedies (articles 229 of the Constitution, 18 of the American Declaration of Human Rights, 8 of the Universal Declaration of Human Rights, and 8 of the American Convention on Human Rights) (Defensoría del Pueblo, 2013, pg. 85).

Thus, in the event of harm, victims have the right to access five types of reparation measures: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition (Transparencia por Colombia, 2020a).

What is the integral reparation approach?

Comprehensive reparation implies that the recognition of the violation of the rights of the victims goes beyond the economic compensation component. Thus, for

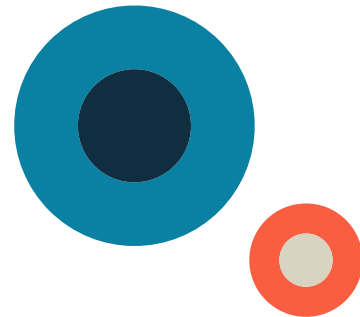
example, the Constitutional Court recognised in Ruling C—228 of 2002 that “the victim or injured party of a crime has the right to economic reparation for the damages caused, whether the crime was committed or attempted, and the right to have the truth established and justice done through the criminal procedure”.

Furthermore, in terms of corruption, reparation implies taking action to restore social, interpersonal, and institutional legitimacy, which have been affected by acts of macro—corruption and institutional co-optation (Fundación Vórtex, 2020). As explained above, the duty to redress is triggered when a conduct (which can also be omissive) affects any of the rights protected by the legal system. This entails that injury is committed against a person, group, or community, and that this injury is an anti-juridical injury, i.e., that it is an injury that the person should not have to endure. In addition, as mentioned above, the reparation of the damage must be comprehensive in nature, so that it includes both a pecuniary and an extra—pecuniary component. This concept of comprehensive reparation has been widely discussed in various administration of justice environments. Although the reparation of damages caused by human rights violations and breaches of international human rights law cannot necessarily be assimilated to the reparation of damages caused by acts of corruption, there are no legal or strategic reasons why these advances and lessons learned should not be taken as a reference.

iii. How can reparations for acts of corruption be pursued?

Damage is closely linked to the notion of reparation. Transparencia por Colombia has explored the possible reparation scenarios applicable in the Colombian legal system. Below are the various legal routes that could be used to seek reparation for corruption damages, clarifying that they may be constitutional actions or instances or those currently provided for in the Colombian legal system:

- Reparation via a reparation order — Criminal proceeding.
- Extinction of ownership.
- Direct reparation action.
- Reparation via popular action and group action.
- Office of the Attorney General of the Nation, especially from its disciplinary intervention axis (the preventive and judicial intervention axes promote access to other channels outside the Office of the Attorney General).
- Sanctions imposed by superintendencies with jurisdictional powers.



The options mentioned above are not exhaustive; it is possible to identify additional routes that may lead to the recognition of remedial measures, such as, for example, those derived from the jurisdictional and sanctioning powers of some superintendencies such as the Superintendency of Industry and Commerce, as well as the ordinary civil procedure.

Finally, we reiterate that the above contexts assume a broad conception of reparation: a disciplinary sanction or a fine imposed by a superintendency, for example, although not compensatory, does have a reparatory component insofar as the sanction to the corrupting agent is part of the right to justice and to determine the truth of what happened. These rights, in turn, are interrelated with the right to full reparation.



3. Conceptual framework

on gender and corruption



Below, we will refer to the levels of analysis under which the gender-corruption link has been investigated, specifying that to date there is no relevant literature related to LGBTIQ+ persons. Hence, what will be presented here is based on the existing literature on women and corruption, which reveals a preliminary finding: the need to produce knowledge on the link between corruption and LGBTIQ+ persons.

Like many social phenomena, the effects of corruption are manifested according to the gender of the person who experiences it. Indeed, gender differences are based on social and cultural structures, so that the phenomenon in question must be analysed within the framework of the complex social relations in which it develops.

This has led to a growing interest since the end of the 20th century in exploring the relationship between gender and corruption, which can be analysed on two levels. The first concerns whether there is a gender-related difference in the way in which men and women relate to corruption (e.g., are women less corrupt than men?). The second concerns the differentiated impacts of corruption on men and women (e.g., are women more vulnerable to the effects of corruption than men?).



i. First level of analysis: are women more corrupt than men?

The first manifestation of this interest is an empirical study on the relationship between gender and corruption published in the *Journal of Economic Behaviour and Organisation*, titled “Are Women Really the “fairer” sex? Corruption and women in Government” (Dollar, Fisman and Gatti, 2001). According to this study, countries with higher representation of women in parliament report lower rates of corruption. This leads us to infer that placing women in government could benefit society as a whole, given women’s reduced propensity to seek their own advantage. Subsequent to the Dollar et. al. study, Swamy et. al. (2001) published a study in which they analysed global public opinion and perception data and found that, unlike men, women are more likely to believe that corrupt acts are unjustified. This study also confirmed the initial findings by Dollar et. al. (2001) on the correlation between corruption rates and the proportion of women in government positions.

Initial studies on gender and corruption have been criticised for being based on stereotypes and beliefs that instrumentalize women as an “anti-corruption force” and for ignoring that the lower corruption rates could instead be explained by the fact that women tend to be excluded from patriarchal power networks (Goetz, 2007) and by the strength of democratic institutions (Sung, 2003). In Sung’s case, the author

argues that democracy is the factor that promotes both governance and gender equality. He concluded this by observing the influence of variables such as the rule of law, freedom of the press, and free elections on corruption indexes and noting that, when they were included in the equation, the presence of women in positions of power was not significant. Sung’s conclusion has been studied for Latin America and, in this regard, it has been found that there is no correlation between corruption and female representation in Congress (UNDP, 2014). These criticisms have suggested that there are variables other than biological sex that should be considered when explaining the gender dimension of corruption (UNODC, 2020). Today, research such as that of Yu Hao et. al. (2018) has shown that the participation rate by gender is irrelevant in predicting levels of corruption. Therefore, there is no evidence to support that women will not participate in acts of corruption as they increase their level of responsibility or assume management positions⁷.

Within the framework of the growing interest in the study of corruption and its effects in developing and developed countries, three trends can be identified in research on corruption and gender. The first, which follows Goetz (2007), argues that there is a relationship between the proportion of women in government and levels of corruption, but what this is evidence of, is women’s low representation in decision-making positions (reverse causality). That is, that corruption is

⁷ On women’s leadership and quotas in corporate governance see: Pande and Ford (2011). *Gender quotas and female leadership: a review*. Available at: <http://www.hks.harvard.edu/fs/rpande/papers/Gender%20Quotas%20-%20April%202011.pdf>

an obstacle to women’s political participation. This has been analysed by Sundström and Wängnerud (2016) when they identified that, in counties in European countries where corruption was high, the proportion of women elected to local councils is low⁸.

The second suggests that women usually earn less money than men and that, given their traditional role associated with caring for the home and private spheres, they are also less involved in public affairs. Given that highly educated, high-income individuals are more likely to interact with government agents and to be exposed to bribery, women do not engage in corruption to the same extent (Lindberg and Stensöta, 2018).

The third suggests that the relationship between corruption and gender should be analysed in terms of its relationship with the mediating role of institutions. For example, the study by Esarey and Chirillo (2013) suggests

that the relationship between the proportion of women in government and levels of corruption is apparent in democracies, but not in authoritarian states.

This is because engaging in corruption in democratic states may be risky, while in authoritarian states it may be riskier not to do so. Hence, because women are differentially influenced by corruption risks, they tend to have greater incentives to conform to the rules of the game in democratic regimes. In the same vein, research by Stensöta et. al. (2014) shows that, within the same country, the patterns of corruption resulting from the presence of women in positions of power vary. In fact, in a survey of 30 European countries, they found that while the correlation between the presence of women and corruption was sustained in parliaments, this was not the case for positions in the public administration. In the latter scenario, corruption levels did not show any alteration based on the greater or lesser proportion of women involved. This is illustrated in the figures below:

FIGURE 1. CORRELATION BETWEEN CORRUPTION AND THE NUMBER OF WOMEN IN THE CIVIL SERVICE

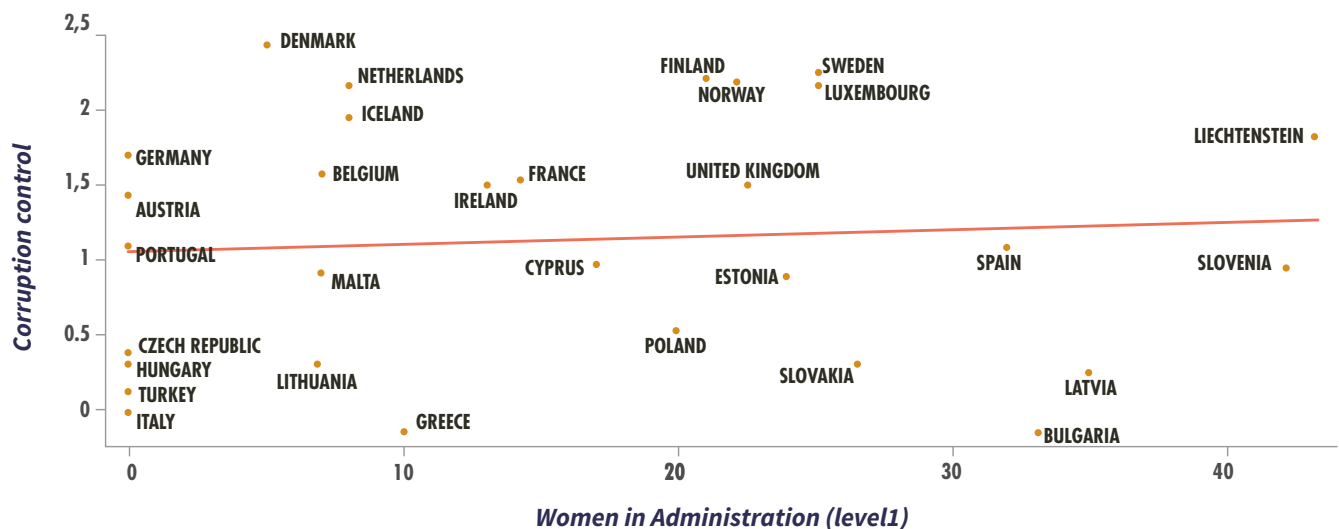
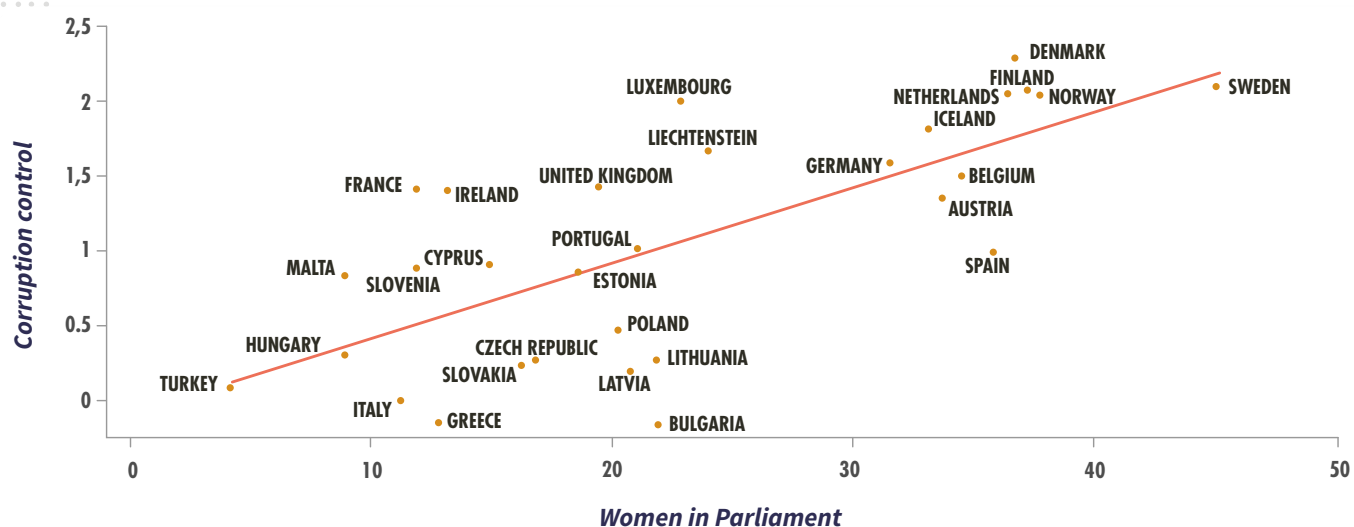


FIGURE 2. CORRELATION BETWEEN CORRUPTION AND THE NUMBER OF WOMEN IN PARLIAMENT



Source: UNODC, (2020a)

TABLE 1. SYNTHESIS OF THEORETICAL PROPOSALS ON THE QUESTION: ARE WOMEN MORE CORRUPT THAN MEN?

THEORY	EFFECT
ESENTIALIST	More women in decision-making roles means less corruption.
INSTITUTIONALIST	The type and quality of democratic institutions condition the relationship between gender and corruption.
SOCIALISATION	Women are more risk averse and exercise greater self-control.
EXPOSURE	Women have less access to corruption networks and are less likely to pay a bribe to another woman.

Source: BID (2018)

ii. Second level of analysis: are women more vulnerable to the effects of corruption than men?

While men tend to pay more bribes than women and are more exposed to phenomena such as land theft (Beekman et. al., 2016), women suffer differentially from the effects of corruption and often engage in corruption to benefit their household (Asiedu, 2016).

As noted by UNDP and UNIFEM (2010), women’s relative lack of economic and social power reduces their ability to demand accountability or to highlight their specific experiences and concerns around corruption. Indeed, corruption exacerbates asymmetries between men and women in terms of power, the enjoyment of rights, and access to basic goods and services. Despite this, according to Transparency International (2006): “a limited number of tools and initiatives (around

20%) address gender and poverty dimensions” (pg. 6). We therefore need to build knowledge about the experiences of women from different socio-economic backgrounds and about the role that grassroots organisations, for example, could play in designing, implementing, and monitoring anti-corruption programmes (UNDP, 2012).

The differential impacts of corruption among men and women can be explained, among other things, by the following:

(i) The largest proportion of the world’s poor are women. The proportion of poor women in the world significantly exceeds that of men. Poverty is not a gender-neutral phenomenon, since it affects women differently according to variables such as age, level of education, motherhood, etc. (Bastos et. al., 2009). Since poor people are highly dependent on public services, they suffer disproportionately from the effects of corruption. For example, poor women often have no choice, even when corrupt practices are involved in the provision of public services, “especially in situations that threaten their life and integrity such as high—risk childbirth” (Seppänen and Virtanen, 2008, p. 39). Thus, women’s vulnerability is especially acute in cases of ‘corruption by necessity’ (Bahur and Charron, 2020).

(ii) Women have less control over their own resources, Thus, in contexts where bribery is a requirement for access to goods and services, they face greater barriers to access (Nyamu-Musembi,

2007), and there is evidence that the value of bribes most significantly affects those who have the least resources to pay them. For example, a study in Mexico found that the poorest households spend a third of their income on bribe payments (Steiner, 2017).

(iii) Illiteracy rates are higher among women, which can lead to a generalised lack of awareness of the rights to which they are entitled. This, in turn, leads to increased vulnerability to extortion and abuse of the rules against them (UNDP, 2020). In addition, a global study found a gender gap in levels of knowledge about their rights in accessing information (World Justice Project, 2015).

(iv) women tend to bear the heaviest burden of care in the home, and are therefore often disproportionately exposed to corruption given their historical role as caregivers and household managers. Indeed, according to work undertaken by UNDP (2012) with women’s organisations, it is more common for women between the ages of 30 and 59 to report that they have been asked for a bribe. This part of women’s life cycle corresponds to the period in which they are involved in family care services such as education, health, and other services.

In its report on Gender and Anti-corruption in Latin America and the Caribbean. Good Practices and Opportunities (2021), Transparency International analysed the intersection between the gender agenda that has been shaped over the last century in Latin America and the anti-corruption agenda⁹. The report establishes that there is indeed a degree of vulnerability and affectation of women's political, civic, economic and social rights in corruption cases in Latin America, depending on the victimising event. In addition, it highlights that, despite all the efforts made by feminist movements and organisations to promote the recognition and free exercise of their rights, and the implementation of a gender perspective in public policies, these have not yet been sufficient to bring about structural transformations (Transparency International,2021).

It is important to highlight that there are currently limitations to expanding the information on the link between corruption and gender, as there is a lack of reliable and sufficient data to establish such a link in Latin America and the Caribbean (Transparency International, 2021). This is due to the fact that, on the one hand, official public statistics are subject under-reporting or contain incomplete information, and, on the other, government entities do not guarantee a reporting system that inspires trust among women complainants. Accordingly, Transparency International proposes that governments should join efforts to improve statistical systems for data collection and reporting, and implement a gender perspective in these systems.

Conclusions

Correlations have been identified between the presence of women in positions of power and lower indicators of corruption. However, this correlation is not explained by innate or connatural differences between men and women, as it is not found across the board and depends on the context.

The inclusion of women in politics and decision-making positions should therefore not depend on whether or not this is conducive to reducing corruption rates, but as an exercise in promoting equality and non-discrimination in itself.

Corruption disproportionately affects women, especially because they are often responsible for care work within the household and for seeking access to public services for all family members. However, evidence-based information needs to be consolidated to analyse this phenomenon in each specific context.

⁹ As a result of the intersection between these two agendas, the report proposes a cycle of five phases to be taken into account in order to further explore the nexus between gender and corruption: (i) Understanding the context of how corruption affects women, (ii) Preventing acts of corruption that may violate or are violating women's rights, (iii) Mechanisms for detecting the type of corruption that affects women, (iv) Support for justice and reparation procedures, in accordance with the damages suffered (Transparency International,2021).

4. Key intersections:

between corruption, human rights, and gender



i. Women as direct and indirect victims of corruption

Women can be direct or indirect victims of corruption and suffer differentiated impacts as a result of this phenomenon.

The likelihood of women being directly victimised is related to their risk of exposure to corruption and to the gender-specific forms of corruption that women experience, such as sexual extortion or quid pro quo sexual favours (Boehm and Sierra, 2015). While, as explained above, there are activities in which men may be more exposed to the risk of corruption, women are more likely to be victims of corruption, as they are often intentionally targeted by corrupt actors on the basis of their gender. For example, a study conducted in Uganda suggests that, although the private sector in that country is predominantly male, corrupt actors target mostly women (Ellis, Manuel and Blackden, 2006). As will be noted in the next section, the evidence supports the hypothesis that women, by virtue of being women, are more directly affected by corruption than men.

Corruption does not always affect individuals directly, but its externalities widely affect third parties. Despite this, women also suffer disproportionately, as indirect victims, from the effects of corruption. When corruption diverts resources that were originally intended to provide public services, more women also suffer from service reductions in both quality and quantity (IDB, 2018). This is because: (i) by virtue of the feminisation of poverty, corruption hinders economic development, and perpetuates and exacerbates poverty, which particularly impacts women, who make up the majority of the world's poor



population; (ii) poor people rely more heavily on public services that are reduced as a result of corruption; (iii) political and administrative corruption can perpetuate gender inequalities, such as discrimination against women, in relation to access to resources, political participation and access to positions of authority in the administration; (iv) women are most affected by covert behaviour by corrupt agents, such as human trafficking, sexual slavery, forced marriage and organ trafficking (Boehm and Sierra, 2015).

ii. LGBTIQ+ persons as victims of corruption

A number of reports have argued for the need to incorporate the perspective of LGBTIQ+ people in connection with corruption. Despite this, there is little empirical and doctrinal information on the differentiated impacts that corruption has on these population groups.

On the one hand, the Inter-American Commission on Human Rights (2019) has noted that LGBTIQ+ people suffer from various forms of violence, the most serious of which is police violence. These acts of violence are, in turn, allegedly associated with various acts of corruption, as those affected are forced to pay bribes to avoid violence and arbitrary arrests and detentions. This aspect has been highlighted in Colombia by organisations such as Caribe Afirmativo, according to which murders of LGBTIQ+ people carry a 96% impunity rate and are considered “minor” crimes¹⁰.

On the other hand, a Myanmar study on corruption and gender suggests that intersections between groups suffering from multiple vulnerabilities need to be studied, given that in such cases “corruption has more severe effects, or can have more severe effects” (UNODC, 2020b, p. 12), for example, in the case of poor women, ethnic minorities, LGBTIQ+ persons and persons with disabilities. This premise was supported by the Fundación Grupo de Acción y Apoyo a Personas Trans (GAAT) in Colombia, which has pointed out that it is important to recognise the intersectionalities and impacts suffered by indigenous trans women, and migrant trans women, among others¹¹. Furthermore, the UNODC study (2020b) warned that cases of same-sex sexual extortion may go unreported, given the persisting social stigma against people with diverse sexual identities.

iii. Manifestations of the differential impacts of corruption on women

Below, we present some of these manifestations through a gender perspective:

a. Political involvement and inclusion in management positions in companies

Evidence suggests that corruption prevents women from engaging in high positions in politics and business, as clientelist practices are also dominated by

¹⁰ This perspective was presented by the organisation at the workshop held by *Transparencia por Colombia* (March, 2021) in the framework of this report.

¹¹ *Ibid.*

male bias (Bjarnegård, 2013). The exclusion of women from corruption networks could be explained by the need to create bonds of trust or “social glue”¹² between individuals in order to engage in illegal and widely disapproved activities, which is facilitated when gender is a common characteristic (UNODC, 2020a).

In relation to political inclusion, corruption negatively affects women because, when “political parties can be bought and sold, officials are elected through vote buying and promotions depend on personal connections rather than merit, women’s chances of gaining access to decision-making circles in a country’s government, political system, and business are diminished” (Transparency International, 2007, pg. 3). Indeed, the imaginary that women are less corrupt (gender stereotypes) also result in a gap in access to opportunities (UNODC, 2020a), as evinced in pilot exercises in Mexico (Barnes, Beaulieu and Saxton, 2018).

The effects of corruption on women’s effective participation can cause or aggravate the physical, psychological, economic, and symbolic violence they have traditionally suffered in the exercise of politics (NIMD—MOE, 2019). The impact of this

violence associated with male—biased practices has a differentiated effect on women’s political work. Few studies have addressed this bridge between corruption, obstacles to women’s effective participation, and its differentiated effect. On the one hand, progress has been made in the regulatory frameworks of several Latin American countries by recognising political violence against women as a scourge of democratic participation, although without recognising corruption as a phenomenon that exacerbates its differentiated impact. On the other hand, it is worth mentioning particular cases such as those of Mexico and Bolivia, where, despite the high level of political violence against women, progress has been made in terms of legislation and protocols for its prevention, attention and sanction (Albaine, 2020).

b. Access to public services

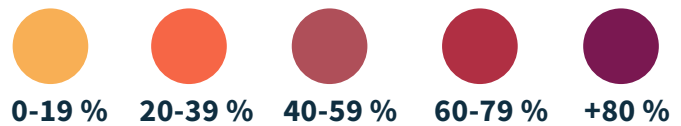
While it is common for individuals to face the risk of corruption in the delivery of public services (Transparency International, 2019), women remain subject to deeper gendered effects that need to be explored.

¹² *Bjarnegård (2013) points out that men who do not exhibit a particular form of masculinity are also excluded from the networks, as they lack essential elements in common with the rest of the members. The author describes this common factor as “homosocial capital”.*



Bribery rates by country

Percentage of public service users that paid a bribe in the last 12 months



1 Mexico 34%	6 Barbados 9%
2 Guatemala 25%	7 Colombia 20%
3 Honduras 28%	8 Peru 30%
4 Costa Rica 7%	9 Chile 13%
5 Panama 7%	10 Argentina 13%

Source: Transparency International (2019). Source: UNODC, (2020a)

In the case of access to justice services, gender differences also influence cases of corruption in the judiciary. When women lack resources, their rights may go unprotected in crucial matters such as marriage, divorce, child custody, property rights, family independence, and personal security (Transparency International, 2007). As noted by the Inter-American Development Bank (2018), bribes for officials often protect perpetrators of criminal acts targeting women, so the perception of corruption may deter women from reporting violence or initiating any kind of action. This is especially true in cases of violence against women where, by dropping the charges, women may be put at even greater risk from the abuser. While the evidence is mainly anecdotal, it is plausible to argue that the impact

of corruption on women is differentiated (Nyamu-Musembi, 2007) given that:

- When a vulnerable group is stigmatised, it is exposed to a higher risk of extortion in contexts where laws and procedures are ambiguous or where there is no adequate oversight of implementation and accountability of public officials.
- Gender bias results in systemic inertia in terms of responsiveness to corrupt practices, the impacts of which fall predominantly on women.

For example, human trafficking and organised crime operate on the basis of bribes to officials and the lack of a gender perspective in law enforcement investigations of violence.

- The invisibility of everyday corrupt practices normalises corruption and discourages people from seeking justice through access to the state apparatus. While all justice users are affected by corruption, some categories of users, such as women, are affected to a greater extent by failures in the system that may be perceived as “minor” or “insignificant”. For example, as Nyamu-Musembi (2007) recounts, in Timor-Leste it was found that the public information service for notification of hearing dates and times fell into disuse, forcing people to approach the registry staff (counter) to find out whether a hearing date had been set in their case. This “minor” flaw in the judicial apparatus meant that victims and families faced daily bribes and intimidation by mostly male staff.
- The lack of clear regulation governing the intersection between formal and informal institutions exposes women and children to a disproportionate risk of corruption. If a citizen’s right to choose where and how to file a complaint is not recognised, the strongest parties to the dispute may use bribery and extortion to stop the affected person from going to a specific instance. In connection with education services, women may have to pay bribes to get their children registered in school (UNDC, 2020). Other manifestations of corruption such as sexual extortion in exchange for grades, recruitment of staff, and handing over of positions may also be encountered. In the education sector, women represent a large proportion of the workforce, while management and coordination

positions are held by men. Thus, women may be exposed to sexual and economic extortion to retain their positions within institutions, or for promotion (UNODC, 2020a).

In As for access to health services, the evidence indicates that women are the primary caregivers in households, and are therefore the main users of health services, either for themselves or for their families. This caring role puts women in situations such as having to pay bribes to receive health services, even though they are generally the lowest income earners. Thus, in cases where women victims do not have the resources to pay the bribe, they are excluded from service provision and are forced, for example, to deliver their babies at home and unassisted (Aluko, 2015), or to engage in non-consensual sex in exchange for care (UNDP, 2010). For example, during the Covid 19 pandemic, the Mexican platform Denuncia Corrupción Coronavirus registered 340 complaints, 10% of which refer to cases of sexual extortion (El Economista, 2020).

c. Access to public goods

In relation to access to land as a productive resource, Transparency International (2018) has documented that, because men and women experience land tenure insecurity differently, the impacts tend to be greater and more severe on women. Political corruption in this area takes the form of irregular zoning reformulations intended to expedite expropriations, while administrative or bureaucratic corruption is observed

when people try to register their property, acquire information or gain access to state programmes. Women are more vulnerable to both types of corruption, as they are likely to have less knowledge about the functioning of land administration systems and, as caretakers of the household, may be forced to pay bribes to avoid evictions (See also Papić and Tanjević, 2013).

Where access to water is concerned, it is women who are generally involved in activities that require water, such as cooking, cleaning, cultivating, washing food for later consumption or sale (UNDP and SIWI Water Governance Facility, 2017). Thus, when the water service does not reach households directly, women are the ones who usually have to provide it manually (UNICEF and WHO, 2012). Therefore, as explained at the beginning of this section, women are directly and indirectly affected by corruption in the way water services are provided. For example, they are affected indirectly, as they are more dependent on public service provision, have fewer resources to turn to private providers and, when abused, lack the social capital and knowledge to seek protection on an equal basis with men (UNDP, 2010).

A study on gender, corruption and access to water services in Bogotá, Colombia, found that the women in the sample: (i) self-perceive themselves as primarily responsible for ensuring access to water in the household; (ii) feel vulnerable when they must seek alternative sources of water provision, as they could be victims of crime or sexual violence; (iii) require greater availability of water compared to men for sanitary and hygiene reasons. The same study concluded that, as a result, women are confronted with demands to pay bribes by public agents, as well as with a lack of access

to information about the water system and the costs associated with the provision of the service (UNDP and SIWI Water Governance Facility, 2017).

d. Human trafficking

Women and children are the most at risk of human trafficking, constituting 70% of the 8,900 cases registered in North and Central America and the Caribbean. While girls represent the largest number of cases in Central America and the Caribbean, adult victims predominate in North America. According to Solano (2019), corruption is an enabling factor in the trafficking dynamics recorded in the countries, given that: (i) “countries that make the least effort to combat trafficking also tend to be those with the highest levels of official corruption and vice versa”; (ii) “there is a link between corrupt practices of public officials and the lack of implementation in national anti-trafficking policies”; (iii) there is a correlation between corruption and compliance with international standards for anti-trafficking policies (pg. 77).

Indeed, “the findings confirm the link between corruption among relevant public officials, such as law enforcement officials, and failures in the overall implementation of anti-trafficking policies” (Solano, 2019, p. 77). For example, human traffickers can exploit corruption to move people across international borders and to advance procedures.

e. Sexual extortion

Sexual extortion occurs when “those who wield power use it to sexually exploit those who depend on that

power” (Transparency International, 2020, p. 8). In other words, sexual extortion occurs when “a sexual favour is the currency of corruption”, such that “the content of the exchange is gendered” (UNODC, 2020a, p. 44). While there is insufficient information about the dimensions of the phenomenon, what can be inferred from the evidence available is that it disproportionately affects women, transgender people, and people with dissident sexual identities (UNODC, 2020a).

According to the Global Corruption Barometer for Latin America and the Caribbean (Transparency International, 2019), 1 in 5 people surveyed reported having experienced sexual extortion or knowing someone who had experienced sexual extortion. Furthermore, 71% of people say that sexual extortion occurs at least occasionally. In the case of Colombia, 16% of respondents reported having experienced sexual extortion or knowing someone who had. Moreover, according to the barometer results, gender “also affects how corruption cases are reported and acted upon” (Transparency International, 2019, p. 20). Indeed, when asked whether action was more likely to be taken if a man or a woman made the report, citizens said that action was more likely to be taken if it was a man who reported the case.

Sexual extortion had not been included as a separate category of analysis in the previous studies of the Global Corruption Barometer for Latin America and the Caribbean and there is some consensus that,

until now, it has been a “silent category of corruption” (Transparency International, 2020c). Thus, discussions on this form of corruption have been confined to the general analytical framework of corruption and criminal law, or to that defined for gender-based violence. As such, a deeper exploration of the situations of the victims, the variables that influence its configuration, etc. is still necessary, especially because it is an act of corruption that is not reported to the authorities, given the social stigma and the victimisation of those who allege that they did not freely consent to sexual relations. According to the results of the study conducted by Transparency International (2020c), sexual extortion manifests itself in different sectors, such as education, interaction with the police, courts, and administration. The target group of this form of corruption are marginalised and vulnerable people, such as migrant and refugee women, who are often required to pay a double bribe, financial and sexual, in exchange for food or accommodation. For Peru and Colombia, Solano (2019) documented numerous cases of sexual extortion in the health, education, justice, and security sectors based on the analysis of judicial decisions.

Transparency International’s (2020c) main recommendations for addressing the phenomenon of sexual extortion as a manifestation of corruption are summarised below:

<p>LEGAL FRAMEWORK AND AWARENESS RAISING</p>	<p>Create a legal definition and a legal framework for sexual extortion that allows for the investigation of such conduct.</p> <p>Implement legal training programmes to ensure that judges and prosecutors can identify sexual extortion and know how to prosecute it.</p> <p>Integrate sexual extortion into anti-corruption and gender-based violence policies. Launch public campaigns to raise awareness of sexual extortion as a form of corruption and to encourage victims to report.</p>
<p>REPORTING MECHANISMS</p>	<p>Provide confidential, safe and gender-sensitive reporting mechanisms that enable victims and survivors to access appropriate remedies when needed, including psychological, legal and health care.</p> <p>Ensure that reporting mechanisms are widely accessible through the availability of reporting information, including through the dissemination of information and the use of local languages and dialects.</p> <p>Protect survivors and victims who report cases of sexual extortion from retaliation.</p> <p>Train individuals who interact with survivors and victims, or who investigate their reports, to ensure that language is appropriate and that there is no re-victimisation.</p>
<p>DATA AND RESEARCH</p>	<p>Reform judicial statistics systems to address the lack of information on sexual extortion cases.</p> <p>Collect disaggregated data on sexual extortion through corruption surveys and other methods and use specific questions in the correct format to organise the data. Conduct comparative legal analyses of previous sexual extortion cases to identify cases that increase or decrease the likelihood of success at trial.</p> <p>Study the mental, physical and economic impact of sexual extortion on victims and survivors, as well as at organisational and societal levels.</p> <p>Conduct sector-level analysis to identify commonalities and differences in the way sexual extortion occurs across sectors.</p>

5. Recommendations:

Corruption, human rights, and gender on Transparencia por Colombia's agenda



Based on the information gathered in this document, we can safely conclude that (i) analyses on the intersection between corruption, gender, and human rights are recent and currently focus on the differentiated direct and indirect impacts of corruption on women; (ii) there are no unequivocal concepts or conclusions on the relationship between gender and corruption; (iii) one of the contributions that can be made to the discussion is to produce local knowledge on the conditions in which gender interacts with the phenomena of corruption. Below we list a number of recommendations for Transparencia por Colombia to analyse and act upon.

i. How to increase the visibility of the differentiated impacts that women and LGBTIQ+ people experience as victims of acts of corruption? (principles of analysis)

- **Consider what individual women and LGBTIQ+ persons, and women's and LGBTIQ+ organisations may think about corruption.** While prevalent concepts from the anti-corruption literature —such as the idea that corruption is a manifestation of abuse of power— can be used, consideration should also be given to whether corruption can mean different things from a gender perspective, such as poor service delivery, lack of service delivery, and physical and sexual abuse (UNDP, 2012). Indeed, administrative inefficiency is often seen as corruption.
- **Consider that the concept of corruption may vary between regions and territories.** In the case of the UNDP (2012), the way women's organisations defined corruption was not consistent across regions. For example, while women from Africa and Southeast Asia considered bribery to be the most accurate definition, Latin American women overwhelmingly chose abuse of power or weak leadership as the main feature of corruption.

- **In order to promote equality, organisations and the government should consider the different ways which masculinity, femininity, and non-heteronormative genders are manifested.** This will allow for substantive measures to be taken to achieve gender equality that go beyond the female-male distinction and “tackle gender inequalities at their root” (UNODC, 2020a).
- **Advocate for the recognition of sexual extortion as a form of corruption and implement measures to end the culture of victim-shaming and victim-blaming.** As explained by the International Bar Association (2019) in a comparative study of eight legal systems, anti-corruption laws have not analysed the existence of sexual favours and the possibility of sexual offences having a corruption component has been ignored. Thus, Colombia needs to clearly and consistently define what constitutes sexual extortion as an act of corruption and what the appropriate sanctions are.

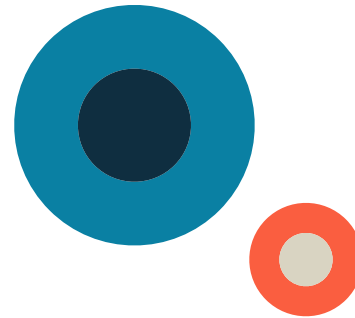
ii. What considerations should govern the care of women and LGBTIQ+ persons as victims of corruption? (principles of action)

- **Promoting the production of gender-sensitive data on corruption.** As discussed above, it was not until 2019 that the Americas Corruption Barometer incorporated the gender variable in its analysis. It is thus clear that organisations and the government must have information that is disaggregated by sex and gender identity (UNDOC, 2020a). This provides statistical information that sheds light on the different ways in which corruption affects men, women, and LGBTIQ+ people, and to therefore design better anti-corruption policies (Transparency International, 2016). To this end, we recommend drawing on the methodological guidelines of the “Manual for designing corruption surveys” designed by the UNODC and the Centre of Excellence for Statistical Information on Government, Crime, Victimization, and Justice (2018).
- **Identify and analyse anti-corruption initiatives created in Colombia** (both normative and public policy), in order to identify the narratives and theoretical assumptions that underpin the initiatives. This will help to challenge “essentialist” positions and promote agendas that recognise gender parity as an end in itself rather than a means to an end.
- **Identify the public services in which LGBTIQ+ people are particularly exposed to acts of corruption and intimidation.** For example, according to the Transgender Advocacy Group (GAAT), transgender people often come up against social and cultural barriers when approaching notary and registry services to request for changes to be made to their identification documents.

According to the recommendations included in this manual, the gender perspective should be integrated into corruption surveys in aspects such as questionnaire design, sample selection and design, interviewer and staff training, interviewing, and data analysis. This will help to build knowledge based on Transparencia por Colombia’s own experience.

Indeed, they often receive answers such as “that’s not possible” or that they need to bring “a certificate from a psychiatrist”. Thus, these informal spaces may encourage bribery or abuse of power by officials, given that the institutions in charge of such procedures lack clarity and awareness in this respect.

- **Identify women's organisations currently fighting corruption from a gender perspective.** According to the UNDOC study (2012), women report feeling more empowered to denounce acts of corruption if they belong to a grassroots women's organisation. This suggests that it is important to establish spaces that amplify the voice of women as victims of corruption, so that they can participate in the public debate and exercise control over leaders, politicians, and rulers. We also suggest analysing, in accordance with the National Time Use Survey (ENUT), the amount of time women have to participate in volunteering and civil organisation activities, in order to identify the asymmetries that may exist in this field between men and women.
- **Analyse the intersections between variables such as sex, gender identity, race, class, and human mobility status.** Given that analyses of gender and corruption are relatively recent, those on the various intersections between gender identity and variables such as class (higher or lower income), age, race, ethnic identity, etc. are as yet non-existent. This points to the importance of promoting an exploration of the life stories of people who are exposed to corruption from diverse identities and therefore, also to multiple vulnerabilities.
- **Promote partnerships to foster research that documents and analyses the experiences of women's and LGBTIQ+ grassroots organizations.** This includes the empowerment of organizations to collect, analyse, and disseminate information concerning experiences of corruption and gender in settings in which women and LGBTIQ+ people are typically exposed (e.g., health, education, public service delivery).
- **Support territorial initiatives to prevent corruption in public offices,** including (i) citizen watchdog groups led by women; (ii) hotlines for women to report cases anonymously; (iii) free registration of birth, marriage, and divorce certificates, etc., in order to render public and transparent certain procedures that are otherwise subject to private transactions; (iv) disseminate information on incidents of corruption and how they were addressed; (v) contextualise anti-corruption initiatives based on conditions such as the cohesion of civil society, socio-demographic characteristics and the general context of gender equality and women's empowerment; (vi) fund initiatives by grassroots women's groups to design, pilot and strengthen anti-corruption programmes; and (vii) support women's groups in the design, piloting, and strengthening of anti-corruption programmes.
- **Adopt an internal policy for mainstreaming the gender perspective in Transparencia por Colombia's projects on corruption.** This is a good practice adopted by organisations such as the Inter-American Development Bank. Here, the following aspects should be considered when designing and implementing cooperation contracts and projects: (i) Do men and women benefit equally from the project? (ii) Are women able to report and access information? Is it necessary to adopt protection policies for women who report cases of corruption? (iii) Do women have a voice in decision-making procedures? Are there opportunities for the involvement of women's organisations? (iv) Is the project likely to address specific gender-based risks? (v) Does the project reach women from different socio-economic backgrounds and of diverse racial and ethnic identities?



- **Recognise and render visible the intersection between corruption and gender from the perspective of LGBTIQ+ persons. Throughout the document, the experience of LGBTIQ+ persons** in relation to acts of corruption is mentioned only tangentially, given that the evidence and analysis produced so far is very incipient. We therefore recommend following up on the effective implementation of the public policy for LGBTIQ+ people and identifying possible opportunities for advocacy so as to explore and understand this issue from the perspective of the voices and stories of those who live it on a daily basis.
- **Bringing a gender perspective to the reporting procedures.** Provide access to reporting from a gender perspective, which will have to incorporate the necessary instructional tools.

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