

Expert Group Meeting

UN Special Rapporteur on violence against women: Report on rape as a grave and systematic human rights violation and gender-based violence against women

27 May 2020

Background

Rape has been recognized as a crime of sexual violence, a war crime, a crime against humanity and/or genocide in specific circumstances. It has been criminalized and prosecuted in a large number of States and jurisdictions but in different ways: rape has different definitions (force /consent), different scopes (women, men, marital rape, all types of penetrations), with different aggravating and mitigating circumstances, with different sanctions, and with different statutes of limitations for its prosecution. While victims of rape can be of any gender, it is predominantly perpetrated against women and girls and as such, falls under the definition of gender-based violence against women as a manifestation of violence against women.

Globally, it is known that rape is frequently not reported, and if reported seldom prosecuted with vigour; if prosecuted, results in very low numbers of convictions (attrition rates are high) and all this results in impunity for the majority of perpetrators; women thereby lose faith in the criminal system, do not report it, and the result is a mixture of low reporting rates and a culture of impunity, leading to the normalisation of rape.

In general, there is lack of data on rape reporting, prosecution and conviction, including a lack of data on the relationship(s) between the victim and the perpetrator.

The international human rights framework on rape as a human rights violation and gender-based violence against women (GBVAW) has been significantly improved, but those improved standards are not fully incorporated into legislation and practice at the national level.

Objective

The purpose of the Expert Group Meeting (EGM) is to gather information on the evolution of the international human rights framework on rape, international standards regarding to its definition and prosecution, the challenges and gaps in criminal legislation worldwide on rape and the implementation of that legislation. To that end, the EGM will gather scholars, UN and independent mechanisms' experts on women's human rights, UN agencies, civil society organisations, practitioners and other stakeholders aimed at providing a comprehensive view of the topic and putting forward recommendations to UN member states and other actors.

Alongside the submissions received following a call published in April, the EGM will contribute to the elaboration of the report by the United Nations Special Rapporteur on violence against women, its

causes and consequences, Ms. Dubravka Šimonović, to be presented to the UN General Assembly in October 2020.

The report will address **States' responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and gender-based violence against women, in line with international human rights standards.** The aim of this report is to support and encourage a process of harmonization of national criminal laws and systems and practice with international standards on rape and sexual violence in both peacetime and during conflict.

In her report, the Special Rapporteur intends to provide recommendations to States and other stakeholders on key international human rights standards that should be integrated in national criminal justice responses in order to harmonize them with accepted international standards; to provide access to justice and support for victims of rape; to break the cycle of impunity; and to prosecute perpetrators, ensuring that they are not protected by hidden domestic norms that are still part of criminal law or criminal procedure.

Methodology

The meeting will be co-hosted by the UN SRVAW and Equality Now through the online platform Webex on 27 May 2020, from 13:00 to 19:15 (Central European Time – Geneva).

Participants are invited to intervene as speakers according to the agenda items below and during the Open Debate segments. Each speaker is invited to submit a paper beforehand and to present it in a 5 to 7 minutes intervention, while comments during the Open Debates should be 3 minutes long. All papers will be published in the webpage of the SR VAW, unless requested otherwise.

All EDVAW Platform mechanisms (CEDAW, UN WGDW, SR ACHPR, R IACHR, MESECVI and GREVIO)¹ are invited to present on the standards and lack of full implementation at the global and regional level.

Participants should refer to the questionnaire distributed through the SR VAW's call for submissions (see Annex 1). Participants are encouraged to share in advance any relevant reports or papers produced by their institutions on the criminalization and prosecution of rape (a preliminary list is available at Annex 2).

¹ The EDVAW Platform is an initiative led by the UN Special Rapporteur on violence against women to promote collaboration between international and regional expert mechanisms on discrimination and violence against women. In addition to the SR VAW, the following mechanisms are part of the EDVAW Platform: UN Committee on the Elimination of Discrimination against Women (CEDAW); UN Working Group on the issue of discrimination against women and girls (UN WGDW); Special Rapporteur on Rights of Women in Africa (SR ACHPR); Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights (R IACHR); Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI); and Group of Experts on Action against Violence against Women and Domestic Violence of the Council of Europe (GREVIO).

Special Rapporteur on violence against women, its causes and consequences

The United Nations Commission on Human Rights, in resolution 1994/45, adopted on 4 March 1994, decided to appoint a Special Rapporteur on violence against women, including its causes and consequences. The mandate was extended in resolution 2003/45 by the Commission on Human Rights in 2003, at its 59th session.

In accordance with her mandate, the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović submits a report to the General Assembly annually on a selected issue pertaining to violence against women, its causes and consequences.

In 2019, she submitted a report about mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence. After reviewing the manifestations and root causes of this violence from a human rights perspective, the Special Rapporteur recalled States' obligation to respect, protect and fulfil women's human rights, including the right to highest standard attainable of physical and mental health during reproductive services and childbirth, free from mistreatment and gender-based violence.

Equality Now

Founded in 1992, Equality Now is an international human rights organization that works to protect and promote the rights of all women and girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit all women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights. Our campaigns are centered on four program areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Trafficking, with a cross-cutting focus on the unique needs of adolescent girls.

In 2017, Equality Now released *The World's Shame – The Global Rape Epidemic – How Laws Around the World are Failing to Protect Women and Girls from Sexual Violence*, and in 2019, *Roadblocks to Justice - How the Law is Failing Survivors of Sexual Violence in Eurasia*, a groundbreaking report in the region.

Contact information

For any questions on the meeting or the report, please contact Ms. Renata Preturlan at rpreturlan@ohchr.org / vaw@ohchr.org .

Meeting agenda

Date: 27 May 2020

EGM Rapporteurs: Alexandra Patsalides and Divya Srinivasan, Equality Now

Time	Item	Speakers
13:00 – 13:10	Introduction; presentation of agenda	Dubravka Šimonović, SRVAW Yasmeen Hassan, Global Executive Director, Equality Now
13:10 – 13:30	Opening remarks and moderation, presentation of report and goals	SR VAW

13:30 – 15:00

Panel 1: International and regional standards to address rape and perspectives on challenges to States upholding them

Current problems of criminal legislation on rape:

- Definition (force vs. consent)
- Scope of legal provisions
- Exclusions of criminalization of the perpetrator
- Marital rape
- Age of sexual consent / statutory rape
- Statutes of limitation, during conflict and peace
- Rape during war and conflict; clash of national and international law

Rape as grounds for abortion

- Is rape grounds for abortion under criminal law - according to the global and regional instruments on peace / war

Aggravating and mitigating circumstances; prosecution of rape.

- Is rape by spouse an aggravating circumstance? Should it be?
- Provisions that allow for the non-prosecution of perpetrator?

Prosecution

- Ex officio vs. ex parte prosecution
- The plea bargain
- Statute of limitations for prosecuting rape (including rape of children)
- Standard of proof for rape
- Victimization - Rape-shield provisions preventing exposing a woman's sexual history during trial
- Re-victimization during the prosecution and court proceedings

Key jurisprudence on rape (Vertido and other cases)

Evolution of the international framework:

- Prof. Christine Chinkin

Current international standards on the definition of rape; concluding observations and jurisprudence examples of shortcomings; application during war and conflict, presentations by expert mechanisms based on panel topics (listed on the left)

- Hilary Gbedemah, CEDAW
- Marceline Naudi, GREVIO
- Tatiana Rein, MESECVI
- Ivana Radačić, WGDAW
- Margarete May Macaulay, R-IACHR

Other issues:

- Amanda Dale; scholar; rape as part of broader definitions of sexual assault
- Jane Connors; UN Victims' Rights Advocate; victims' perspective in rape cases

15:00 – 15:30	Open debate	
15:30 – 15:45	Break	
15:45 – 17:15	<p>Panel 2: International Civil Society and Institutional Responses to Rape Today</p> <p>Current UN and regional documents on rape UN reports, UN and regional resolutions on rape, other projects</p> <p>Current NGO reports on rape Key findings</p>	<ul style="list-style-type: none"> • Amarsanaa Darisuren, OSCE • Genoveva Tisheva, CEDAW jurisprudence <p>An overview of reports and practice on rape from NGO's work and current perspective</p> <ul style="list-style-type: none"> • Anna Blus, Amnesty International • Olivia Björklund Dahlgren, FATTA • Anna Zobnina, European Women's Lobby • Antonia Kirkland & Jacqui Hunt, Equality Now • Nisha Varian, Human Rights Watch • Cheryl Thomas, Global Rights for Women • Sara Hossain, BLAST • Rosalyn Park, The Advocates for Human Rights • Mary Ellsberg, George Washington University
17:15– 17:45	Open debate	
17:45 – 18:00	Break	

18:00 – 18:45	<p>Panel 3: Law and Practice in Different Parts of the World</p> <p>Data and practice; implementation, or lack thereof, of rape legislation</p> <p>Specific problems and solutions from different parts of the world</p> <p>Rape and custody of a child - should rapists have parental rights?</p>	<p>Data on the prosecution of rape; main challenges</p> <ul style="list-style-type: none"> • Prof. Sylvia Walby; scholar, attrition rates as indicators • Vrinda Grover (India/Asia); • Brisa De Angulo, CEO & Founder, A Breeze of Hope, & Bárbara Jiménez-Santiago, Equality Now (Americas) – Impunity for sexual violence against adolescent girls • Tamar Dekanosidze, Equality Now (Eurasia) • Asma Khader, SIGI (Mena Region) • Judy Gitau, Equality Now (Africa)
18:45 – 19:00	Open Debate	
19:00 – 19:15	Closing remarks	SR VAW

Annex 1 - Questionnaire on criminalization and prosecution of rape

Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing a full transcripts of the relevant articles of the Criminal code and the Criminal procedure code.
2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific covering women only YES/NO
 - b. Gender neutral covering all persons YES/NO
 - c. Based on the lack of consent of victim, YES/ NO
 - d. Based on the use of force or threat YES/ NO
 - e. some combination of the above YES / NO
 - f. Does it cover only vaginal rape YES /NO
 - g. Does it cover all forms of penetration YES/NO. If yes, please specify.
 - h. Is marital rape in this provision explicitly included YES / NO
 - i. Is the law silent on marital rape YES/NO
 - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included YES/NO
 - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO
3. Is there any provision that is excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so please submit it.
4. What is the legal age for sexual consent?
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Aggravating and mitigating circumstances

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
 - a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
 - b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO
 - c. Is rape by spouse or intimate partner an aggravating circumstance?
9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.
10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?
 - a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
 - a. if the perpetrator marries the victim of rape? YES/NO
 - b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/N

Prosecution

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO
13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO
14. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO
15. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO
16. Please provide information on the statute of limitations for prosecuting rape.
17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO
18. Are there mandatory requirements for proof of a rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.
19. Is there the rape-shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

War and / or conflict

21. Is rape criminalized as a war crime or crime against humanity? YES/NO



22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Other

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the state accountability of perpetrators in your legal and social context not covered by the above.

Annex 2: Available reports

UN System:

- UN Women, OHCHR, ILO, UNDP, UNESCO, UNFPA, WHO, “A Framework to Underpin Action to Prevent Violence against Women”, 2015, <https://www.ohchr.org/Documents/Issues/Women/WRGS/PreventionFrameworkNov2015.pdf>
- UNODC, “Handbook on Effective Prosecution Responses to Violence against Women and Girls”, 2014. http://www.unodc.org/documents/justice-and-prison-reform/Handbook_on_effective_prosecution_responses_to_violence_against_women_and_girls.pdf
- UN WOMEN, “Handbook for legislation on violence against women”, 2012. https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2012/12/unw_legislation-handbook%20pdf.pdf?la=en&vs=1502
- World Bank, “Closing The Gap: Improving Laws Protecting Women from Violence”, <http://pubdocs.worldbank.org/en/349811519938655769/Topic-Note-Protecting-Women-from-Violence-EN.pdf>

NGOs:

- Amnesty International, “Rape and sexual violence: Human rights law and standards in the International Criminal Court”, 2011. <https://www.amnesty.org/download/Documents/32000/ior530012011en.pdf>
- Amnesty International, “Right to be free from rape: Overview of Legislation and State of Play in Europe and International Human Rights Standards”, 2018. <https://www.amnesty.org/download/Documents/EUR0194522018ENGLISH.PDF> 2018 (the most major update since then being the change of the definition of rape in Greece, which is consent-based since June 2019)
- Amnesty International, “Overcoming barriers to Justice for Women Rape Survivors in Denmark”, March 2019: <https://www.amnesty.org/en/documents/eur18/9784/2019/en/>
- Amnesty International, “Time for Change: Justice for Rape Survivors in the Nordic Countries”, April 2019: <https://www.amnesty.org/en/documents/eur01/0089/2019/en/>
- Equality Now, “The World’s Shame: the Global Rape Epidemic”, 2017. https://www.equalitynow.org/the_global_rape_epidemic_learn_more
- Equality Now, “Roadblocks To Justice: How The Law Is Failing Survivors Of Sexual Violence In Eurasia”, 2019. https://d3n8a8pro7vhm.cloudfront.net/equalitynow/pages/1581/attachments/original/1547485403/EN-Eurasia_Rpt_ENG_-_Web.pdf?1547485403
- European Women’s League, “EWL’s Barometer on Rape in the EU”, 2013. https://www.womenlobby.org/IMG/pdf/ewl_barometre_final_11092013.pdf
- Sisters for Change, Comparative Legal Review of Anti-Discrimination & Equality Legislation Across the

Commonwealth <https://www.sistersforchange.org.uk/2019/12/13/comparative-legal-review-of-anti-discrimination-equality-legislation-across-the-commonwealth/>

- Sisters for Change, Criminalisation of Marital Rape and Intimate Partner Sexual Violence Across the Commonwealth <https://www.sistersforchange.org.uk/2019/12/13/the-criminalisation-of-marital-rape-and-intimate-partner-sexual-violence-across-the-commonwealth/>
- Sisters for Change, Comparative Legal Review of Gender Recognition Laws across the Commonwealth <https://www.sistersforchange.org.uk/2019/12/13/comparative-legal-review-of-gender-recognition-laws-across-the-commonwealth/>
- Sisters for Change, Comparative Legal Review of the impact of Muslim Family Laws on Women across Commonwealth Asia and Africa <https://www.sistersforchange.org.uk/2019/11/19/comparative-legal-review-of-the-impact-of-muslim-family-laws-on-women-across-commonwealth-asia-and-africa/>