



# RAPE AS A GRAVE AND SYSTEMATIC HUMAN RIGHTS VIOLATION AND GENDER-BASED VIOLENCE AGAINST WOMEN

EXPERT GROUP MEETING  
REPORT 2020



# ABOUT THE MEETING

On 27 May 2020, the UN Special Rapporteur on violence against women, its causes and consequences (UN SR VAW), Ms. Dubravka Šimonović and the Office of the High Commissioner on Human Rights (OHCHR), in collaboration with Equality Now, co-organized a virtual Expert Group Meeting (EGM) on rape as a grave and systematic human rights violation and gender-based violence against women. More than 30 experts attended the meeting, including academics, gender equality and women's rights activists, practitioners, UN and independent mechanisms experts, and civil society organizations from around the world.

The purpose of the EGM was to gather information on the evolution of the international human rights framework on rape, international standards regarding its definition and prosecution, the challenges and gaps in criminal legislation worldwide on rape, and the implementation of that legislation. The meeting 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 by the SR VAW in April, the EGM will contribute to the elaboration of the report by the UN SR VAW to be presented to the UN Human Rights Council in 2021.

The aim of the SRVAW's 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. Recommendations are provided on key international human rights standards that should be integrated into national criminal justice responses 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.<sup>1</sup>



**Dubravka Šimonović,**  
UN Special Rapporteur on violence against  
women, its causes and consequences



**Yasmeen Hassan,**  
Global Executive Director, Equality Now

Cover Photo: Kisha Bari

<sup>1</sup> The concept note for the EGM was prepared by the SRVAW and Equality Now.

# RAPE AS A GRAVE & SYSTEMATIC HUMAN RIGHTS VIOLATION & GENDER-BASED VIOLENCE AGAINST WOMEN:

## EXPERT GROUP MEETING REPORT, 27 MAY 2020

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### TABLE OF CONTENTS

- PAGE 4 [Opening Session: Introduction and Presentation of Agenda and Report](#)
- PAGE 5 [Panel 1: International & Regional Standards to Address Rape & Perspectives on Challenges to States Upholding Them](#)
- PAGE 12 [Panel 2: International Civil Society & Institutional Responses to Rape Today](#)
- PAGE 22 [Panel 3: Law & Practice in Different Parts of the World](#)
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### ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
COVID-19	Coronavirus Disease
EGM	Expert Group Meeting
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
MENA	Middle East and North Africa
UNODC	United Nations Office on Drugs and Crime
UN SR VAW	UN Special Rapporteur on Violence Against Women, its Causes and Consequences

# OPENING SESSION

**Dr. Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences** explained that she would be focusing on the issue of rape as a grave and systematic human rights violation, crime and gender-based violence against women in her next report to the Human Rights Council. Her report will identify gaps and key concerns in States' efforts to prevent, sanction and address rape, and will provide recommendations and a Model Law on rape to provide guidance on harmonizing national criminal laws with international human rights standards and jurisprudence. She highlighted that despite the criminalization of rape in most States, the laws across States had varying and inadequate legal standards on rape including in relation to definitions of rape, scope of the offense, aggravating and mitigating circumstances, the statute of limitations, and the like. This points to the need for harmonization of rape laws in line with international standards. The Special Rapporteur also explained that most rapes are not reported, and are not well prosecuted even if they are reported. All these factors result in a culture of impunity for rape and the normalization of rape.

**Ms. Yasmeen Hassan, Global Executive Director, Equality Now** highlighted the very low levels of reporting in rape cases due to various reasons such as stigma, victim-blaming, "honor" killings, or lack of faith in the judicial system as borne out by the steep attrition rate in rape cases. Noting that national judicial systems have largely failed.

Ms. Hassan highlighted the illustrative case of [Equality Now and Ethiopian Women's Lawyers Association v. Ethiopia](#) before the African Commission on Human and Peoples' Rights to underscore the point that even when

*Globally, 1 in 3 women are subjected to gender-based violence.*

*1 in 10 girls has experienced forced sexual acts.*

justice was obtained through the international human rights system, the survivor had spent 17 years of her life attempting to get justice from slow and unresponsive systems. Justice delayed is justice denied. She noted that the COVID-19 pandemic is exacerbating sexual violence in the home, particularly against girls.

She stressed that a sea change is required to end sexual violence wherein legal change goes hand-in-hand with social change, as has taken place for example with the [#MeToo](#) movement which has achieved a lot in terms of awareness and accountability, accompanied by arrests, convictions, and firing of high-profile perpetrators in the U.S. She concluded that achieving such change requires "strong victim-centered laws and procedures, gender-sensitive investigations and prosecutions, and services for survivors".



# PANEL 1: INTERNATIONAL AND REGIONAL STANDARDS TO ADDRESS RAPE AND PERSPECTIVES ON CHALLENGES TO STATES UPHOLDING THEM

**What are the current international and regional standards on the definition and prosecution of rape? What are the shortcomings and challenges in relation to States applying these standards?** In this session, the Special Rapporteur convened global and regional monitoring mechanisms on human and women's rights to reflect on their approach to addressing rape within their respective mandates, and the lessons learned from international and regional jurisprudence on rape, including the application of rape law during war and conflict.

**MODERATOR: Dr. Dubravka Šimonović, Special Rapporteur on violence against women, its causes and consequences**

**Professor Christine Chinkin, London School of Economics and Political Science** explained the evolution of the international framework in relation to rape, beginning with the prohibition of rape during warfare under international humanitarian law, the subsequent designation of rape as a war crime and a crime against humanity under international criminal law, and the development of States' obligations at the international level through the evolution of 'soft law' and the creation of a catalog of good practice.

Professor Chinkin highlighted the following points of note:

- With regard to *legal framing*, rape is not generally dealt with separately in international instruments but is integrated into the development of norms relating to gender-based violence against women and primarily framed within the principles of non-discrimination and inequality. In the regional human rights frameworks where standards evolved through case law, rape is primarily framed through treaty provisions relating to torture and cruel, inhuman degrading treatment and privacy and family rights; as opposed to discrimination-framing.
- There is a presumed divide between rape in the context of conflict and so-called everyday rape. For instance, in the [Women, Peace and Security Agenda of the Security Council](#), rape is addressed as a tactic of war, and human rights are not given traction. However, this divide is breaking down and must be rejected based on a grounding of existing and continuing inequalities. The CEDAW Committee's position is that the Convention remains applicable in armed conflict and thus rape in conflict falls under CEDAW.
- Rape is often invisible in other legal frameworks such

as those related to torture, slavery, genocide, forced and child marriage, and trafficking; though rape is part of the reality that these frameworks address.

- State obligations concerning the provision of services are often presented as matters of welfare, humanitarian or other measures, and are not viewed as legal entitlements. The issue of a woman's legal entitlement to abortion following rape remains ambiguous.
- Important issues surrounding rape laws include the definition of rape, and particularly whether coercive circumstances that negate consent as applicable in international criminal law have a place in human rights law, the evolution of the required standard of investigation, and the issue of combating gender-based stereotypes relating to access to justice.

Professor Chinkin questioned whether the legal evolution of rape standards has been too ad-hoc and piecemeal, allowing States to avoid their obligations. This raises the question of whether there should be an international legal codification of rape standards, or whether such codification may result in a loss of flexibility and contextuality.

*Many of these issues go to that of prevention and how the law can be used as a tool to shift mindsets and the culture of rape sustained by structural and intersecting inequalities such as those based on race, class, sexuality, disability.*

### **Ms. Hilary Gbedemah, Chair, CEDAW Committee**

highlighted the work of the CEDAW Committee in relation to rape and noted that the CEDAW Committee in its constructive dialogues systematically calls for information on legislation and data relating to reporting, prosecution and convictions of rape.

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### **CEDAW AND RAPE**

Rape is contextualized by the CEDAW Committee within the framework of violence against women under Article 5 of [CEDAW](#), as further expanded in [General Recommendation 19](#). There is also an association between violence against women and several human rights, such as the right to life, the right to not be subjected to torture, cruel, inhuman and degrading treatment, the rights to dignity, security, equal protection, and the right to the highest attainable standard of health, etc.

[General Recommendation 33](#) on women's access to justice deals with evidentiary rules, including for rape, and requires that evidentiary rules should not be overly inflexible, restrictive, or influenced by stereotypes. The communication by the CEDAW Committee in [Vertido v. The Philippines](#) highlights the issue of stereotyping and the need to target the evidentiary rules and judicial training (particularly in the lower levels of courts) to ensure that stereotypes and rape myths are addressed. The rape myths found in the Vertido case include myths regarding the ability to escape, timid personality (i.e. strong personalities cannot be raped), need for evidence of direct threat and injuries, issue of understanding rape within the context of acquaintance rape, and the age of the aggressor. These myths compound other familiar rape myths such as those related to the appearance and character of the victim, and the time and place of the rape. [General Recommendation 35](#) on Gender-Based Violence delineates State obligations at all levels, including protection, prosecution, reparations and data collection, and training of judiciary and law enforcement.

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Ms. Gbedemah queried how a model law on rape would function when the interpretation of the same law into local languages and contexts could vary widely. She emphasized that often the definition of rape varies in the same legal provision in the local language and in the translation. For example, in some countries, the word for rape in the local language is sex by force, though the English translation of the law may define rape as sex without consent. She noted that areas of concern include rape in the workplace which is often minimized when

covered under sexual harassment; access to justice of disadvantaged sectors such as women with disabilities, migrant women, older women, and trafficked women; the lack of attention to the impact of rape (such as post-traumatic stress disorder, the impact of the rape on families, jobs and the issue of re-victimization), which is not addressed effectively; and forms of rape that are not articulated under the law, such as marital rape (which has an implication in culture and religion), and "corrective" rapes.

### **Dr. Marceline Naudi, President, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)**

detailed relevant aspects of the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence (known as the [Istanbul Convention](#)). She explained that GREVIO has completed the monitoring of 13 States Parties to the Istanbul Convention, where it is legally binding. Dr. Naudi noted that a number of States, such as Montenegro, Portugal, and Sweden, have amended their laws to ensure full or partial compliance. Many States are yet to ensure that all non-consensual sexual acts are criminalized in line with the Istanbul Convention. She went on to detail approaches to consent-based definitions of rape.

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### **ISTANBUL CONVENTION ARTICLES RELEVANT TO RAPE**

- Article 36 requires States Parties to criminalize all forms of non-consensual sexual acts including rape and mandates that non-penetrative sexual acts should also be covered. The central element of the Convention's definition of sexual violence is the lack of consent given voluntarily by the victim, without emphasizing use of force or threat or requiring proof of resistance by the victim. Article 36(2) requires that the prosecution of sexual offenses shall be based on a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether or not the victim has freely consented to the sexual act.
  - Article 25 requires States Parties to "take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centers for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counseling for victims".
  - Article 16 requires the setting up treatment programs for sex offenders.
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## APPROACHES TO A CONSENT-BASED DEFINITION OF RAPE

- *Two-Tiered Approach* keeps the rape provision that requires the use of force/threat/coercion and adds another provision that is based entirely on consent. The issue with this approach is that the force-based provision normally carries a harsher punishment, which can promote the idea of so-called “real rape” that is based on force. An example of this approach is the Austrian legislation which has separate offenses on rape and sexual integrity.
- *No means No Approach* does not require the use of force/threat/coercion but requires the sexual intercourse to have happened “against the will of a person”. The risk here is that criminal proceedings will place all the attention on the behavior of the victim, possibly resulting in non-conviction for rape where the lack of consent cannot be clearly established.
- *Only Yes means Yes Approach* is based on consent but which criminalizes sexual intercourse or other sexual acts with a person “who is not participating voluntarily” as opposed to “against the will of a person”. This approach aims to ensure that the criminal proceedings will focus on the behavior of the perpetrator (to determine what he did to establish consent etc.) rather than that of the victim. An example of this approach is the Swedish law on rape.

**Ms. Tatiana Rein, Chair, Committee of Experts of the Follow-up Mechanism to the Belém do Pará Convention (MESECVI)** outlined the work done by the Committee of Experts of MESECVI in analyzing the situation of States Parties to the [Belem do Pará Convention](#) regarding rape and access to justice, particularly the [Hemispheric Report on Sexual Violence and Child Pregnancy in the States Party to the Belém do Pará Convention](#) (2017). She noted that despite the general recognition of rape as a crime, 15 countries in the region do not consider sexual violence or rape as a crime when it is perpetrated inside marriage.

Ms. Rein highlighted another major problem which is the gap between the existing laws and the mechanisms for the effective enforcement of these laws, especially when the acts are committed against girls between 10 and 14. At least 10 States of the region establish mitigating circumstances in cases of sexual violence against girls, which perpetuate gender stereotypes against them. Such circumstances include the existence of reasonable causes for believing that the girl was older than 14 or 16, evidence of which must be provided by the aggressor, the exoneration of criminal liability when the victim is the wife of the accused, and the excusing of criminal liability in cases where the aggressor can demonstrate the consent of the victim in cases of girls aged 12 to 16. The penalties for sexual violence against girls vary widely in the region, ranging from 2 years of imprisonment to a life sentence in some States in the Caribbean.

The Committee of Experts has emphasized the importance

of criminalizing sexual violence perpetrated by State agents as a war crime and a crime against humanity, and to ensure its punishment. In this regard, only 15 States in the region punish violence perpetrated by the State or its agents, and 15 do not punish it. Ms. Rein highlighted the example of Colombia, where a [2014 law](#) stipulates that sexual violence may constitute a crime against humanity, and includes forms of torture that may have a disproportionate impact on women, such as forced nudity. Another issue is the lack of available records and statistics on violence against women in general, as well as a lack of data on sentencing. There is a need for advancement in generating data on access to justice indicators in this area.

**Ms. Ivana Radačić, Member, UN Working Group on Discrimination against Women (WGDW)** noted that the Working Group views gender-based violence as a cross-cutting issue. The Working Group has received various communications where it has seen issues such as rape threats being used as intimidation against women human rights defenders, rape in armed conflict, the lack of effective remedies for rape, particularly for women facing intersecting forms of discrimination such as women with disabilities; the lack of access to services and sexual and reproductive health services, such as access to abortion and contraception; proposals to further restrict abortion laws, and issues of judicial stereotyping in the interpretation of the rape offense.

Through its country visits, the Working Group has noted that a concern in Central and Eastern Europe is the continued focus on coercion or the use of force in the

rape definition in many countries. Despite the decision of the European Court of Human Rights in [MC v Bulgaria](#), prosecution of rape cases is still focused on force and resistance. Other problems with access to justice noted through the country visits include high attrition rates, low penalties, stereotyping by both the judiciary as well as the media, victim-blaming (including by religious leaders), and the lack of specialized centers to provide services to rape survivors. Certain populations also face specific vulnerabilities, including asylum-seekers and refugees, and girls. For example, in Central America, rape in many cases can restrict access to education, particularly when teenage pregnancy is caused as a result of rape. There is continued impunity for marital rape in many countries in the world.

The Working Group is focusing on the availability of reproductive rights, including the availability of emergency contraceptives and abortion in cases of rape. In some countries, abortion is not available by law, or the exceptions are very narrow. Even where such rights are available by law, they are often not available in practice. The Working Group has highlighted the issue of sexual violence in many of its thematic reports, including a [report on women deprived of liberty](#), which highlights the issue of women being jailed for being raped (for the crime of engaging in extra-marital sex), and girls vulnerable to rape being put in “protective” custody, and a [report](#) on the elimination of discrimination against women in the area of health and safety, which highlights the issue of “corrective” rape for lesbian women and girls; and calls for decriminalization of abortion in rape cases.

The Working Group advocates for the ‘consent plus’ or the affirmative consent definition in rape cases, for integrated and victim-centric services, including access to emergency contraception and abortion, particularly abortion on request as opposed to exception-based legislation.

*A big focus of the Working Group is on the issue of stereotyping, as this lies in the heart of discrimination against women and girls.*

**Ms. Margarette May Macaulay, Rapporteur on the Rights of Women of the Inter-American Commission on Human Rights (IACHR)** provided an overview of the evolution of the concept and legal classification of rape within the Inter-American human rights system. The IACHR and

the Inter-American Court have issued a number of key decisions in this regard, with the Court stressing that rape is an extremely traumatic experience that can have severe causes and consequences, including physical and psychological damage.

*In many criminal codes, values such as honor, virginity, chastity, and good morals prevail over values such as the mental and physical integrity of women and her sexual liberty, thereby impeding due protection under the law of victims of such crimes, or compelling them to prove that they resisted in the crime of rape, or subjecting them to interminable procedures which re-victimizes them.*

In the case of [González Pérez v. Mexico](#) (2001), the IACHR’s report developed the concept of rape as torture and a violation of a woman’s right to a private life and highlighted the specific obstacles faced by indigenous women. The IACHR concluded that the pain and humiliation experienced by the women were aggravated by the fact that they were indigenous women who did not know the language of their assailants or the authorities involved in the process of accessing justice, and by the fact that they were ostracised by their own communities because of the crime committed against them. The IACHR has noted that the due diligence responsibilities of State authorities must be reinforced, as the negligence of State authorities could result in even more serious physical and psychological effects on the victim.

The recent ruling of the Inter-American Court in the case of [Linda Loaiza López Soto v. Venezuela](#) (2018), concluded that the State, because of its inability to prevent or investigate kidnapping, torture and sexual violence against the petitioner, was responsible for enabling sexual slavery and torture. For the first time, sexual violence committed against a woman by an individual was classified as torture under the Inter-American system.

Ms. Macaulay emphasized that the requirement of use



of force has been widely used in many jurisdictions. It is often extremely hard to prove and the Inter-American system has noted that a broader understanding of this element should include the actual use or threat of force, or taking advantage of a coercive environment that may have undermined the victim's ability to give genuine, voluntary consent. She also highlighted that in the case of sexual violence committed against adolescents, the Inter-American human rights system has stated that there must be presumption of sexual assault in all such cases where sexual intercourse is proved. In such cases, victims tend to remain silent for a long time before making complaints. This could be due to a fear of not being believed, family consequences that the revelation may cause, or because they have blocked the memory. Thus, the IACHR has recommended extending the statute of limitations period for crimes committed against children.

In the case of "[Las Dos Erres](#)" [Massacre v. Guatemala](#) (2009), the Inter-American Court found that during armed conflict, women are particularly chosen as victims of violence and, in this context, rape is directed to destroy the dignity of women at a cultural, social, familial and individual level.

**Dr. Amanda Dale, International human rights scholar and activist** explained that while Canada has a progressive legal regime, there is a gap between the legal regime and its effects on the social problem of sexual harm and the experiences of sexual violence survivors. She noted that in Canada, there were low reporting rates, weak prosecution, low conviction rates, a culture of impunity, and a persistent theme in the legal system where the aim of defense lawyers is to destroy the victim's credibility.

There is no classification of rape per se under the Canadian [Criminal Code](#), just a broad classification of sexual assault. However, Dr. Dale noted that despite the broad range of offenses established under sexual assault, these offenses have been incredibly hard to prosecute, with high attrition rates (50% of charges are dropped by the Crown and never even reach the court) and the prosecution and the bench being brought up in and negatively affected by a system aimed at breaking down the witness/complainant. With regard to the law itself, there are some issues with aggravated sexual assault only (including e.g. use of weapons or causing bodily harm, which implies that rape itself is not bodily harm) being viewed as "real" sexual assault. There are now [rape shield laws](#), which protect the complainant from the overuse of sexual history, and there are procedures required to call for therapeutic records.

Before the introduction of rape shield laws, these types of evidence would often be used by the defense to try to account for promiscuity or mental illness on the part of the victim - the two poles of defense strategy commonly used to disparage the victim's character.

While the definition of consent is fairly progressive in the legal regime, in practice the system is riddled with rape myths amongst both defense counsel and the police. Dr. Dale emphasized the intersectional barriers faced by some victims, particularly in the case of indigenous women, women with disabilities, women who have precarious status, women who have had involvement with the law, and women in prostitution - who all report extremely high level of sexual harassment, rape, and coercion without access to justice.

*The police tend to deem rape complaints as unfounded, including in up to 80% of rape complaints in some regions.*

Dr. Dale pointed out the need for clarification on the level of intoxication and consent. Women who are unconscious cannot consent, but other issues around drinking are less clear and a woman's intoxication is used frequently as a defense tactic and judges have found in favor of defendants in far too many cases where women were clearly unable to consent. Dr. Dale highlighted an innovative program in Canada, whereby victims are provided legal support through government-funded advocates who are allowed to accompany women through the process and said that funded independent legal advice is available in some provinces.

**Ms. Jane Connors, UN Victims' Rights Advocate** explained the role of the Victims' Rights Advocate which was created in 2017, aimed at ensuring that the victim's rights are at the center of prevention and response, and in assisting victims with obtaining individual accountability for sexual exploitation and sexual abuse by United Nations personnel. She noted that the UN does not have its own legal system or civil/criminal jurisdiction and that it can only issue disciplinary sanctions against its personnel. The UN relies on Member States to pursue investigations against their nationals who are perceived to be involved in sexual abuse or exploitation. The [bulletin](#) issued by the UN Secretary-General (2003/13) defines sexual abuse, and this definition has a focus on inequality of power which is not normally seen in domestic sexual violence legislation. The bulletin also indicates that any sexual

activity in relation to a child under the age of 18 is regarded as abuse, with no exceptions for mistake in age, or age of consent legislation in a particular country. However, there is an exception in the case of child marriage, though this exception does not apply much in practice.

Ms. Connors emphasized that the UN is taking steps to prevent a “revolving door” by using a system-wide database called [Clear Check](#) to ensure that former UN personnel with one entity in the UN system involved in substantiated cases of sexual harassment, exploitation, and abuse cannot be employed by another UN entity. Ms. Connors highlighted that in the case of international and uniformed personnel, the jurisdiction to prosecute cases of sexual abuse and exploitation remains with the State of nationality of the UN personnel. A critical issue here is the need for national law to provide for extra-territorial jurisdiction of national courts in such cases. Many States provide for extra-territorial jurisdiction only when the victims are children, such as in the case of child sex tourism. In most States, extra-territorial jurisdiction does not apply in cases of adult victims. Even when extra-territorial jurisdiction exists, there are challenges in ensuring individual accountability, due to dependence on the definition of sexual abuse and age of consent in the State of jurisdiction, difficulty in gathering evidence from a foreign jurisdiction, and the necessity to cooperate with the State where the incident occurred.

*Based on my experience...the victims are after support and assistance. Very frequently, they are left with children...they are interested in receiving support for those children, something to go forward, something to support them to gain the capacity to earn a living, which will reintegrate them within a community.*

Ms. Connors reinforced that a real challenge is the lack of availability of support and assistance services for victims, particularly in remote areas and high-risk areas where there is armed conflict, and there is also a lack of legal services for victims of sexual exploitation and abuse.

## DISCUSSION

Experts discussed the issue of gender-neutral rape laws and acknowledged that while all persons including sexual minorities must be protected from rape under the law, a gendered perspective is also required as there is a trend of gender-based violence targeted at women because they are women. Rape is grounded in patriarchy and discrimination and those arguments need to be made. Standards should be inclusive, but not gender blind. The importance of sexuality education in efforts to prevent sexual violence was also emphasized, particularly since sexuality education is not provided to children in many countries. Even when it is provided, it is often not mandatory or is not comprehensive in nature.

Recognizing the various factors which lead to delays in reporting rape, particularly in cases of child sexual abuse, a debate followed about the need to do away with statutes of limitation in rape cases in both conflict and “everyday” situations, and the importance of raising awareness amongst victims so they can acknowledge and express that they have been sexually abused. A consensus emerged that there should not be any applicable statute of limitations in sexual violence cases in cases of both child and adult victims.

One expert argued that plea bargains could be used effectively to get convictions in rape cases, especially if the prosecutor agrees to a lesser sentence but ensures that certain minimum requirements such as the offender getting some jail time, being registered as a sex offender, etc. are met. The benefit of plea bargains is that victims will not have to testify in Court, which can often be a form of re-victimization. However, another expert noted that plea bargains can sometimes be misused and could impact on the justice received by the victim. Participants noted their opposition to the death penalty in all cases.

The issue of prosecutorial independence was also highlighted as, in some countries, a single individual/prosecutor is given the discretion to decide whether or not to take forward the prosecution in a rape case. This could impinge on access to justice for rape victims.

# KEY POINTS: INTERNATIONAL AND REGIONAL STANDARDS TO ADDRESS RAPE AND PERSPECTIVES ON CHALLENGES TO STATES UPHOLDING THEM

- Across the world, there is a culture of impunity for rape, which is demonstrated by low levels of reporting and high attrition rates in rape cases. Rape myths and gender-based stereotyping by police, judiciary, and the media are some of the main factors impeding access to justice for rape victims.
- Consent definitions in rape law need to move towards a standard of affirmative consent or “Yes means Yes”, wherein voluntary participation by both parties is required for sexual acts.
- Loopholes in sexual violence laws include phallogentric rape definitions that fail to cover all non-consensual sexual acts including non-penetrative acts; the failure to criminalize marital rape in many countries; and the lack of extra-territorial jurisdiction for sexual offenses. In addition, too short statute of limitation periods for rape cases impedes access to justice for survivors, particularly in relation to child victims who may find it difficult to raise a complaint before they reach the age of majority.
- Rape survivors need access to comprehensive support and services, including free healthcare services, access to abortion and emergency contraceptives (both in law and practice), trauma support and counseling, and legal aid and assistance through the legal process. Many countries have successfully provided such services through the establishment of specialized centers that are staffed with experts who are trained in issues relating to gender-based violence.
- Marginalized communities who face intersecting forms of discrimination including, for example, women of color, indigenous women, women with disabilities, migrant women, persons from sexual minorities, and women from minority communities, as well as adolescent girls, appear to be disproportionately affected by sexual violence and also face severe and added obstacles to accessing justice.
- Sexual violence perpetrated by State agents is a serious concern which is not separately dealt with in most international human rights instruments. States need to pass domestic legislation punishing sexual violence by State agents as torture/war crimes/crimes against humanity and remove barriers to prosecuting State agents (such as laws which require government permission to prosecute).



# PANEL 2: INTERNATIONAL CIVIL SOCIETY AND INSTITUTIONAL RESPONSES TO RAPE TODAY

**What are the institutional and international civil society responses to rape today?** The panel explored the findings of available research on rape laws and their implementation and highlighted challenges and advances in rape law reform and practice in various regions.

**MODERATOR: Jacqui Hunt, Europe and Eurasia Director, Equality Now**

**Ms. Amarsanaa Darisuren, Senior Adviser on Gender Issues, Organisation for Security and Co-Operation in Europe (OSCE)** referred to violence against women as a severe security threat to those who experience it, with negative repercussions affecting the security of society as a whole. In 2019, the OSCE launched a flagship survey on the [Well-being and Safety of Women in selected countries in South Eastern Europe and Eastern Europe](#).<sup>1</sup> This survey provides data on violence against women in conflict, post and non-conflict settings, as well as the impact of violence on women and girls and attitudes towards women. The survey confirmed the very prevalent view that it was okay to “have sex” even if the woman did not want it and that intimate partners are the most common perpetrators of sexual violence. In cases where a perpetrator is not a partner, it was found that he will most likely be an acquaintance of the victim. Only 22 out of 57 OSCE participating States have laws explicitly criminalizing marital rape. This number has increased in recent years, which can be attributed to the impact of the Istanbul Convention.

*Three in ten women say that they have experienced physical and/or sexual violence since the age of 15 at the hands of a partner or non-partner. Over two-thirds of women think that violence against women and girls is common in their communities, and a fifth think it is very common.*

Regarding sexual violence in conflict, the OSCE survey showed that a significant number of women make a connection between conflict and sexual violence. Data show women whose partner fought in a conflict are more likely to experience intimate-partner violence, and that such violence is likely to be more severe. Survivors are less likely to report their experience of sexual violence to the police during times of conflict. This is particularly true for refugee and returnee women.

Ms. Darisuren highlighted the example of Eastern Ukraine, where it has been reported that there has been an increase in pregnancies among young women, demonstrating the direct impact of the conflict on women’s security. However, official data reveal that there have also been many fewer reports of domestic violence and sex crimes in the conflict areas than in the rest of Ukraine. This indicates that there is a lower rate of reporting in conflict settings.

Through the work of OSCE observers in Bosnia and Herzegovina, it was found that 28% of wartime cases involved sexual violence. There was a conviction rate of around 77% in such cases. Trials are still ongoing 25 years later. Based on the number of convictions secured, progress can be said to have been made and the OSCE observed positive developments, such as a more sensitive approach in court towards survivors and witness support services. There has also been an improved recognition of evidentiary standards where judges have been seen to apply more consistently the rules which prohibit questioning a victim about her prior sexual conduct, thereby showing an improved understanding of the credibility of victims as sole witnesses.

Ms. Darisuren highlighted a [publication](#) by the OSCE’s Office for Democratic Institutions and Human Rights on preventing sexual violence and gender-based violence in places of deprivation of liberty which

<sup>1</sup> Selected OSCE participating States, including Albania, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia, Moldova and Ukraine. The research was also conducted in Kosovo.

reviewed the dynamics and consequences and provides recommendations to States on how to prevent such violence in this context.

Ms. Darisuren underlined the following recommendations:

- Special attention needs to be placed on rape within intimate-partner relations, particularly with respect to ensuring it is recognized as a form of violence in national legal frameworks.
- Clearer implementation strategies must be developed.
- Sexual violence cases should be prioritized and rape in institutions such as prisons should be examined.
- Greater improvement on aligning domestic legislation with the Istanbul Convention.
- Development of the capacity of law enforcement and multi-sectoral response models, and training with a survivor-centered approach, including improving the victim-blaming attitudes and gender insensitive response by first responders.
- Regarding justice for sexual violence survivors in conflict settings, there needs to be victim support at all stages of the trial proceedings; appropriate compensation and sentencing; and greater sensitization of prosecutors and judges.
- Civil society should be supported.

**Ms. Genoveva Tisheva, Member, CEDAW Committee**

provided an analysis of important CEDAW Communications where violations had been found and recommendations were made for compensation and reparation to the victim, in addition to general measures for better implementation of States' obligations with respect to Articles 2, 3, 5, 12, 15 and 16 of CEDAW. Ms. Tisheva noted that it was important to develop regional case law under the [European Convention on Human Rights](#) as the European Court of Human Rights has not considered sexual violence as a form of discrimination against women.

The following Communications of the CEDAW Committee were highlighted by Ms. Tisheva:

- In [Vertido v Philippines](#), the Committee found that the State had improperly relied on sex-based stereotypes and failed to provide an effective remedy to the survivor. The Committee had determined that judges should not base their decisions on preconceived notions of who can be considered a rape victim based on stereotyping and harmful rape myths. The Committee recommended that compensation be paid

to the complainant and that the Philippines review their rape definition to include lack of consent, as well as provide training for judges and law enforcement.

- The case of [R. P. B. v. the Philippines](#) involved a minor girl with disabilities who had been raped by her neighbor. The Committee stated that the investigation should have been conducted in an impartial manner without applying stereotypes relating to both sex and disability, and that assistance should be provided during the legal process, especially when the victim has disabilities. The lack of a consent-based definition of rape compounded the discrimination experienced by the victim.
- [S.V.P. v Bulgaria](#) was a case that had been brought by the victim's mother, involving an attempted rape of a girl who was 7 years old. At that time, attempted rape was not considered a serious crime in Bulgaria, and instead, the perpetrator was prosecuted for sexual molestation of a minor. The Committee found that in addition to the State being required to establish a reliable system for effective compensation and reparations for moral damages of victims of sexual violence, violence against women and girls should be defined and prosecuted, and the protection of the victim from sexual violence should be established through orders beyond the judicial proceedings.
- In exploring the elements of sexual violence, Ms. Tisheva presented the case of [Abramova v Belarus](#), where the Committee recommended that female prisoners should be attended to only by female officers in the detention facility, who would pay due respect to their privacy, dignity, and protection from sexual harassment, inhuman and degrading treatment.
- Additionally, in [Jallow v Bulgaria](#), which involved a migrant woman and her children suffering violence by her Bulgarian husband, the Committee emphasized the importance of greater protection being afforded to migrant women as they face additional challenges in reporting violence to the authorities as a result of their potentially precarious immigration status and gender stereotyping.
- Ms. Tisheva admitted that the Committee missed an opportunity to address the issue of re-victimization when assessing the effectiveness of the domestic remedies in [T.S. v Russia](#) which concerned the criminal investigation of a rape case. The Committee had declared the communication was inadmissible as the domestic remedies had not been exhausted. However, this resulted in the re-victimization of the victim who had already been re-victimized throughout the investigation process.

Ms. Tisheva expressed that achieving greater implementation of laws in the field of sexual violence is difficult and that the Committee faced challenges in making States adhere to the recommendations. However, she recommended providing better prevention and support services for victims; applying a greater focus on particularly vulnerable communities; establishing systems of protection and enabling victims with disabilities to participate in proceedings; as well as combating judicial stereotyping. Furthermore, she recommended that the tracking of long-term health and social impacts on women and girls be undertaken as this would determine their specific need for compensation and reparation.

**Ms. Anna Błuś, Amnesty International** presented the organization's [2018 European-wide report](#), which explored 31 countries in Europe and the European Economic Area. The report assessed whether legal provisions on rape were in compliance with the Istanbul Convention and regional and international standards. Amnesty International had also undertaken an overview study in 2019 on the barriers to accessing justice for rape and sexual violence survivors in the [Nordic countries](#) (Denmark, Finland, Norway, and Sweden). Ms. Błuś explained they decided to focus on these countries because of the image these countries have both internally and externally of having achieved gender equality, but surveys and other indicators demonstrate otherwise with respect to the prevalence of sexual violence and lack of access to justice. There is a strong and growing movement to change laws in Denmark, Finland, Norway, Sweden, and Iceland.

Ms. Błuś referred to the [EU-wide survey](#) undertaken by the EU Fundamental Rights Agency in 2014 on violence against women and the [Eurobarometre of 2016](#) which showed the prevalence of rape myths and stereotypes, and the beliefs around rape in the public.

*One in 20 women in the EU has been raped after the age of 15. This corresponds to over 9 million women. More than 1 in 4 people believe that sexual intercourse without consent may be justified.*

In Europe, out of 31 jurisdictions, only 9<sup>2</sup> recognize that sex without consent is rape. In the remaining countries, rape is defined on the basis of force, threat, coercion, or the victims' inability to defend themselves.

Some European countries had provisions where the rape definition included sexual intercourse with victims who were asleep or under the influence of alcohol and could not defend themselves.

Ms. Błuś updated the participants on the most recent developments in Europe:

- In **Spain**, prior to the COVID-19 pandemic, the government announced it would change its definition of rape. This was as a result of extensive campaigning and advocacy, spurred on by the #MeToo movement and protests following the high profile gang-rape case 'La Manada' (The Wolfpack).
- In **Denmark**, amendments to the definition of rape are expected as a result of years of campaigning by survivors and civil society members.
- A working group had been set up in **Finland** which has been discussing changes to its definition of rape which could be taking place this year.
- There are some worrying developments in the **Netherlands** as the Ministry of Justice presented a new draft law a few weeks ago, proposing the adoption of a two-tiered model of rape law. The definition of rape would remain based on use of force, threats, and coercion, while a new crime would be introduced which would be based on lack of consent, thereby creating a hierarchy of protection for survivors of sexual violence.

Some of the key findings in the region that Ms. Błuś highlighted, based on interviews with survivors, included legislative gaps in the way in which rape is defined which results in victims often falling through the cracks and never obtaining justice or realizing that what they experienced was in fact rape. Additionally, the quality of investigations was another problematic area as cases showed that the police dismiss victims' testimony, do not always follow national guidelines on the collection of evidence, and sometimes discourage victims from coming forward or logging reports. Retraumatization of victims during the legal process was also mentioned as a challenge. This included being asked about the victim's sexual history and having to see the perpetrator in person, which are further compounded by gender stereotypes and myths. Shortcomings in sexuality and relationships

2 United Kingdom (England & Wales, Scotland and Northern Ireland); Ireland; Belgium; Cyprus; Greece; Luxembourg; Iceland; Sweden; Germany.

education were also noted by Ms. Błuś.

Ms. Błuś reinforced that consent-based laws themselves cannot eradicate rape but sexual violence legislation must be human rights compliant as laws have a normative power in achieving social change and influencing peoples' behavior. Laws need to be supported by good practice, appropriate training, and awareness-raising.

**Ms. Olivia Björklund Dahlgren, FATTA** highlighted the process of law reform in **Sweden** from 2013 when the movement to change the definition of rape had begun to build momentum. At that time, Sweden's law did not protect sexual integrity or bodily autonomy. On 23 May 2018 however, the Swedish Parliament voted for a consent-based definition which marked a big shift from the previous definition which stated that someone would be guilty of rape if they forced another person by violence or threats or improperly exploited the fact that the person was in a particularly vulnerable situation.

Ms. Dahlgren explained that the [current law](#) prescribes that someone will be guilty of rape if they perform sexual intercourse with a person who is not participating voluntarily. It is not considered voluntary participation if the participation is as a result of violence, threats, improper exploitation of a particularly vulnerable situation, or an abuse of a position of dependence. The law also introduced a new criminal offense of negligent rape which includes cases where the perpetrator essentially has had a suspicion that the other person was not participating voluntarily, but was nonchalant in relation to that suspicion. Consent is about the voluntary participation of both parties and whether the accused was alert to an active "yes". Ms. Dahlgren held the belief that these provisions enable more situations of rape and sexual violence to be covered and also emphasizes the responsibility of people to ensure that the other person wants to engage in sexual relations.

On 15 June 2020, the Swedish National Council for Crime Prevention will present its assessment on the impact of the new definition of rape. Through its analysis of the law, FATTA has determined that consent-based legislation needs to include both voluntary participation and negligent rape as these two qualifications are important in ensuring there both parties are affirmatively engaging in the sexual acts. This effectively shifts the focus from the victim proving they did not consent to the perpetrator to demonstrate that they had obtained consent.

Since the introduction of the new legislation, there has

been greater public awareness on the importance of consent and this is being developed in school curricula as the new norm. Ms. Dahlgren provided an example of how this legislation had been applied in a case involving a sex buyer who was found guilty of rape when the woman concerned was a victim of human trafficking.

Finally, Ms. Dahlgren underlined that prejudice and stereotypes still play a part in influencing whether someone is deemed to be a credible victim.

**Ms. Anna Zobnina, European Women's Lobby (EWL)** informed participants that the EWL calls for the EU's accession to the Istanbul Convention to ensure the full implementation of the Convention across the EU. The EWL has requested all EU Member States to ratify the Convention and called for violence against women to be included in the list of EU crimes in the EU Treaties. The EWL Observatory is currently undertaking a mapping of the gaps in the implementation of the Convention and one challenge was identified to be the gender-neutral character of laws and policies in domestic legislation.

Ms. Zobnina explained that the prevalence of cultural attitudes and gender stereotypes feed into rape culture and rape myths largely as a result of global consumerism. The belief that women and girls are objects who can be bought and sold and the sexualization of women through sexist advertising reinforce beliefs that women are subordinate to men. She highlighted the link between the dehumanization and objectification of women, sex-based stereotypes and harmful cultural attitudes, and sexual violence.

Ms. Zobnina referenced Professor Catharine MacKinnon's work and the idea that the term 'consent' is used as a proxy for freedom and mutuality of desire, when in fact, the activity under discussion is anything but what the woman actually wants. Consent is never enough to describe a positive sexual experience, but it is always enough to prove that a negative one did not take place.

Ms. Zobnina provided some examples from EU jurisdictions that had adopted consent-based definitions of rape. Namely, in **Germany**, the law changed in 2016 from being based on use of force that was immediate and considerable enough to be considered dangerous, to requiring evidence that the victim expressed lack of consent, also referred to as a 'no means no' model of consent. Ms. Zobnina noted that such a model provided for a bare minimum that women have a right to expect in a sexual interaction.

In **Spain**, discussions are currently underway to develop a 'yes means yes' model of consent. Members of the EU Observatory have noted that the proposed law, even though it provides for an affirmative consent model, is not sufficient to tackle rape holistically as it does not have the potential to legally address all contexts of rape in all its manifestations, for example with respect to prostitution or pornography. **Ireland** ratified the Istanbul Convention in March 2018 and adopted a [new law on sexual offenses](#) which defined sexual consent for the first time. This new legislation tackles child pornography, incest, and sexual grooming, and criminalizes the purchase of sexual acts. The criminalization of the purchase of sexual acts combined with criminalization of coercive control demonstrates this new understanding of the bounds of sexual consent. **Sweden** introduced a new definition in 2018 and Ms. Zobnina noted that the way consent has been defined in relation to sexual violence and rape has also been integrated in the law on purchasing sexual acts which, in Ms. Zobnina's point of view, is the best example of connecting two legal areas and protecting all women.

**Ms. Antonia Kirkland & Ms. Jacqui Hunt, Equality Now** presented the 7 key findings from Equality Now's 2017 global rape laws report, which was based on an analysis of surveys from lawyers and activists in 82 jurisdictions. The Report showed that laws and legal systems failed to distinguish between sex and sexual violence, as rape is about power, control, and entitlement and not about sexual desire. There are many examples of laws where perpetrators can still be exempt from punishment by forgiveness, settlement, or reconciliation with the victim. It is still legally possible in some countries for a perpetrator to escape punishment if they marry their victim. Though there has been some progress in the MENA region in this regard, there has also been a recent resurgence of support for this provision.

*In many laws, rape is treated as an issue of morality, not violence, where laws are framed using the language of modesty, morality, or chastity. Instead of treating rape as a violation of an individual's bodily integrity, laws seek to punish unacceptable "immoral" behavior.*

Rape committed by a husband against his wife is not treated as a crime in many countries, while in others, marital rape is expressly legal, including in cases where a child is under the age of the minimum age of marriage. This can be seen in countries such as the USA where there is an exception under [federal statutory rape law](#) for marriage, even if the state-level minimum age of marriage laws have been violated. Ms. Kirkland recommended that the law should be clear in protecting the best interests of the child.

Another finding was that some jurisdictions had laws that fail to recognize that true consent is impossible in situations of dependency or extreme vulnerability, for example where penalties for paid sex with a minor are lower than other forms of rape with a minor. She underlined that it is important to recommend that States include broad, non-exhaustive coercive circumstances and abuses of power within the understanding consent in the law.

Ms. Hunt highlighted the barriers to accessing justice caused by procedures and investigations, particularly overly burdensome evidence requirements that inhibit the investigation and prosecution of sexual assault, including allowing evidence relating to the victim's past sexual history. Examples include requirements that, with respect to medical evidence, only that submitted by defined accredited medical examiners can be permitted. In practice, this effectively requires that women need to know about this legal requirement and be able to access the approved examiners. If a survivor of sexual violence is poor, lives in a rural area with limited access to the town, or is trapped or disabled, this hinders or even denies their ability to access the centers and provide evidence of her assault. Other examples include laws or practices inhibiting investigation or prosecution, for example, those requiring a fee to register a case, those canceling investigation without further inquiry if a complainant withdraws from a case, those limiting the time within which a case can be brought, those allowing discussion of a complainant's prior sexual history, those requiring witness corroboration, proof of penetration and so on.

The Report further demonstrated that there were laws that allowed for judicial discretion to reduce charges or discretion to consider evidence. The exercise of such judicial discretion is often heavily influenced by a stereotyped assessment of the victim's behavior. This effectively results in either no justice or punishments being reduced in a manner that does not reflect the severity of the crime. Ms. Hunt emphasized that it was



important that punishments are serious to deter and punish perpetrators of sexual violence.

Moreover, it was found that marginalized women or women from vulnerable backgrounds and precarious circumstances suffer the most while accessing justice. There is a need for strong consent-based definitions of rape which recognize women's right to bodily integrity. Further, it was emphasized that specialized support services, legal aid, and other measures would ensure that the justice system is available to both the poor and the wealthy. Ms. Hunt emphasized that in particular during the troubled times of the COVID-19 pandemic, it was ever important to ensure that perpetrators are held accountable and that justice remains available for all.

**Ms. Nisha Varian, Human Rights Watch**, explained that sexual violence against marginalized populations, such as indigenous groups, children, older people, and women with disabilities, is common. An upcoming report by Human Rights Watch on family violence and people with disabilities in Mexico will highlight a number of harmful practices and stereotypes, including the sterilization of women and girls with disabilities as a way to prevent them from getting pregnant. This however had the effect of creating a harmful incentive to others to abuse them. Ms. Varian highlighted some additional barriers that women with disabilities experience in accessing help, for example in cases of family violence, there may be a higher level of dependence on the rapist and lack of accessibility to complaint mechanisms and helplines. It was noted that challenges remain for women with intellectual disabilities to be able to report through complaint mechanisms which are not accessible or accommodating.

There is a continued practice of virginity testing or testing to see if the hymen is broken to determine whether sexual intercourse has taken place. Ms. Varian noted that this practice has been recorded in Indonesia, particularly as part of the application process to join the police force where women are required to demonstrate they are virgins. Yazidi women have also been subjected to this practice as part of forensic testing after rape.

Research undertaken on the experiences of lesbian, bisexual, and transgender women (LBT) has demonstrated a number of remaining challenges. In South Africa, whilst improvement has been made in the criminal justice system's response, research indicated that there is still stigma from the public and investigators, and secondary traumatization through the justice process. In Lebanon, Ms. Varian explained that marital rape is still

not criminalized and the definition of rape is too narrow. Domestic violence legislation does not cover same-sex couples and Human Rights Watch has recommended the repeal of discriminatory laws, ensuring non-discriminatory complaint mechanisms are in place, and addressing discrimination and stigma in the criminal justice sectors. It was further recommended that all States should proactively strengthen data collection to monitor sexual violence and disaggregate the data by sexual orientation and gender identity as well.

*Many populations are afraid to report sexual violence because the act of reporting itself may increase their vulnerability to being prosecuted.*

For example in countries which still have zina laws which affect a rape victim's ability to report, and in cases of sex workers, undocumented migrant workers, and LGBT populations.

With respect to sexual violence in conflict, in particular in Myanmar, Kenya, and South Sudan, it was noted that even if survivors of sexual violence can access health clinics, for example, there is greater under-resourcing and lack of medications, as well as a lack of capacity to undertake forensic examinations. There are also issues regarding the storage of physical forensic material and Ms. Varian recommended that it was important to support other forms of evidence, such as ensuring interviews are conducted with survivors and trying to shift the focus away from physical evidence being considered as the gold standard. Finally, Ms. Varian underlined that for greater accountability and successful prosecutions, there needs to be a greater long-term commitment to provide services to survivors which include economic support, education, and support to help them determine their own path to recovery.

**Ms. Cheryl Thomas, Global Rights for Women**

underlined that the law is an important tool at every level, particularly with respect to addressing the global culture of women's subjugation and impunity for harm. Ms. Thomas addressed issues with the implementation and enforcement of sexual violence laws, highlighting that there is a staggering lack of expertise and technical skills among those tasked with enforcing sexual violence laws, including police, law enforcement, and legal officials who exhibit a pervasive lack of knowledge and skills to hold offenders culpable.

*Even where the best laws are in place, the reality of the lack of technical knowledge and skills amongst law enforcement professionals, overlaid by the universal persistence of misogyny and bias, is a brutal combination of global failures.*

Global Rights for Women monitored court proceedings in domestic violence, sexual violence, and trafficking cases in Moldova and issued a [joint report in 2018](#). Ms. Thomas expressed that it was possible to bring a commitment and expertise to those responsible for enforcing sexual violence laws and it was necessary to focus on the accountability of the offender, justice, and enforcement systems.

In addressing the lack of implementation, Ms. Thomas recommended that laws should be very specific. For example, in Moldova, the law provides for legal assistance to victims, and this enabled local NGOs to implement a coordinated community response to hold the community and legal systems accountable for providing such assistance. Such coordinated community responses ensured everyone is held accountable. This response has been deemed effective in domestic violence and Ms. Thomas suggested that it can also be used in sexual violence cases to hold enforcers accountable.

It was underlined that training is vital for enforcers of sexual violence laws and that such training needs to be on a wide range of issues including trauma-informed interviewing, reasons for delays in reporting, as well as reasons for inconsistencies in victims' testimonies and statements, and rape myths. Ms. Thomas denoted the importance of victims' voices in guiding the process, as well as the need for a coordinated community response where everyone can communicate with each other, identify gaps and determine ways to move forward from the perspective of victims' security, integrity, and freedom and with the goal of holding offenders accountable.

**Ms. Sara Hossain, Bangladesh Legal Aid and Services Trust (BLAST) & International Women's Rights Action Watch-Asia Pacific (IWRAP-AP)** explained the importance of looking at sexual violence laws in connection with other laws, such as personal and

family laws, trafficking and domestic violence laws, as well as constitutional norms around equality and sexual autonomy. She highlighted the need to take an intersectional and inclusive approach by assessing data which can demonstrate how particular groups are being excluded from protection on account of factors such as disability, statelessness, ethnicity, or their status as sex workers.

Ms. Hossain stressed the importance of looking at strategies for reform around rape laws and explained that many rape law definitions emanate from the 19th century. Despite the development of specialized legislation in the last decade, these do not appear to be framed according to constitutional principles of equality, and instead include references to colonial-era legislation which are based on principles of morality.

Providing information to survivors of sexual violence at every juncture provides them with greater access to services, such as shelter, and also gives them the confidence to make a complaint and understand all the processes, such as their medical examination. Pro bono lawyers have been supportive in providing regular advice and guidance to victims and assisting them in developing their case strategy. Women's rights organizations have campaigned over the years to introduce legislation for the protection of victims of sexual violence. However, Ms. Hossain cautions that measures should not be placed in the law which could have a counterproductive effect or limit the right to a fair trial.

Approaches that have been important in protecting survivors of sexual violence include victim support centers, one-stop crisis centers, hotlines with first responders, and the provision of in-person paralegal support to victims even at the stages of reporting to the police, medical examination, accessing a shelter, etc. Survivors need to be given information at every step in order to understand the criminal justice process.

Ms. Hossain highlighted examples of successful [law reform](#) in Bangladesh which have brought about provisions relating to in-camera trials, protections such as the prohibition of the publication of a victim's name, and of survivors being forced into shelters or custody in the name of protection. Another method that has been successful in bringing about change is strategic litigation. Ms. Hossain highlighted a successful constitutional [case](#) that had been brought to challenge the use of the 'two finger test' which was used by forensic doctors to prove that the complainant had been habituated to sex and

therefore could not have been raped. Another [example](#) was the challenging of the discriminatory practice of the police who refused to take on complaints of sexual violence, which resulted in the introduction of new police directives that require police to accept all rape complaints, irrespective of the background or community of the complainant.

Ms. Hossain underlined some of the remaining challenges, including a lack of implementation of laws, as well as the criminalization of consensual sexual relations, such as adultery and same-sex relations. Further challenges include the non-recognition of sexuality and autonomy as fundamental rights, as well as laws on child marriage that intersect with rape. This is particularly pertinent in India, for example, where young people in consensual relationships are facing criminalization and the law does not address the reality of young people's sexuality. Ms. Hossain raised the issue of reparations for survivors and the need to provide compensation.

**Ms. Rosalyn Park, The Advocates for Human Rights,** underlined that there are two points which are essential to an effective criminal justice response, namely the monitoring of laws to ensure they respond to victims' needs and the effective implementation of laws which requires a strong response by all community actors.

Ms. Park's presentation focused on [statutes on sexual assault](#) in Minnesota, USA. The law needs to criminalize non-consensual penetration without regard to the use of force or coercion, as these are inherent in imposing unwilling sexual penetration. Instead, any use of additional forcible, threatening or coercive measures should be considered an aggravating factor over and above the non-consensual act. Failure to resist should not equal consent.

Another point regards the prohibition of a number of sexual relationships based on the professional identity of the perpetrator. These can include, among others, a psychotherapist, clergy, corrections guard, police officer, and physician. In these cases, consent by the victim is considered not relevant. Ms. Park pointed out that any sexual assault should be investigated, regardless of the relationship between the perpetrator and the victim. A marriage or partnership should not prevent the state from investigating a report of rape, and instead, should be seen as an aggravating rather than nullifying factor. Ms. Park encouraged the introduction of 'voluntary intoxication statutes' which would state that if a victim is incapacitated, she cannot consent to sexual activity.

Finally, it was underlined that undertaking regular monitoring will evaluate the need for reform and can identify unintended harmful consequences of the law.

With respect to implementation, Ms. Park stressed three aspects. The first aspect related to the need for the state response to be coordinated with a multidisciplinary team of NGOs, police, prosecutors, medical providers, and courts, where communities meet and discuss their protocols for responding to sexual assault. The multidisciplinary teams should focus on a proactive agreement between all actors as to what the response should be. The second aspect concerned the importance of response protocols to be victim-centered, where the victim's needs and wishes are central to the decisions that affect her and where she has a measure of control over the steps in the process that she can engage with and what works best for her. Thirdly, the criminal investigation should be thorough and complete. Despite obstacles such as lack of witnesses, Ms. Park stressed the need to conduct a thorough criminal investigation.

Regarding medical reports, it was emphasized that laws and policies should not place heavy reliance on a forensic certificate, and instead, direct police to prioritize medical documentation of the victim's condition. In Minnesota, there are sexual assault nurse examiners (SANEs) who are trained to interview a traumatized victim and collect evidence.

*According to an attorney in Minnesota, the difference between having a sexual assault nurse examiner who interviewed the victim and collected evidence and not having one made an 80% difference in the strength of a case.*

Ms. Park underlined that it takes both strong laws and effective implementation to promote a strong criminal justice response to sexual violence.

**Dr. Mary Ellsberg, George Washington University,** described [research](#) that had been undertaken in South Sudan which showed links between sexual violence and rape as a weapon of war with intimate-partner violence. In the South Sudan study, a population-based survey had been carried out in three settings affected by the conflict.



*A survey of over 2000 women in South Sudan found that about 1 in 3 women had reported having been raped by a non-partner.*

More than 40% reported having experienced non-partner sexual violence more than once. This is about 4-5 times greater than the global average of sexual violence. The study also revealed problems with UN-run protection of civilian camps, as the UN peacekeepers do not have a mandate to investigate or provide justice, but the national police also did not have jurisdiction within the UN-run civilian camps. An example was given of an 8-year old girl who had been raped by a neighbor in a civilian protected camp, but the perpetrator was released after two days supposedly because of a lack of proof even though he was caught in the act. Risk factors for sexual violence in conflict areas include social norms such as beliefs that women must have done something to deserve being assaulted or should marry their rapist.

It was found that intimate partner violence even in high conflict settings was much higher than violence by non-partners i.e. that rape was not just a weapon of war used by the opposing side. Dr. Ellsberg reported that 46% of women had been raped by their husbands in their lifetime. Risk factors for women being more likely to experience intimate partner violence include for example having had a bride price paid for them, being forced into marriage at an early age, or being involved in a polygamous marriage.

A [study](#) carried out in Nicaragua on intimate partner violence, which compared data collected in 1995 and 2016, indicates that over this twenty-year period, physical violence by partners decreased by 60%. However, the rate of sexual violence between partners was not statistically reduced even though marital rape has been against the law since 1990. The study also found that almost half the women had experienced sexual violence. 90% of women surveyed knew that violence against women and girls was a crime. The study indicated that changes in social norms have had a big impact on reducing physical violence, but not sexual violence.

Dr. Ellsberg recommended that intimate partner violence should be included in programs addressing women's empowerment and adolescent girls and that funding for such programs should be prioritized. She stressed the importance of addressing harmful traditional practices as a method of preventing sexual violence. Finally, supporting women's groups and the women's movement is important in being able to advocate for better policies and social norms.

# KEY POINTS: INTERNATIONAL CIVIL SOCIETY AND INSTITUTIONAL RESPONSES TO RAPE TODAY

- Jurisdictions which still have definitions of rape which are based on force, threat, coercion, or the victim's inability to defend themselves are not in line with international human rights law, including the Istanbul Convention. International human rights standards require States to base their definitions on lack of consent/voluntary participation and include a broad range of non-exhaustive coercive circumstances and abuses of power, as well as sanctions for sexual violence offenses which are serious enough to deter and punish perpetrators. Failing to do so results in victims often falling through the cracks and never obtaining justice or realizing that what they experienced was in fact rape.
- Perpetrators of sexual violence can still be exempt from punishment by forgiveness, settlement, or reconciliation with the victim, including by marrying their victim in some countries. Discriminatory laws, policies, and provisions should be repealed in order to ensure that criminal justice systems and complaint mechanisms are in place which are accessible by all victims, including the most vulnerable.
- The prevalence of cultural attitudes and gender stereotypes feed into rape culture and rape myths and beliefs that women are subordinate to men. Such stereotypes can also be seen in the way courts base their decisions on preconceived notions of who can be considered a rape victim and a number of CEDAW Communications have highlighted a range of examples. Discriminatory stereotyping by judicial and law enforcement that detrimentally impact survivors' access to justice should be combatted.
- It was emphasized that it is important to look at sexual violence laws in connection with other laws, such as trafficking and domestic violence laws, and apply an intersectional and inclusive approach to ensure that all groups are ensured protection and are not being discriminated against on account of their disability, ethnicity or any other factor.
- It is vital that those responsible for implementing sexual violence laws have the necessary expertise and technical skills to be able to collect evidence and hold offenders to account. To ensure that laws are responsive to victims' needs and are being effectively implemented, laws must be monitored and all community actors should be involved in this process.
- Survivors, including those who have experienced sexual violence during conflict, require support at all stages of the trial proceedings; appropriate compensation and sentencing; and greater sensitization of prosecutors and judges is needed. Moreover, issues regarding the difficulty of providing storage of physical forensic material had also been raised which requires the exploration of other forms of evidence to ensure cases are fully supported.
- Specialized services to survivors should be provided on a long-term basis that includes economic support, education, rehabilitation, and support to NGOs providing these services. Support should also be given to women throughout the legal process to reduce attrition rates.

# PANEL 3: LAW AND PRACTICE IN DIFFERENT PARTS OF THE WORLD

**How are different countries across the world responding to rape? What type of information is needed to measure rape and the effectiveness of policy interventions against rape?** This panel took stock of rape legislation, implementation (or lack thereof), data, and practice on the prosecution of rape in different parts of the world.

**MODERATOR: Antonia Kirkland, Global Lead, Legal Equality and Access to Justice, Equality Now**

## **Professor Sylvia Walby, City University of London**

described the role of data in combating rape, as measurement of changes in the extent of rape and in the practices to reduce rape are helpful in evaluating, monitoring, and improving policy to end rape. Though measuring rape and measuring state responses to rape are challenging, they are possible.

Professor Walby explained the three main methods of measurement:

- **Survey:** A survey that asks a representative sample is a key methodology. However, obtaining the real number of rapes in a survey is challenging, since many do not wish to disclose. Also, large samples are needed, which makes this an expensive methodology. Surveys are important and possible, but expensive and challenging to deliver in a way that generates reliable data.
- **Police recorded crime:** Rape cases recorded with the police records are another source of data, though its meaning can be hard to interpret, as it records only rapes reported to the police. Though it is sometimes used as a proxy for the real rate, this is not appropriate as it is unclear whether an increase in police recorded crime is a sign of more rape, a sign of improved intervention, or a sign of wider changes that encourage reporting. In a context where most rapes are not recorded, an increase probably signifies that the police are engaging more seriously.
- **Conviction Rates/Attrition Rates:** Most cases of rape do not lead to the criminal conviction of the rapist. The conviction rate is the proportion of rapes that result in a criminal conviction, while 'attrition' refers to the way that cases fall out of the system. The attrition of rape cases in the criminal justice system refers to the extent to which cases of rape do not end with a criminal conviction. The conviction (or attrition) rate is a measure of the extent to which a criminal justice system is effective in holding rapists to account. It is potentially comparable over time and between

countries. Article 11 of the Istanbul Convention requires States to [collect data](#) on violence against women and domestic violence, including conviction/attrition rates.

*Collecting data on rape that is comparable over time and place requires resources, consistency, and institutionalization.*

Data on rape not only needs to be collected routinely but also has to be processed into publicly available summary statistics in a timely fashion, which is often the responsibility of the national statistical office. Harmonization of criminal justice data to enable comparison across countries is usually done by the [UNODC](#). Unfortunately, the definition of rape used by the UNODC is not consistent with international human rights standards. It could be improved, for example, by revising the threshold from force to consent. Professor Walby highlighted the importance of engaging with the UNODC and thereby national statistical offices to improve the technicalities of data collection and harmonization to meet international legal standards on the definition of rape.

**Ms. Vrinda Grover, lawyer and activist (India)** recalled that the 2012 Delhi gang rape case was an important moment that provided the Indian feminist movement with momentum to push through law reform. She noted that the public protests following the violent gang rape and consequent death of a young woman in December 2012 had compelled the Government to amend laws on sexual offenses in 2013, which resulted in a progressive feminist law. The [2013 amendments](#) recognize that sexual crimes form a continuum and the structural and graded nature of sexual assault. The new rape law now covers all non-consensual penetration by a man against a woman by any body part into any orifice, which is a

shift from the earlier peno-vaginal definition of rape. In addition, the amendment introduced a new definition of consent as an “unequivocal, voluntary agreement that communicates willingness on the part of the woman to engage in that specific sexual act” and further clarifies that the absence of physical resistance does not imply consent to the sexual act.

Ms. Grover also noted that the reforms to the substantive law were accompanied by procedural and evidentiary law changes, such as amendments to exclude the introduction of any evidence relating to the victim’s character or past sexual history, including in cross examination, the putting into place of a new medical protocol for the examination of rape survivors to outlaw the practice of medicalization of consent, whereby the medical examiner’s notings that the survivor was “habituated to sex” was used to presume consent. The new law also brought in an expanded definition of aggravated rape, which takes into account a range of coercive circumstances, which are not just spatial, but recognize structural authority whether rape by men in uniform or against women from dispossessed, marginalized communities. Despite the outcry by certain sections of the public, the introduction of the death penalty for rape was successfully opposed by women’s groups at the time, though it has since been introduced in the law.

One regressive aspect of the 2013 amendments was the raising of the statutory age of consent for sex from 16 years to 18 years. This has resulted in the criminalization of consensual sexual activity amongst adolescents, which has flooded the courtroom and added to the narrative of false rape cases. Another gap in the law is that intimate partner violence is only recognized as a civil wrong, and marital rape not recognized as a penal offense. There is no protection against sexual crimes for transwomen and women of other sexual orientations. There is also very little recognition of the vulnerabilities of disabled women in particular.

Women across the classes are breaking the shackles of silence and stigma, with the number of reported rape cases rising sharply in the past few years. The largest attrition rate is at the time of filing the “charge sheet” before the criminal court, i.e. the number of complaints filed with the police that are actually moved to the trial and into the courtroom. This stage, during the police investigation, is when most women are pressured, intimidated, and coerced into dropping cases, compounded by the insufficiency of available victim and witness protection. In relation to police training,

Ms. Grover noted that when there is a general lack of investigative capacity within the police, it cannot be expected that they would work differently in cases of sexual violence. She expressed regret that despite training provided to the police, bias and gender stereotypes seem to overwhelm and undermine any investigation, prosecution, and adjudication of rape cases.

Finally, in relation to the discussion around “No means No”, Ms. Grover drew attention to the case of [Mahmood Farooqui v. State](#), wherein, even after the introduction of new consent definition, the Court passed a judgment in a case of digital rape which indicated that a “feeble no” was insufficient to prove lack of consent.

**Ms. Barbara Jiménez-Santiago, Equality Now (Latin America and the Caribbean)** outlined the key gaps in sexual violence laws in the Americas, followed by **Dr. Brisa De Angulo, CEO & Founder, A Breeze of Hope** who presented the situation in Bolivia and her experience as a survivor and director of an organization that provides comprehensive services to victims of sexual violence.

Ms. Jiménez-Santiago highlighted that *first*, in 28 countries in the region, rape laws are based on violence, force, or intimidation as opposed to lack of consent on the part of the victim. *Second*, preliminary research by Equality Now indicates that in 31 countries, the law provides lesser penalties for adult men who rape adolescent girls (known as *estupro* provisions). In practice, judges use their discretion when deciding whether to apply the *estupro* provision in rape cases involving adolescent girls, which results in lesser penalties for rape of adolescent girls. Experience demonstrates that these provisions are routinely used to allow rapists to avoid punishment. *Third*, the common exceptions for rape include a marital rape defense, which is sometimes applicable even for children, and mistake-in-age and close-in-age exceptions in relation to rapes of adolescents, which all contribute to impunity. *Fourth*, there is a statute of limitations, limiting the time within which a case can be brought, which is an issue particularly in cases of rape of children and adolescents. Good practice examples here are El Salvador and Puerto Rico which have eliminated the statute of limitations for sexual violence against minors. *Fifth*, the institutional violence effect is double for indigenous and marginalized communities.

Dr. De Angulo described the situation in Bolivia and noted that as a survivor of sexual violence herself, she has been actively litigating her own case for 18 years, which is currently pending before the IACHR. She highlighted that

while good legislation on rape is important to achieve, even in cases where the legislation is substandard, the important requirement is to increase awareness of rape victims, support them through the process and enable their access to justice. Focusing on the legal aspect could be a detriment as opposed to a benefit. For example, in countries where the death penalty has been enacted, fewer victims will come forward to report rape cases since there is more intimidation. Dr. De Angulo stressed the importance of working on awareness-raising for victims without which the vast majority of rape victims will not even reach the legal system. A robust awareness program can really increase the number of children who acknowledge and disclose cases of sexual violence.

*“I was repeatedly raped and tortured by an adult family member, and I had no idea that what was happening to me was rape. It is unacceptable that... women and girls are suffering sexual violence every day, and they don't even know that what is happening to them is a crime, so they cannot even ask for help.*

*“When I disclosed sexual violence, I was interrogated for hours and hours to tell and repeat my story to see if I was lying. [Even] after the prosecutor said that I wasn't lying, she threatened to put me in jail if I continued to tell my story, and then ridiculed me for wanting to destroy the life of the man who had raped me.”*

The training of law enforcement professionals in implementing the law is crucial to ensure that they are able to respond to traumatized victims and appreciate

that sexual violence is a different type of crime, which mostly happens in secrecy and at many times, without leaving any evidence. Dr. De Angulo referred to a study she had conducted with prosecutors, who believed that 7 out of 10 adolescents who complained about sexual violence would be lying and that the job of the prosecutor would be to interrogate the victim to determine whether they were lying.

With proper training and victim and family support, a high conviction rate can be achieved even with mediocre legislation. Dr. De Angulo highlighted that in cases where her organization has intervened, they were able to achieve an 85% conviction rate, as opposed to a 7.4% conviction rate in cases of state prosecution without support, though the same law was used. The difference lay in supporting the victim and her family and ensuring that the judicial process becomes another empowering step in the process of healing, as opposed to an unpleasant task which has to be completed. Governments need to allot a budget to create awareness, train officials, and support families and victims. Victims who are still trapped in silence need to be made the center of all efforts to combat rape.

Ms. Jiménez-Santiago made the following recommendations in relation to the Latin America & Caribbean region:

- Amend penal codes to include a consent based definition of rape
- Repeal the *estupro* provisions from the penal codes
- Eliminate harmful legislation and policies that limit adolescent girls' ability to access justice following sexual violence including exceptions to the rape offense and statutes of limitation
- Devise and implement compulsory training programs for those on the front line of the administration of justice such as [Ley Micaela](#) in Argentina
- Effectively implement laws and policies, including by budgeting sufficient resources

**Ms. Tamar Dekanosidze, Equality Now (Eurasia),**

explained that in Eurasia, sexual violence is a serious but still largely overlooked problem and perpetrators enjoy widespread impunity. Some region-specific reasons for this are inadequate definitions of sexual violence crimes; the failure to mandate ex officio/public prosecution for sexual violence; and discriminatory procedures falling short of the standards developed by international and regional human rights mechanisms which undermine the dignity of survivors. Equality Now released [research](#)



in 2019 on 15 countries of the former Soviet Union<sup>1</sup> which identified common issues in the majority of the countries regarding failures in laws and procedures in relation to rape and other forms of sexual violence.

In all countries in the region, with the exception of Ukraine, the definition of rape or other forms of sexual violence are not based on the lack of consent given voluntarily as a result of the person's free will and assessed in the context of the surrounding circumstances. Instead, their provisions of rape focus on the requirement of force, threat of force, or helplessness of the victim. Lack of criminalization of non-consensual acts leaves many crimes unpunished or classifies them as crimes of less gravity, where perpetrators are often released from punishment based on a variety of procedures, including conditional sentences, reduced punishments, and procedural bargaining.

Ms. Dekanosidze further explained that the absence of public, ex officio prosecution for sexual violence by the State in most countries in Eurasia makes it even more difficult for survivors to seek justice and this also leads to impunity for perpetrators. This is because the onus for collecting evidence and investigating the crime falls on the victim, rather than the State, and explains some of the key reasons why many survivors do not apply to the justice system. Ms. Dekanosidze articulated that the practice of reconciliation is often practiced and can be the basis for discontinuing criminal proceedings and leaving perpetrators unpunished. This practice has been applied also when sexual violence is committed in relation to harmful practices, including bride kidnappings and child marriage.

Discriminatory procedures and gender stereotyping are often applied in practice during the investigation and prosecution of sexual violence offenses. Ms. Dekanosidze highlighted a number of practices, such as the 'investigative experiment' which involves bringing the survivor to the scene of the crime to re-enact the case and 'confrontation' which is organized by the investigator outside the courtroom (in the course of the investigation) to determine whether the victim is saying the truth. Additionally, forensic psychological/psychiatric examinations are often conducted in a way which subjects the victim to bias, victim-blaming, as well as unethical and sometimes humiliating questions and comments. During the trial, there are no victim-protection measures, and victims are always forced to come face-to-face with the

perpetrators who can ask questions directly to the victims.

Ms. Dekanosidze expressed that marital rape is not explicitly excluded as a crime. The fact that it is not separately criminalized or defined as an aggravating circumstance in many countries contributes to the lack of perception of this act as a crime whatsoever. The justice system systematically overlooks marital rape as a crime and this makes survivors of sexual violence even more vulnerable, particularly if they are already vulnerable on account of their specific circumstances, such as domestic violence.

In addition, Ms. Dekanosidze noted that there are no specific methodologies in place for investigating sexual violence against vulnerable women, particularly women with disabilities, which ultimately denies them justice. She welcomed recommendations in the above-mentioned areas that would be instrumental in improving access to justice for survivors of sexual violence.

**Ms. Asma Khader, Sisterhood is Global Institute (SIGI - Jordan)**, expressed that a patriarchal mindset was common in the MENA region not just amongst judges and legislators, but also the family and society on the victim in the way they reacted to sexual violence. It was recognized that it had been a difficult struggle in Jordan to introduce legislation which ended toleration of honor-based crimes in the law. However, despite the existence of legal provisions that would protect victims of sexual violence, it is often the case that laws are being interpreted in ways that protect the perpetrator. In practice, victims are unable to access justice and rape is linked to the concept of virginity. In one case involving a 12-year old girl who had been raped by two men and became pregnant, the DNA test established that the baby's father was one of her perpetrators. The court, instead of finding the perpetrators guilty of rape, chose the lesser charge of sexual assault, which carries only 4 years' imprisonment. Marital rape is not criminalized in MENA.

Ms. Khader explained that many girls are being punished and imprisoned for their own protection if they have been raped. Despite the fact that a number of shelters have been created for their protection, women and girls are still being detained in prison. In some cases, they are punished for getting pregnant or for having been raped. Fear of being stigmatized if they report their rape or a questioning of their behavior are some reasons why women and girls are not able to access justice.

<sup>1</sup> Armenia, Azerbaijan, Estonia, Georgia, Latvia, Lithuania, Ukraine, Moldova, Russia, Belarus, Kyrgyzstan, Kazakhstan, Tajikistan, Uzbekistan and Turkmenistan

Ms. Khader explained that sexual violence crimes are categorized as 'crimes against the family and religion' in the penal codes, rather than crimes against human beings. If a woman has been raped or sexually assaulted, she is considered 'broken' by her family and will be turned away. The perpetrator on the other hand does not face such ostracisation. In Jordan, a countrywide coalition and extensive campaign succeeded in [repealing](#) Article 308 which provided that if a woman had been raped and then married her perpetrator, he would not face any punishment. A public survey showed that 72% of Jordanians were against this provision, however, there have recently been voices calling for this Article to be re-introduced as it is perceived that nobody would want to marry a girl who had been raped. Ms. Khader emphasized that social norms are important as they give context to the text of the law itself, but the way the judges apply the law is still controlled by their patriarchal mentality.

Whilst there is public support for girls who have been sexually assaulted, they are not considered victims but instead as witnesses on the sidelines of the criminal justice process. The trauma or their personal circumstances are not appreciated, and there is a lack of legal support to survivors. Ms. Khader explained that there is a need to assign a budget for training of law enforcement and duty bearers, and observation of sexual violence cases in court. Participants were informed that most cases where a woman had been sentenced to death for murder were as a result of them defending themselves against sexual abuse.

Finally, the implementation of strategies and training need political will and a dedicated budget to ensure greater access to justice and support for survivors.

**Ms. Judy Gitau, Equality Now (Africa)** emphasized that despite the heterogeneity in culture, demographic and numbers across the African continent, there is still a commonality in the incongruence between international norms and standards and national laws with respect to rape as well as way the criminal justice system functions which results in impunity for sexual violence, particularly against adolescent girls. This impunity is underpinned by gaps or flaws in the law as well as in its implementation.

Ms. Gitau referred to the case of [Attorney General v Rebecca Gyumi \(Tanzania\)](#) in which the [Law of Marriage Act](#) was challenged, as it sanctioned the marriage of young girls at 15 and 14 with the consent of her parents and the court, while boys could only get married at 18 years of age. Tanzanian law expressly provides that marital rape is not recognized, and also classifies the offense of carnal knowledge of girls above the age of 12 within marriage only as a misdemeanor. Tanzania has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the [Maputo Protocol](#)) and CEDAW, and its [Penal Code](#) also provides for the age of consent for sex to be 18 years. The incongruence of laws, which on the one hand provide for protections and safeguards for girls against rape, but at the same time legalize the violation of girls in and out of the context of marriage is replicated in different contexts across Africa.

Ms. Gitau also presented the case of [Noura Hussein](#) in Sudan, noting that personal laws in Sudan allow a girl to be married off with the consent of her guardian. Neither a girl's consent to marriage or her consent (or lack thereof) to sex is taken into account. Sudanese laws also 'permit' rape within marriage, even of children. Noura had been brutally raped within marriage and had killed her husband in her attempt to defend herself from further sexual assault. However, she was unable to rely on the fact that she had been raped as her defense since marital rape was not recognized as a criminal offense.

*States that are party to international treaties need to be held to account to reflect these standards in all their domestic legislation in order to ensure protection for all survivors of sexual violence.*

Ms. Gitau stressed the importance of continually pushing for the harmonization of laws at the international and regional levels with the laws as they manifest in the national contexts.

## DISCUSSION

Discussions centered on the degree of punishment. Not all experts agree that imprisonment was a sufficient punishment for acts of rape, as perpetrators often re-committed crimes after serving their sentences. It is therefore important to implement perpetrator treatment programs, as required, for example, in the Istanbul Convention. Additionally, though most countries are moving away from reconciliation mechanisms in sexual violence cases, there is a resurgence of these mechanisms in a few countries such as Canada which requires a feminist response. With respect to the issue of compensation to rape victims, one expert expressed a fear that victims who ask for monetary compensation would be accused of filing false rape cases merely to enrich themselves. An instructive example from India in this regard however demonstrated that when the State is responsible for setting up a victim's compensation fund and compensating victims at the start of the criminal

process (without linking to conviction), women are not necessarily blamed for seeking such compensation.

Experts observed that further research and narratives are required to shatter the idea of the 'perfect' rape victim since every woman who has been raped tends to react differently. They also highlighted the problem of the rise in SLAPP suits (Strategic Lawsuits Against Public Participation), which are specifically based in misogyny, and aimed to shut down women as a group and creating a chilling effect on sexual violence survivors coming forward with their story.

The experts also highlighted the role of the COVID-19 pandemic in impeding access to justice for victims of sexual violence, including difficulties in reporting cases, in reaching hospitals for medical/forensic examinations, delivery of victim and witness statements, and the postponement of court hearings which creates further delays and backlogs in the judicial system.



Photo: Ben Ibrahim

# KEY POINTS: LAW AND PRACTICE IN DIFFERENT PARTS OF THE WORLD

- Laws prescribing the statutory age of consent for sex need to account for evolving capacities of teenagers and must be carefully balanced to ensure that children under the age of 18 are protected from sexual assault while at the same time adolescents are provided the freedom to engage in consensual sexual relations with their peers.
- Data plays a key role in combating rape, including by providing a means for policy evaluation and in identifying and measuring progress and regress in rape. It is important to ensure the collection of reliable, consistent, and comparable data which are harmonized to meet the international legal standards on rape.
- Good sexual violence legislation alone is not sufficient to combat it. It must be accompanied by awareness-raising programs to educate all people on sexual violence and to help survivors recognize their rights under the law, which will also enable greater reporting and accountability for sexual violence; training of law enforcement professionals, including on gender-based stereotypes and rape myths, trauma-informed responses to rape survivors and anti-bias is crucial to equip them to investigate, litigate and rule on rape case; and adequate budgeting and resources to implement the law, train officials and provide support to victims and their families.
- Adolescent girls have increased vulnerability to sexual violence. Gender-based myths around adolescent girls as ‘temptresses’, combined with loopholes in the law such as the estupro provisions in Latin America, and specific difficulties faced by adolescents in accessing justice contribute to impunity for rape of adolescents. The lack of appreciation and understanding of the trauma that victims have endured, and the lack of available legal support, makes it even more difficult for survivors to access justice.
- Rape shield laws, which prevent the introduction of evidence on the past sexual history of the survivor or other character evidence are crucial in ensuring a fair and impartial decision-making process.
- Absence of public, ex officio prosecution for sexual violence by the state in most countries in Eurasia made it even more difficult for survivors to seek justice and this leads to impunity for perpetrators. Discriminatory procedures and gender stereotyping are often applied in practice during the investigation and prosecution of sexual violence offenses, which further compounds survivors not being able to access justice.
- When a woman has been raped or sexually assaulted, she is considered ‘broken’ by her family and will be turned away, as is the case in some MENA countries. The perpetrator on the other hand does not face such ostracisation. Following a successful public campaign in Jordan to repeal Article 308 (‘marry your rapist’ provision), there are still voices calling for this Article to be re-introduced as there is the pervasive belief that nobody would want to marry a girl who had been raped.

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