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**E - mail submission:** **vaw@ohchr.org**

**Call for submissions to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. **Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code**.

 According to the constitutional structure and distribution of competencies in Bosnia and Herzegovina, material criminal legislation of Bosnia and Herzegovina consists of four criminal justice systems, namely: the Criminal Code of Bosnia and Herzegovina[[1]](#footnote-1), the Republika Srpska[[2]](#footnote-2), the Criminal Code of the Federation of Bosnia and Herzegovina[[3]](#footnote-3) and the Criminal Code of Brčko District of Bosnia and Herzegovina[[4]](#footnote-4) . On the other hand, criminal procedure in Bosnia and Herzegovina is governed by four laws on criminal procedure, namely: Criminal Procedure Code BIH[[5]](#footnote-5), Criminal Procedure Code of the Federation of BiH[[6]](#footnote-6), Criminal Procedure Code of Republika Srpska[[7]](#footnote-7) and Criminal Procedure Code of Brčko District BiH[[8]](#footnote-8).

 The Criminal Code of Bosnia and Herzegovina does not prescribe criminal offenses against sexual integrity, as well as criminal offenses of sexual abuse and exploitation of a child. Accordingly, these crimes are prescribed by the criminal laws of the Republika Srpska, the Federation of BiH and the Brčko District of BiH.

 In these criminal laws, rape and other criminal offenses in this area are prescribed in a special chapter in a special part of criminal laws, entitled Criminal offenses against sexual integrity, whereas from 2017 in the Republika Srpska, in addition to this chapter, these offences are also criminalized in a special chapter entitled Crimes of Sexual Abuse and Exploitation of a Child.

**CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**Article 203 Rape**

*(1) Whoever coerces another by force or by threat of immediate attack upon his life or limb, or the life or limb of someone close to that person, to sexual intercourse or an equivalent sexual act, shall be punished by imprisonment for a term between one and ten years.*

*(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article in a particularly cruel or humiliating manner or if on the same occasion a number of perpetrators perform a number of acts of sexual intercourse or equivalent sexual acts against the same victim, shall be punished by imprisonment for a term between three and fifteen years.*

*(3) If, by the criminal offence referred to in paragraph 1 of this Article, the death of the raped person is caused, or serious bodily injury is inflicted on the raped person or his health is severely impaired, or the raped female is left pregnant, the perpetrator shall be punished by imprisonment for not less than three years.*

*(4) The punishment referred to in paragraph 2 of this Article shall be imposed on whoever perpetrates the criminal offence referred to in paragraph 1 of this Article out of hatred on the grounds of national or ethnic origin, race, religion, sex or language.*

*(5) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a juvenile, shall be punished by imprisonment for not less than three years.*

*(6) Whoever perpetrates the criminal offence referred to in paragraphs 2, 3 and 4 of this Article against a juvenile, shall be punished by imprisonment for not less than five years.*

*(7) If, by the criminal offence referred to in paragraph 2 of this Article, the consequences referred to in paragraph 3 of this Article are caused, the perpetrator shall be punished by imprisonment for not less than five years.*

**CRIMINAL CODE OF REPUBLIKA SRPSKA**

**Article 165** **Rape**

 *(1) Whoever compels another person to sexual intercourse or any other sex act by force or threat of immediate attack upon life or body, or life or body of someone close to that person, shall be punished by imprisonment for a term between three and ten years.*

 *(2) If the criminal offence referred to in Paragraph 1 of this Article was committed against a minor or in a particularly cruel or degrading manner or if at the same occasion the victim was raped by several perpetrators or if the criminal offence has resulted in grievous bodily injury or a serious impairment of health or pregnancy of the female victim, the perpetrator shall be punished by imprisonment for a term between five and fifteen years.*

 *(3) If the criminal offences referred to in Paragraphs 1 and 2 of this Article have resulted in the death of the victim, the perpetrator shall be punished by imprisonment for a term not less than ten years.*

**CRIMINAL CODE OF BRČKO DISTRICT**

**Article 200 Rape**

*(1)A person who compels another person to sexual intercourse or an act equal to sexual intercourse by use of force or by threat of direct attack on life and body of that person, or life and body of somebody close to that person, shall be sentenced to prison from three to ten years.*

*(2)If the offence referred to in Paragraph 1 of this Article was committed in an extremely brutal or humiliating way, or if several sexual intercourses, or sexual acts equal to them, involving the same victim were committed by several persons, the perpetrator shall be sentenced to prison from three to fifteen years.*

*(3)If the offence referred to in paragraph 1 of this Article resulted in death of the raped person, or grievous bodily injury, or serious impairment of health, or pregnancy of the raped person, the perpetrator shall be sentenced to at least three years of prison.*

*(4)A person who commits the criminal offence referred to in paragraph 1 of this Article because of intolerance regarding ethnic or national origin, race, religion or language, shall be imposed the sentence referred to in paragraph 2 of this Article.*

*(5)A person who commits the criminal offence referred to in paragraph 1 of this Article against a juvenile, shall be sentenced to at least three years of prison.*

*(6)A person who commits the criminal offences referred to in paragraphs 2, 3 and 4 of this Article against a juvenile, shall be sentenced to at least five years of prison.*

*(7)If the criminal offence referred to in paragraph 2 of this Article resulted in consequences referred to in paragraph 3 of this Article, the perpetrator shall be sentenced to at least five years of prison.*

1. **Based on the wording of those provisions, is the provided definition of rape**:
	1. Gender specific, covering women only. **NO**
	2. Gender neutral, covering all persons. **YES**
	3. Based on the lack of consent of victim. **YES, but with use of force and threatening**
	4. Based on the use of force or threat. **YES**
	5. Some combination of the above. **YES, lack of consent with force and threat**
	6. Does it cover only vaginal rape? **NO**
	7. Does it cover all forms of penetration? **YES, used are notions such as: “sexual intercourse or an equivalent sexual act”, “intercourse or an equivalent sexual act (see above cited provisions)**
	8. Is marital rape in this provision explicitly included? **NO**
	9. Is the law silent on marital rape? **YES**
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES, given the above cited provisions it could be said that it is included in general provisions since it was not emphasized “with whom she does not live in a matrimony” or similar.**
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **NO, marital rape is not excluded in the provisions all three criminal codes so that so-called marital rape is considered a criminal offence**
2. **To what extent legislation in your country excludes criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit relevant articles with corresponding translations.**

The provisions of the Criminal Code do not exclude the criminalization of the perpetrator of rape if the victim and the alleged perpetrator live together in a sexual relationship/have or have had sexual relations. A perpetrator of these offences can be any person.

1. **What is the legal age for sexual consent**?

As it can be concluded from the provisions below, according to the Criminal Code of the Federation of Bosnia and Herzegovina and the Criminal Code of the Brčko District of Bosnia and Herzegovina, the age for consent to sexual intercourse is 14 years, and according to the Criminal Code of Republika Srpska 15 years.

 By prescribing criminal offense of “Sexual intercourse with a child”, children are protected as a particularly vulnerable category of society. With the basic form of this criminal offense, the legislator criminalizes any sexual intercourse or equivalent sexual act committed with a child, which is an absolute prohibition of sexual intercourse with a child, regardless of whether the child consented or the act was initiated by the child. A qualified form of the criminal offense Sexual intercourse with a child is when a violent sexual intercourse or equivalent sexual act with a child (rape) or a helpless child (sexual intercourse with a helpless person) is committed.

According to the provisions of the Criminal Code of the Federation of BiH and the Brčko District of BiH, a child is a person under the age of 14, while the Criminal Code of the Republika Srpska defines a child as a victim of a crime as a person under the age of 18 (Article 123, paragraph (1) item 7 CC RS).

 Chapter XV of the Criminal Code of the Republika Srpska prescribes criminal offenses of sexual abuse and exploitation of a child. The object of protection of these crimes are children from all forms of sexual abuse and exploitation by adults, ie their sexual freedom, freedom of decision in the field of sexual relations, in terms of entering into sexual relations or otherwise satisfying the sexual urge. Most of these crimes are aimed at committing sexual intercourse or an equivalent sexual act with a child using his immaturity. Children are specially protected with regard to sexual freedom, as well as with regard to sexual exploitation by adults. Any (even voluntary) intercourse or sexual intercourse with a child (a person under the age of fifteen) is punishable.

**CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**Article 2 Meaning of Terms as Used in This Code**

*(12) A child, as referred to in this Code, is a person who has not reached fourteen years of age.*

*Article 207 Sexual Intercourse with a Child*

*(1) Whoever performs sexual intercourse or equivalent sexual act on a child, shall be punished by imprisonment for a term between one and eight years.*

*(2) Whoever performs forcible sexual intercourse or equivalent sexual act on a child (Article 203, Rape, paragraph 1) or on a helpless child (Article 204, Sexual Intercourse with a Helpless Person, paragraph 1), shall be punished by imprisonment for not less than three years.*

**LAW ON THE PROTECTION AND TREATMENT OF CHILDREN AND JUVENILES IN CRIMINAL PROCEEDINGS OF THE FEDERATION OF BIH[[9]](#footnote-9)**

 **Article 2. Definition of the child and implementation of criminal sanctions**

 (1) A child, as referred to in this Code, is a person who has not reached 18 years of age.

 (2) To a child who had not reached the age of 14 at the time of perpetration of a criminal offence (hereinafter: the child) no criminal sanctions or other measures foreseen in this Law can be pronounced.

 (3) A juvenile is a child who had reached the age of 16, but not reached the age of 18 (hereinafter: the juvenile) and to whom criminal sanctions or other measures foreseen in this Law can be pronounced.

 **Article 3. Age of a juvenile for the purposes of this Law**

 (1) A junior juvenile is a minor who at the time of perpetration of a criminal offence had attained 14 years of age but had not reached 16 years of age.

 (2) A senior juvenile is a minor who at the time of perpetration of a criminal offence had attained 16 years of age but had not reached 18 years of age.

 (3) A junior adult is a person who at the time of perpetration of a criminal offence had attained 18 years of age but had not reached 21 years of age.

**CRIMINAL CODE OF THE REPUBLIKA SRPSKA**

**Article 123 Meaning of Terms**

(1) The terms used in this Code shall have the following meanings:

*7) child as a victim of a criminal offence shall mean a person who has not reached the age of 18 years*

**Article 172 Sexual Intercourse with a Child under the Age of 15**

*(1) Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of 15 shall be punished by imprisonment for a term between two and ten years.*

*(3) In the event that the offense referred to in paragraph (1) of this Article has been perpetrated by use of force or threat, or exploitation of the mental disorder or infirmity of the child, or in a particularly cruel or humiliating manner, or by several persons, or if there is a large disparity in terms of maturity and age between the perpetrator and the victim, or if the criminal offence has resulted in grievous bodily injury or a serious impairment of health or pregnancy of the offence victim, the perpetrator shall be punished by imprisonment for at least eight years.*

**LAW ON THE PROTECTION AND TREATMENT OF CHILDREN AND JUVENILES IN CRIMINAL PROCEEDINGS OF REPUBLIKA SRPSKA[[10]](#footnote-10)**

 **Article 2. Definition of the child and implementation of criminal sanctions**

 (1) A child, as referred to in this Code, is a person who has not reached 18 years of age.

 (2) To a child who had not reached the age of 14 at the time of perpetration of a criminal offence (hereinafter: the child) no criminal sanctions or other measures foreseen in this Law can be pronounced.

 (3) A juvenile is a child who had reached the age of 16, but not reached the age of 18 (hereinafter: the juvenile) and to whom criminal sanctions or other measures foreseen in this Law can be pronounced.

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 (1) A junior juvenile is a minor who at the time of perpetration of a criminal offence had attained 14 years of age but had not reached 16 years of age.

 (2) A senior juvenile is a minor who at the time of perpetration of a criminal offence had attained 16 years of age but had not reached 18 years of age.

 (3) A junior adult is a person who at the time of perpetration of a criminal offence had attained 18 years of age but had not reached 21 years of age.

**CRIMINAL CODE OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA**

**Article 2 Meaning of terms as used in this Code**

*(13) A child, as referred to in this Code, is a person who has not reached 14 years of age.*

**Article 204 Sexual intercourse with a child**

(*1) A person who performs sexual intercourse, or a sexual act equal to it, against a child shall be sentenced to prison from two to ten years.*

*(2) A person who performs a forced sexual intercourse, or a sexual act equal to it, against a child (Article 200 Rape, paragraph 1), or against a helpless child (Article 201 Sexual Intercourse with a Helpless Person, paragraph 1), shall be sentenced to at least eight years of prison.*

**LAW ON THE PROTECTION AND TREATMENT OF CHILDREN AND JUVENILES IN CRIMINAL PROCEEDINGS[[11]](#footnote-11)**

 **Article 2. Definition of the child and implementation of criminal sanctions**

 (1) A child, as referred to in this Code, is a person who has not reached 18 years of age.

 (2) To a child who had not reached the age of 14 at the time of perpetration of a criminal offence (hereinafter: the child) no criminal sanctions or other measures foreseen in this Law can be pronounced.

 (3) A juvenile is a child who had reached the age of 16, but not reached the age of 18 (hereinafter: the juvenile) and to whom criminal sanctions or other measures foreseen in this Law can be pronounced.

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 (3) A junior adult is a person who at the time of perpetration of a criminal offence had attained 18 years of age but had not reached 21 years of age.

1. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them**.

The Criminal Code of Republika Srpska recognizes a special basis for excluding a criminal offense of this type if there is no "significant" difference in their mental and physical maturity between the perpetrator and the child (passive subject). For example, a criminal offense called Sexual intercourse with a child under the age of fifteen is not considered to be committed if there is no significant difference in mental and physical maturity between the perpetrator and the passive subject (child). When this difference exists and when it is "more significant", on a larger scale and of greater significance, it is a factual issue deliberated by the court in each specific case with the engagement of an appropriate forensic expert.

1. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.** See the answer to the Question 1 Cited provisions include the sanctions as well.
2. **What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator**?

In a judgment convicting a perpetrator as guilty, the court may award a property claim in whole or in part, and for the rest of the claim instruct the injured party to exercise his rights in civil proceedings. If the data collected in the criminal proceedings do not provide a reliable basis for awarding even a partial property claim, the court will instruct the injured party to seek his claim in full in civil proceedings (Article 212 CPC FBiH, Articles 103-114 CPC RS, Article 108 CPC RS and Article 198 of the CPC BD BiH).

**CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA** („Official Gazette of the Federation of BiH“, no.: 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14)

***Article 212 Ruling on the Claims under Property Law***

*(1) The court shall render a verdict on claims under property law. The court may propose mediation through the mediator to the injured party and the accused or to the defense attorney in accordance with law, if the court considers that the claim under property law is such that it would be purposeful to refer it to the mediation. Injured party, accused and the defense attorney may propose referral to the mediation until the closing of the main trial.*

*(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.*

**CRIMINAL PROCEDURE CODE OF REPUBLIKA SRPSKA** ("Official Gazette of Republika Srpska" no. 53/2012, 91/2017 and 66/2018)

***Article 108  Ruling on the Claims under Property Law***

*(1) The court shall render a verdict on claims under property law.*

*(2) The court may propose mediation through the mediator to the injured party and the accused or to the defense attorney in accordance with law, if the court considers that the claim under property law is such that it would be purposeful to refer it to the mediation. Injured party, accused and the defense attorney may propose referral to the mediation until the closing of the main trial.*

*(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.*

**CRIMINAL PROCEDURE CODE OF BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA** (Official Gazette of Brčko District of Bosnia and Herzegovina" no. 34/2013-consolidated, 27/2014 and 3/2019)

***Article 198 Ruling on the Claims under Property Law***

*(1) The court shall render a verdict on claims under property law. The court may propose mediation through the mediator to the injured party and the accused or to the defense attorney in accordance with law, if the court considers that the claim under property law is such that it would be purposeful to refer it to the mediation. Injured party, accused and the defense attorney may propose referral to the mediation until the closing of the main trial.*

*(2) In a verdict pronouncing the accused guilty, the court may award the injured party the entire claim under property law or may award him part of the claim under property law and refer him to a civil action for the remainder. If the data of criminal proceedings do not provide a reliable basis for either a complete or partial award, the court shall instruct the injured party that he may take civil action to pursue his entire claim under property law.*

 **8 Aggravating and mitigating circumstances**

**a) Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

When sentencing, the court will keep in mind the general rules prescribed by criminal law. For example, in the Republika Srpska it is the provision of Article 52 in which paragraph 1 speaks generally of mitigating and aggravating circumstances:

*General Principles of Meting out Punishments*

*Article 52*

*(1) The court shall mete out the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular the degree of criminal responsibility, the motives for perpetrating the offence, the degree of danger or damage to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the meting out the punishment.*

*(2) A circumstance representing the characteristics of a particular criminal offence may not be taken into consideration also as an aggravating or extenuating circumstance, unless it surpasses the measure that is necessary for the existence of a criminal offence or a particular form of a criminal offence, or if there are two or more such circumstances but only one is sufficient for the existence of a more serious or less serious criminal offence. (3) If a criminal offence was perpetrated out of hatred as provided in Article 123, paragraph (1), sub-paragraph (25) of this Code, the court shall take it into consideration as an aggravating circumstance, unless the hatred is a qualifying circumstance of that criminal offence*

*(4)When meting out the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated with the same motive, and it will also take into consideration the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned.*

*(5)In meting out a fine, the court shall in particular take into consideration the financial situation of the perpetrator.*

 **b) Is rape by more than one perpetrator an aggravating circumstance?**

 Rape by multiple perpetrators is not considered an aggravating circumstance, but a more severe form of rape for which a much harsher punishment is prescribed compared to the basic form of this criminal offense. Consequently, the crime of rape has two more serious forms of manifestation. The first serious form of rape for which a prison sentence of five to fifteen years is prescribed exists in the following cases: a) if the act was committed against a child older than fifteen, where the age of juvenile at the time of the act, known to the perpetrator, constitutes a qualifying circumstance, b) if the act was committed in a particularly cruel or particularly degrading manner - the manner in which the act is committed constitutes a qualifying circumstance. Particular cruelty is present when unnecessary and excessive physical and mental suffering, pain, discomfort and fear of greater intensity or longer duration are inflicted on the passive subject during the commission of the act, while a particularly humiliating way is present when the perpetrator treats the passive subject by taking defamatory, derogatory, degrading, procedures, c) if the act was committed by multiple persons (gang rape) - when at least two or more persons commit several acts of coercion and acts of fornication or other sexual acts equated with it, d) if the act was committed from a special type of immoral motive - hatred, which must exist on the side of the perpetrator at the time of committing the act. Hatred, under Article 123 Item 21 CC is present if a criminal offence is entirely or partly perpetrated on account of racial, national or ethnic origin, language, religious beliefs, skin colour, sex, sexual orientation, social origin, health status or gender identity, d) if due to the action of coercion or resistance, a serious bodily injury or serious damage to the health of a passive subject has occurred - then it is considered an act qualified by a serious consequence (severe bodily injury or serious damage to health in any form) which must be the result of negligence of the perpetrator; and e) if the act resulted in the pregnancy of a raped female person - this is also an act qualified as having a more serious consequence where the pregnancy is caused by the act of sexual intercourse in relation to which the perpetrator acts with negligence. The most serious form of the criminal offense of rape, for which a prison sentence of at least ten years is prescribed, is present if the death of a passive subject occurred as a result of the committed act (coercion or resistance). In relation to death, the perpetrator must act with negligence and it must be caused by the force taken or with the resistance of the passive subject.

 **c) Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)**

In such cases these are separate criminal offences. For instance, in Republika Srpska these are two criminal offences:

*Sexual intercourse with a helpless person*

*Article 167*

*(1)Whoever has had sexual intercourse or any other sex act with a person taking advantage of that person’s mental disease, mental retardation, any other mental disorder, helplessness or any other state of that person which makes him/her incapable of resisting, shall be punished by imprisonment for a term between two to ten years.*

*(2)If the criminal offence referred to in Paragraph 1 of this Article was committed in a particularly cruel or degrading manner or if sexual intercourse were performed by more perpetrators or if the criminal offence has resulted in grievous bodily injury or a serious impairment of health or pregnancy of the helpless female victim, the perpetrator shall be punished by imprisonment for a term not less than five years.*

*(3)If the criminal offences referred to in Paragraphs 1 and 2 of this Article have resulted in the death of the victim, the perpetrator shall be punished by imprisonment for a term not less than ten years.*

And other criminal offence under Article 168:

*Sexual Intercourse by Abuse of Position*

*Article 168*

 *Whoever induces into sexual intercourse or any other sex act a person who is in a subordinate or dependent position, shall be punished by imprisonment for a term from two to five years*

**d) Is rape by spouse or intimate partner an aggravating circumstance**? NO

9) **Does** **the law foresee mitigating circumstances for the purposes of punishment?** Already answered

10. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response?** NO

a) **Regardless of the law, is reconciliation permitted in practice?**

The Ombudsman does not possess the data about it

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **NO**

* 1. if the perpetrator marries the victim of rape? YES/NO
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

**Prosecution**

**12. Is rape reported to the police prosecuted ex officio (public prosecution)?** YES

**13. Is rape reported to the police prosecuted ex parte (private prosecution)?** NO

**14. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women?** YES

**15. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children?** YES

**16. Please provide information on the statute of limitations for prosecuting rape.**

**The Criminal Code of Bosnia and Herzegovina the Criminal Code of the Federation of BiH, and the Criminal Code of the Brčko District of BiH** prescribe that the statute of limitations from criminal prosecution takes place in the following cases:

Unless it is stipulated otherwise in this Code, the imposed sentence shall not be executed when the following time periods have elapsed from the date of entry into force of the judgement by which a punishment has been imposed:

(1) Thirty-five years if a punishment of long-term imprisonment has been imposed;

2) Twenty years if a punishment of imprisonment for a term exceeding ten years has been imposed;

3) Fifteen years if the punishment of imprisonment for a term exceeding five years has been imposed;

4) Ten years if the punishment of imprisonment for a term exceeding three years has been imposed;

5) Five years if the punishment of imprisonment for a term exceeding one year has been imposed;

6) Three years if the punishment of imprisonment for a term not exceeding one year or a fine has been imposed.

(2) If several punishments are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe punishment prescribed

**Criminal Code of Republika Srpska** prescribes the following:

*(1) Criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:*

*1) Thirty years in the case of a criminal offence punishable with a long-term imprisonment sentence;*

*2) Twenty years in the case of a criminal offence punishable with an imprisonment sentence for a term exceeding fifteen years;*

*3) Fifteen years in the case of a criminal offence punishable with an imprisonment sentence for a term exceeding ten years;*

*4) Ten years in the case of a criminal offence punishable with an imprisonment sentence for a term exceeding five years;*

*5) Five years in the case of a criminal offence punishable with an imprisonment sentence for a term exceeding three years;*

*6) Three years in the case of a criminal offence punishable with an imprisonment sentence for a term exceeding one year.*

*7) Two years in the case of a criminal offence punishable with an imprisonment sentence for a term not exceeding one year or with a fine.*

*(2) If several punishments are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe punishment prescribed.*

**17. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?**

There is no such provisions in the positive legislation in Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina.

**18. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses?**

 This is the question for prosecution and judicial authorities

**19. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?**

This is the question for prosecution and judicial authorities

**20. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.**

This is the question for prosecution and judicial authorities

**War and/or conflict**

**21. Is rape criminalized as a war crime or crime against humanity?** YES

**The Criminal Code of Bosnia and Herzegovina prescribes rape in the following criminal offenses:**

**a) Crime against humanity**

**Article 172 paragraph 1 Item g)**

*Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity*

(2) For the purpose of paragraph 1 of this Article the following terms shall have the following meanings: (paragraph 2 Item f)

*Forced pregnancy means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.*

**b) War crimes against civilians**

**Article 173 paragraph 1 Item f)**

*Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy’s army or in its intelligence service or administration;*

**22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?** NO

**Criminal Code of Bosnia and Herzegovina provides for the following:**

**Article 19**

Criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations.

**23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?** NO

**Criminal Code of Bosnia and Herzegovina provides for the following:**

**Article 19**

Criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations

**24. Has the Rome Statute of the International Criminal Court (ICC) been ratified?** YES

 **Data**

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

We do not have this data because we do not keep records of this kind. This information is in the possession of the judicial authorities or the High Judicial and Prosecutorial Council of BiH

**Other**

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

Patriarchal society and inherited relations between men and women, which are characterized by fear, shame, lack of understanding of the environment, slowness in resolving these cases, often misunderstanding on the side of the authorities involved in processing these cases, cause lack of reporting of some cases of rape. Therefore, it is certain that the number of rape cases is higher than the number presented in official statistics.

INSTITUTION OF HUMAN RIGHTS OMBUDSMAN OF BOSNIA AND HERZEGOVINA

1. Official Gazette of Bosnia and Herzegovina no. 3/2003; 32/2003 – corr.; 37/2003; 54/2004; 61/2004; 30/2005; 53/2006; 55/2006; 32/2007; 8/2010; 47/2014; 22/2015; 40/2015 and 35/2018 [↑](#footnote-ref-1)
2. Official Gazette of Republika Srpska no. 64/2017 and 104/2018 – CC decision. It should note that the previous Criminal Code of Republika Srpska was adopted in May 2003 and entered into force on 1 July 2003, no. 49/2003; 108/2004; 37/2006; 70/2006; 73/2010; 1/2012 and 67/2013 [↑](#footnote-ref-2)
3. Official Gazette of the Federation of Bosnia and Herzegovina No.. 36/2003; 37/2003 – corr.; 21/2004 – corr.; 69/2004; 18/2005; 42/2010; 42/2011; 59/2014; 76/2014; 46/2016 and 75/2017 [↑](#footnote-ref-3)
4. Official Gazette of Brčko District of Bosnia and Herzegovina 33/2013 – consolidated; 47/2014 – corr.; 26/2016; 13/2017 and 50/2018 [↑](#footnote-ref-4)
5. Official Gazette of Bosnia and Herzegovina no. 3/2003, 32/2003 - corr, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009 - other law, 93/2009, 72/2013 and 65/2018 [↑](#footnote-ref-5)
6. Official Gazette of the Federation of Bosnia and Herzegovina, no. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 53/07, 9/09, 12/10, 8/13 and 59/14. [↑](#footnote-ref-6)
7. Official Gazette of the Federation of Republika Srpska, br. 53/2012, 91/2017 and 66/2018 [↑](#footnote-ref-7)
8. Official Gazette of Brčko District of BiH, no. 34/2013 - consolidated, 27/2014 and 3/2019 [↑](#footnote-ref-8)
9. Official Gazette of the Federation of Bosnia and Herzegovina, no. 7/2014 [↑](#footnote-ref-9)
10. Official Gazette of Republika Srpska, no. 13/2010 and 61/2013 [↑](#footnote-ref-10)
11. Official Gazette of Brčko District of BiH, no. 44/2011 [↑](#footnote-ref-11)