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.**

**INTRODUCTION:**

The Laws applicable in Bosnia and Herzegovina for criminal offenses as “Rape” and other forms of sexual violence, include the following: The Criminal Codes of BIH, Federation of BIH, Republika Srpska and Brcko Distrikt of BIH, the Criminal Procedure Codes in BIH, FBIH, RS and Brcko Distrikt of BIH, and the Laws on Protection from Domestic Violence in Federation of BIH, Republika Srpska and Brcko Distrikt of BIH.

The Criminal Code of Bosnia and Herzegovina and the Law on Gender Equality of Bosnia and Herzegovina define certain criminal offences that are also relate to the issue of violence against women. These criminal offences relate primarily to the area of exercising rights before the Institutions of Bosnia and Herzegovina. They also relate to the areas of gender-based discrimination, war events and the perpetuation of criminal offences as war events and as war crimes, the area of international human trafficking and international solicitation of prostitution and the area of violation of gender equality.

The Criminal Codes of Federation of BIH, Republika Srpska and Brcko Distrikt of BIH as well as special Laws of BIH and the entities have an approach to the criminalization of the following offences: psychological violence, stalking, physical violence, sexual violence including rape, forced marriage, female genital mutilation, forced sterilization and sexual harassment.

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

**Official Gazette of the Federation of Bosnia and Herzegovina No. 36/2003, 21/2004, 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 i 75/2017**

**CHAPTER XIX**

**CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM AND MORALITY**

**Article 203**

**Rape**

(1) Whosoever compels another person to have sexual intercourse with him by force or threat of immediate physical attack upon that person or upon someone close to that person, shall be punished by imprisonment for a term of between one and ten years.

(2) Whosoever commits an offence under paragraph 1 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a term of between three and fifteen years.

(3) If any offence under paragraph 1 above results in grievous bodily injury, a serious effect on health, the death of the victim or pregnancy of the female victim, the offender shall be punished by imprisonment for a minimum term of three years.

(4) The liability to sentence under paragraph 2 above shall apply to whomsoever commits the offence under paragraph 1 above out of hatred.

(5) Whosoever commits the offence under paragraph 1 above against a juvenile, shall be punished by imprisonment for a minimum term of three years.

(6) Whosoever commits any offence under paragraphs 2 to 4 above against a juvenile, shall be punished by imprisonment for a minimum term of five years.

(7) If the offence under paragraph 2 above results in the consequences set out under paragraph 3 above, the offender shall be punished by imprisonment for a minimum term of five years.

**Article 204**

**Sexual Intercourse with a Helpless Person**

(1) Whosoever has had sexual intercourse, or performs sex acts tantamount to sexual intercourse, with a person, taking advantage of that person's mental disability, temporary mental disorder, infirmity or any other condition which makes him/her incapable of resisting, shall be punished by imprisonment for a term of between one and eight years.

(2) Whosoever commits any offence under paragraph 1 above against a person whose incapability to resist, the offender has himself caused, or participated in causing, shall be punished pursuant to Article 203(1) (Rape) of this Code.

(3) Whosoever commits the offence under paragraph 1 above in an aggravated, cruel ordegrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a term of between one and ten years. (4) Whosoever commits any offence under paragraph 2 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished pursuant to Article 203(2) of this Code

(5) If the offence under paragraph 1 above results in grievous bodily injury, a serious effect on health, the death of the victim or pregnancy of the female victim, the offender shall be punished by imprisonment for a term of between one and ten years.

(6) If the offence under paragraphs 3 and 4 above results in the consequences set out in paragraph 5 above, the offender shall be punished by imprisonment for a minimum term of three years.

**Article 205**

**Sexual Intercourse by Abuse of Position**

(1) Whosoever induces into sexual intercourse, or sex acts tantamount to sexual intercourse, a person who is in a dependent position in relation to him, due to that person’s financial, family, social, health or other circumstances, shall be punished by imprisonment for a term of between three months and three years.

(2) Any instructor, educator, guardian, adoptive parent, step-parent or any other person who, by abuse of his status, has sexual intercourse with a juvenile, shall be punished by imprisonment for a term of between six months and five years.

**Article 206**

**Forced Sexual Intercourse**

Whosoever coerces another person into sexual intercourse, or sex acts tantamount to sexual intercourse, by use of serious threat to cause harm, shall be punished by imprisonment for a term of between six months and five years.

**Article 207**

**Sexual Intercourse with a Child**

(1) Whosoever has sexual intercourse, or sex acts tantamount to sexual intercourse, with a child, shall be punished by imprisonment for a term of between one and eight years.

(2) Whosoever has forced sexual intercourse, or sex acts tantamount to sexual intercourse, with a child (Article 203(1) Rape), or a helpless child (Article 204(1) Sexual Intercourse With a Helpless Person), shall be punished by imprisonment for a minimum term of three years.

(3) Whosoever has sexual intercourse, or sex acts tantamount to sexual intercourse, with a child by abuse of his position (Article 205(2) Sexual Intercourse by Abuse of Position), shall be punished by imprisonment for a term of between one and ten years.

(4) Whosoever commits any offence under paragraphs 1 to 3 above in an aggravated, cruel or degrading manner, or if at the same time more instances of sexual intercourse or sex acts tantamount to sexual intercourse are performed by more offenders, shall be punished by imprisonment for a minimum term of five years.

(5) If any offence under paragraphs 1 to 3 above results in grievous bodily injury, a serious effect on health, the death or pregnancy of the female child, the offender shall be punished by imprisonment for not less than five years or to life imprisonment.

**Article 208**

**Lechery (Lewd Behavior)**

(1) Whosoever, in the offences under Articles 203 (Rape), 204 (Sexual Intercourse With a Helpless Person), 205 (Sexual Intercourse by Abuse of Position) and 206 (Forced Sexual Intercourse) of this Code, does not commit a full offence, but only a lecherous act, shall be punished by imprisonment for a term of between three months and three years.

(2) Whosoever, in the offences under Article 207 (Sexual Intercourse With a Child) of this Code, commits no full offence, but only a lecherous act, or who commits an offence under paragraph 1 above against a child or juvenile, shall be punished by imprisonment for a term of between six months and five years.

**Article 209**

**Satisfying Lust in Front of a Child or Juvenile**

Whosoever engages in his or another’s debauchery in front of a child or juvenile, or who incites a child to engage in debauchery in front of him or another, shall be punished by imprisonment for a term of between six months and three years.

**Article 213**

**Incest**

(1) Whosoever has sexual intercourse, or commits sex acts tantamount to sexual intercourse, with a lineal relative or a sibling, shall be punished by a fine or imprisonment for a term of between six months and two years.

(2) Whosoever commits an offence under paragraph 1 above with a juvenile, shall be punished by imprisonment for a term of between one and five years.

(3) Whosoever commits the offence under paragraph 1 above with a child, shall be punished by imprisonment for a term of between two and ten years.

**CHAPTER XX**

**CRIMINAL OFFENCES AGAINST MARRIAGE AND THE FAMILY**

**Article 222**

**Domestic Violence**

(1) Whosoever, by use of violence, threatening behavior or mental cruelty violates the peace, life, physical or mental health of any member of his family, shall be punished by a fine or imprisonment for a maximum term of one year.

(2) Whosoever commits an offence under paragraph 1 above against a member of his household, shall be punished by a fine or imprisonment for a maximum term of three years.

(3) If during the commission of any offence under paragraphs 1 and 2 above, any weapons, dangerous implements or other instruments capable of inflicting grave bodily injury or harm are used, the offender shall be punished by imprisonment for a term of between three months and three years.

(4) If the commission of any offence under paragraphs 1 to 3 above results in grievous bodily harm to, or impairment of health of any member of his family, or if any offence under paragraphs 1 to 3 above is committed against a child or juvenile, the offender shall be punished by imprisonment for a term of between one and five years.

(5) If the commission of any offence under paragraphs 1 to 4 above results in the death of any member of his family, the offender shall be punished by imprisonment for a term of between two and fifteen years.

(6) Whosoever causes the death of any member of his family whom he has previously mistreated shall be punished by imprisonment for a minimum term of ten years or to longterm imprisonment.

**THE LAW ON PROTECTION FROM DOMESTIC VIOLENCE IN THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**Official Gazette of the Federation of Bosnia and Herzegovina,**

**No. 20/13**

**Article 7, Definition of Domestic Violence**

It is to be considered within the meaning of this Law that domestic violence is present if there are grounds for suspicion of any act being committed that inflicts physical, psychological, sexual or economic harm as well as threats or fear of physical, psychological, sexual or economic harm to another family member.

Acts of domestic violence or the threats of such acts, in terms of paragraph 1 of this Article, include the following:

1) any use of force against the physical or psychological integrity of a family member;

2) any behaviour by a family member that could result in or cause danger of physical or psychological pain and suffering;

3) intimidation, threats or the violation of the dignity of a family member through blackmail or another form of coercion;

4) physical attack by a family member on another family member, irrespective of the fact of whether there was physical injury or not;

5) verbal attack, insult, profanity, name calling or other forms of violent harassment by one family member against another;

6) sexual harassment;

7) stalking or other related forms of harassment of a family member;

8) causing damage to or destroying joint property and possessions;

9) the use of physical violence or causing fear in order to take away the rights of a family member to economic independence by prohibiting that person’s ability to work or by otherwise keeping a family member in a relationship of dependence and subordination;

10) the use of physical or psychological violence against children and neglect in terms of their upbringing;

11) physical or psychological violence against elderly or weak persons and neglecting of their care and medical treatment;

12) forced isolation or limiting the freedom of movement of a family member;

13) failure to provide due care for a family member or failure to assist and protect a family member when bound to do so by the law.

**LAW ON GENDER EQUALITY IN BOSNIA AND HERZEGOVINA, Official Gazette of Bosnia and Herzegovina, No. 32/10**

**Article 29**

A person who, on grounds of sex, commits violence, harassment or sexual harassment that endanger serenity, mental health or body integrity shall be punished with a fine or imprisonment for a term of six months up to five years.

**CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA, Official Gazette of the Federation of Bosnia and Herzegovina, No. 35/2003, 56/2003 - corr., 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 9/2009, 12/2010, 8/2013 i 59/2014**

**Article 279**

**Special Evidentiary Rules When Dealing with Cases of Sex Crimes**

(1) The evidence offered to prove that injured party was engaged in other events related to sexual behavior and to prove a sexual predisposition of the injured party is not admissible.

(2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.

(3) In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in a favor of the defense.

(4) Before admitting evidence pursuant to this Article, the court must conduct an appropriate hearing incamera.

(5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the court orders otherwise.

Rape, Article 165 of the Criminal code of Republic of Srpska

(1) Whoever forces another person to engage in sexual conduct by using force or threatening to directly attack the life or body of him or of a person close to him, shall be punished by imprisonment for a term between three and ten years.

(2) If the act referred to in paragraph 1 of this Article was committed against a child older than fifteen years, or in a particularly cruel or particularly humiliating manner, or by several persons, or out of hatred, or the act resulted in serious bodily injury, serious impairment or pregnancy of a raped female person, the offender will be punished by imprisonment for a term between five and fifteen years.

(3) If, as a result of the crime act from par. 1 and 2 of this Article, the death of the attacked person occurred, the perpetrator shall be punished by imprisonment for not less than ten years.

Sexual blackmail, Article 166 of the Criminal code of Republic of Srpska

Whoever forces another to have sex or a sexual act equated with it by threatening to discover something that would harm his, or someone’s close to him, honor or reputation or by threatening with some other kind of serious evil, shall be punished by imprisonment for a term between one and eight years.

Sexual conduct with incapacitated person, Article 167 of the Criminal code of Republic of Srpska

(1) Whoever makes any kind of sexual intercourse with another person by exploiting this person’s mental illness, insufficient mental development, other mental disorder, infirmity or any other condition of that person due to which he/she is incapable of resistance, shall be punished by imprisonment for a term between two and ten years.

(2) If the act referred to in paragraph 1 of this Article was committed in a particularly cruel or particularly humiliating manner, or by several persons, or out of hatred, or as a result of the act occurred serious bodily injury, serious impairment of health or pregnancy of a helpless female person, the perpetrator shall be punished by imprisonment for at least five years.

(3) If, as a result of the crime act from par. 1 or 2 of this Article the death of the attacked incapable person occurred, the perpetrator shall be punished by imprisonment for a term not less than ten years.

Sexual abuse by misusage of position, Article 168 of the Criminal code of Republic of Srpska

Whoever, by abusing his position, induces a person who is in a position of any subordination or dependence to him to participate in any kind of sexual act, shall be punished by imprisonment for a term between two and five years.

Sexual harassment , Article 170 of the Criminal code of Republic of Srpska

(1)Who sexually harasses another person who is in a relationship of subordination or addiction to him or which is particularly vulnerable due to age, illness, disability, addiction, pregnancy, severe physical or mental disability, shall be punished by imprisonment for a term not exceeding two years.

(2)Sexual harassment is any verbal, non-verbal or physical unwanted behavior of sexual nature which aims to violate the dignity of the person in the sphere of sexual life, and which causes fear or creates a hostile, degrading, or offensive environment.

(3) Prosecution for the act referred to in paragraph 1 of this Article shall be undertaken upon motion.

Lewd acts, Article 171 of the Criminal code of Republic of Srpska

Who under the conditions of Art. 165, 166, 167 and 168 of this Code, performs another sexual act shall be punished by imprisonment for a term not exceeding three years.

Sexual conduct with a child under 15 years of age, Article 172 of the Criminal code of Republic of Srpska

(1) Whoever engages himself in a sexual intercourse with a child under the age of fifteen, shall be punished by imprisonment for a term between two and ten years.

(2) If the act referred to in paragraph 1 of this Article is committed by a blood relative in the direct line to any degree, and in the collateral line up to the fourth degree, stepfather, stepmother, adoptive parent, guardian, teacher, educator, doctor, religious official or other person the child is entrusted to with the purpose of teaching, education, custody, care or nursing, the perpetrator shall be punished by imprisonment for a term between five and fifteen years.

(3) If the act referred to in paragraph 1 of this Article was committed by force or threat, or by exploiting the child's mental disorder or infirmity, or in a particularly cruel or degrading manner, or by several persons, or there is a large disparity in maturity and age between perpetrator and victim, or the act has resulted in a serious bodily injury, serious impairment of health or pregnancy of the person against whom the act was committed, the perpetrator shall be punished by imprisonment for a term not less than eight years.

(4) If due to the act from paragraph 1, 2 and 3 of this Article, the child dies, the perpetrator shall be punished by imprisonment for a term not less than ten years or by long-term imprisonment.

(5) The perpetrator who was in remediable misconception in relation to the age of the child referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term between one and five years.

(6) The perpetrator shall not be punished for the act referred to in paragraph 1 of this Article if there is no significant difference between him and the child in their mental and physical maturity.

(7) If under the conditions of par 1 or 2 of this Article, another sexual act is committed, the perpetrator shall be punished by imprisonment for a term between six months and five years, and if another sexual act is performed under the conditions referred to in paragraph 3 of this Article, the perpetrator shall be punished by imprisonment of one to eight years.

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

**C H A P T E R XIX**

**CRIMINAL OFFENCES AGAINST SEXUAL FREEDOM AND MORAL**

**Rape**

**Article 200**

(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 one 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 victi 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.

**Sexual Intercourse with a Helpless Person**

**Article 201**

(1) Whoever commits a sexual intercourse, or a sexual act equal to it, against another person by taking the advantage of the person’s mental illness, mental disorder, mental retardation, some other serious mental impairment, or some other condition of that person which makes him incapable to oppose, shall be sentenced to prison from one to eight years.

(2) If the offence referred to in Paragraph 1 of this Article was committed against a person whose incapacity to oppose was caused by the perpetrator himself, or if the perpetrator participated in making the person incapable to oppose, the perpetrator shall be sentenced to prison from one to ten years.

(3) Whoever commits the criminal offence referred to in paragraph 1 of this Article in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or equal sexual acts, by several perpetrators, the perpetrator shall be sentenced to prison from one to ten years.

(4) Whoever commits the criminal offence referred to in paragraph 2 of this Article in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or equal sexual acts, by several perpetrators, the perpetrator shall be sentenced to prison from three to fifteen years.

(5) If the criminal offence referred to in paragraph 1 of this Article resulted in death of the person against whom a sexual intercourse, or a sexual act equal to it, was performed, or in grievous bodily injury, serious impairment of health, or pregnancy of the female, the perpetrator shall be sentenced to prison from one to ten years.

(6) If the criminal offences referred to in paragraphs 3 and 4 of this Article resulted in consequences stated in paragraph 5 of this Article, the perpetrator shall be sentenced to at least three years of prison.

**Sexual Intercourse through Abuse of Office**

**Article 202**

(1) A person who abuses office to compel to sexual intercourse, or a sexual act equal to it, another person who is dependent on that person due to financial, family, social, health or some other status or difficult circumstances, shall be sentenced to prison from three months to three years.

(2) A teacher, tutor, parent, adoptive parent, guardian, stepfather, stepmother or other person who abuses his position and performs a sexual intercourse or an act equal to it, against a juvenile entrusted to him for the purpose of teaching, education, guarding or care, shall be sentenced to prison from six months to five years.

**Forced Sexual Intercourse**

**Article 203**

A person who forces another person to sexual intercourse by use of serious threat of revealing something which would harm the honor or reputation of that person or a person close to him by use of threat of doing some other serious harm, shall be sentenced to prison from six months to five years.

**Sexual Intercourse with a Child**

**Article 204**

(1) A person who performs sexual intercourse, or a sexual act equal to it, against a child shall be sentenced to prison from one to eight 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 three years of prison.

(3) A person who commits sexual intercourse, or a sexual act equal to it, against a child through abuse of office (Article 202, Sexual Intercourse through Abuse of Office, paragraph 2), shall be sentenced to prison from one to ten years.

(4) A person who commits the criminal offence referred to in paragraphs 1 through 3 in an extremely brutal or humiliating manner, or if the same victim was subject to several sexual intercourses, or sexual acts equal to sexual intercourse, by several perpetrators, shall be sentenced to at least five years of prison.

(5) If the criminal offences referred to in paragraphs 1 through 3 resulted in death of a child, or a child was severely injured, or his health was severely impaired, or it resulted in pregnancy of a female child, the perpetrator shall be sentenced to at least five years of prison or a long-term imprisonment.

**Debauchery**

**Article 205**

(1) A person who commits an offence involving only debauchery in the cases referred to in Article 200 (Rape), 201 (Sexual Intercourse with a Helpless Person), 202 (Sexual Intercourse through Abuse of Office), and 203 (Forced Sexual Intercourse) of this Law, when there was no attempt of that criminal offence, shall be sentenced from three months to three years of prison.

(2) A person who commits an offence involving only debauchery in the case referred to in Article 204 (Sexual Intercourse with a Child) of this Law, when there was no attempt of that criminal offence, or a person who commits the criminal offence referred to in paragraph 1 of this Article against a child or a minor, shall be sentenced from six months to five years of prison.

**Incest**

**Article 210**

(1) A person who performs an sexual intercourse, or a sexual act equal to it, with a blood relative in direct line or with a brother or sister, shall be fined or sentenced up to one year of imprisonment.

(2) A person who commits the criminal offence referred to in paragraph 1 of this Article against a minor, shall be sentenced to prison from six months to five years.

(3) A person who commits the criminal offence referred to in paragraph 1 of this Article against a child, shall be sentenced to prison from one to eight years.

**2. Based on the wording of those provisions, is the provided definition of rape:**

**a. Gender specific, covering women only YES/NO**

**b. Gender neutral, covering all persons YES/NO**

**c. Based on the lack of consent of victim YES/ NO**

**d. Based on the use of force or threat YES/ NO**

**e. Some combination of the above. YES / NO**

**f. Does it cover only vaginal rape? YES /NO**

**g. Does it cover all forms of penetration? YES/NO. If yes, please specify.**

No specific forms are listed.

**h. Is marital rape in this provision explicitly included? YES / NO**

Except according to the Law on Protection from Domestic Violence in Brčko District of Bosnia and Herzegovina (Official Gazette of the Brčko District’, No. 7/2018), ‘domestic violence’ is deemed to be any act of violence committed by a family member or threats by a family member that endangers the peace, psychological, physical**, sexual** or economic integrity of another family member.

**i. Is the law silent on marital rape? YES/NO**

The Criminal Code of the Federation of Bosnia and Herzegovina in the Article 203 Rape, the Article 204 Sexual Intercourse with a Helpless Person, the Article 205 Sexual Intercourse by Abuse of Position, the Article 206 Forced Sexual Intercourse, the Article 207 Sexual Intercourse does not exclude the possibility that spouses could appear as the offender and the victim.

*In the Article 205, paragraph 1,( Sexual Intercourse by Abuse of Position) is precisely defined relation between the offender and the victim by the provision* **“** Whosoever induces into sexual intercourse, or sex acts tantamount to sexual intercourse, a person who is in a dependent position in relation to him, due to that person’s financial, family, social, health or other circumstances, shall be punished by imprisonment for a term of between three months and three years”.

In addition, Article 222 of the Criminal Code of the Federation of Bosnia and Herzegovina criminalizes domestic violence. The term domestic violence is defined in Article 7 of the Law on Protection from Domestic Violence in the Federation of Bosnia and Herzegovina that includes actions that inflicts physical, psychological, sexual or economic harm as well as threats or fear of physical, psychological, sexual or economic harm to another family member. Sexual harassment is defined as domestic violent action.

Also, Article 29 of the Law on Gender Equality in Bosnia and Herzegovina prescribes a sentence of imprisonment of 6 months to 5 years for an offender who, on grounds of sex, commits violence, harassment or sexual harassment that endangers serenity, mental health or body integrity.

The law in Republika Srpska is silent on marital rape.

**j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**

**Please see the paragraph i.**

**k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO**

**Please see the paragraphs i. I j.**

**3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

NO

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

The age for sexual intercourse is not explicitly stated. According to the Criminal Code of the Federation of Bosnia and Herzegovina, a child is a person under the age of fourteen and a minor is a person under the age of eighteen. The Criminal Code of the Federation of Bosnia and Herzegovina specifies the criminal offence of sexual intercourse with a child in the Article 207. In the case of other criminal offences against sexual freedom and morals, the Law provides for qualifying circumstance if they were committed against a minor or child. In addition to this, the Code specifies the criminal offence of sexual satisfaction in the presence of a child or a minor (Article 209), abuse of a child or minor for pornography (Article 211) and introducing a child to pornography (Article 212).

Also, the Criminal Code of the Federation of Bosnia and Herzegovina specifies criminal offences including elements of sexual violence and rape, such as rape (Article 203), sexual intercourse with a helpless person (Article 204), sexual intercourse by abuse of power (Article 205), coerced sexual intercourse (Article 206), sexual intercourse with a child (Article 207), sexual misconduct (Article 208), sexual satisfaction in the presence of a child or a minor (Article 209), solicitation of prostitution (Article 210), human trafficking (Article 210a), abuse of child or minor for pornography (Article 211), introducing a child to pornography (Article 212), and incest (Article 213).

The Criminal Code of the Federation of Bosnia and Herzegovina prescribes the criminal offense Extramarital Cohabitation with a Junior Juvenile (Article 216), which stipulates that an adult who co-habits with a juvenile, who is under the age of 16, shall be punished by imprisonment for a term of between three months and three years.

According to the Law on Protection against Domestic Violence of the Federation of Bosnia and Herzegovina, a child is any family member who is under 18 years of age. According to the Law on Protection and Treatment of Children and Minors in the Criminal Procedure of the Federation of Bosnia and Herzegovina, a child is any person who is under 18 years of age.

The legal age for sexual consent in Republika Srpska is 15.

According to the Article 2 of the Criminal Code of Brcko Distrikt BIH, a child is a person who has not reached fourteen years of age and a juvenile is a person who has not reached eighteen years of age. In the case of other criminal offences against sexual freedom and morals, the Law provides for qualifying circumstance if they were committed against a minor or child. According to the Law on Protection from Domestic Violence in Brcko District of Bosnia and Herzegovina, a child is a minor who is under 18 years of age.

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

There are no provisions in the Federation of Bosnia and Herzegovina that differentiate for sexual activities between peers.

In accordance with Article 15 of the Criminal Code of the Republika Srpska, the criminal legislation does not apply to a person who has not reached the age of 14 at the time the offense was committed.

Also, the Criminal Code of the Republika Srpska, Article 172, defines the act of Sexual conduct with a child under 15, where paragraph 6 stipulates that the perpetrator will not be punished if there is no significant difference between him and the child in their mental and physical maturity.

6.     **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

Information on criminal sanctions and its duration is provided in answer no. 1 above.

**7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

Article 207 of the Criminal Procedure Code of FBIH[[1]](#footnote-1) provides that the aggrieved party can present a civil claim resulting from a criminal offence in criminal proceedings, if it does not lead to a considerable prolongation of the proceedings. A civil claim can relate to damage compensation, return of property or the annulment of a legal transaction. In compliance with Article 208 of the Law, the injured party can present a civil claim in criminal proceedings if authorised to do so in civil proceedings. In compliance with Article 209 of the Law, a civil claim in criminal proceedings is presented to the prosecutor or the court. A claim can be presented no later than the end of the main hearing or the hearing for the imposition of criminal sanctions by the court. Article 212 of the Law provides that the court will decide on a civil claim. The court can award full compensation to injured party in the judgment in which the accused is found guilty or it can award only partial compensation and refer the party to civil proceedings for the remaining part of the compensation.

The Law on the Obligations of FBIH[[2]](#footnote-2)contains substantive law provisions that regulate the right to damage compensation in civil or criminal proceedings. The Law provides for damage compensation in case of physical injury or damage to health, which implies damage compensation for medical treatment and other necessary costs related to this as well as loss of earnings due to the inability to work during the treatment. It also covers financial compensation, which implies compensation for the physical and emotional pain suffered because of reduced activity, injury, tarnished reputation and honour, reduced freedom or right of personality, death of a dear person and fear. The damage compensation procedure is part of civil proceedings in compliance with the Law on the Civil Procedure Code.[[3]](#footnote-3) According to Article 202 of this Law, a person who has been deceived, coerced or abused by a relationship of subordination or dependence into criminal adultery or criminal fornication, as well as a person against whom another criminal offense against dignity of personality and morals has a right for damage compensation.

In the criminal procedure system of the Republika Srpska, the institute of property damage claim is an associated procedure of criminal procedure. Victims of crime have the right to file a property damage claim in relation to the damage they have suffered. The position and rights of the injured victim in criminal proceedings are prescribed by the Criminal Code Procedure.

With regard to the right to compensation, the Law on Obligations applies. Article 155 of this Law defines the right to compensation for damage that can be manifested as material and as non-material. Material damage means reducing assets or someone's property or preventing their increase, and non-material damage means inflicting physical or mental pain and fear on others.

**Aggravating and mitigating circumstances**

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

The Criminal Code of BIH and the Criminal Code of the Federation BIH prescribe aggravating circumstances in the General Principles of Execution of Punishments.

Article 49 of the Criminal Code of FBIH stipulates general rules for sentencing where the court prescribes the punishment for the perpetrator of a criminal offence within the limits prescribed by law for that criminal offence, having in mind the purpose of punishment and taking into account all of the circumstances that have a bearing on the magnitude of punishment (extenuating and aggravating circumstances). This applies in particular to the following: the degree of criminal responsibility, the motive for perpetrating the offence, the degree of danger or damage to the protected object, the circumstances under which the offence was perpetrated, the personal history of the perpetrator prior to the crime, his/her personal situation and conduct after the perpetration of the criminal offence as well as other circumstances related to the person - perpetrator. In prescribing punishment for the perpetrator of a criminal offence who is a recidivist the court will give special consideration to whether the most recent offence is of the same type as the previous one, whether both offences were perpetrated for the same motive and the period of time that elapsed since the previous conviction or served or pardoned punishment. When prescribing a fine, the court will also take into consideration the financial situation of the perpetrator, taking into account the amount of his/her salary, other income, assets and family obligations.

**CRIMINAL CODE OF BIH**

**General Principles of Meting out Punishments**

**Article 48**

(1) The court shall impose 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 liability, the motives for perpetrating the offence, the degree of danger or injury 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 personality of the perpetrator.

(2) In ruling on 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 from the same motive, and it will also consider the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned.

(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations

**CRIMINAL CODE OF FEDERATION BIH**

**Article 49**

**General Principles of Meting out Punishments**

(1) The court shall mete out the punishment for the perpetrator of a criminal offence within the limits prescribed by law for that criminal 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 injury to the protected object, the circumstances in which the offence was perpetrated, the personal history of the perpetrator prior to the perpetration, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the person of the perpetrator.

(2) In meting out the punishment for the perpetrator of a criminal offence perpetrated 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 from the same motive, and the period of time which has elapsed since the previous conviction or served or pardoned punishment.

(3) In meting out a fine, the court shall take into consideration also the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.

In addition, an aggravating circumstance is if the criminal offence was committed out of hatred, unless a hate crime is not qualifying circumstance of that crime.

Article 52 of the Criminal Code of Republika Srpska defines general rules on sentencing, which apply to all criminal offenses, including the criminal offense of rape. Some of the circumstances that can be mitigating and aggravating are: the degree of criminal responsibility, the motives from which the crime was committed, the severity of endangering or violating the protected property, the circumstances under which the crime was committed, the perpetrator's previous life, personal circumstances and post-crime posture of the perpetrator, whether the act was committed out of hatred, as well as others. It is important to emphasize here that the same article explicitly prescribes that circumstances that are characteristics of a criminal offense cannot be considered aggravating or mitigating unless they exceed the measure necessary for the very existence of the criminal offense or its specific form.

1. **Is rape by more than one perpetrator an aggravating circumstance?  YES/NO**

The rape by more than one perpetrator is an aggravating circumstance.

In addition, the Criminal Code of the Federation of Bosnia and Herzegovina treats the rape by more than one perpetrator as qualifying forms of crime offenses: “Rape” in the Article 203, paragraph (2), “Sexual Intercourse with a Helpless Person” in the Article 204. paragraph (3), (4), and (6) and “Sexual intercourse with a child” in the Article 207, paragraph (4).

1. **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO**

The rape committed against a particularly vulnerable individual or the imbalance of power between alleged perpetrator and victim may constitute an aggravating circumstance.

The Criminal Code of the Federation of Bosnia and Herzegovina criminalizes rape committed against a particularly vulnerable person or due to imbalance of power as special criminal offenses: "Sexual intercourse with Helpless Persons" in Article 204, "Sexual intercourse by abuse of power" in Article 205 and "Sexual intercourse with a child" in Article 207.

Also, the Criminal Code of the Federation of Bosnia and Herzegovina criminal offense of rape committed against a particularly vulnerable person or due to unequal relations can be treated as qualified forms of criminal offenses: "Rape" in Article 203, paragraph (5) and (6), "Sexual intercourse by abuse of power "in Article 205, paragraph (2)," Sexual intercourse with a child ", in Article 207, paragraph (2) and (3) and “Incest " in Article 213, paragraph (2) and (3)

According to Article 2 (ii) of the Law on Asylum of BIH , vulnerable groups include, “... victims of torture, rape or other psychological, physical and sexual violence, such as victims of female genital mutilation.”

In Republika Srpska this particular circumstance is already a characteristic of a specific form of rape, and therefore, according to the Article 52 of the Criminal Code of Republika Srpska it cannot be considered an aggravating.

1. **Is rape by spouse or intimate partner an aggravating circumstance?**

The Criminal Code of FBIH in the Article 203. covers rape as criminal offence. In this regard, rape by spouse or intimate partner is not defined as a particular aggravating circumstance.

In Republika Srpska it is not explicitly given as such, though the list of aggravating circumstances defined by the Law is an open type list.

**9.     Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.**

The Criminal Code of BIH and the Criminal Code of the Federation BiH foreseen mitigating circumstances for the purposes of punishment.

The answer for Republika Srpska is contained in the information given under the question 8 of the Questionnaire. In addition, the legislator in the Republika Srpska has shown a high degree of sensitivity towards the acts that are the subject of this Questionnaire, and thus Article 54 of the Criminal Procedure Code, which defines the limits of mitigation, states that they will not apply to acts of rape (Article 165 ), Sexual conduct with incapacitated person (167), Sexual conduct with a child under 15 years of age (Article 172).

**CRIMINAL CODE OF BIH**

**General Principles of Meting out Punishments**

**Article 48**

(1) The court shall impose 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 liability, the motives for perpetrating the offence, the degree of danger or injury 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 personality of the perpetrator.

(2) In ruling on 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 from the same motive, and it will also consider the period of time which has elapsed since the pronunciation of the previous conviction, or since the punishment has been served or pardoned.

(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations

**CRIMINAL CODE OF FEDERATION BIH**

**Article 49**

**General Principles of Meting out Punishments**

(1) The court shall mete out the punishment for the perpetrator of a criminal offence within the limits prescribed by law for that criminal 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 injury to the protected object, the circumstances in which the offence was perpetrated, the personal history of the perpetrator prior to the perpetration, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the person of the perpetrator.

(2) In meting out the punishment for the perpetrator of a criminal offence perpetrated 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 from the same motive, and the period of time which has elapsed since the previous conviction or served or pardoned punishment.

(3) In meting out a fine, the court shall take into consideration also the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.

The nature of the relationship between the perpetrator and the victim does not constitute grounds for non-prosecution, release from criminal responsibility or impunity.

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO  If so, at what stage and what are the consequences?**

The Istanbul Convention itself prohibits mediation and other alternative forms of dispute resolution. Mediation is not envisaged in criminal proceedings, as well as in the protective measures procedures. However, mediation in which domestic violence occurs is a particular problem in divorce, where the mediation process is an integral part of the divorce process.

**a.      Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

Although in practice court proceedings reconciliation between the victim and the perpetrator of domestic violence is sometimes taken as a circumstance for dismissing the case or as a mitigating circumstance, the Law does not provide for such a possibility.

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.**

**In the Article 15 the Criminal Code of Federation BIH** stipulates limitations of application of Statute of Limitations Regarding the Institution of Criminal Prosecution as follows:

**Article 15**

**Application of Statute of Limitations Regarding the Institution of Criminal Prosecution**

(1) Unless otherwise stipulated in this Code, criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

a) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed;

b) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;

c) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;

d) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;

e) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;

f) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

(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

There is no provision in the Criminal Code of Republika Srpska for the noon-prosecution of perpetrator.

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/NO**

According the Article 16 (Accusatory Principle) of Criminal Procedure Code of Bosnia and Herzegovina and the Article 17 (Accusatory Principle) of Criminal Procedure Code of the Federation of Bosnia and Herzegovina, criminal proceedings may only be initiated and conducted upon the request of the Prosecutor.

Also, in accordance with the principle of accusatory nature and Article 16 of the Criminal Procedure Code of the Republika Srpska, criminal proceedings may be initiated only at the request of the prosecutor.

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

**14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO**

Article 203 of the Criminal Code prescribes the rape as a criminal offense and there is no defined admission of guilt as a mitigating circumstance for this offense.

In accordance with the Criminal Procedure Code of the Republika Srpska, there is a possibility of pleading guilty by giving a guilty plea or reaching a plea agreement, for all criminal offenses provided by the Criminal Code.

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO**

Article 207 of the Criminal Code prescribes the sexual intercourse with a child as a criminal offense and there is no defined admission of guilt as a mitigating circumstance for this offense.

In accordance with the Criminal Procedure Code of the Republika Srpska, there is a possibility of pleading guilty by giving a guilty plea or reaching a plea agreement, for all criminal offenses provided by the Criminal Code.

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

The Criminal Code of BiH in the Article 19 prescribes that 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 limitation.

The Criminal Code of the Federation of Bosnia and Herzegovina on the statute of limitations on rape and related criminal offenses prescribes that the subjective limitation is period begins from the day when the crime was committed. The subjective limitation period is determined according to the prescribed punishment for an individual criminal offense. Accordingly, prosecution shall not be instituted when the following time periods have elapsed since the commission of a criminal offence:

a) **Thirty-five years** for a criminal offence for which a punishment of long-term imprisonment is prescribed ( the criminal offense “Sexual Intercourse with a Child” the Article 207, paragraph 5, the Criminal Code of Federation BIH)

b**) Twenty years** in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed; (the criminal offense “Rape” the Article 203., paragraph (2), (3), (4), (5), (6) i (7) , the criminal offense “Sexual Intercourse with a Helpless Person” the Article 204., paragraph (4) i (6) and the criminal offense “Sexual Intercourse with a Child” the Article 207., paragraph (2) i (4) of the Criminal Code of FBiH);

c) **Fifteen years** in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed (the criminal offense “Rape” the Article 203., paragraph (1), the criminal offense “Sexual Intercourse with a Helpless Person” the Article 204., paragraph (1), (2), (3) i (5), the criminal offense “Sexual Intercourse with a Child” the Article 207., paragraph (1) i (3) and the criminal offence “Incest” the Article 213., paragraph (3) of the Criminal Code of FBIH.

d) **Ten years** in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed (the criminal offense “Sexual Intercourse by Abuse of Position” the Article 205., paragraph (2), the criminal offense “Forced Sexual Intercourse” the Article 206., the criminal offense “Lechery” the Article 208., paragraph (2) and the criminal offense “Incest” the Article 213., paragraph (2) of the Criminal Code of Federation BIH”

e) **Five years** in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed (the criminal offense “Sexual Intercourse by Abuse of Position” the Article 205., paragraph (1), the criminal offense “Lechery” the Article 208. paragraph (1), the criminal offense “Satisfying Lust in Front of a Child or Juvenile” the Article 209. and the criminal offense “Incest” the Article 213. paragraph (1) of the Criminal Code of Federation of BIH.

The Criminal Code of the Republika Srpska envisages the statute of limitations for criminal prosecution for all criminal offenses, and thus for the criminal offense of rape, as well as other offences against sexual integrity. According to Article 95 of the Criminal Code of the Republic of Srpska, criminal prosecution cannot be undertaken after the elapse of:

1) thirty years from the commission of a criminal offence for which a sentence of long-term imprisonment may be imposed ,

2) twenty years from the commission of a criminal offence for which a sentence of imprisonment of more than fifteen years may be imposed,

3) fifteen years from the commission of a criminal offence for which a sentence of imprisonment of more than ten years may be imposed,

4) ten years from the commission of a criminal offence for which a sentence of imprisonment of more than five years may be imposed,

5) five years from the commission of a criminal offence for which a sentence of imprisonment of more than three years may be imposed,

6) three years from the commission of a criminal offence for which a sentence of imprisonment of more than one year may be imposed,

7) two years from the commission of a criminal offence for which a sentence of imprisonment of up to one year or a fine may be imposed by law.

If more than one sentence is prescribed for a criminal offense, the statute of limitations is determined according to the most severe prescribed punishment.

**17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO**

A person who was a rape victim as a juvenile may report rape even after reaching the age of majority if the statute of limitations for prosecuting a criminal offense has not expired.

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.**

Proving the facts in rape cases in criminal proceedings, in the general legal sense, does not differ from proving in proceedings for other criminal offenses and is aimed at establishing those facts that characterize the criminal offense, then the facts on which illegality, guilt and criminality depend, as and other facts on which the application of criminal law depends, both substantive and procedural. It should also be borne in mind that courts and other bodies participating in the proceedings, in accordance with the principle of free assessment of evidence, when assessing the existence or non-existence of a fact are not bound or limited by any special formal rules. The very evaluation of evidence encompasses their logical and psychological evaluation based on the legality of human opinion and experience. However, in relation to criminal offenses against sexual freedom, some special rules of evidence have been implemented, which all bodies participating in the proceedings are obliged to abide by. These rules refer to the prohibition of presenting evidence about the sexual life of the injured party (victim) before the commission of the criminal offense which is the subject of the proceedings. Violation of these rules will result in the illegality of the evidence obtained in such a manner. With regard to crimes against humanity and international law, it was also established that the victim's consent could not be used in support of the accuser’s defense. From the procedural point of view, it should also be borne in mind that when passing a verdict, the court is obliged to conscientiously assess each piece of evidence (CC FBiH Art. 49 para. 1) individually and in connection with other evidence and based on such assessment draw a conclusion on whether some fact proven. Circumstances that are relevant for the judicial sentencing are considered to be circumstances related to the act itself as wrongful, circumstances related to the degree of guilt, and circumstances related to the perpetrator himself.[[4]](#footnote-4)

In regard to the protection measures available during the investigative and judicial proceedings at the level of BIH, there is no procedure in place for a witness under threat or a vulnerable witness in cases where a restraining order or a ban on visiting certain places has been ordered to be informed about the legal position of the suspect/defendant. Article 6 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses regulates, “During the investigation, the prosecutor, and after the indictment has been issued, the Court, shall, provided the witness agrees, and without disclosing any of the witness’s personal details, ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at the examination or hearings.”

The Law on the Protection of Witnesses under Threat and Vulnerable Witnesses provides for a wide spectrum of measures aimed at limiting or completely avoiding contact between the witness/victim and the abuser. It thus provides for the following: the giving of testimony through use of technical means for the transfer of images and sound, removal of the defendant from the courtroom, and additional measures to ensure non-disclosure of the identity of the witness. The Criminal Code of BIH, the Criminal Procedure Code of BIH, and the Law on Gender Equality of BIH also provide for specific safeguards such as the following: restrictions when examining a witness about his/her earlier sex life, the obligation to obtain the consent of the witness/victim to carry out certain activities or, more precisely, activities that he/she previously engaged in but bear no relevance to the existence of the crime, and the application of special urgency in all actions. The prosecution of and decision-making in response to a crime or misdemeanour offence established under this Law is of an urgent nature and has priority in the work of the competent authorities.

The new Law on Witness Protection Program BiH was adopted in 2014, to ensure effective witness protection before, during and after the criminal proceeding and to allow them free and open testimony. Law stipulates that decision to include a witness into the program is made by a special Program Implementation Commission, consisting of the Judge of the Court of BiH, the Prosecutor of the Prosecutor's Office of BiH and the Head of the Witness Protection Department of the State Investigation and Protection Agency, while organization and implementation of protection programs at the operational level falls within the competence of Witness Protection Unit.

Witness Support Offices were established in the following institutions: the BiH Court, the BiH Prosecutor's Office, District Prosecutor's Offices and District Courts in the RS, Cantonal Courts and Prosecutor's Offices in FBiH, and in the Basic Court of the BD BiH. Witness Support Offices employ psychologists providing assistance to witnesses. Administrative staff and psychologists engaged in war crime cases in the RS started with work in 2014.

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO**

In the Article 279 “Special Evidentiary Rules When Dealing With Cases of Sex Crimes”, the Criminal Procedure Code of Federation of BIH stipulates the following:

**Article 279**

**Special Evidentiary Rules When Dealing With Cases of Sex Crimes**

(1) The evidence offered to prove that injured party was engaged in other events related to sexual behavior and to prove a sexual predisposition of the injured party is not admissible.

(2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.

(3) In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in a favor of the defense.

(4) Before admitting evidence pursuant to this Article, the court must conduct an appropriate hearing in camera.

(5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the court orders otherwise.

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.**

Article 100 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina prescribes the course of examination of witnesses, and it is explicitly stated that the injured party is not allowed to be questioned about his sexual life before the crime was committed, and if such interrogation is performed - such testimony cannot be to establish a court decision. This article also stipulates that during the interrogation of a minor, especially if he or she has been harmed by a criminal offense, care shall be taken so that the interrogation would not adversely affect the mental state of the juvenile. The interrogation of a minor will be performed with the help of a psychologist, pedagogue or other professional. With regard to age, physical and mental condition or other legitimate interests, the witness may be heard through technical devices for the transmission of images and sound in such a way that the parties and the defense counsel may ask questions without being present in the room where the witness is. An expert may be appointed for the purpose of such examination. During the examination of witnesses, it is not allowed to use deception or ask such questions that already contain how they should be answered. Article 104 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provides that the examination of witnesses may be recorded by audio or audiovisual means at all stages of the proceedings. The hearing must be recorded in cases involving minors under the age of sixteen who have been harmed by a criminal offense as well as if there are grounds for fear that the witness will not be able to be heard at the main trial. Article 250 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina provided the possibility of exclusion of the public. From the opening of the session until the end of the main trial, the judge or panel may at any time, ex officio or at the suggestion of the parties and defense counsel, but always after their hearing, exclude the public for all or part of the main trial, if it is in the interest of the state security or, if necessary, for the protection of state, military, official or important business secrets, protection of public order, protection of morals in a democratic society, personal and intimate life of the accused or injured party or protection of the interests of minors or witnesses. Article 257 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina allows a judge or presiding judge to remove a person from the courtroom in order to protect the right to a fair and public trial, i.e. to hold a dignified and undisturbed trial.

**The Criminal Procedure Code of Federation of BIH**

**Article 100**

**Course of the Examination of a Witness**

(1) The witness must answer orally.

(2) Before examination, the witness shall be called upon to tell the truth and not to withhold anything and shall then be cautioned that giving false testimony is a criminal offense.

(3) Subsequently, the witness shall be asked the following questions: his name and surname, names of father and mother, occupation, residence, place and date of birth and relation to the suspect, accused or injured party. The witness must also be cautioned that it is his duty to inform the court regarding a change of address or residence.

(4) When hearing a minor and, in particular if the minor was injured by the criminal offense, the participants in the proceedings shall be obligated to act with circumspection in order not to have an adverse effect on the minor’s mental condition. If necessary, the minor shall be heard with the assistance of a psychologist, pedagogue or other professional.

(5) It shall not be permissible to ask an injured party about his sexual experience prior to commission of the criminal offense and if such questioning has already been carried out, the court decision cannot be based on such statement.

(6) Given age, physical and mental condition, or other justified reasons the witness may be examined using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness. An expert may be assigned for the purpose of the examination.

(7) After general questions, the witness shall be invited to present everything that he knows about the case and then the witness shall be asked questions aimed at checking, supplementing and explaining his statement. When hearing the witness it shall be prohibited to practice deceit or ask any questions that already contain the desired answer.

(8) The witness shall be asked how he came to know the facts he is testifying about.

(9) Witnesses may be confronted if their testimony disagrees with respect to important facts. The confronted witnesses shall be examined individually about each circumstance that their testimony disagrees about and their responses shall be entered into records. Only two witnesses at a time may be confronted.

(10) The injured party being examined as the witness shall be asked about his desires with respect to satisfaction of a property claim in the criminal proceedings.

**Article 104**

**Recording of the Examination of Witnesses**

The examination of witnesses may be recorded using audio‐visual equipment at all stages in the proceedings. It must be recorded in case of minors under sixteen (16) years of age who were injured by the offense, and if there are grounds to fear that the witness cannot be examined at the main trial.

**Article 250**

**Exclusion of the Public**

From the opening to the end of the main trial, the judge or the Panel may at any time, ex officio or on motion of the parties and the defense attorney, but always after hearing the parties and the defense attorney, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect the personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.

**Article 257 (Penalties for Disruption of Order)** stipulates that the judge or the presiding judge may order that the accused be removed from the courtroom for a certain period if the accused persists in disruptive conduct after being warned that such conduct may result in his removal from the courtroom.

**The Criminal Procedure Code of Federation of BIH also prescribes special evidentiary rules when dealing with cases of sex crimes in the Article 279.**

***Article 279***

***Special Evidentiary Rules When Dealing With Cases of Sex Crimes***

*(1) The evidence offered to prove that injured party was engaged in other events related to sexual behavior and to prove a sexual predisposition of the injured party is not admissible.*

*(2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.*

*(3) In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in a favor of the defense.*

*(4) Before admitting evidence pursuant to this Article, the court must conduct an appropriate hearing in camera.*

*(5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the court orders otherwise.*

The Article 282. of same Low stipulates protection of witnesses from insults, threats and attack as follows:

***Article 282***

***Protection of Witnesses from Insults, Threats and Attacks***

(1) The judge or the presiding judge is obligated to protect the witness from insults, threats and attacks.

(2) The judge or the presiding judge shall warn or fine a participant in the proceedings or any other person who insults, threatens or jeopardizes the safety of the witness before the court. In the case of a fine, provisions of Article 257, Paragraph 1 of this Code shall be applied.

(3) In the case of a serious threat to a witness, the judge or the presiding judge shall inform the prosecutor for the purpose of undertaking criminal prosecution.

(4) At the motion of the parties or the defense attorney, the judge or the presiding judge shall order the police to undertake measures necessary to protect the witness.

According to the Law on Protection of Threatened and Vulnerable Witnesses of the Federation of Bosnia and Herzegovina, a threatened witness is a witness whose personal safety or the safety of his family is endangered due to his participation in the proceedings as a result of threats, intimidation or similar actions related to his testimony, and an endangered witness is considered to be a witness who is seriously physically or mentally injured by the circumstances under which the criminal offense was committed or who suffers from serious mental disorders that make him extremely sensitive, or a child and a minor. During the investigation, the prosecutor, and after the indictment is issued, the court, as far as possible, informs the competent social welfare body about the involvement of the endangered witness in the proceedings and provides assistance to that body and psychological support to the witness, including the presence of appropriate experts. The judge or the presiding judge shall adequately control the manner in which the witness is examined when the endangered witness is examined, in particular in order to protect the witness from harassment and confusion. In exceptional circumstances, the court may, with the consent of the parties and counsel, hear the endangered witness by asking him or her questions directly on behalf of the parties and counsel. When there is a justified fear that the presence of the accused will affect the witness's ability to testify fully and accurately, the court may, ex officio or at the request of the parties or defense counsel, and after hearing the opposing party and defense counsel, order the accused to be removed from the courtroom.

In Republika Srpska, according to the Law on the Protection of Witnesses in Criminal Procedure, there are a number of measures envisaged to ensure the protection of witnesses under threat and endangered witnesses. These are the following measures:

-providing social, psychological and professional assistance;

- deviation from the order of presentation of evidence at the main trial if it is for the purpose of witness protection;

- controlling the manner of examination of witnesses in order to protect against harassment and confusion;

- the court may, with the consent of the defense counsel and the parties, hear witnesses directly;

- testimony via technical devices for the transmission of images and sound;

- removal of the accused from the courtroom;

- exceptions to the direct presentation of evidence where the court may decide that the testimony given in the investigation may also be used as evidence at the main trial in order to protect the endangered witness from exposure to mental pain by appearing at the main trial;

- restriction of the right of the accused and his defense counsel to inspect the files and documentation;

- additional measures to ensure anonymity and

- the possibility of granting the status of a protected witness and enabling hearings according to special procedures.

War and/or conflict

***Remark:*** *Information and answers given under the questions 21-23 are based on The Criminal Law of Socialist Federal Republic of Yugoslavia by which courts and prosecutors in Republika Srpska act in the crimes of genocide and war crimes.*

**War and/or conflict**

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

In order to implement Recommendation 10 (b) CEDAW / C / BIH / CO / 4-5, Amendments to the Criminal Code of BiH have been adopted, defining sexual violence as a war crime and a crime against humanity. Amendments superseded earlier condition for the use of force, i.e. a request to prove that the sexual intercourse came without consent only in circumstances that imply direct use of force or a threat to use force. This law applies in all war crime cases, regardless of which judicial authority handles the proceedings.

**Criminal Code of Bosnia and Herzegovina (“Official Gazette of BIH”, No: 3/2003, 32/2003 - corr.37/2003, 54/2004,**

**61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015 i 35/2018)**

**Crimes against Humanity**

**Article 172**

(1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

1. Depriving another person of his life (murder);
2. Extermination;
3. Enslavement;
4. Deportation or forcible transfer of population;
5. Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
6. Torture;
7. 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;**
8. Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognised as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina;
9. Enforced disappearance of persons;
10. The crime of apartheid;
11. Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

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

1. Attack directed against any civilian population means a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack.
2. Extermination includes the intentional infliction of conditions of life, especially deprivation of access to food and medicines, calculated to bring about the destruction of part of a population.
3. Enslavement means the exercise of any or all of the powers attaching to the right of ownership over a person, and includes the exercise of such power in the course of trafficking in persons, in particular women and children.
4. Deportation or forcible transfer of population means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.
5. Torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions.
6. 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.
7. Persecution means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.
8. Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the
9. authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time.
10. The crime of apartheid means inhumane acts of a character similar to those referred to in paragraph 1 of this Article, perpetrated in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and perpetrated with an aim of maintaining that regime.

**War Crimes against Civilians**

**Article 173**

(1) Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:

1. Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people’s health;
2. Attack without selecting a target, by which civilian population is harmed;
3. Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;
4. Dislocation or displacement or forced conversion to another nationality or religion;
5. **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;
6. Forced labour, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of property that is not justified by military needs, taking an illegal and disproportionatecontribution or requisition, devaluation of domestic money or the unlawful issuance of money, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on whomever in violation of rules of international law, in the time of war, armed conflict or occupation, orders or perpetrates any of the following acts:

1. Attack against objects specifically protected by the international law, as well as objects and facilities with dangerous power, such as dams, embankments and nuclear power stations;
2. Targeting indiscriminately of civilian objects which are under specific protection of international law, of nondefended places and of demilitarised zone;
3. Long-lasting and large-scale environment devastation, which may be detrimental to the health or survival of the population.

(3) Whoever in violation of the rules of international law applicable in the time of war, armed conflict or occupation, orders or carries out as an occupier the resettlement of parts of his civilian population into the occupied territory, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

***Remark:*** *Information and answers given under the questions 21-23 are based on The Criminal Law of Socialist Federal Republic of Yugoslavia by which courts and prosecutors in Republika Srpska act in the crimes of genocide and war crimes.*

Rape is criminalized as a war crime against humanity in Republika Srpska.

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

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

Not explicitly for rape per se, but for all war crimes and crime against humanity, which contain rape within its definition given in the Criminal Law of Socialist Federal Republic of Yugoslavia.

The Criminal Code of BiH in the Article 19 prescribes that 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 limitation.

The Criminal Code of the Federation BIH in the Article 20 prescribes that criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences that, pursuant to international law, are not subject to the statute of limitation.

**24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO**

Bosnia and Herzegovina has been ratified the Rome Statute of the International Criminal Court by the Decision on ratification that published on “Official Gazette of BIH” No: 2/02.

**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.**

Statistical data on reported criminal offenses of rape and related criminal offenses, criminal prosecution and imposed sanctions in 2017 and 2018 in the Federation of Bosnia and Herzegovina are as follow. Please note that the available statistics for the Federation of Bosnia and Herzegovina are not official statistics. These statistics are collected by the Gender Center of the Federation of Bosnia and Herzegovina on the basis of questionnaires sent each year to the judicial authorities in the Federation of Bosnia and Herzegovina (cantonal prosecutor's offices and municipal and cantonal courts).

2017

Reported cases: 19

Prosecuted cases: 3

Sanctioned cases:12

2018

Reported cases: 28

Prosecuted cases: 10

Sanctioned cases:9

The following data for Republika Srpska is given for 2017 and 2018. The source is Institute for Statistics of Republika Srpska.

2017 Cases of criminal offence against sexual integrity

Reported adult perpetrators: 44

Reported juvenile perpetrators: 5

Accused adult perpetrators: 23

Accused juvenile perpetrators: 2

Convicted adult perpetrators: 20

Convicted juvenile perpetrators: 2

2018 Cases of criminal offence against sexual integrity

Reported adult perpetrators: 52

Reported juvenile perpetrators: 6

Accused adult perpetrators: 18

Accused juvenile perpetrators: 2

Convicted adult perpetrators: 16

Convicted juvenile perpetrators: 2

**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.**

Due to a strong sense of discomfort and shame about what happened to them and due to gender stereotypes related to sexual violence, victims may not report rape or would often withdraw the report.

1. 'Official Gazette of the Federation of Bosnia and Herzegovina', nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 8/13 and 59/14. [↑](#footnote-ref-1)
2. From the Former Socialist Federal Republic of Yugoslavia, taken over by Bosnia and Herzegovina, 'Official Gazette of SFRY'', nos. 29/78, 39/85, 45/89 and 57/89, and 'Official Gazette of the Republic of Bosnia and Herzegovina', nos. 2/92, 13/93 and 13/94. [↑](#footnote-ref-2)
3. 'Resursni paket jačanje odgovora pružatelja besplatne pravne pomoći na rodno zasnovano nasilje, uključujuči seksualno nasilje i torturu u sukobima' (Resource Package for Strengthening the Response of Free Legal Aid Providers to Gender-Based Violence, including Conflict-related Sexual Violence and Torture), UNDP, 2017, page 63. [↑](#footnote-ref-3)
4. Guidelineses for Criminal Procedures in cases of rape in judicial practise in Bosnia and Herzegovina, Atlantic Initiative, Sarajevo, BiH, 2019., str. 16. [↑](#footnote-ref-4)