



PERMANENT MISSION OF GHANA

GENEVA

SC/GE/UN.7

The Permanent Mission of the Republic of Ghana to the United Nations Office and other International Organisations in Geneva presents its compliments to the Secretariat of the Human Rights Committee and, with reference to the latter's letter dated 9th April, 2020 received from Ms. Dubravka Šimonovic, the Special Rapporteur on Violence against Women, its Causes and Consequences requesting Ghana to submit contribution relating to the Report on Criminalization and Prosecution of Rape, has the honour to submit Ghana's responses to the questionnaire.

The Permanent Mission of the Republic of Ghana to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Secretariat of the Human Rights Committee the assurances of its highest consideration.

Geneva, 20th May, 2020

**THE SECRETARIAT OF THE HUMAN
RIGHTS COMMITTEE
GENEVA**

**Email: rpreturlan@ohchr.org
omccann@ohchr.org**



Cc: ccpr@ohchr.org

QUESTION ON CRIMINALIZATION AND PROSECUTION OF RAPE

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

The Criminal Offences Act or Penal Codes of 1960, Act 29 make provisions for the following ;

- **Statutory Rape / Defilement:** Section 101(1), Act 29 provides that defilement is the natural or unnatural carnal knowledge of a child under 16 years. Section 101(2) enacts that whoever naturally or unnaturally carnally knows a person under 16 years with or without his / her consent shall be liable upon summary conviction for a term of imprisonment not less than 7 years and not more than 25 years.
 - Section 97 of the Criminal Offences Act, 1960 (Act 29) stipulates that whoever commits rape shall be guilty of a first degree felony and upon conviction shall be liable to a term of imprisonment not less than 5 years and not more than 25 years.
 - Section 98, Act 29 enacts that rape is carnal knowledge of a female of more than 16 years without her consent.
 - Unlike rape, according to section 14(a) of Act 29 consent for carnal knowledge of a child under sixteen years is void – with punishment of not less than seven years and not more than twenty five years in prison.
 - **Unnatural Carnal Knowledge**
Under section 104(2) of Act 29, unnatural carnal knowledge is defined as sexual intercourse with a person in an unnatural manner or, with an animal.
 - **Indecent Assault:** Section 103(1) of the Criminal Offences Act, 1960 (Act 29) formulates that, whoever indecently assaults any person shall be guilty of a misdemeanor and shall be liable on conviction to a term of imprisonment of not less than six months. Sub-section 2 of section 103 enacts that an act constitutes an indecent assault where a person without the consent of the other forcibly makes any sexual bodily contact with the other or sexually violates the body of the person in a manner not amounting to carnal knowledge or unnatural carnal knowledge.
 - Section 85(1), Act 29 defines Assault to include assault and battery; assault without actual battery; and imprisonment. Section 84, Act 29 states that whoever assaults any person shall be guilty of a misdemeanor.
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** For defilement is gender neutral, rape **no is gender specific**
 - 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**. If yes, please specify.
 - f. Does it cover only vaginal rape? **YES / NO**
 - g. Does it cover all forms of penetration? **YES / NO**. If yes, please specify. Unnatural or natural canal knowledge so includes all forms of penetration either the vaginal or anal

- h. Is marital rape in this provision explicitly included? **YES / NO**
- i. Is the law silent on marital rape? **YES / NO**
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included **YES / NO** Catered for under the Domestic Violence Act 2007, Act 732 when proven
- k. Is marital rape **excluded in the provisions**, or is marital rape not considered as a crime? **YES / NO**

➤ Marital Rape is not coded under the penal code for the definition for rape so **YES** excluded in the provisions and **NO** since the Domestic Violence Act 2007, Act 732 caters for it and considers it as a crime.

➤ *According to section 98 of Act 29, rape is having carnal knowledge of a female of not less than sixteen years without her consent. This implies that as long as a person is sixteen years or above, you can have sexual intercourse with her by her express or implied consent. With the advent of the Criminal Code Amendment (Act 554), the offence of rape is now a first degree felony carrying a sentence of not less than five years and not more than twenty-five years (Section 97).*

➤ *In Ghana, the offence of rape is gender specific. Thus, a man cannot be raped, not even by his fellow man. In situations like these, it is considered as unnatural carnal knowledge and it carries the same sentence as rape. Most importantly, in Ghana, a woman cannot be the perpetrator of rape. Under no circumstance will it be held that a woman has raped a man.*

3. Are there any provisions excluding crimination 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 with corresponding translations.

➤ **No, rape is a first degree felony and irrespective of the relationship is an offense under the law.**

4. What is the legal age for sexual consent?

➤ **ANS: The legal age for sexual consent is 16years old and above and the minimum age for marriage is 18years as enshrined in the Children's Act 1998 (Act 560) section 14(2).**

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

➤ **ANS: No.**

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

➤ **ANS: The offence of rape is now a first degree felony carrying a sentence of not less than five years and not more than twenty-five years (Section 97).**

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?

➤ **ANS: Psychosocial, medical support and any other that may be needed**

AGGRAVATING AND MITIGATING CIRCUMSTANCES

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

➤ **ANS: In practice aggravating and mitigating factors are central to judicial sentencing decisions. That decision is solely made by the Court or a Judge depending on the case at hand and the offender's degree of culpability.**

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

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

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

➤ **ANS: It depends on the issue at hand**

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

➤ **Ans: Yes With Juveniles, depending on the circumstances surrounding the crime may have an impact in the punishment**

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

➤ **ANS: NO**

➤ Rape is a felony and is not amenable to reconciliation between the victim and the offender.

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

➤ **ANS: NO**

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

a. If the perpetrator Marries the victim of rape? **YES / NO**

b. If the perpetrator loses his "socially dangerous" character or reconciles with the victim? **YES / NO**

PROSECUTION

12. Is rape reported to the police prosecuted ex officio (public prosecution) **YES / NO**

13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES / NO
14. Are plea bargain or “friendly settlement” of case allowed in cases of rape of women? YES / NO
15. Are plea bargain or “friendly settlement” of a case allowed in case of rape of children? YES / NO

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

- **ANS: In Ghana, rape cases irrespective of when it happened can be reported and be prosecuted anytime as long as there is evidence and prove, hence there is no statute of limitations for rape.**

17. Which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any? YES / NO

- **ANS. Since there is no statute of limitation for rape, the victim can report it anytime**

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

A witness which can be the victim or plus an eye witness and any other proof including/ and the medical report

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

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

- **The Penal Code and the Procedural code do not have provisions. However as a matter of policy and avoiding gender based violence, the court are more gender friendly now with trained officials including judges, prosecutors and investigators to protect and avoid re-victimization or re-traumatizing the victim.**

- **Standard operating procedures are in place including in- camera hearing to protect juveniles and victims.**

WAR AND /OR CONFLICT

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

- **ANS: Is a crime against humanity**

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

- **Ans: N/A. However Criminal Cases Can Be Prosecuted At Anytime**

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

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

- **ANS: 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.

DATA FROM 2015-2018

Year	Total No Of Reported Cases	No of persons arrested	Cases sent to court	Cases convicted	Acquitted and discharged	Cases Awaiting trial	Cases Under investigation	Closed cases
2015								
Defilement	1179	585	481	84	9	388	690	8
Rape	315	127	78	6	2	70	237	0
2016								
Defilement	719	438	221	51	2	168	498	0
Rape	233	95	63	5	1	57	169	1
2017								
Defilement	790	429	321	73	8	240	461	8
rape	307	142	84	7	1	76	213	10
2018								
Defilement	634	343	169	31	8	130	459	6
Rape	211	84	29	4	4	21	180	2
2019	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

NOTE: 2019 DATA IS YET TO BE AVAILABLE

OTHER

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

Barriers

- Individuals refusal to report rape and defilement cases due to fear
- Individuals refusal to appear in court to further prosecute cases
- The delay in prosecuting some rape cases discourage others to prosecute when they are raped
- Gendered based discrimination, violence against women and patriarchy sometimes hinders access to justice.
- Interference from traditional systems
- Delay in court prosecutions