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

**Update: the deadline for this call for submissions has been extended until 31 December 2020. The information received will inform the preparation of the Special Rapporteur’s final report to the Human Rights Council.**

The United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, in her thematic report to be presented to the UN Human Rights Council in June 2021 will address **States’ responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and a manifestation of gender-based violence against women, in line with international human rights standards.**

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

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

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

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

The aim of this report is to collect as much information as possible on the criminalization and prosecution of rape, and to thereby support and encourage a process of harmonization of national criminal laws and systems and practice with international standards on rape and sexual violence in both peacetime and during conflicts.

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

To that end, the Special Rapporteur on violence against women would like to invite all States, National Human Rights Institutions, civil society actors, international organizations, academics and other stakeholders from all countries to send responses to the questionnaire below.

(Due to limited time and resources, please send information including provision of the criminal law in English. If sent in other languages, translation services are not available and it could not be considered at this stage of information gathering).

All submissions should be sent to [vaw@ohchr.org](mailto:vaw@ohchr.org) by**31 December 2020**. You are kindly requested to indicate if you DO NOT wish your submission to be made public.

Please indicate who is providing the response, along with contact details.

**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

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

**Until 2015, the Sudanese Criminal Act of 1991 conflated rape with zina (adultery) which meant that if a female rape victim failed to prove her case she could be punished for committing adultery and face punishment of either 100 lashes if she was unmarried**

**at the time of the incident or death by stoning if she was married at the time of the incident.**

**After an intense human rights campaign, Article 149 of the 1991 Criminal Act was amended in February 2015 and it expanded the range of acts deemed to constitute rape under the criminal law. The amendment no longer defines rape in reference to adultery or sodomy which helped to clarify the conflated meaning of rape and adultery under the old law. Although the amendment failed to explicitly mention marital rape as a criminal offence, it is implied in the new definition of rape as any sexual contact by way of using force, intimidation or coercion or abuse of power if clearly defined as a criminal offence.**

**Article 149 of the 1991 Criminal Act previously read: “149 (1) There shall be deemed to commit the offence of rape, whoever makes sexual intercourse, by way of adultery, or sodomy with any person without his consent”; (2) Consent shall not be recognized, where the offender has custody, or authority over the victim; (3) Whoever commits the offence of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, unless rape constitutes the offence of adultery, or sodomy, punishable with death.”**

**The Article was amended as follows: In Article 149: (First) Clause (1) and (2) shall be nullified and replaced by the following new clause: (1) There shall be deemed to commit the offence of rape, whoever makes sexual contact by way of penetrating a sexual organ or any object or part of the body into the victim’s vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent** **because of natural causes or luring related or related to age.**

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only YES/NO
   2. Gender neutral, covering  all persons   YES/NO
   3. Based on the lack of consent of victim YES/ NO
   4. Based on the use of force or threat  YES/ NO
   5. Some combination of the above.  YES / NO
   6. Does it cover only vaginal rape?  YES /NO
   7. Does it cover all forms of penetration? YES/NO. If yes, please specify.

**There shall be deemed to commit the offence of rape, whoever makes sexual contact by way of penetrating a sexual organ or any object or part of the body into the victim’s vagina or anus by way of using force, intimidation, or coercion by fear of the use of violence, detention, psychological persecution, temptation, or abuse of power against the person or another person, or when the crime is committed against a person incapable of expressing consent** **because of natural causes or luring related or related to age.**

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

**There is no definition of martial rape within this amendment but any violent act or damaging attitude that cause physical or psychological harm within the family statues law give women the right to be granted divorce for harm**

* 1. Is the law silent on marital rape? YES/NO
  2. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
  3. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO

**We are launching the first National Law for GBV in Sudan , our suggestion is to define marital rape within family statues law , and within the GBV law we define all domestic abuse and violence types Physical sexual violence by its all definition we didn’t name it marital rape but the violent act is defined that’s included even the act of sexual behavior that considered repulsive for the other person specifically for women and also including act related to insect act that happened to women over 18 and underage girls as well**

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 **Death Penalty and 20 years of Imprisonment**

1. a sexual relationship? If so, please submit it.
2. What is the legal age for sexual consent?

**18 year**

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

**If you mean insect its well defined within law**

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

**Its still not yet there but its included within the draft GBV law**

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
   1. Is rape by more than one perpetrator an aggravating circumstance?  YES/NO
   2. 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
   3. Is rape by spouse or intimate partner an aggravating circumstance?
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

**Yes most of the above circumstances increase punishment to death penalty**

1. 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?

**There is no article on the law define this practice as a legal practice its actually social practice that the victim decided to waives her /his right, but the judge still don’t waive the public right and will give punishment could be months to three years of imprisonment or paying a fine**

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

**The perpetrator agree to marry the victim and the family consented then she will waive her special right or agree on financial settlement then parent of minor will waive his or her rights as guardians or the adult above 18 is consented to the settlement then he or she will waive their special right**

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

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO but its not called friendly the victim will be told she is waiving her special right before she provides her consent to the settlement
4. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO
5. Please provide information on the statute of limitations for prosecuting rape.

**All crimes that receive punishment of death penalty and 20 years of imprisonment is not part of limitation but the case should be open if its closed then it will be not persecuted and stay for ten years**

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES/NO
2. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify.
3. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO
4. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

Yes especially on cases involving minor the court should move to the victim in case of possible re-victimizations

The same conditions is within the Great Lake protocol which Sudan had ratified and member on it on cases of rape persecution and court should move to safe the best interest of the victim

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
3. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
4. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

**But Sudan had signed the Framework of Cooperation with United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict March 2020**

**Data**

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

**Other**

1. 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.

**The lack of knowledge and accessibility to justice system governed by stigma as approaching legal persecution is stigma , and the rape culture prevent the victim fro speaking or reporting**

**The first national law of GBV is actually unique on pointing out the state responsibilities towards protection and prevention as most of GBV act are already criminalized within criminal law but the practice of the law was the problem and absence of political will and state accountability had been the dilemma which we want to end by the national GBV law**

**Expert Group Meeting**

On 27 May 2020, the Special Rapporteur on violence against women, in collaboration with Equality Now, held an Expert Group Meeting to gather information on the evolution of the international human rights framework on rape, international standards regarding to its definition and prosecution, the challenges and gaps in criminal legislation worldwide on rape and the implementation of that legislation. The results of this meeting will inform the drafting of her report on the criminalisation and prosecution of rape (click here for the [concept note](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Concept_note_and_Agenda_EGM_rape_report_SR_VAW_EN.pdf) and [list of participants](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Participant_list_EGM_rape_report_SR_VAW_EN.pdf)).

[Read the Expert Group Meeting's report.](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/EGM_EN-SR_Report.pdf)

See below papers, talking notes and presentations from the Expert Group Meeting:

* [Olivia Björklund Dahlgren, Chairperson, FATTA](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Olivia_Bjorklund_Dahlgren.pdf)
* [Anna Błuś, Researcher, Amnesty International](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Anna_Blus_Amnesty_International.pptx)
* [Christine Chinkin, Professor, London School of Economics and Political Science](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Christine_Chinkin.docx)
* [Amanda Dale, International human rights scholar and activist](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/AmandaDale.pdf)
* [Amarsanaa Darisuren, Senior Adviser on Gender Issues, Organisation for Security and Co-Operation in Europe (OSCE)](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Amarsanaa_Darisuren.docx)
* [Tamar Dekanosidze, Human Rights Lawyer, Equality Now](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Tamar_Dekanosidze.docx)
* [Equality Now (presentations by Antonia Kirkland, Jacqui Hunt, Brisa De Angulo, Tamar Dekanosidze, Judy Gitau)](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Equality_Now.pptx)
* [Marceline Naudi, Chair, Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Marceline_Naudi.docx)
* [Rosalyn Park, Director, The Advocates for Human Rights](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Rosalyn_Park.docx)
* [Genoveva Tisheva, Member, Committee on the Elimination of Discrimination against Women (CEDAW)](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Genoveva_Tisheva.doc)
* [Tatiana Rein, Chair, Follow-Up Mechanism to the Belém do Pará Convention (MESECVI)](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Tatiana_Rein.docx)
* [Sylvia Walby, Director of the Violence and Society Centre and Professor of Sociology, at City, University of London](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Sylvia_Walby.docx)
* [Anna Zobnina, member of the Executive Committee, European Women’s Lobby](https://www.ohchr.org/Documents/Issues/Women/SR/Call_on_Rape/Anna%20Zobnina.docx)