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**The Advocates for Human Rights**

**Presentation for the Expert Group Meeting: Report on rape as a grave and systematic human rights violation and gender-based violence against women**

**May 27, 2020**

The Advocates for Human Rights would like to thank the UN Special Rapporteur on Violence against Women for convening this meeting and for her attention to this important issue. We also extend our appreciation to Equality Now for its support of this meeting.

When examining standards, challenges and gaps in laws on rape, we submit that two points are essential to an effective criminal justice response: First, laws are an initial step, but they must also be monitored and reformed in response to victims’ needs and unintended consequences. Second, effective implementation requires strong responses by all community actors.

**Statutes**

With regard to laws, The Advocates’ written submission describes Minnesota statutes on sexual assault. I would like to highlight a few key points from our law:

* First, the law should criminalize nonconsensual penetration without regard to the use of force or coercion. We are seeing numerous countries amend their laws to comply with international standards and as they ratify the Istanbul Convention. Force is *inherent* in imposing unwilling sexual penetration, and any use of additional forcible, threatening, or coercive measures should be considered an *aggravating factor* over and above the nonconsensual act.
  + Our attorney reviewed hundreds of police reports – she found that 25% of people reporting did not agree to the sexual contact that occurred. But, at the same time (in those cases), the offender was also not using actions that would meet a definition of force or coercion. It is crucial that laws reflect what we know: it does not take physical force to pressure someone into complying with sexual conduct that they don’t want. Traumatic freezing is common in these cases. When someone is surprised by an individual who is initiating unwanted sexual conduct, intimidating the victim, or removing their clothing, that person will frequently freeze. So we must reiterate through our laws and to justice system personnel that failure to resist is NOT consent.
* Second, I want to highlight that Minnesota law prohibits a number of sexual relationships based on the professional identity of the perpetrator—these can include a psychotherapist, a clergy, a corrections guard, a police officer, a bus driver for individuals living with disabilities, a physician, and a massage therapist. In these cases, consent by the victim is not relevant.
  + Currently, teacher-student relations are only prohibited if •the teacher is in a position of authority and •the teen was 16-17 years of age at the time of relationship (age of consent is 16). If the teen is still in secondary school but is 18 or older, the sexual relationship with a teacher is not prohibited. We are currently looking, however, at prohibiting a licensed educator at all times from a sexual relationship with a 16- or 17-year old, or possibly over 18 if still in school.
  + Building on that, any sexual assault should be investigated, regardless of the relationship between the perpetrator and victim. Thus, marriage or partnership should not prevent the state from investigating a report of rape. Indeed, the existence of a relationship between the parties and the violation of trust that rape represents between partners should be seen as an aggravating rather than a nullifying factor.
* We would also encourage examining laws to ensure they have “voluntary intoxication statutes.” States should have a law that says if a victim is incapacitated by intoxication, she cannot consent to sexual activity, and no one should have sex with her.
  + But states must pay attention to how they define “too intoxicated?” To illustrate, hitting someone in the face is always a crime. But, people having sex under influence of alcohol is not going to be criminal most of the time. So how do you draw the line where someone is too drunk? We are still exploring this line, but are nearing the standard of a person who is so intoxicated, they don’t understand their own conduct.
* Third, regular monitoring will evaluate the need for reform. Monitoring can identify unintended harmful consequences of the law. For example, Minnesota had a statute that granted an exception to rape in cases of marriage or live-in partnership where one partner was mentally impaired (permanent, congenital condition), or was physically helpless (sleeping or unconscious). The purpose of the law was to acknowledge that people with cognitive disabilities could form consensual relationships, and the state did not want to prohibit that. But the legal exception had the unintended effect of also barring criminal charges against husbands who rape their spouses, when the spouse was asleep or ingested a substance that made them unconscious (like alcohol or sleep medicine). Our state recognized this loophole, and we repealed the statute granting that exception to rape charges last year.
* Lastly, I want to mention that Minnesota has a statutory reform group – our attorney serves on this committee and is examining how to change our laws on rape. The issues they are looking at include: shifting our force and coercion requirements to consent-based provisions, voluntary intoxication, prohibiting relations between school employees and students, a review of predatory offender registration, and addressing persons living with cognitive and physical disabilities to balance their right to have relationships versus people who may be trying to exploit them.

**Implementation**

With regard to implementation, there are 3 points I’d like to stress today.

First, the state response must be coordinated with a multidisciplinary team of NGOs, police, prosecutors, medical providers, and courts. Communities must meet and discuss their protocols for the sexual assault response. The response is not individual to each state actor, but rather, is an interconnected system that will work *only* with ongoing collaboration. These multi-disciplinary teams should focus not on individual cases, but on a proactive agreement as to what the response should be for each discipline.

To illustrate the multidisciplinary approach, this team might agree that the first agency contacted by the victim will always connect with the NGO to ensure the victim has support throughout the process. They might agree that the investigator will contact the victim within 24 hours of the first report to police and set up a full interview as soon as is practical. They might agree that prosecutors will meet with victims early after criminal charges and will keep the victim fully advised as to all phases of the criminal process.

Second, response protocols must be victim-centered. The victim’s needs and wishes should be central to decisions that affect her. The victim should have some measure of control over which steps in the process she will engage with, how that engagement would work best for her, and for supportive advocacy throughout the process. For example, a team might agree that a victim has the right to “pause” a criminal investigation, taking time to heal and become better prepared for next steps.

When actors ignore the needs of the victim after a sexual assault, it risks the victim •declining to make a report, •disengaging from police or prosecutors, or •feeling unable to be fully honest about their experience. Systems must be restructured to create a “soft place” for victims to land and report their experiences.

Third, the criminal investigation must be thorough and complete. Often, law enforcement may not follow through with an investigation because there were no separate witnesses. But no matter the apparent obstacles, a thorough investigation – interviewing the first outcry witness, collecting information from the victim’s phone and other surveillance footage, gathering medical documentation - is absolutely necessary.

I want to expand on medical reports. Laws and policies should not place heavy reliance on a “forensic certificate” and instead direct police to prioritize medical documentation of the victim’s condition of the victim.

* In Minnesota, we have sexual assault nurse examiners – SANEs – who are trained to interview a traumatized victim and collect evidence. Our submission describes them in more detail. Our attorney found that, in her prosecution practice, the difference between having a SANE and not having one made an 80% difference in the strength of a case.

To summarize, it takes both strong laws and effective implementation to promote an strong criminal justice response to sexual violence.

The first step is for police to begin with the attitude that the victim’s report may be true, and there may be additional evidence beyond that first report. When police begin their investigation with doubt about the victim’s veracity or whether they can find the truth, then the “investigation”—and accountability--grinds to a halt.

After taking the victim’s report, police should gather evidence surrounding the report and take actions to:

* Interview the first “outcry” witness(s), usually a friend, sister, mother, or neighbor, who the victim has called first.
* Collect information from the victim’s phone or other device, which establishes timelines, and candid communication between the victim and the suspect.
* Look for other electronic evidence, like photos or surveillance videos that show the victim and suspect together --this may come from personal devices or business cameras.
* If the victim sought medical help, collect the medical report, which might show bruising, scratches, or other evidence. Many sexual assaults occur with little to no injury, the medical record, if it exists, is an important component of any investigation.
* After gathering the above information, then police should interview the suspect and follow up on information the suspect provides.