



Human Rights Institute

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human rights worldwide

**Stakeholder Submission to
the United Nations Special Rapporteur on violence against
women, its causes and consequences
on
'Rape as a grave and systematic human rights violation and
gender-based violence against women'**

Submission by the International Bar Association's Human Rights Institute

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About the IBA

Established in 1947, the International Bar Association (IBA) is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBA influences the development of international law and shapes the future of the legal profession throughout the world. It has a membership of more than 80,000 individual lawyers and 190 bar associations and law societies, spanning more than 170 countries, and has considerable experience in providing assistance to the global legal community.

About the IBAHRI

The IBA's Human Rights Institute (IBAHRI) was established in 1995 and works across the IBA helping to promote, protect and enforce human rights under a just rule of law and to preserve the independence of the judiciary and legal profession worldwide. The IBAHRI holds that lawyers and judges play a fundamental role in facilitating access to justice, ensuring accountability of the state and upholding the rule of law and human rights.

Introduction and methodology

As requested in the **call for submissions** issued by the Special Rapporteur on violence against women, its causes and consequences, the IBAHRI's submission provides information in response to the questionnaire on criminalisation and prosecution of rape in relation to England and Wales, with respect to:

- (1) Definition and scope of criminal law provisions
- (2) Aggravating and mitigating circumstances
- (3) Prosecution
- (4) War and/or conflict
- (5) Data
- (6) Other

The submission concludes with accompanying recommendations to the Special Rapporteur on violence against women, its causes and consequences, in light of States' responsibility to criminalise and prosecute rape.

(1) 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.**

In England and Wales, the offence of rape and numerous other serious sexual violence offences are considered in the **Sexual Offences Act 2003**, which came into effect in May 2004 and replaced the Sexual Offences Act 1956. The sections containing the core offence of rape are copied below for reference.

Sexual Offences Act 2003

Section 1 - Rape¹

(1) A person (A) commits an offence if—

- (a) he intentionally penetrates the vagina, anus or mouth of another person (B) with his penis,
- (b) B does not consent to the penetration, and
- (c) A does not reasonably believe that B consents.

(2) Whether a belief is reasonable is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.

(3) Sections 75 and 76 apply to an offence under this section.

(4) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

Section 5 - Rape of a child under 13²

(1) A person commits an offence if—

- (a) he intentionally penetrates the vagina, anus or mouth of another person with his penis, and
- (b) the other person is under 13.

(2) A person guilty of an offence under this section is liable, on conviction on indictment, to imprisonment for life.

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

a. Gender specific, covering women only YES/NO

No. Can be perpetrated against any other person.

b. Gender neutral, covering all persons YES/NO

No. Can only be perpetrated by a person with a penis.

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

Yes, for victims aged over 13.

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

No.

e. Some combination of the above. YES / NO

No.

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

No.

¹ Sexual Offences Act 2003, s. 1 www.legislation.gov.uk/ukpga/2003/42/section/1.

² Ibid, s. 5 www.legislation.gov.uk/ukpga/2003/42/section/5.

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

No. Only penile penetration of the vagina, anus and mouth. Penetration with other body parts or anything else is covered in s. 2 - Assault by penetration, s. 6 - Assault of a child under 13 by penetration.

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

No.

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

Yes.

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

Yes. In *R. v R* [1991] UKHL 12,³ the House of Lords affirmed that there is no marital exemption to the law of rape.

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

No.

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?

16.⁴ 18 if the perpetrator is in a position of trust relative to the victim.⁵

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

No, but prosecutorial discretion can be exercised.

Children under the age of 13 are not considered able or competent to give consent to sexual activity and penetrative sex is classed as rape.

In deciding whether it is in the public interest to prosecute, prosecutors may exercise more discretion in relation to child sex offences where the victim is aged 13-15. The Crown Prosecution Service states that 'it is not in the public interest to prosecute children who are of the same or similar age and understanding that engage in sexual activity, where the activity is truly consensual for both parties and there are no aggravating features, such as coercion or corruption'.⁶

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

A person guilty of rape is liable, on conviction on indictment, to imprisonment for life.

³ www.bailii.org/uk/cases/UKHL/1991/12.html.

⁴ Sexual Offences Act 2003, s. 9 www.legislation.gov.uk/ukpga/2003/42/section/9.

⁵ Ibid, s. 16 www.legislation.gov.uk/ukpga/2003/42/section/16.

⁶ Crown Prosecution Service, Rape and Sexual Offences - Chapter 2: Sexual Offences Act 2003 - Principal Offences, and Sexual Offences Act 1956 - Most commonly charged offences www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-2-sexual-offences-act-2003-principal-offences-and.

Rape: Offence range: 4-19 years' custody.⁷

Rape of a child under 13: Offence range: 6-19 years' custody.⁸

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?

Victims of violent crime in England and Wales can claim compensation from a government body,⁹ the Criminal Injuries Compensation Authority (CICA).¹⁰ Applications to the CICA scheme are subject to strict eligibility criteria. The types of payment which may be made under the CICA Scheme include injury payments, loss of earnings payments, special expenses payments, bereavement payments, child's payments, dependency payments and funeral payments.¹¹

With young offenders in England and Wales (under the age of 18 at the time of the offence), restorative justice through 'referral orders' may be used, pursuant to section 16 of the Powers of Criminal Courts (Sentencing) Act 2000.¹² The use of referral orders will depend on the particular offence and the existence or lack of a fixed sentence for young offenders. If the young offender is given a referral order, they will have to attend a meeting with a panel at which time they will agree on a contract which will be signed at this meeting.¹³ This contract may include a meeting with the victim, a letter of apology to the victim, or/and community service which may or may not have direct applicability to the victim depending on the circumstances, wishes of the victim, and safety considerations.

(2) Aggravating and mitigating circumstances

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

Yes.¹⁴

Statutory aggravating factors (non-exhaustive):

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction;
- Offence committed whilst on bail.

Other aggravating factors (non-exhaustive):

- Specific targeting of a particularly vulnerable victim/child;
- Ejaculation;
- Blackmail or other threats made;

⁷ Sentencing Council, Rape www.sentencingcouncil.org.uk/offences/crown-court/item/rape.

⁸ Sentencing Council, Rape of a child under 13 www.sentencingcouncil.org.uk/offences/crown-court/item/rape-of-a-child-under-13.

⁹ Criminal Injuries Compensation Act 1995, s.1 www.legislation.gov.uk/ukpga/1995/53/section/1.

¹⁰ Criminal Injuries Compensation Authority www.gov.uk/government/organisations/criminal-injuries-compensation-authority.

¹¹ Ministry of Justice, The Criminal Injuries Compensation Scheme 2012 at 8

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/808343/criminal-injuries-compensation-scheme-2012.pdf.

¹² Powers of Criminal Courts (Sentencing) Act 2000, s. 16 www.legislation.gov.uk/ukpga/2000/6/section/16.

¹³ Ibid, s. 23 www.legislation.gov.uk/ukpga/2000/6/section/23.

¹⁴ Supra, notes 7 and 8.

- Location of offence;
- Timing of offence;
- Use of weapon or other item to frighten or injure;
- Victim compelled to leave their home (including victims of domestic violence), school etc.;
- Failure to comply with current court orders;
- Offence committed whilst on licence;
- Exploiting contact arrangements with a child to commit an offence;
- Presence of others, especially children;
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution;
- Attempts to dispose of or conceal evidence;
- Commission of offence whilst under the influence of alcohol or drugs;
- Victim encouraged to recruit others;¹⁵
- Abduction or detention;
- Offender aware that he is suffering from a sexually transmitted infection;
- More than one offender acting together;
- Abuse of trust;
- Offence motivated by prejudice;
- Sustained attack;
- Pregnancy or infection results;
- Background of intimidation or coercion;
- Use of drugs, alcohol or other substance to facilitate the offence.¹⁶

- a. **Is rape by more than one perpetrator an aggravating circumstance? YES/NO**
 Yes.¹⁷
- b. **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**
 Yes.¹⁸
- c. **Is rape by spouse or intimate partner an aggravating circumstance?**
 No.

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

Yes.¹⁹

¹⁵ An aggravating factor only in relation to the rape of a child under 13.

¹⁶ Crown Prosecution Service, Rape and Sexual Offences - Chapter 19: Sentencing www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-19-sentencing.

¹⁷ Ibid.

¹⁸ Ibid. Supra, note 7.

¹⁹ Supra, notes 7 and 8.

Mitigating factors (non-exhaustive):

- No previous convictions or no relevant/recent convictions;
- Remorse;
- Previous good character and/or exemplary conduct;
- Age and/or lack of maturity where it affects the responsibility of the offender;
- Mental disorder or learning disability, particularly where linked to the commission of the offence.

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?

Yes.²⁰

Restorative justice can take place while criminal proceedings are ongoing, as part of a sentence after criminal proceedings have finished or as part of an out of court disposal. Any restorative justice will be led by a trained facilitator who will take the victims' needs into consideration and deliver services in line with recognised quality standards. Restorative justice is voluntary – both the victim and the offender must agree to it.

The victim can explain to the offender how the incident affected them and they may decide to seek an apology, or agree an activity that the offender has to undertake as part of making good the harm that has been done. Once an offender has been convicted a restorative intervention will not impact their sentence.

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

Yes. However, there are few publicised cases of survivors of sexual violence seeking out and engaging in a restorative justice conference.²¹

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?

YES/NO If yes, please specify.

No.

a. if the perpetrator marries the victim of rape? YES/NO

No.

b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

No.

²⁰ Ministry of Justice, Code of Practice for Victims of Crime (October 2015) at 35

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/476900/code-of-practice-for-victims-of-crime.PDF.

²¹ Francesca Marsh and Nadia M. Wager, Restorative justice in cases of sexual violence: Exploring the views of the public and survivors, Probation Journal 2015, Vol. 62(4) 336–356, at 341

www.why-me.org/wp-content/uploads/2016/11/NH_Sexual-Violence-Perception_Article.pdf.

(3) Prosecution

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

Yes.²²

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

Yes.²³ Private prosecutions have been brought by victims of rape, but remain rare in practice.

Prosecution of Offences Act 1985

Section 6 - Prosecutions instituted and conducted otherwise than by the Service.

(1) Subject to subsection (2) below, nothing in this Part shall preclude any person from instituting any criminal proceedings or conducting any criminal proceedings to which the Director's duty to take over the conduct of proceedings does not apply.

(2) Where criminal proceedings are instituted in circumstances in which the Director is not under a duty to take over their conduct, he may nevertheless do so at any stage.

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

Yes.²⁴

The Crown Prosecution Service may accept a guilty plea from the defendant to a charge other than rape. This might arise, for example, if a defendant pleads guilty to some but not all of the charges, or because the victim does not wish to proceed, or because new evidence comes to light. The situation will be discussed with the victim or the victim's family whenever possible – they will be kept informed, and the victim's interests will be accounted for.

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

Yes.²⁵

The Crown Prosecution Service may accept a guilty plea from the defendant to a charge other than rape. This might arise, for example, if a defendant pleads guilty to some but not all of the charges, or because the victim does not wish to proceed, or because new evidence comes to light. The situation will be discussed with the victim or the victim's family whenever possible – they will be kept informed, and the victim's interests will be accounted for.

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

Rape is a serious criminal offence for which, in England and Wales, there is no statute of limitations.

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

Rape of a child is a serious criminal offence for which, in England and Wales, there is no statute of limitations.

²² Crown Prosecution Service, CPS Policy for Prosecuting Cases of Rape www.cps.gov.uk/publication/cps-policy-prosecuting-cases-rape.

²³ Prosecution of Offences Act 1985, s. 6 www.legislation.gov.uk/ukpga/1985/23/section/6.

²⁴ Supra, note 22.

²⁵ Ibid.

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

No.²⁶

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

Yes.²⁷

There is a general prohibition on the admission of evidence or questions in cross-examination relating to sexual history of a complainant by the defence. The legislation sets out four narrowly drawn exceptions for where sexual history may be adduced when a strict set of criteria are met.²⁸ This applies to all proceedings for sexual offences, as no distinction is made between rape cases and other sexual offence cases. The prosecution does not require prior permission to introduce such evidence.

In practice, studies have shown that in over one-third of rape trials, sexual history evidence was introduced in circumvention of procedural rules.²⁹ Section 41 of the Youth Justice and Criminal Evidence Act 1999 has been described as 'evaded, circumvented and resisted',³⁰ with judges simultaneously interpreting *R v A*³¹ as giving broad discretion to allow evidence so as to ensure a fair trial.³²

Youth Justice and Criminal Evidence Act 1999

Section 41 - Restriction on evidence or questions about complainant's sexual history.³³

(1) If at a trial a person is charged with a sexual offence, then, except with the leave of the court—

- (a) no evidence may be adduced, and
- (b) no question may be asked in cross-examination,

by or on behalf of any accused at the trial, about any sexual behaviour of the complainant.

(2) The court may give leave in relation to any evidence or question only on an application made by or on behalf of an accused, and may not give such leave unless it is satisfied—

- (a) that subsection (3) or (5) applies, and
- (b) that a refusal of leave might have the result of rendering unsafe a conclusion of the jury or (as the case may be) the court on any relevant issue in the case.

(3) This subsection applies if the evidence or question relates to a relevant issue in the case and either—

²⁶ Ibid.

²⁷ Youth Justice and Criminal Evidence Act 1999, ss. 41-43.

²⁸ Ibid, s. 41(3) (5) www.legislation.gov.uk/ukpga/1999/23/section/41.

²⁹ A V. Baird et al., Seeing Is Believing: The Northumbria Court Observers Panel Report on 30 Rape Trials 2015–2016 (Northumbria Police and Crime Commissioner: Newcastle, 2017) at 8. L. Kelly et al., Section 41: An Evaluation of New Legislation Limiting Sexual History Evidence in Rape Trial (Home Office Report: London, 2006) at vi <http://citeserx.ist.psu.edu/viewdoc/download?doi=10.1.1.628.3925&rep=rep1&type=pdf>.

³⁰ Ibid, L. Kelly et al., at 77.

³¹ [2001] UKHL 25.

³² Supra, note 29, L. Kelly et al., at vi.

³³ Supra, note 27, s. 41 www.legislation.gov.uk/ukpga/1999/23/section/41.

- (a) that issue is not an issue of consent; or
- (b) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have taken place at or about the same time as the event which is the subject matter of the charge against the accused; or
- (c) it is an issue of consent and the sexual behaviour of the complainant to which the evidence or question relates is alleged to have been, in any respect, so similar—
 - (i) to any sexual behaviour of the complainant which (according to evidence adduced or to be adduced by or on behalf of the accused) took place as part of the event which is the subject matter of the charge against the accused, or
 - (ii) to any other sexual behaviour of the complainant which (according to such evidence) took place at or about the same time as that event,

that the similarity cannot reasonably be explained as a coincidence.

(4) For the purposes of subsection (3) no evidence or question shall be regarded as relating to a relevant issue in the case if it appears to the court to be reasonable to assume that the purpose (or main purpose) for which it would be adduced or asked is to establish or elicit material for impugning the credibility of the complainant as a witness.

(5) This subsection applies if the evidence or question—

- (a) relates to any evidence adduced by the prosecution about any sexual behaviour of the complainant; and
- (b) in the opinion of the court, would go no further than is necessary to enable the evidence adduced by the prosecution to be rebutted or explained by or on behalf of the accused.

(6) For the purposes of subsections (3) and (5) the evidence or question must relate to a specific instance (or specific instances) of alleged sexual behaviour on the part of the complainant (and accordingly nothing in those subsections is capable of applying in relation to the evidence or question to the extent that it does not so relate).

(7) Where this section applies in relation to a trial by virtue of the fact that one or more of a number of persons charged in the proceedings is or are charged with a sexual offence—

- (a) it shall cease to apply in relation to the trial if the prosecutor decides not to proceed with the case against that person or those persons in respect of that charge; but
- (b) it shall not cease to do so in the event of that person or those persons pleading guilty to, or being convicted of, that charge.

(8) Nothing in this section authorises any evidence to be adduced or any question to be asked which cannot be adduced or asked apart from this section.

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

Yes.³⁴

A victim of rape is automatically presumed to be eligible for special measures unless the court is informed that he or she does not require this.

³⁴ Supra, note 22.

Special measures for giving evidence (non-exhaustive):³⁵

- playing the court the victim's or witness' video recorded interview (previously taken by the police during the course of the investigation), they will not have to give live evidence, but will still have to answer cross-examination questions;
- giving evidence from behind a screen;
- giving evidence away from the courtroom through a live television link;
- giving evidence in private by clearing the public gallery;
- the use of an intermediary and/or interpreters approved by the court;
- removal of wigs and gowns by judges and barristers.

If the victim or witness is a child, their evidence is video recorded and played in court unless the court considers that it is not in the interests of justice for this to be done, for example, where the video recording contains technical faults, improper questions, or other material prejudicial to a fair trial.

The prosecutor can meet the victim or witness at an earlier stage in the criminal process.

Rape victims are entitled to anonymity in the media, even if their name has been given in court.

Victim and witness addresses will not be mentioned in the court proceedings.

Reasonable expenses will be paid for attending court and for childcare costs.

If witnesses are kept waiting, they are to be told the reasons for delay and the estimated time when they will be required to give evidence.

Wherever possible, separate waiting facilities will be made available.

Pre-court familiarisation visits are possible to explain what might happen at court.

(4) War and/or conflict

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

Yes.³⁶

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

No.

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

No.

³⁵ Crown Prosecution Service, Special Measures www.cps.gov.uk/legal-guidance/special-measures.

³⁶ International Criminal Court Act 2001, s. 51 www.legislation.gov.uk/ukpga/2001/17/section/51.

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

Yes.³⁷

(5) 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.

Number of cases of rape reported

53,970 allegations of rape were made in the year ending March 2018.³⁸

58,657 allegations of rape were made in the year ending March 2019.³⁹

Number of cases of rape prosecuted

4,370 cases of rape were referred by the police to the Crown Prosecution Service for a charging decision in the year ending March 2018.⁴⁰

3,375 cases of rape were referred by the police to the Crown Prosecution Service for a charging decision in the year ending March 2019.⁴¹

Number of rape convictions

There were 2,635 convictions for rape in the year ending March 2018.⁴²

There were 1,925 convictions for rape in the year ending March 2019.⁴³

(6) 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.

Many additional barriers remain in England and Wales to the reporting and prosecution of rape, and accountability of perpetrators, including (non-exhaustive):

- Victims who are or have been in a relationship with their attacker may blame themselves or feel that agencies will blame them, and may well face wider difficulties such as disruption to the lives of their children and extended families;
- People from black and minority ethnic communities may have experienced racism. They may fear that they will not be believed, or that they will not be treated properly. As a result they may be reluctant to report offences or support a prosecution;

³⁷ International Criminal Court, States Parties to the Rome Statute https://asp.icc-cpi.int/en_menus/asp/states%20parties/western%20european%20and%20other%20states/Pages/united%20kingdom.aspx.

³⁸ Office for National Statistics, Sexual offending: victimisation and the path through the criminal justice system www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/sexualoffendingvictimisationandthe paththroughthecriminaljusticesystem/2018-12-13.

³⁹ HM Crown Prosecution Service Inspectorate, 2019 rape inspection: A thematic review of rape cases by HM Crown Prosecution Service Inspectorate (December 2019), at 7 www.justiceinspectortates.gov.uk/hmcpsi/wp-content/uploads/sites/3/2019/12/Rape-inspection-2019-1.pdf.

⁴⁰ Crown Prosecution Service, Violence Against Women and Girls Report 2018–19, at 14 www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019.pdf.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

- Cultural and religious beliefs may prevent people from reporting offences or supporting a prosecution;
- In cases involving rape within same-sex relationships, victims may fear a homophobic reaction from the criminal justice system. They may also fear being ‘outed’ by the process;
- People with physical disabilities may fear reporting rape if the offender is a carer, or fear the loss of residential care;
- Elderly people, in particular, may be deterred from reporting rape by feelings of shame or embarrassment;
- People with learning difficulties or mental health problems may feel that they will not be believed if they report being raped;⁴⁴
- A lack of trust in the police and criminal justice system is frequently cited – a fear of not being believed and taken seriously, and feeling ‘raped all over again’ by the way the police question both the victim and their account. Any tentative trust required to report the rape is quickly lost when police officers communicate disbelief and disrespect, or when the victim loses faith in the police to effectively investigate the case, leading victims to withdraw from the process or retract the allegation altogether;
- ‘Real rape’ and ‘respectable woman’ stereotypes and gender expectations endure, influencing attrition rates and impacting on police, prosecution and jury decisions;
- Victim vulnerabilities such as mental health problems and learning difficulties suffer higher attrition;
- Whether or not the victim physically resisted the attack or delayed reporting of the rape significantly increases the rate of attrition.⁴⁵

(7) Recommendations

In light of States’ responsibility to criminalise and prosecute rape, the IBAHRI draws the attention of the Special Rapporteur on violence against women, its causes and consequences to the following recommendations to be addressed to States to:

- 1- **Criminalise non-consensual oral, anal and vaginal penetration against any individual, including against the perpetrator**, irrespective of factors such as gender, sexuality, age, marriage / relationship, the absence of threats against the victim, prior or subsequent sexual behaviour of the victim; and ensure the **effective implementation of such legislation in practice**.

⁴⁴ Supra, note 22.

⁴⁵ Hohl, K. and Stanko, E. (2015). Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales. European Journal of Criminology, 12(3), pp. 324-341, at 15 <https://openaccess.city.ac.uk/id/eprint/5923/3/Hohl%20Stanko%202015%20FINAL.pdf>.

- 2- **Repeal or reform all laws, policies and practices that instigate, permit, enable or tolerate rape**, such as those that exclude marital rape from the crime of rape or pardon rapists who marry their victims.⁴⁶
- 3- **Acknowledge that under article 1 of the Convention on the Rights of the Child, a 'child means every human being below the age of 18 years'** and reform rape and rape of a child laws accordingly.⁴⁷
- 4- **Ensure that marital rape is explicitly defined and punishable as a criminal offence.**
- 5- **Define rape by more than one perpetrator/gang rape as constituting an aggravating factor meriting a more severe punishment.**
- 6- **Ensure that factors such as tradition, culture, custom or religion are not considered as a defence, justification or mitigating factor in the prosecution and sentencing of rape cases.**⁴⁸
- 7- **Ratify, without reservations, the Rome Statute of the International Criminal Court and criminalise rape as a war crime and crime against humanity.**
- 8- **Ratify, without reservations, all other relevant international legal instruments**, including the Convention on the Elimination of All Forms of Discrimination against Women; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities. States should also adopt the measures set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) and other relevant regional instruments relating to gender-based violence.⁴⁹
- 9- **Remove any statutory limitations to the prosecution of rape**, in recognition of the multitude of challenges faced by victims to reporting the offence and to ensure that acts against both child and adult victims can be prosecuted at any stage and that **perpetrators of rape incur criminal responsibility without exception.**
- 10- **Implement laws that obligate private companies and public authorities to adopt anti-rape and anti-sexual aggression internal policies and measures**, such as codes of conduct, protection of whistleblowers, regular auditing and effective implementation of zero tolerance.

⁴⁶ UN General Assembly. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (5 January 2016) UN Doc A/HRC/31/57, para. 69
<https://undocs.org/pdf?symbol=en/A/HRC/31/57>.

⁴⁷ The United Nations Convention on the Rights of the Child, art. 1 https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf.

⁴⁸ UN General Assembly. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (12 July 2019) UN Doc A/74/148, para. 76
<https://undocs.org/pdf?symbol=en/A/74/148>.

⁴⁹ Ibid, para. 71.

- 11- **Ensure that victims of rape have equal access to justice and remedies** and provide for the right to free legal assistance for victims of rape, including through legal aid and dismantling the legal and practical barriers to initiating legal proceedings.⁵⁰
- 12- **Establish sexual assault referral centres**, focused on survivor wellbeing and respecting their wishes and anonymity. Both adult and child, gender and age sensitive, specific services and targeted support should be well-funded and readily available in order to encourage the reporting of rape, to eliminate the associated stigma and to ensure accessible, confidential, adequate and effective channels for the reporting of such violations. Such centres should offer professional medical, practical and emotional support, with monitoring/follow-up, as well as signposting to available legal support. The option of a forensic medical examination should ideally be provided to the victim, and in any event medical treatment for preventing sexual transmitted infections, including HIV, and pregnancy should be offered as a priority.
- 13- **Ensure that protection orders can be swiftly requested** in a secure manner so as to increase protection for rape victims.
- 14- **Regularly track, analyse and report on rape statistics**, including age, gender, sexual orientation, relationship status; cases reported, unreported, prosecuted and conviction rates. Investigate the reasons for factors such as unreported cases and high case attrition and seek to remedy gaps identified in services, to adopt relevant and targeted anti-rape policies and actions and to provide justice to rape victims.
- 15- Ensure a **wide range of special measures for giving evidence** are available to all victims of rape, with additional special consideration given to factors such as the victim's age, mental health, religion, disabilities and relationship with the accused.
- 16- Legislate and provide prosecutorial **guidance restricting broad questioning of complainants about their sexual history**, particularly history extraneous to the event in question. Train prosecutors and judges on the effective and appropriate cross-examination of complainants pursuant to such guidance.
- 17- Carry out **mandatory adequate training on implicit bias and gender** in the administration of justice, **addressing stereotypes** such as the role of men, masculinity and sexual violence against men and boys, the role of women, the 'respectable woman' image, and sexual violence against women and girls.
- 18- **Provide guidance and training to police, medics, victim support services, lawyers and the judiciary on the psychological impact of sexual violence**, the range of reactions to the assault and its aftermath. Ensure such training is multidisciplinary and covers supporting particularly vulnerable witnesses, including the elderly, children, the LGBTQI+ community, those with existing mental ill health or with disabilities.
- 19- **Provide support and guidance to prosecutors handling cases of same-sex or transgender rape**, to ensure cases are handled sensitively and devoid of stereotypes, misconceptions and discrimination.

⁵⁰ Ibid, para. 86.

20- Ensure that all legislative, judicial and other measures to criminalise and prosecute rape are taken in good faith and without any discrimination. Document, investigate and redress complaints of imbalance and direct or indirect discrimination in accessing services and complaint mechanisms.⁵¹

⁵¹ Ibid, para. 93. Supra, note 46, para. 70(w).