**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**

All submissions should be sent to vaw@ohchr.org by **20 May 2020**. Kindly indicate if you DO NOT wish your submission to be made public.

**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.

**CRIMINAL LAW (CODIFICATION AND REFORM) ACT CHAPTER 9:23**

**Division B: Sexual crimes**

**Section 65 Rape**

**(1) If a male person knowingly has sexual intercourse or anal sexual intercourse with a female person and, at the time of the intercourse (a) the female person has not consented to it; and (b) he knows that she has not consented to it or realises that there is a real risk or possibility that she may not have consented to it; he shall be guilty of rape and liable to imprisonment for life or any shorter period.**

**(2) For the purpose of determining the sentence to be imposed upon a person convicted of rape, a court shall have regard to the following factors, in addition to any other relevant factors and circumstances (a) the age of the person raped; (b) the degree of force or violence used in the rape; (c) the extent of physical and psychological injury inflicted upon the person raped; (d) the number of persons who took part in the rape; (e) the age of the person who committed the rape; (f) whether or not any weapon was used in the commission of the rape; (g) whether the person committing the rape was related to the person raped in any of the degrees mentioned in subsection(2) of section seventy-five; (h) whether the person committing the rape was the parent or guardian of, or in a position of authority over, the person raped;**

**(i) whether the person committing the rape was infected with a sexually transmitted disease at the time of the rape.**

**Rape is provided for under Section 65 of the *Criminal Law (Codification and Reform) Act [Chapter 9:23].* This crime has been extended to cover a situation where a male has non-consensual anal intercourse with a female**

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only. **YES.**
	2. Gender neutral, covering all persons. **NO.**
	3. Based on the lack of consent of victim. **YES**
	4. Based on the use of force or threat. **NO.**
	5. Some combination of the above. **NO**. Force is only used to determine sentence to be imposed. The definition only provides for the intention of the male perpetrator to perform intercourse with the victim realizing that the woman has not consented to the intercourse.
	6. Does it cover only vaginal rape? **NO** , the definition provides for vaginal and anal intercourse.
	7. Does it cover all forms of penetration? **NO**. There are other forms of penetration not covered here such as oral penetration.
	8. Is marital rape in this provision explicitly included? **YES** section 68 of the Criminal Code of Zimbabwe
	9. Is the law silent on marital rape? **NO**

Section 68. Unavailable defences to rape, aggravated indecent assault and indecent assault

***It shall not be a defence to a charge of rape, aggravated indecent assault or indecent assault⎯***

 ***(a)that the female person was the spouse of the accused person at the time of any sexual intercourse or other act that forms the subject of the charge:***

***Provided that no prosecution shall be instituted against any husband for raping or indecently assaulting his wife in contravention of section sixty-six or sixty-seven unless the Attorney-General has authorised such a prosecution; or***

 ***(b)subject to sections six, seven and sixty-three, that the accused person was a male person below the age of fourteen years at the time of the sexual intercourse or other act that forms the subject of the charge.***

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**
	2. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? **NO**
1. To what extent legislation in your country excludes 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 relevant articles with corresponding translations.

**Not applicable**

1. What is the legal age for sexual consent? **16 years.**
2. Are there provisions that differentiate for sexual activity between peers? If so, please provide them. **No.**
3. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

**Imprisonment for life or any shorter period. The court also takes into consideration the circumstances under which the rape took place.**

1. 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?

**The victim is provided with medical treatment and counselling services. There is no provision for reparation to the victim.**

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? **YES**. If so, what are they?
* **The age of the person raped**
* **The degree of force of violence used in the rape**
* **The extent of physical and psychological injury inflicted upon the person raped**
* **The number of people who took part in the rape**
* **The age of the person who committed the rape**
* **Whether or not a weapon was used in the commission of the crime**
* **Whether the person committing the rape was related to the person raped in any way**
* **Whether the person the rape was a parent or guardian of or in a position of authority over the person raped.**
* **Whether the person committing the rape was infected with a sexually transmitted disease at the time of rape**

Is rape by more than one perpetrator an aggravating circumstance? **YES**

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**
	1. Is rape by spouse or intimate partner an aggravating circumstance? **YES**
2. Does the law foresee mitigating circumstances for the purposes of punishment? **YES.** If yes, please specify.

**The age of the accused person is mitigatory. If they are very young, lack of guidance may be a mitigatory factor.**

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO.** If so, at what stage and what are the consequences?
	1. Regardless of the law, is reconciliation permitted in practice? **NO.**
	2. What is the practice in this regard? **The practice is retribution and rehabilitation in sentencing. Reconciliation is not part of it.**
2. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **NO.**
	1. if the perpetrator marries the victim of rape? **NO**
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **NO**

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**
2. Is rape reported to the police prosecuted ex parte (private prosecution)? **YES** **in limited cases where the prosecution has declined to prosecute. An example is Francis Maramwidze v Commissioner General Zimbabwe Republic Police and Prosecutor General HH208-14 case where an application for private prosecution was granted.** <https://jsc.org.zw/jscbackend/upload/Judgements/High%20Court/Harare/2014/HH%20208-14.pdf>
3. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **NO**
4. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **NO**
5. Please provide information on the statute of limitations for prosecuting rape.

**This is not available in Zimbabwe. Rape can be prosecuted after the ordinary prescription periods.**

1. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any? They can report but the challenge is that the physical evidence may be difficult to procure.

**The Criminal Procedure and Evidence Act Chapter 9:07 provides for rape cases to prescribe after 20 years in section 23(2) below:**

**PRESCRIPTION OF OFFENCES**

**23 Prescription of offences (1) The right of prosecution for murder shall not be barred by any lapse of time. (2) The right of prosecution for any offence other than murder, whether at the public instance or at the instance of a private party, shall, unless some other period is expressly provided by law, be barred by the lapse of twenty years from the time when the offence was committed.**

1. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? **NO**. However, a case has to be proven beyond reasonable doubt. Evidence is required to prove cases such as the production of a medical report, physical evidence such as the clothing items, DNA tests results and the testimony of witnesses including the complainant.
2. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?

**Evidence of prior reports of rape made and previous sexual history is admissible in court.**

1. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.

**For child victims they are tried in camera. For adult offenders if the request is made this can also be done. Rape matters also have to be tried in the shortest time possible to avoid inconveniencing the complainant.**

**War and/or conflict**

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

**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.
* **Political influence where perpetrators are highly influential.**
* **Corruption in the prosecution and court system.**
* **Intimidation of victims by the perpetrators.**
* **Family influence where victims and perpetrators are related.**
* **Failure by the police to appreciate that marital rape is rape based on culturally ingrained beliefs**
* **Lengthy trials which may bar complainants from reporting.**
* **The lack of political will on the government to order investigation of rape cases where the State security agents are involved as perpetrators in the course of their duties of maintaining peace and order.**
* **Out of court settlements with the perpetrator**
* **Non-reporting of cases where perpetrator is related to victim e.g. father**