|  |
| --- |
| Call for Submissions to the UN Special Rapporteur on Violence Against  **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.**  *Statute Law of Bahamas, Ch. 99 Sexual Offences*  *Definition of Rape*  3. Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse —  (a) without the consent of that other person;  (b) without consent which has been extorted by threats or fear of bodily harm;  (c) with consent obtained by personating the spouse of that other person; or  (d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.  *Indecent Assault*  5D. (1) Any person who —  (a) indecently assaults any other person;  (b) does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act,  is guilty of an offence and liable to a term of imprisonment of three years.  (2) It is no defence to a charge of an indecent assault committed on a person under sixteen years of age, to prove that the person consented to the act of indecency.  *Indictable Sexual Offences*  6. Any person who —  (a) commits rape;  (b) attempts to commit rape; or  (c) assaults any person with intent to commit rape,  is guilty of an offence and liable to imprisonment for life.  *Sexual intercourse with a person under fourteen years.*  10. (1) Any person who —  (a) has unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) Notwithstanding the provision of section 96 of the Penal Code, it is no defence to a charge under this section that the person did not know or believe or had not the means of knowing that the other person was under fourteen years of age.  *Sexual intercourse with a person between fourteen and sixteen years.*  11. (1) Any person who —  (a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.  (3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.  *Sexual intercourse with a person suffering from a mental disorder.*  12. (1) Any person who —  (a) has unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew or had reasonable cause to suspect that, at the time of the commission of the offence that the person with whom he had unlawful sexual intercourse was a person suffering from a mental disorder; or  (b) attempts to have unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew, or had reasonable cause to suspect that, at the time of the commission of the offence the person with whom he attempted to have unlawful sexual intercourse was a person suffering from a mental disorder, is guilty of an offence and liable to imprisonment for life.  (2) In this section, “mental disorder” means severe subnormality or subnormality within the meanings respectively assigned to those expressions under subsection (1) of section 2 of the Mental Health Act.  *Sexual assault by spouse.*  15. (1) Any person who has sexual intercourse with his spouse without the consent of the spouse —  (a) where there is in existence in relation to them —  (i) a decree nisi of divorce;  (ii) a decree of judicial separation;  (iii) a separation agreement; or  (iv) an order of a court for the person not to molest or co-habit with his spouse, or any other order made under Part II; or  (b) where the person has notice that a petition for judicial separation, divorce or nullity of marriage has been presented to a court,  is guilty of the offence of sexual assault by spouse and liable to imprisonment for a term of fifteen years.  (2) No prosecution of a person under the age of twenty-one years shall be commenced for an offence under this section without the consent of the Attorney-General.  *Forcible taking or detaining of person with intent.*  20. Any person who, by force, takes away or detains any other person of any age against his will, with intent to marry or co-habit or have unlawful sexual intercourse with him, or to cause him to be married to or to co-habit or have unlawful sexual intercourse with another person, is guilty of an offence and liable to imprisonment for fourteen years.  *Powers of the Court where Sexual Offence is Committed*  27. (1) Where, on the trial of any sexual offence against a person under sixteen years of age, it is proved to the satisfaction of the court that the offence has been perpetrated, caused, encouraged or favoured by his father, mother or guardian, or by any other person having custody, care, charge or control of him, it shall be in the power of the court to divest such father, mother, guardian, or other person having such custody, care, charge or control of all authority over him, and to appoint any person or persons willing to take charge of him to be his guardian until he has attained eighteen years of age, or any age below this as the court may direct, and the court shall have the power from time to time to rescind or vary the order by the appointment of any other person or persons as guardian or guardians, or in any other respect.  (2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.  (3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.  *Offences of this Section to be Indictable Offences*  29. Unless otherwise provided under this Act, an offence under the provisions of this Act is punishable on indictment and the provisions of Book I of the Penal Code mutatis mutandis apply in respect of any such offence as they apply in respect of any offence punishable under Book III of the Code.  30. (1) Nothing in any of the provisions of this Act shall be construed as having the effect of authorising the imposition in respect of any criminal offence of a penalty severer in degree than the maximum penalty that might have been imposed for that offence at the time when it was committed.  (2) The provisions of this Act do not in any way derogate from or limit the provisions of section 90 of the Penal Code.  *Sexual Offences And Domestic Violence Act*  (<http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf>)  **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**  **c. Based on the lack of consent of victim YES/ NO** *or lack of informed consent*  **d. Based on the use of force or threat YES/ NO** not necessary for finding of rape  **e. Some combination of the above. YES / NO**  **f. Does it cover only vaginal rape? YES /NO**  **g. Does it cover all forms of penetration? YES/NO. If yes, please specify.** *Only sexual intercourse*  **h. Is marital rape in this provision explicitly included? YES / NO**  **i. Is the law silent on marital rape? YES/NO** *There is a provision on sexual assault by spouse, but not rape*  **j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**  **k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO** *Only marital sexual assault is defined*    **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.**  Yes: Provision 3 states: “Rape is the act of any person not under fourteen years of age having sexual intercourse with another person *who is not his spouse*” (emphasis added). (<http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf>)  *Sexual Offences And Domestic Violence Act § 3*  **4. What is the legal age for sexual consent?**  16  **5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**  Yes, to a certain extent. The Attorney General must consent to prosecute a perpetrator who is under twenty-one who has either consensual or non-consensual sexual intercourse with a minor who is aged fourteen or fifteen.  (1) Any person who —  (a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.  (3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.  **6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**  *Sexual intercourse with a person under fourteen years.*  10. (1) Any person who —  (a) has unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) Notwithstanding the provision of section 96 of the Penal Code, it is no defence to a charge under this section that the person did not know or believe or had not the means of knowing that the other person was under fourteen years of age.  *Sexual intercourse with a person between fourteen and sixteen years.*  11. (1) Any person who —  (a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.  (3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.  *Sexual intercourse with a person suffering from a mental disorder.*  12. (1) Any person who —  (a) has unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew or had reasonable cause to suspect that, at the time of the commission of the offence that the person with whom he had unlawful sexual intercourse was a person suffering from a mental disorder; or  (b) attempts to have unlawful sexual intercourse with any person who is suffering from a mental disorder, whether with or without the consent of that person, under circumstances which prove that the accused person knew, or had reasonable cause to suspect that, at the time of the commission of the offence the person with whom he attempted to have unlawful sexual intercourse was a person suffering from a mental disorder, is guilty of an offence and liable to imprisonment for life.  (2) In this section, “mental disorder” means severe subnormality or subnormality within the meanings respectively assigned to those expressions under subsection (1) of section 2 of the Mental Health Act.  *Forcible taking or detaining of person with intent.*  20. Any person who, by force, takes away or detains any other person of any age against his will, with intent to marry or co-habit or have unlawful sexual intercourse with him, or to cause him to be married to or to co-habit or have unlawful sexual intercourse with another person, is guilty of an offence and liable to imprisonment for fourteen years.  *Powers of the Court where Sexual Offence is Committed*  27. (1) Where, on the trial of any sexual offence against a person under sixteen years of age, it is proved to the satisfaction of the court that the offence has been perpetrated, caused, encouraged or favoured by his father, mother or guardian, or by any other person having custody, care, charge or control of him, it shall be in the power of the court to divest such father, mother, guardian, or other person having such custody, care, charge or control of all authority over him, and to appoint any person or persons willing to take charge of him to be his guardian until he has attained eighteen years of age, or any age below this as the court may direct, and the court shall have the power from time to time to rescind or vary the order by the appointment of any other person or persons as guardian or guardians, or in any other respect.  (2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.  (3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.  *Sexual Offences And Domestic Violence Act*  **(**<http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf>)  **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?**  There is no domestic legislation providing for reparations.  **8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**  Aggravating- if the victim is age 16 or under, or has a mental defect.  Mitigating- if the victim is the perpetrator’s spouse, or if the perpetrator is under twenty-one and the victim is fourteen or fifteen.  *Sexual Offences And Domestic Violence Act*  **a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO** Not addressed.  **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**  Age and mental impairment. Also, dependent child:  *Sexual intercourse with a dependent child*  It is a criminal offence for an adult to have sexual intercourse with a minor whom is his dependent child. A dependent child of an adult is a child who is not related by blood to the adult but falls in any of these categories below:  the child is the adopted child, step-child, foster child or ward of the adult  the child has been treated by the adult as a child of the family of the adult  the child is being maintained, either wholly or partly by the adult  the child is in the actual custody; charge or control of the adult; or  a child in relation to whom the adult holds a position of trust.  The penalty for having unlawful sexual intercourse with one’s dependent child is imprisonment for life. The penalty for attempting to do so is imprisonment for fourteen years. (<http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf>)  *Sexual Offences And Domestic Violence Act*  **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.**  Higher sentences for rape of children under 16 and under or rape of people with a mental impairment.  *Sexual Offences And Domestic Violence Act*  **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, if they are married.  “When your matter comes before the court, if the court is of the view that the matter can be resolved through counselling or through parenting sessions, it can adjourn the hearing of your application and send you and the abusive person to counselling. The court may request that it be provided with a written report indicating whether any progress was made in the counselling or the parenting sessions towards resolving the matter. The report will not give the details of what happened at the counselling sessions. When the court receives this report, it may deal with the matter as it sees fit in accordance with the domestic violence legislation.  If the court makes a protection order, it must also direct that both you and the abusive person (and the child if the matter involves a child) receive appropriate professional counselling and therapy from a specified agency. Regard will be had to your business and employment responsibilities. This agency has an obligation to provide a written report to the court which should detail the dates of counselling, nature of the counselling and therapy carried out and also the response of the persons who were receiving counselling and therapy.”  <https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/the-bahamas>  <https://www.oas.org/dil/Sexual_Offences_and_Domestic_Violence_Act_Bahamas.pdf> #35-37  **a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**  Reconciliation is permitted in practice and can be quite problematic. Women can have difficulty reporting domestic violence due to this culture of reconciliation. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjA5NbOwrDtAhVpRjABHSm4BGkQFjAAegQIBRAC&url=http%3A%2F%2Fispac.cnpds.org%2Fdownload.php%3Ffld%3Dreport_files%26f%3Dviolenceagainstwomeninthecaribbean.pdf&usg=AOvVaw3xhxepsp7LFUpq17M20mQw>  **11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.** It is not rape if the perpetrator rapes their spouse.  Also, the Attorney General must consent to prosecute perpetrators under the age of twenty-one who have sexual relations with minor aged fourteen and older.  “(1) Any person who —  (a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or  (b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,  is guilty of an offence and liable to imprisonment for life.  (2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.  (3) No prosecution of a person under the age of twenty-one years for an offence under this section *shall be commenced without the consent of the Attorney-General.*” (*emphasis added*).  *Sexual Offences And Domestic Violence Act*  27. (2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.  (3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.  <http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0009/SexualOffencesAct_1.pdf>  *Sexual Offences And Domestic Violence Act*  **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**  Not required.  **13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**  Not required.  **14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO**  Not clearly specified.  **15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO**  Not clearly specified.  **16. Please provide information on the statute of limitations for prosecuting rape.**  The Sexual Offences and Domestic Violence Act limits the period within which a person may be prosecuted for committing any of these two offences (having unlawful sexual intercourse with a minor who is between fourteen and sixteen years of age ; attempting to have unlawful sexual intercourse with a minor who is between fourteen and sixteen years of age). The prosecution for any of these offences must be commenced within six months of the commission of the offence. The consent of the Attorney-General is required for a person to be prosecuted for these offences.  (<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-country-resources/the-bahamas>)  **17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO**  **18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.**  7. (1) Evidence on an application for a protection order may be given on affidavit.  (2) It is not necessary to call a person who made an affidavit pursuant to subsection (1), to give evidence unless a party to the proceedings or the court hearing the application so requires.  Domestic Violence (Protection Orders) Act § 7.  <http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2007/2007-0024/DomesticViolenceProtectionOrdersAct_1.pdf>  **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 hearings? YES/NO. If yes, please specify.**  **War and/or conflict**  **21. Is rape criminalized as a war crime or crime against humanity? YES/NO**  **22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO**  **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 Criminal Court (ICC) been ratified? YES/NO**  No. (<https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx#B>).  **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.**  Rape  2016 - 71  2017 - 52  2018 - 55  2019 - 37  Attempted Rape  2016 - 15  2017 - 11  2018 - 11  2019 - 7  Unlawful Sexual Intercourse  2016 - 144  2017 - 146  2018 - 113  2019 - 97  <http://www.royalbahamaspolice.org/statistics/>  **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.** |

Notwithstanding the availability of these services, a gap analysis of the services provided revealed a number of areas of concern if the country is to fulfill its commitment to provide comprehensive quality services. These include:

1. The lack of a national protocol for the comprehensive management of Gender- based Violence

2. Limited shelters for victims

3. Limited availability of providers and intervention services after 5pm when the majority of the cases will occur

<https://www.bahamas.gov.bs/wps/wcm/connect/3be7c3ad-862c-4c0f-ac44-a2833552e00b/GBV+REPORT.Final.+August2015.pdf?MOD=AJPERES>