May 20th 2020

Ms. Dubravka Šimonovic Special Rapporteur on Violence against Women
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I have the pleasure of sending to your Excellency the Questionnaire on criminalization and prosecution of rape Definition and scope of criminal law provisions which has been prepared by the legal team of the Presidential Commission for Human Rights and Attention to Victims of the Interim Government of the Bolivarian Republic of Venezuela, chaired by the President of the National Assembly, Juan Guaidó.

In the same way, I would like to inform you that we do not have any problem in making public the information available in this submission.

Accept, Ms., the renewed assurances of my highest consideration.



**HUMBERTO PRADO SIFONTES**

Presidential Commissioner for Human Rights and Attention to Victims of the Interim Government of the Bolivarian Republic of Venezuela

**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 criminal code and the criminal procedure code.

**The Criminal Code of Venezuela** establishes in its title VIII of crimes against good customs and good order of families, Chapter I of the rape, seduction, prostitution or corruption of minors and the outrages on decency as follows:

***Article 374.*** *- Who by means of violence or threats has forced any person, of either sex, to a carnal act by vaginal, anal or oral route, or the introduction of an object by one of the first two routes, or by oral route, enter an object that simulates sexual objects, the person responsible will be punished, as charged of rape, with a prison sentence of ten years to fifteen years. If the crime of rape here provided has been committed against a girl, boy or adolescent, the penalty will be fifteen years to twenty years in prison.*

*The same penalty will be applied, even without violence or threats, to the individual who has a carnal act with a person of either sex:*

1. *When the victim is especially vulnerable, due to their age or situation and, in any case when under the age of thirteen.*
2. *Or has not completed sixteen years, provided that for the execution of the crime, the person responsible has prevailed himself of a relationship of superiority or kinship, because is ascendant, descendant or brother or sister, by nature or adoption, or related to the victim.*
3. *Or that while being detained, convicted, the custody of the culprit has been entrusted.*
4. *Or who is not able to resist due to physical or mental illness; for another reason independent of the will of the culprit or as a consequence of the use of fraudulent means or narcotic or exciting substances that it has been used.*

***Article 375.*** *- When any of the acts foreseen in the first part and in numerals 1 and 4 of the preceding article, has been committed with abuse of authority, trust or domestic relations, when they are committed by the joint action of two or more people, the penalty will be imprisonment from eight years to fourteen years in the case of the first part, and from ten years to sixteen years in the cases established in numerals 1 and 4*

*Sole Paragraph: Those who are implicated in any of the assumptions expressed, will not have the right to enjoy the procedural benefits of law or to the application of alternative measures of compliance with the sentence.*

***Article 377.*** *- When any of the acts provided for in the preceding articles has been committed with the simultaneous concurrence of two or more persons, the penalties established by Law shall be imposed with an increase of one third.*

Similarly, **The Law on the Right of Women to a Life Free of Violence (Ley Orgánica de la Mujer a una Vida Libre de Violencia)** in its Chapter VI of crimes, contemplates the following:

***Sexual violence***

***Article 43.*** *- Who through the use of violence or threats constrains a woman to access unwanted sexual contact that includes vaginal, anal or oral penetration, even though the introduction of objects of any kind through any of these routes, will be punished with prison from ten to fifteen years*

*If the perpetrator of the crime is the spouse, cohabitant partner, ex-spouse, ex-cohabitant partner, person with whom the victim maintains or maintained a relationship of affection, even without living together, the penalty will be increased from a quarter to a third.*

*The same penalty increase will be applied in the assumptions that the author is the victim's ascending, descending, collateral, consanguineous or related relatives. If the act is carried out to the detriment of a girl or adolescent, the penalty will be fifteen to twenty years in prison.*

*If the victim turns out to be a girl or adolescent, daughter of the woman with whom the author maintains a relationship as a spouse, cohabitant partner, ex-spouse, ex-cohabitant partner, person with whom he or she maintains or maintained an affective relationship, even without coexistence, the penalty it will increase from a quarter to a third.*

***Carnal act with a particularly vulnerable victim***

***Article 44.*** *- The person who performs the carnal act, even without violence or threats, will be punished with the crime provided for in the previous article and will be punished with a sentence of fifteen to twenty years in prison in the following cases:*

1. *To the detriment of a vulnerable woman, due to her age or in any case less than thirteen years of age.*
2. *When the perpetrator has validated his relationship of superiority or relationship with the victim, whose age is less than sixteen years.*
3. *In the event that the victim is detained or convicted and has been entrusted to the custody of the aggressor.*
4. *When the victim is physically or mentally disabled or has been deprived of the ability to discern due to the supply of drugs or psychotropic substances*

***Article 45.****- Who through the use of violence or threats and without the intention of committing the crime referred to in article 43, constrains a woman to access unwanted sexual contact, affecting her right to freely decide her sexuality, will be punished with one to five years imprisonment.*

*If the act is carried out to the detriment of a girl or adolescent, the penalty will be two to six years in prison.*

On the other hand, **The Organic Law for The Protection of Children And Adolescents (Ley Orgánica para la Protección del Niño, Niña y del Adolescente) (LOPNA)**, within the scope of its competence, also establishes penalties and sanctions for this type of crime, in this sense contemplates the following:

***Article 259.*** *- Sexual Abuse of Children.* *Whoever performs sexual acts with a boy or girl, or participates in them, will be punished or imprisoned for two to six years.*

*If the sexual act involves genital or anal penetration, by means of a carnal, manual act or the introduction of objects; or oral penetration even with instruments that simulate sexual objects, the prison will be from fifteen to twenty years.*

*If the culprit exercises authority over the victim, parenting responsibility or vigilance, the penalty will be increased from a quarter to a third.*

*If the author is a man of legal age and the victim is a girl, or victims of both sexes attend the case, they will meet the Special Courts provided for in the Organic Law on the Right of Women to a Life Free of Violence according to the procedure in this established.*

***Article 260.*** *- Sexual abuse of adolescents. Whoever performs sexual acts with adolescents, against their consent, or participates in them, will be punished according to the previous article.*

*In these cases, depending on the seriousness of the infraction, closure may also be imposed for a determined or definitive time of the establishment.*

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

1. Gender specific, covering women only

**NO.** Nevertheless the provisions about reparation and compensation are gender specific, covering women only.

1. Gender neutral, covering  all persons

**YES**

1. Based on the lack of consent of victim

**YES**

1. Based on the use of force or threat

**YES**

1. Some combination of the above.

**YES**

1. Does it cover only vaginal rape?

**NO**

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

**YES**, the applicable legal order contemplates vaginal, anal and oral penetration; as well as the introduction of objects to the victim.

1. Is marital rape in this provision explicitly included?

**YES**

1. Is the law silent on marital rape?

**YES**

1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?

**YES**

1. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?

**NO**

**3.** Are there any provision 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?

In Venezuela, the age for sexual consent is a phenomenon that, rather than being discussed, is taken for granted since there is no specific Law that establishes an exact age for sexual consent, although in many countries an age of sexual consent is expressly set. In Venezuela, all sexual acts committed against people under the age of 12 are punished, for this reason we must first interpret what the law means by a child or adolescent, and in this sense the Organic Law for the Protection of Children and Adolescents (Ley Orgánica para la Protección del Niño, Niña y Adolescente) (LOPNNA) according to its acronym in Venezuela, its article 2 clearly defines that: "*a child is understood to be any person under the age of twelve (12); and an adolescent is understood to be any person who is twelve (12) years of age or older. Once that taking into account then that differentiation that the norm raises, in this sense the Venezuelan laws punish sexual contact with an adolescent as long as "it is against their consent*", that is to say the norm grants the individual the power to grant or not their consent for sexual contact, from this analysis it can be inferred that the age to give consent is from twelve (12) years when the individual is already considered an adolescent.

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

**NO**

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

According to the Venezuelan Criminal Code, in its article 374 the penalty for the crime of rape is imprisonment of ten (10) to fifteen (15) years. If the crime of rape is committed against a girl, boy or adolescent, the established penalty will be fifteen (15) to twenty (20) years in prison

The Organic Law on the Right of Women to a Life Free of Violence, establishes for this type of crime in its article 43, prison sentence of ten (10) to fifteen (15) years.

The Organic Law for the protection of Children and Adolescents, in its article 259, establishes penalties of imprisonment, for sexual abuse of children and adolescents, ranging from two (02) to 20 years in prison.

**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?

Although it is true that in the matter of reparation to the victim of rape, the Law contemplates reparation and compensation by the perpetrator, these procedural figures in practice are not fulfilled even when the Organic Law on the Right of Women to a Life Free of Violence establishes the following:

*Compensation*

***Article 61.*** *All the acts of violence provided for in this Law shall entail the payment of compensation by the aggressor to the women victims of violence or to their heirs and heirs in the event that the woman has died as a result of those crimes, the amount of said compensation shall be fixed by the competent specialized jurisdictional body, without prejudice to the aggressors obligation to pay for the medical or psychological treatment that the victim will need.*

*Reparation*

***Article 62.*** *Whoever is convicted of the punishable acts provided for in this Law, who has caused property damage to the movable and immovable property of women victims of violence, shall be obliged to repair them with payment of the damage they have suffered, which will be determined by the competent specialized court. When its repair is not possible, it will compensate its loss by paying the market value of said goods.*

***Aggravating and mitigating circumstances***

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

**YES**, the aggravating factors for the crime of rape in Venezuelan law are the following:

* That the crime of rape has been committed against a girl, boy or adolescent.
* The guilty party having committed the crime of the efforts of the ascendants, guardians, legal representatives or other persons in charge of supervising the minor or of the offices of pimps or habitual corrupters.
* That the crime of rape has been committed by the spouse, cohabitant partner, ex-spouse, ex-cohabitant partner, person with whom the victim maintains or maintained an emotional relationship even without coexistence.
* That the crime of rape has been committed to the detriment of a girl or adolescent, daughter of the woman with whom the author maintains or maintained an emotional relationship; even without coexistence.
* When the rape victim is especially vulnerable, due to their age or situation.
* That in the execution of the crime of rape, the perpetrator has availed himself of a relationship of superiority or kinship, because he is ascendant, descendant or sibling, by nature or adoption, or related to the victim.
* That the victim being detained, convicted, has been entrusted or confined to the custody of the guilty party.
* That the victim is not able to resist due to physical or mental illness; for any other reason independent of the will of the guilty party or due to the consequences of the use of fraudulent means or narcotic or exciting substances that have been used.
* When the crime has been committed with the simultaneous assistance of two or more people.
* When the crime has been consummated in the execution of another crime; like kidnapping or robbery.

a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO

**YES**

b. Is rape of a particulary vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age diference)

**YES**

c. Is rape by spouse or intimate partner an aggravating circumstance?

**YES**

**9.** Does the law foresee mitigating circumstances for the purpose of punishment?

**NO**

**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?

**NO**

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

**NO**, the practice is the prosecution and conviction of the culprit.

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

**YES**. The legislation establishes cases in which the active subject of the crime does not possess the legal capacity to be imputable; these assumptions are not exclusively applicable to the crime of rape, rather, they are taken as exemptions from criminal responsibility for any type of unlawful conduct. In this sense, we have that if the perpetrator is under twelve (12) years old, he/she cannot be charged and, consequently, prosecuted, a norm contemplated in article 69 of the Criminal Code which establishes the following: ... “*It is not punishable: the minor of twelve years, in no case, nor the over twelve and under fifteen, unless it appears that he acted with discernment*”.... In this same order of ideas, the Organic Law for the Protection of Children and Adolescents establishes in its article 532 the following ... “*When a boy, girl or adolescent under fourteen is involved in a punishable act, only protective measures will be applied in accordance with the provisions of this Law*”... this ruling out the prosecution of the minor involved in the commission of the crime.

The other assumption is based on the perpetrator as a subject out of criminal liability due to mental incapacity, which is not exclusively applicable to the crime of rape. That is, it is an exculpatory from generalized criminal responsibility and it is provided in the article 62 of the Criminal Code, which establishes that: ... “*It is no punishable for those who carry out the action while asleep or in a state of mental illness sufficient to deprive them of their conscience or freedom of their acts*”... establishing for the particular case of “crazy or insane”, the decree of confinement in hospitals or establishments destined for this class of patients by the competent court, from where the perpetrator may not leave without prior authorization from the same court.

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**

***Prosecution***

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

**YES**, however, in practice the Presidential Commission for Human Rights has noticed that that *ex officio* investigations aren’t common. Conversely, sometimes, due the free or festival days, even by bureaucracy issues, the denounces are not investigated since the first moment when the authorizes receive information about them.

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

**YES,** but even in that scenario the victims does not reactive timely responses

**14.** Are plea bargain or "frendly settlement" of a case allowed in cases of rape of women? YES/NO

**NO**

**15.** Are plea bargain or "frendly settlement" of a case allowed in cases of rape of children? YES/NO

**NO**

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

The article 379 of the Criminal Code of Venezuela establishes: ... “*But the complaint is not admissible if a year has elapsed from the day the act was committed or from the day the person who may complain on behalf of the aggrieved became aware of it* ”.

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

**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.

**YES**, although it is true that even though exhaustively there is no legal mandate that requires the practice of tests of this type, beyond the victim's complaint, it is still true that the practice of forensic medical-legal expertise, such as a general physical examination of the victim, psychological tests, taken in a timely manner, together with the correct substantiation of the investigation, it has a fundamental impact on the prosecution of the culprit and its respective conviction.

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

**NO**

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

**NO**

***War and/or conflict***

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

In this case, by direct application, the provisions of the Rome Statute of the International Criminal Court of which the Bolivarian Republic of Venezuela is part and has ratified would contemplate it in light of article 23 of our National Constitution. However, in strict sense, there is no specific legal or constitutional disposition that stablish the rape as a war crime or crime against humanity.

**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 commited during war and armed conflict? YES/NO

**NO**

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

**YES**

***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.

It is important to note first that in Venezuela the authorities of the *De Facto Power* do not publish official figures on violence rates on a regular basis, so that access to this information is reduced and is limited to independent investigations by the media and civil society organizations, so what follows is the only summary compilation of the data collected under this scheme:

In 2017, on one hand, the country faced a context of protests and public demonstrations during 4 months, in that sense, we experienced a phenomenon of proliferation of sexual violence for political reasons. According to the NGO “Foro Penal” and Human Rights Watch 53 political prisoners were victims of sexual violence in 2017[[1]](#footnote-1).

The NGO AVESA has reported that in 2019 at least 1.82% of Venezuelan women claim they have been victims of sexual violence, but only 32.14% of gender violence victims have filed a complaint against the competent authorities[[2]](#footnote-2). A study from NGO Amnesty International dated from 2017 has established that out of 70 thousand complaints of gender violence, only 1% reached a trial and out of these only 4% got a guilty verdict[[3]](#footnote-3).

Venezuela registered until August 2019 at least 1.180 cases of sexual abuse and an increase in sexual violence claims, reported the Corps of Scientific, Criminal and Criminal Investigations (Cuerpo de Investigaciones Científicas Penales y Criminalistas - CICPC). “*We have a national balance of 1,180 cases of sexual abuse*”, said the director of that police corporation, Douglas Rico, in a statement that has been released on social media. In that interview the official explained that the Venezuelan authorities have given "*a response in 63%"* of these cases, for which they have detained 627 people. On the other hand, *de facto* General Attorney Tarek William Saab said that 110,498 security measures have been issued in cases of violence against women since August 2017 and the units for dealing with crimes of male violence will be restructured “to better serve those affected”[[4]](#footnote-4).

According to Communitary Center for Education (Centro Comunitario de Aprendizaje also known as CECODAP), 39% of child protection councils do not receive sexual violence complaints, not because of the lack of cases but because of institutional weakness[[5]](#footnote-5).

***Other / Otros***

**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.

Statistically, one of the main obstacles to prosecution in this type of crime is the lack of denunciation by the victim, for her refusal to be subjected to a judicial process where her modesty is compromised. The lack of psychological education and training for officials in charge of the administration of justice makes the already traumatizing process that the victim of this horrendous crime is going through become even more difficult due to the lack of tact with which the process is handled judicial in question. This situation gets worse by the lack of regulations regarding re-victimizations.

Another obstacle that increases the so-called “black number”, which is none other than the figure that responds to the number of cases of rape or sexual abuse that are not prosecuted, is the fear that the perpetrator infringes on the victim, since in a high index of cases, the culprit has some type close relationship with his victim, be it some kind of kinship of consanguinity or affinity in any degree, academic, labor or professional relationship of superiority with it, making this crime committed on many occasions continuously.

The lack of government policies that promote information campaigns that generate confidence in the State and in the effective prosecution of the process by the justice administration, so that they encourage the victims of this scourge to denounce it, is another impediment that adds to these, in some way “causal” in the obstruction in the exercise of criminal action in the crime of rape.

Also, the small percentage of people that decide to file a complaint against their aggressors have to endure a process where their constitutional guarantees are constantly violated, for instance: the practice of “peloteo” which means that the case gets unreasonably transferred from courts or judges delaying the process (the trials get interrupted between 3-4 times), the difficulty and lack of good faith when soliciting protection measures, the non-conditioned spaces to avoid victims and aggressors from meeting each other, the misplacing of files, the non-fixed audience hours and the regular collapse of the system used to record the cases, process status and location of files[[6]](#footnote-6).

There is no rules of procedure for the **The Law on the Right of Women to a Life Free of Violence (Ley Orgánica de la Mujer a una Vida Libre de Violencia)** despite being one of the compensation measures and guarantee of non-recidivism dictated by the Interamerican Court of Human Rights in the Case Lopez Soto vs Venezuela, one of the most important cases in the matter of sexual violence in the Court.

1. AVESA. (2019) "Women at the Limit: Women's Rights in the face of the worsening of the complex humanitarian emergency in Venezuela". 2019. Page 89. <https://bit.ly/30Pk2Cg> [↑](#footnote-ref-1)
2. AVESA. (2019) "Women at the Limit: Women's Rights in the face of the worsening of the complex humanitarian emergency in Venezuela". 2019. <https://bit.ly/30Pk2Cg> [↑](#footnote-ref-2)
3. Amnesty International Venezuela (2017) “Impunity and Gender Violence: without justice, equality is not possible. <https://bit.ly/2RQem7a> [↑](#footnote-ref-3)
4. ###  El Nuevo Herald, "Venezuela registers 1,180 sexual abuses and increases in femicides this year", August 27, 2019. <https://www.elnuevoherald.com/ultimas-noticias/article234432582.html>

 [↑](#footnote-ref-4)
5. Crónica Uno. “En Venezuela la violencia se ensaña con los niños, niñas y adolescentes”. 17 de mayo de 2019. <https://bit.ly/3bEttIC> [↑](#footnote-ref-5)
6. AVESA. (2019) "Women at the Limit: Women's Rights in the face of the worsening of the complex humanitarian emergency in Venezuela". 2019. Page 84. <https://bit.ly/30Pk2Cg> [↑](#footnote-ref-6)