### Check against delivery

**Statement by DUBRAVKA SIMONOVIC**

*Madam Vice-President,*

*Distinguished members of the Human Rights Council,*

*Excellences, representatives of NGOs, NHRIs*

*Ladies and Gentlemen,*

I am glad to attend this session of the Human Rights Council in person, for the last time as the UN Special Rapporteur on violence against women and to present my thematic report on rape as a **grave, systematic and widespread** human rights violation, a crime and a manifestation of gender-based violence against women and girls, both in peacetime and during conflict, with a focus on States’ responsibility to prevent it, to change the prevalent rape culture, culture of impunity for perpetrators and stigmatization and lack of access to justice for victims. After this, I look forwards to engaging with you in a constructive dialogue.

This report also supports and encourages a process of review and harmonization of national criminal laws and practices with international standards on rape. It is accompanied by the **Framework for Model Legislation on Rape, that I also launch today.** This model law is intended to serve as a **harmonization tool** for comparing and aligning national laws with international standards, a process that has already started under the CEDAW Committee’s General Recommendation No. 35 for its 189 States Parties and under the Istanbul Convention for its 34 States Parties.

*Distinguished delegates,*

My thematic report focuses on rape as a specific form of sexual violence. The efficient criminalization of rape requires the examination of all its constitutive elements at the international level, while many of those standards are also applicable to other forms of sexual violence.

To demonstrate this, in my report I first present the evolution of international human rights law and international humanitarian and criminal law standards as they were developed for the effective criminalization and prosecution of rape, based on a victim-centred approach in times of peace and conflict.

Based on the questionnaire on the criminalization of rape, the 206 submissions received revealed that those international standards on rape have not been fully or properly incorporated at the national level. There are many shortcomings at the national level. Some States are mentioned in the report as examples only, while all contributions from all stakeholders reveal gaps in other States. All of the submissions are on the mandates’ webpage, covering 105 States.

I invite all delegations to review the information provided on their countries and to provide corrections if any facts are not accurate.

The responses received reveal that States criminalize rape using **different definitions** (based on force or on lack of consent), **protecting different persons** (only women or all persons), **including or excluding marital rape,** **covering different types of penetrations**, **prescribing different aggravating and mitigating circumstances,** setting different lengths of sentences, **prescribing ex officio or ex parte prosecution of rape,** and providing or not providing statutes of limitation for its prosecution.

Additionally, the implementation of those laws is influenced by the surrounding general context of different forms of discrimination and gender-based violence against women, myths and gender-based stereotyping on rape by the media and the criminal justice system.

All of this results in the current normalization of rape and impunity for perpetrators.

Let me mention some key findings.

1. ***Protected victims, acts of rape and exemption of marital rape***

**In many States, provisions on rape cover only women victims and only vaginal penetration.** Many States still exempt marital rape from criminalization, including the Bahamas, Bangladesh, India, Iraq, Jordan, Lebanon, Malaysia, Nigeria, Samoa, South Sudan, Sri Lanka, the Sudan and the Syrian Arab Republic. In other countries, such as Nepal and Rwanda, while marital rape is criminalized, it is punishable by reduced sentences.

**Based on international standards, I have recommended that criminal law provisions should protect all persons, without discrimination, including men, boys and gender-diverse persons. They should also cover all types of penetration, however slight, of a sexual nature with any bodily part or object.**

**I have recommended that the criminalization of rape should include rape between spouses or intimate partners, and that States that legally exclude the criminalization of marital rape, contrary to international human rights standards, should urgently repeal those provisions.**

1. ***Definitions of rape based on lack of consent and/or use of force and age of consent***

Criminal law provisions in the majority of States define rape only by the use of force or threats of violence. In my report, I have cited examples of such provision in the Czech Republic and Azerbaijan, **while submissions revealed a long list of States.**

The age of sexual consent is among the most contentious issues related to the criminalization of rape and I recommend that laws criminalizing rape should establish that consent of children below the age of 16 is immaterial. However, in some States the age of sexual consent is very low, at 12 to 14 years old or even lower, or there is no legal age of sexual consent.

**As a key standard for definition of rape I recommend that States include lack of consent in its centre, and specify that consent must be given freely, as a result of the person’s free will, assessed in the context of the surrounding circumstances.**

**Intercourse without consent should be criminalized as rape in all definitions.**

**States must also ensure age appropriate education and promote the understanding of lack of consent (the no means no approach) and promote affirmative consent (the yes means yes approach).**

1. ***Sentencing and aggravating and mitigating circumstances***

My review has also identified shortcomings regarding the sentencing of rapes. Many States include mitigating circumstances that are not in line with international standards. States should review and abolish all mitigating circumstances that are not in accordance with human rights standards, especially “marry your rapist” provisions, and cease their application on the basis of gender stereotypes and myths on rape.

1. ***Prosecution ex officio and without undue delay***

The crime of rape should be prosecuted **ex officio and without undue delay**; however, in some States, rape is prosecuted ex parte. In Ecuador prosecution is ex parte in cases of *estupro* (sexual relations with a minor through deceit), and in **Mexico, Slovenia and Turkey in cases of marital rape or rape by an intimate partner.** Likewise, **only aggravated forms of rape are prosecuted ex officio in States such as Azerbaijan and Romania.**

1. ***Standard of proof, rape shield provisions and other protective measures***

The application of criminal law standard of proof, “beyond reasonable doubt”, in rape cases is closely interconnected with the definition of rape. If it is based on the use of force the burden of proof is on the victim while if it is based on the lack of consent the burden of proof is shifted to the perpetrator also.

Also, in many States, in practice it is necessary to present medical evidence of rape, and in some, there must be **witnesses**, including in Afghanistan, Bangladesh, Ghana, Mauritius, Morocco, Nigeria, Pakistan and Sierra Leone. In Yemen, the law establishes that without a confession from the perpetrator, a rape victim must **provide four male witnesses to establish that the offence had been committed.**

My recommendations, based on international law standards is that the victim’s testimony, supported by a physical and psychological assessment of harm and assessed alongside existing evidence, should not require further corroboration to be considered as proof. States should also enact rape shield provisions to exclude from evidence information about a victim’s sexual history.

1. ***Statute of limitation, extraterritorial application and data***

**A key element for the prosecution of rape are also provisions on the statutes of limitation,** which prescribe a number of months or years after the rape in which it can be reported and prosecuted. **Victims often need time to decide to come forward.** Short statutes of limitation like the three months in Iraq, and one year in Italy, Nepal and Venezuela prevent many victims from reporting their cases.

**I have recommended that there should be no statutes of limitation for initiating legal proceedings on rape**, whether they were committed during conflict or in peacetime. Some post-conflict States still have short statutes of limitation applicable for rapes that happed during conflict, and have not ratified the Statute of the International Criminal Court. This precludes the prosecution of rape that took place during the conflict and in times of peace.

**Many States do not have specific provisions for statutes of limitation when children are victims of rape or incest.** In the case of child victims, statutes of limitation should at a minimum allow for the initiation of proceedings after the victim has reached the age of majority.

My report also recommends that States provide for **extraterritorial jurisdiction,** so that their courts can prosecute rape cases committed by **their nationals** outside their territory, which is particularly relevant to prevent impunity of cases involving international or uniformed personnel connected to the UN.

**I also call for a human rights based approach to the prevention of rape during conflict, since rape can’t be successfully addressed in conflict contexts without addressing pre-existing shortcomings in its criminalization in concerned States that are in conflict.**

**The roadmap to eliminate rapes during the conflict starts at home during the peace.**

**There is a lack of comparable data on rapes. Available data reveals high attrition rates**. Sweden has a conviction rate of 4.6 per cent for the period 2014–2018, while Nigeria secured convictions in only 0.9 percent.

**Finally, I recommend that States collect data on prosecution, sentencing and attrition rates, and establish rape prevention watches or observatories as part of observatories on violence against women.**

*Madam Vice-President,*

My 6-year tenure as Special Rapporteur will come to a close next month. It was very intensive, voluntary but privileged work, and I am very proud of all 12 thematic reports, including this one and 11 country reports : South Africa, Georgia, Israel, the Occupied Palestinian Territory / State of Palestine, Argentina, Australia, Bahamas, Canada, Nepal, Bulgaria, and Ecuador. I would like to thank those States that followed up on my recommendations and informed me of improvements done.

I have also started two long-term initiatives that were priorities during my tenure: femicide watch and the EDVAW Platform, and hope that they will continue to grow.

In 2015, I started a “femicide prevention watch” initiative that was followed up each year and resulted with growing number of States that collect femicide data and have established femicide watches or observatories.

In 2017, I started the EDVAW Platform initiative – the Platform of 7 independent expert UN and regional expert mechanisms on the elimination of discrimination and violence against women, which elaborated 10 joint statements, including one on the definition of rape based on the lack of consent.

In conclusion, I would like to call for:

- increased and implementation-oriented collaboration between UN agencies, independent expert human rights mechanisms and UN intergovernmental bodies;

* inclusion of violence against women as a permanent agenda item of the Commission on the Status of Women and Commission on Crime Prevention and Criminal Justice;
* increase of the time allocated to violence against women by the HRC and regular inclusion all EDVAW Platform expert mechanism in its deliberations.

Finally, I would like to thank all women and girls victims of gender-based violence from all parts of the world that I met during the past six years or supported through the communications procedure, who placed their trust in me, in this mandate, by sharing their personal and often traumatic experiences, allowing me to gain an insight into some of the systemic human rights violations they face when it comes to gender-based violence.

Also, I would like to thank sincerely the OHCHR staff members that have supported my work in the best possible way and contributed generously to the outcomes beyond their regular duties.

*Thank you.*