

BRIEFING FOR THE HUMAN RIGHTS COMMITTEE, COUNTRY REPORT TASK FORCE, 138TH SESSION (26 JUNE 2023 - 28 JULY 2023), WITH RESPECT TO VIOLENCE AGAINST WOMEN IN: UGANDA *Submitted by Strategic Advocacy for Human Rights (SAHR), May 2023*



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This thematic report¹ considers the legality of violence against women in Uganda, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Uganda, and the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Uganda during the Universal Periodic Review in 2022, it is our hope that the Committee will:

- raise the issue of violence against women in its List of Issues Prior to Reporting for Uganda, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and
- in its concluding observations on Uganda’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.

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1. INTRODUCTION

Strategic Advocacy for Human Rights (SAHR)² is a peer-led non-governmental organization by and for human right defenders working to equip a movement of human rights defenders with the knowledge and tools to end gender-based violence through litigation, policy, and law reform.

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 138th Session (26 June 2023 - 28 July 2023).

This report highlights key legal inequalities that women face in Uganda in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices in Uganda against the UN Model Law on Rape³, published by the former UN Special Rapporteur on Violence Against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee, the State, and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

2. KEY ISSUES OF CONCERN

2.1 Female Genital Mutilation (“FGM”) (2004 Concluding Observations paragraph 10)

- (a) In paragraph 10 of its Concluding Observations, the Committee noted that the State party has acknowledged the persistence of FGM in some areas of the country, despite article 33, paragraph 6, of the Constitution which prohibits cultures, customs and traditions which are against the dignity, welfare, or interest of women.
- (b) The State party pointed to Article 2(2) of the Constitution, which effectively states that the Constitution shall prevail over any law or any custom inconsistent with it, and that such law or custom shall be void to the extent of the inconsistency. In 2007, the Constitutional Court of Uganda declared that the practice of FGM is unconstitutional and prohibited. In 2010, the Parliament enacted the Prevention of Female Genital Mutilation Act, 2010 (“FGMA”).
- (c) The FGMA provides for the prohibition of FGM, the offences, prosecution and punishment of offenders and the protection of victims as well as girls and women under threat of FGM, among other matters. Overall, the FGMA criminalizes a wide scope of activities associated with FGM, including attempts to carry out FGM, discrimination against a person who has not, or a person who’s relative has not, undergone FGM, the aiding or procuring the carrying out FGM. However, there are certain misalignments between the FGMA and the Covenant, and the UNSR on VAW benchmarks.

Analysis of the FGMA by reference to the UN Model Rape Law

- (a) There are differences in approach of the FGMA in comparison to the UN Model Rape Law:
 - (i) the UN Model Rape Law aims to protect all persons without any discrimination and the criminalization of the offence is oriented towards achieving substantive gender equality, although it acknowledges that rape predominantly affects women and girls. In comparison, as FGM is a gender-based violence against

³ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023] [A/HRC/47/26/Add.1](https://www.unhcr.org/refugees-and-returnees/47/26/Add.1)

women and girls, gender-specific legislation is required to address the practice and the needs of the victims of FGM.

- (ii) The nature of rape as an offence is the lack of consent. On the other hand, under the FGMA, consent of the victim to FGM is not a defence under the FGMA. This is consistent with the position that FGM is torture or harm that a woman, of any age, cannot consent to. This also addresses the societal pressure on women and girls to undergo FGM, and such duress or coercion is often deemed to vitiate consent.
- (iii) Article 11 and Article 20 of the UN Model Rape Law provides that there should be a victim-centred approach, and provides for various protective measures, especially with respect to child victims and witnesses. However, the FGMA does not contain extensive provisions addressing access to justice, investigation, prosecution, and trial, in order to ensure that the rights and interests of victims are protected at all stages of the proceedings.
- (iv) The Framework for Model Legislation on Rape (Report of the Special Rapporteur on violence against women, its causes and consequences) takes the view that states should take steps to mandate national education and training with a view towards preventing violence, eliminating gender-based discrimination and training for professionals working on such cases (e.g. law enforcement officials, lawyers, judicial, medical and social service professionals).⁴ The FGMA does not specifically provide for such education, raising of awareness and capacity building, which the government could adopt towards eliminating FGM.

Issues regarding the Practical Application of the FGMA at the Community Level

- (a) There are numerous issues in the practical application of the FGMA at the community level:
 - (i) **Societal attitudes towards FGM:** FGM practices are deeply entrenched in cultural beliefs, and values, and is a socially upheld behavioural rule. Expectations about gender, sexuality, marriage, and family determine what is considered “proper” sexual behaviour of women in relation to “premarital virginity and marital fidelity”⁵. Thus, despite the FGMA, the practice has continued and gone underground, because the community still believes it to be a necessary rite of passage for young girls⁶. Efforts against FGM are seen as a direct attack on their culture and identity⁷.

⁴ Human Rights Council, *A framework for legislation on rape (model rape law): Report of the Special Rapporteur on violence against women, its causes and consequences*, 15 July 2021, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/149/63/PDF/G2114963.pdf?OpenElement> [accessed 5 May 2023].

⁵ World Health Organization Female Genital Mutilation, Fact sheet N°241, available at: <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation> [accessed 8 May 2023].

⁶ UN Women, *Rooting out FGM in rural Uganda* (2 February 2022) available at: <https://www.unwomen.org/en/news-stories/feature-story/2022/02/rooting-out-fgm-in-rural-uganda> [accessed 8 May 2023].

⁷ *Protecting the Right to Health in the Campaign Against FGM: A Rapid Assessment of Stakeholder Interventions in Kapchorwa district*, Eastern Uganda, available at: <https://www.cehurd.org/wp-content/uploads/2015/11/FGM-response-and-R2H-1.pdf> [accessed 8 May 2023].

- (ii) **Reluctance to report offence:** FGM may be carried out on young girls, for example adolescent girls as a rite of passage before marriage⁸, and, given the strong cultural underpinnings of the practice, may be encouraged by a victim's family members, and carried out by a member of her community. Young victims of FGM or other persons aware ongoing FGM practices may be afraid or reluctant to report instances of FGM, for numerous reasons.
- (iii) **Lack of harmonised approach:** There is weaker enforcement of laws prohibiting FGM in Kenya, which borders Uganda. This is because police or law enforcement officials in Kenya may not be aware of FGM prohibiting laws, and even if they were aware, most investigators and other actors in the justice chain such as medical examiners, lawyers and judges are not adequately trained to understand the specificities of FGM to enable them to perform their role effectively and ensure access to justice for victims of FGM⁹. Increasing the effectiveness and enforcement of the FGMA may not eradicate the practice of FGM among Ugandan women, who may consequently choose to travel to Kenya to be cut in secret¹⁰.
- (iv) **Inconsistent implementation / enforcement:** Based on assessment conducts, there is some resistance amongst both law enforcement and the population as to anti-FGM laws, and there is a feeling that the penalties under law are too harsh. Furthermore, there are gaps in involving communities in designing the law and its awareness programs, and communities continue to hold mistaken beliefs in relation to the health risks and complications that come with FGM, especially in the remote, hard-to-reach areas where FGM is still rife¹¹.
- (v) **Lack of acceptance of anti-FGM laws:** Ugandan communities that continue to practice FGM are often not involved in the legislative process and may feel that laws are imposed from outside and are a challenge to their norms and culture. For example, in 2012, practicing communities in one village were so opposed to laws against FGM that they ended up "arresting" and attacking a police officer who came to arrest potential suspects.¹²
- (vi) **Inadequate justice system:** A complaint under the FGMA will be channelled through the Ugandan justice system. However, a 2015 study carried out by The Hague Institute for Innovation of Law found that most people in Uganda found

⁸ Unicef, *Female Genital Mutilation (FGM) in Uganda*, 2020, available at https://www.unicef.org/uganda/media/7996/file/FGM%20Evidence%20from%20Uganda_Policy%20Brief_29th%20Sept%202020.pdf [accessed 5 May 2023].

⁹ Cynthia Umurungi, moderator of the Community of practice on Female Genital Mutilation and Caroline Lagat, Programme Officer- End Harmful Practices at Equality Now, *Law and FGM, are we having an implementation crisis?*, undated, available at <https://copfgm.org/2020/07/issues-critiques-linked-to-anti-fgm-laws> [accessed 5 May 2023].

¹⁰ 28 Too Many, *Uganda: The Law and FGM*, May 2018, available at [https://www.28toomany.org/media/uploads/Law%20Reports/uganda_law_report_v1_\(may_2018\).pdf](https://www.28toomany.org/media/uploads/Law%20Reports/uganda_law_report_v1_(may_2018).pdf) [accessed 5 May 2023].

¹¹ *Protecting the Right to Health in the Campaign Against FGM: A Rapid Assessment of Stakeholder Interventions in Kapchorwa district*, Eastern Uganda, available at: <https://www.cehurd.org/wp-content/uploads/2015/11/FGM-response-and-R2H-1.pdf> [accessed 8 May 2023].

¹² The Community of Practice on Female Genital Mutilation, *Issues & critiques linked to anti-FGM laws*, undated, available at <https://copfgm.org/2020/07/issues-critiques-linked-to-anti-fgm-laws> [accessed 5 May 2023].

the justice system complex to navigate, expensive and in many cases not capable of producing fair outcomes that reflect the needs of Ugandans¹³.

- (vii) **Difficult to prove an offence has been committed:** The FGMA criminalizes a wide range of acts, some of which may be very hard to prove have been committed, such as an attempt to carry out FGM, or a failure to report a person who intends to commit an offence under the FGMA, particularly because members of a community may be reluctant to testify against each other¹⁴.
- (viii) **Certain remedies under the FGMA may be impractical:** For example, the FGMA states that a magistrate's court may issue a protection order to a girl or woman likely to undergo FGM. However, the girl in question may not have a safe alternative place to live if the offenders include her family and community members. The FGMA also allows a court to order an offender to pay monetary compensation to the victim. However, a poor offender may be unable to pay the sum awarded, rendering such court orders ineffectual.¹⁵

Suggested List of Questions for the State Party

- *Please confirm if there is any intention to broaden or update the definition of FGM in the FGMA.*
- *We note that people in the rural areas of Uganda may not be aware of the FGMA, or the harmful effects of FGM. Please report on the steps the State party is taking to educate people located in the rural areas of Uganda on the FGMA and the harmful effects of FGM.*
- *Please report on the steps the State party is taking to educate people located in the rural areas of Uganda on the protections afforded under the FGMA.*
- *Please provide information on the number of successful prosecutions that have been brought under the FGMA since 2010 – is this number increasing year on year? Which provision under the FGMA are offenders most often prosecuted under? Have there been any repeat offenders?*
- *Please provide information on any measures the State is taking to harmonize the enforcement of FGM prohibition with Uganda's neighbours, such as Kenya, Sudan, Rwanda, the Democratic Republic of the Congo and Tanzania.*

2.2 Domestic Violence (2004 Concluding Observations paragraph 11)

¹³ The Hauge Institute for Innovation of Law, 2016, *Justice Needs in Uganda 2016*, available at https://www.hiil.org/wp-content/uploads/2018/09/Uganda-Mini-Folder_2016.pdf [accessed 5 May 2023]

¹⁴ This is especially so where a victim's family members were involved in carrying out the FGM. Bettina Shell-Duncan, Ylva Hernlund, Katherine Wander, and Amadou Moreau, *Legislating Change? Responses to Criminalizing Female Genital Cutting in Senegal*, 1 December 2013, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3997264/> [accessed 5 May 2023].

¹⁵ Jamil Ddamulira Mujuzi, *Female Genital Mutilation in Uganda: A Glimpse at the Abolition Process*, 2012, available at <https://www.jstor.org/stable/41709955>, [accessed 5 May 2023]. In the article, the writer argues that the court should not close its eyes to the fact that ordering a poor offender to compensate a substantial amount of money (as per the financial status of the offender) to an FGM victim could result in the offender's inability to pay the money. The court should therefore take the perpetrator's financial position into consideration when making such orders.

In its Concluding Observations, the Committee expressed concern about “the persistence of domestic violence and the lack of investigation, prosecution and punishment of perpetrators”.¹⁶

Response by the State party

The State party’s Second Periodic Report has responded to these recommendations in several ways. It noted that gender-based violence is a threat to women’s freedom, liberty, and security and that it has taken several measures to address the issue.¹⁷

Analysis of State party legislation by reference to the Covenant

- (a) **Domestic Violence Act No. 3, 2010:** the State party enacted the Domestic Violence Act No. 3 of 2010 to “address violence in a domestic setting which affects mainly women”¹⁸.
- (i) The Domestic Violence Act 2010 was enacted to provide for the protection and relief of victims of domestic violence; to provide for the punishment of perpetrators; to provide for guidelines to be followed by the court in relation to the protection and compensation of victims of domestic violence; provide for jurisdiction and enforcement of orders made by the court; and to empower the family and children court to handle cases of domestic violence.¹⁹
- (ii) However, implementation has been problematic and the number of domestic violence-related homicides has almost tripled since its passage.²⁰ The lack of impact of the Domestic Violence Act 2010 to protect women puts Uganda at risk of breaching Article 6 of the Covenant which requires state parties to take special measures of protection towards vulnerable persons whose lives have been placed at risk because of pre-existing patterns of violence including victims of domestic and gender-based violence.²¹

¹⁶ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 4 May 2004, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/412/84/PDF/G0441284.pdf?OpenElement> [accessed 3 May 2023].

¹⁷ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008, 19 November 2020*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F2&Lang=en [accessed 3 May 2023].

¹⁸ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008, 19 November 2020*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F2&Lang=en [accessed 3 May 2023].

¹⁹ Domestic Violence Act, 2010, available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_172625.pdf. [accessed 3 May 2023].

²⁰ University of Oxford, *Domestic Violence and the Death Penalty in Uganda*, 10 January 2023, available at: <https://blogs.law.ox.ac.uk/blog-post/2023/01/domestic-violence-and-death-penalty-uganda> [accessed 5 May 2023].

²¹ Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F36&Lang=en [accessed 5 May 2023].

- (b) **Sexual Offences Bill:** in response to the Concluding Observations, the government of Uganda also highlighted that a Sexual Offences Bill was before Parliament and is under consultation by stakeholders.²² According to Human Rights Watch, the bill included some positive provisions towards addressing sexual violence.²³ However, the final version of the Sexual Offences Bill failed to recognise marital rape and was limited in its definition of rape.²⁴ The bill was rejected by President Museveni on 3 August 2021 and returned to Parliament stating that the Sexual Offences Bill covered offences already provided for in the Penal Code Act (Chapter 120), 1950.²⁵
- (c) **Other National Strategies:** in response to the recommendations of the Committee, Uganda noted that it launched a National Gender Based Violence policy in 2016 to ensure the prevention of and response to gender based violence.²⁶
- (i) The creation of such strategies are positive steps to address the concerns of the Committee identified in its Concluding Observations. However, the success and implementation of such strategies are unclear and a report by the World Health Organization in 2018 ranked Uganda in the top 10 countries with the highest estimates of lifetime physical and/or sexual intimate partner violence.²⁷
- (ii) The UN Committee Against Torture stated, “it deplore[d] that incidents of gender-based violence are still reported with domestic being the top crime, in 2021, according to the annual crime police report.”²⁸ A report by the U.S. State Department also highlighted that local media reported that many widows in remote areas experience sexual violence at the hands of their deceased husband’s family and lost their rights to property.²⁹
- (iii) The above indicates that the practical implementation of legislation and policies may be difficult. The Committee’s general comment No. 28, (2000) notes that Article 3 of the Covenant requires that State parties must not only adopt measures of protection but also positive measures in all areas so as to achieve

²² Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008*, 19 November 2020, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F2&Lang=en [accessed 3 May 2023].

²³ Human Rights Watch, *Uganda: Reject Sexual Offenses Bill*, 6 May 2021, available at: <https://www.hrw.org/news/2021/05/06/uganda-reject-sexual-offenses-bill> [accessed 3 May 2023].

²⁴ AfricLaw, *Uganda’s new Sexual Offences Act fails to address the toxic culture of victim blaming*, 2 July 2021, available at: <https://africlaw.com/2021/07/02/ugandas-new-sexual-offences-act-fails-to-address-the-toxic-culture-of-victim-blaming/> [accessed 4 May 2023].

²⁵ Human Rights Watch, *Uganda: Reject Sexual Offenses Bill*, 6 May 2021, available at: <https://www.hrw.org/news/2021/05/06/uganda-reject-sexual-offenses-bill> [accessed 3 May 2023].

²⁶ United Nations, *Uganda: Violence against women unabated despite laws and policies*, available at: <https://www.un.org/africarenewal/news/uganda-violence-against-women-unabated-despite-laws-and-policies> [accessed 4 May 2023].

²⁷ World Health Organization, *Violence against Women Prevalence Estimates, 2018*, 2018, available at: <https://www.who.int/publications/i/item/9789240022256> [accessed 4 May 2023].

²⁸ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda*, 2022, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

²⁹ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda*, 2022, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

the effective and equal empowerment of women and as such Uganda is at risk of breaching Article 3 of the Covenant.³⁰

- (d) **Investigation, prosecution, and punishment:** in response to the Committee's recommendation to train law enforcement officials to deal with domestic violence, the Second Periodic Report noted that the Uganda Peoples' Defence Forces, the Uganda Police Force and Uganda Prisons Service have incorporated sexual and gender-based violence in their training curriculum and established departments to handle the same.
- (i) This is a positive step as the Framework for Legislation on Rape recommends that states mandate national education and training for law enforcement officials, lawyers, judicial, medical, and social service professionals.³¹
 - (ii) Based on research conducted for this report, the success of these strategies remains unclear. The U.S. Department of State noted in a 2022 report that "the Centre for Health Human Rights and Development, Foundation for Male Engagement, and police reported that police personnel lacked the required skills for collection, preservation, and management of forensic evidence in sexual violence cases."³²
 - (iii) Additionally, when women reported cases of rape to police, officers blamed the women for causing the rape by dressing indecently, took bribes from the alleged perpetrators to stop the investigation and to pressure the survivors into withdrawing the cases, or simply dismissed the accusations and refused to record them.³³
 - (iv) This is inconsistent with Article 26 of the Covenant which not only entitles all persons to equal protection of the law but also prohibits any discrimination under the law and Article 3 which requires that State parties not only adopt measures of protection but also positive measures to achieve effective and equal empowerment of women.³⁴
- (e) **Support for victims of domestic violence:** The Committee also recommended that the State party provide material and psychological relief to victims of domestic violence. Uganda has responded to this recommendation by noting that it has developed guidelines for the provision of psychosocial support for gender-based violence victims / survivors and established 13 shelters for victims of gender-based violence that provide comprehensive services to survivors including psychological support, rehabilitation,

³⁰ Human Rights Committee, *General Comment No. 28*, 29 March 2000, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F21%2FRev.1%2FAdd.10&Lang=en [accessed 3 May 2023].

³¹ Human Rights Council, *A framework for legislation on rape (model rape law): Report of the Special Rapporteur on violence against women, its causes and consequences*, 15 July 2021, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/149/63/PDF/G2114963.pdf?OpenElement>

³² U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda, 2022*, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

³³ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda, 2022*, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

³⁴ Human Rights Committee, *CCPR General Comment No. 18: Non-discrimination*, 10 November 1989, available at: <https://www.equalrightstrust.org/ertdocumentbank/Human%20Rights%20Committee,%20General%20Comment%2018.pdf> [accessed 4 May 2023].

medication, and reintegration. It also highlighted that the guidelines emphasise a victim based approach to services, the “do no harm” principle, safety and confidentiality.³⁵

Analysis of legislation by reference to the UN Model Rape Law

- (a) **Marital rape:** sources have noted that Ugandan legislation does not address spousal rape.³⁶ In the Second Periodic Report, the Ugandan government noted that in *Uganda v. Yiga Hamidu and 2 Others* (High Court Criminal Case Session No. 112 of 2016) “the court recognised the existence of the offence of marital rape and held that the accused forceful engagement in sexual intercourse with the victim claiming that she was his wife was a violation of her rights under the 1995 Constitution and ... other international and regional conventions on the protection of the rights of women against any form of discrimination or sexual abuse to which Uganda is party.”³⁷ However, Ugandan legislation still does not specifically address spousal rape.³⁸ This is inconsistent with the Framework for Model Legislation on Rape which states that criminal provisions on rape should apply to rape between spouses and intimate partners, whether current or former.³⁹
- (b) **Sexual acts committed against persons under 18:** the State party has also noted in its Second Periodic Report that the government has introduced the Penal Code (Amendment) Act, 2007 which criminalises sexual acts committed against a person who is below the age of 18 and introduces a crime of “aggravated defilement” where the perpetrator is HIV positive, is a person in authority over the child, is related to the victim or where the victim is below 14 years. However, it should be noted that the Penal Code (Amendment) Act, 2007 does not address gender-based violence more generally and applies only to sexual acts committed against persons under 18. This is inconsistent with Article 8 of the UN Model Rape Law which applies aggravating circumstances to any instance of rape. It is also noted that under Article 3 of the UN Model Rape Law, the age of genuine consent is 16 years old.
- (c) **Investigation, prosecution, and punishment:** In its 2004 Concluding Observations, the Committee expressed concerns about the lack of investigation, prosecution, and punishment of perpetrators. In response, Uganda noted that, with the support of the United Nations Population Fund (UNFPA) and the judiciary, it established special courts for cases of gender-based violence to address the issue more effectively. It highlighted that the special courts were introduced in 2018 and by December of the

³⁵ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008, 19 November 2020*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2FUGA%2F2&Lang=en [accessed 4 May 2023].

³⁶ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda, 2022*, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

³⁷ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008, 19 November 2020*, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F2FUGA%2F2&Lang=en [accessed 3 May 2023].

³⁸ U.S. Department of State, *2022 Country Reports on Human Rights Practices: Uganda, 2022*, available at: <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> [accessed 3 May 2023].

³⁹ Human Rights Council, *A framework for legislation on rape (model rape law): Report of the Special Rapporteur on violence against women, its causes and consequences*, 15 July 2021, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/149/63/PDF/G2114963.pdf?OpenElement>

same year, more than 1000 cases had been concluded in more than eight centres country wide.⁴⁰

- (i) A report by the UNFPA in 2018 had noted that gender based violence accounts for at least 50% of the cases within Uganda’s criminal justice system and the “experiences of complainants with court personnel in regular courts suggests that such personnel frequently do not have the necessary gender-sensitivity or comprehensive understanding of the various laws that apply to violence against women cases; may not be sensitive to women’s rights.”⁴¹ The special court and sessions were designed to specifically respond to gender based violence and reduce case backlog.⁴²
 - (ii) The State party also highlighted that the special courts ensures that gender-based violence are handled expeditiously to ensure justice is served and prevent further trauma and abuse.⁴³ This is an encouraging step towards alignment with the UN Model Rape Law as Article 15 requires that investigations and judicial proceedings should be carried out in a timely manner without undue delay.
 - (iii) Additionally, as noted above, women who reported cases of rape to police officers were often blamed by officers who took bribes and pressured survivors into withdrawing the cases or simply dismissed the accusations. Under Article 20 of the UN Model Rape Law, states are required to take legislative measures to ensure that the rights and interests of victims are protected and Article 11 which states that a victim-centred approach that places the victim at the centre of all responses should be adopted.
- (d) **Death penalty:** As noted above, rape is punishable by death under the Penal Code Act (Chapter 120), 1950. This is inconsistent with Article 7(d) of the Model Rape Law which states that the death penalty should never be imposed for rape. Based on research conducted for this report, the frequency of imposing a death sentence for rape is unclear.

Suggested List of Questions for the State Party

- *Please report on the steps the State party is taking to address the lack of marital rape laws.*
- *Please indicate what procedures are in place for the implementation of National Gender Based Violence Policy and other measures taken to support the fight against sexual violence, including measures for the protection, care and support of victims of sexual violence.*

⁴⁰ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008*, 19 November 2020, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F2&Lang=en [accessed 4 May 2023].

⁴¹ United Nations Population Fund, *Gender Based Violence (GBV) and Harmful Practices, Uganda, 2021*, available at: https://uganda.unfpa.org/sites/default/files/pub-pdf/gbv_factsheet_final.pdf [accessed 4 May 2023].

⁴² United Nations Population Fund, *Special Courts in Uganda: Enabling access to justice for survivors of gender-based violence*, September 2018, available at: <https://uganda.unfpa.org/sites/default/files/pub-pdf/Issue%20Brief%208%20Special%20Courts.pdf> [accessed 4 May 2023].

⁴³ Human Rights Committee, *Second Periodic Report submitted by Uganda under article 40 of the Covenant, due in 2008*, 19 November 2020, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FUGA%2F2&Lang=en [accessed 4 May 2023].

- *Please report on the steps the State party is taking to address the rejection of the Sexual Offences Bill that was under consideration at the time of the Second Periodic Report.*
- *Please report on the steps the State party is taking to address the provision of the death penalty for rape under the Penal Code Act (Chapter 120), 1950 which is not in line with Article 7 of the Model Rape Law.*
- *Please report on the measures taken to improve the number of successfully handled cases by the special courts for gender-based violence.*
- *Please report on the steps taken to improve investigations and judicial proceedings in relation to rape so that they are carried out in a timely manner as required by Article 13 and Article 15 of the Model Rape Law.*
- *Please report on the measures taken to expand the aggravating circumstances contained in Section 129 of the Penal Code Act (Chapter 120), 1950 which currently applies only to sexual acts committed against persons under 18 years old, in line with Article 8 of the Model Rape Law.*
- *In light of Article 11 of the Model Rape Law, please provide an update on the success of the Department of Gender, Children and Sexual Offences in coordinating the handling and management of prosecutions of cases of sexual violence.*
- *In light of Article 20 of the Model Rape Law, please provide information on the measures taken to prevent and combat the hurdles faced by women relating to reporting and investigating reports of rape.*

ANNEX – COMPARISON: UN MODEL LAW ON RAPE AND STATE LEGISLATIVE FRAMEWORK

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape. This table demonstrates the extent to which the State's law complies with internationally accepted standards and the articles of the ICCPR as above-mentioned.

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
A. Criminalization of rape		
<p>Article 1. Definition of rape</p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal, or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p>	<p>Section 123. Definition of rape, Penal Code Act (Chapter 120), 1950</p> <p>Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape.</p>	<p>Section 123 does not cover and protect all persons without any discrimination as men, boys and gender diverse persons are not covered.</p> <p>Section 123 does not explicitly include all types of penetration of a sexual nature (vagina, anal or oral).</p>
<p>Article 2. On consent</p> <p>17. Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p> <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim's past sexual behavior; or</p>		<p>Section 123 does not expressly state that consent must be given voluntarily and must be genuine and result from the person's free will.</p>

<p>(d) the victim’s status, occupation, or relationship to the accused.</p>		
<p>Article 3. Age of consent</p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p> <p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>	<p>Section 129. Defilement of persons under eighteen years of age, Penal Code Act (Chapter 120), 1950</p> <p>(1) Any person who performs a sexual act with another person who is below the age of eighteen years, commits a felony known as defilement and is on conviction liable to life imprisonment.</p> <p>(2) Any person who attempts to perform a sexual act with another person who is below the age of eighteen years commits an offence and is on conviction, liable to imprisonment not exceeding eighteen years.</p> <p>(3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.</p> <p>(4) The circumstances referred to in subsection (3) are as follows—</p> <ul style="list-style-type: none"> (a) where the person against whom the offence is committed is below the age of fourteen years; (b) where the offender is infected with the Human Immunodeficiency Virus (HIV); (c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed; (d) where the victim of the offence is a person with a disability; or 	<p>Under Section 129, sexual acts committed against a person who is below the age of 18 are criminalised. However, the age of consent under the UN Model Rape Law is 16.</p>

	<p>(e) where the offender is a serial offender.</p> <p>(5) Any person who attempts to perform a sexual act with another person below the age of eighteen years in any of the circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.</p> <p>(6) Where a person is charged with the offence under this section that person shall undergo a medical examination as to his or her Human Immune Deficiency Virus (HIV) Status.</p> <p>129A. Child to child sex</p> <p>(1) Where the offender in the case of any offence under section 129 is a child under the age of twelve years, the matter shall be dealt with as required by Part V of the Children Act.</p> <p>(2) Where an offence under section 129 is committed by a male child and a female child upon each other when each is not below the age of twelve years of age, each of the offenders shall be dealt as required by Part X of the Children Act.</p>	
<p>Article 4. On the incapability of giving genuine consent</p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p>		<p>Based on research conducted for this report, legislation that specifically provides for the incapability of giving genuine consent.</p>
<p>Article 5. Use of force, threat, or coercion</p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range</p>	<p>Section 123. Definition of rape, Penal Code Act (Chapter 120), 1950</p>	<p>Section 123 does not expressly state that a lack of consent is presumed where a threat (expressed or implied) of present</p>

<p>of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim’s subjugation or acquiescence; or</p> <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>	<p>Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm, or by means of false representations as to the nature of the act, or in the case of a married woman, by personating her husband, commits the felony termed rape.</p>	<p>or future physical or non-physical harm to a third person.</p>
<p>Article 6. On presumed lack of consent</p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence, or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence, or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home or orphanage;</p>		<p>Based on research conducted for this report, legislation that specifically provides for presumed lack of consent detailed in Article 6 of the UN Model Rape Law.</p>

<p>(d) in the context of providing the victim medical, psychological, or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training, or supervision of the victim.</p>		
B. Sentencing, aggravating and mitigating circumstances		
<p>Article 7. Sentencing</p> <p>(b) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive, and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p> <p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p>	<p>Section 124. Punishment for rape, Penal Code Act (Chapter 120), 1950</p> <p>A person convicted of rape is liable to suffer death.</p> <p>Section 125. Attempt to commit rape, Penal Code Act (Chapter 120), 1950</p> <p>Any person who attempts to commit rape commits a felony and is liable to imprisonment for life.</p> <p>Section 129. Defilement of persons under eighteen years of age, Penal Code Act (Chapter 120), 1950</p> <p>(3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.</p> <p>(5) Any person who attempts to perform a sexual act with another person below the age of eighteen years in any of the</p>	<p>Section 124 and Section 129(3) provide that a person convicted of rape may receive the death penalty. This is not in line with Article 7(d) of the UN Model Rape Law.</p>

	<p>circumstances specified in subsection (4), commits an offence and is liable on conviction, to imprisonment for life.</p>	
<p>Article 8. Aggravating circumstances</p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a former or current spouse or partner; (ii.) the offence was committed by a member of the family or a person cohabiting with the victim; (iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim; (iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State; <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a victim who for any reason is imprisoned or detained; 	<p>Section 129. Defilement of persons under eighteen years of age, Penal Code Act (Chapter 120), 1950</p> <p>(3) Any person who performs a sexual act with another person who is below the age of eighteen years in any of the circumstances specified in subsection (4) commits a felony called aggravated defilement and is, on conviction by the High Court, liable to suffer death.</p> <p>(4) The circumstances referred to in subsection (3) are as follows</p> <ul style="list-style-type: none"> (a) where the person against whom the offence is committed is below the age of fourteen years; (b) where the offender is infected with the Human Immunodeficiency Virus (HIV); (c) where the offender is a parent or guardian of or a person in authority over, the person against whom the offence is committed; (d) where the victim of the offence is a person with a disability; or (e) where the offender is a serial offender. 	<p>Section 129 only applies to sexual acts committed against persons under 18 years old and not to the crime of rape generally. Article 8 of the UN Model Rape Law applies to instances of rape generally.</p>

<p>(ii.) the offence was committed against a child or against an older person;</p> <p>(iii.) the offence was committed against or in the presence of relatives of the victim or any child;</p> <p>(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p> <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol</p>		
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<p>or other intoxicating substances to maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>		
<p>Article 9. Mitigating circumstances</p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions, or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p>		<p>Based on research conducted for this report, legislation specifically addressing mitigating circumstances was not identified.</p>

<p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator's family or community, to compensate for the harm.</p> <p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p>		
<p>Article 10. Withdrawal of parental rights</p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child's right to enjoy any benefit accruing from their paternity.</p>		<p>Based on research conducted for this report, legislation specifically addressing withdrawal of parental rights was not identified.</p>

C. Investigation, prosecution and trial		
<p>Article 11. Victim-centred approach</p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice unless a reasoned decision has been made to the contrary.</p>	<p>None found. However, in the Second Periodic Report, the State noted that the Office of the Director of Public Prosecutions had recently operationalised the Department of Gender, Children and Sexual Offences to coordinate the handling and management of prosecutions of cases of sexual violence.</p>	<p>Based on research conducted for this report, legislation specifically addressing a victim-centred approach to rape was not identified.</p>
<p>Article 12 – Child victims and witnesses of rape</p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p style="padding-left: 40px;">(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p style="padding-left: 40px;">(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in</p>		<p>Based on research conducted for this report, legislation specifically addressing the treatment of child victims and witness of rape was not identified.</p>

<p>order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a witness or victim shall not be published without the express permission of the court.</p> <p>(v.) A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.</p> <p>(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:</p> <ul style="list-style-type: none">(i.) At his or her request;(ii.) At the request of his or her parents or guardian;(iii.) At the request of the support person, if one has been designated;(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child. <p>(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:</p>		
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<p>(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;</p> <p>(ii.) Requesting restraining orders from a competent court;</p> <p>(iii.) Requesting a pretrial detention order for the accused from a competent court, with “no contact” bail conditions;</p> <p>(iv.) Requesting an order from a competent court to place the accused under house arrest;</p> <p>(v.) Requesting protection for a child victim or witness by the police or other relevant agencies;</p> <p>(vi.) Making or requesting from competent authorities’ other protective measures that may be deemed appropriate</p>		
<p>Article 13. Investigation</p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their</p>		<p>Based on research conducted for this report, legislation specifically addressing the investigation aspect of rape was not identified. However, some steps have been taken to improve the structures around the handling of sexual violence cases as noted in the column to the left.</p>

<p>rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to protect the victim and their family as necessary;</p> <p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p>		
<p>Article 14. Ex officio prosecution</p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>		<p>Based on research conducted for this report, legislation specifically addressing ex officio prosecution was not identified.</p>
<p>Article 15. Timely and without undue delay</p>		<p>Based on research conducted for this report, legislation specifically</p>

<p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly, and impartially.</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>		<p>addressing the timely and undue delay of investigations and judicial proceedings was not identified. However, note the measures highlighted in the column to the left.</p>
<p>Article 16. Evidentiary requirements, rape shield provisions</p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim’s past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination; and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable, and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p>		<p>Based on research conducted for this report, legislation specifically addressing the evidentiary requirements and rape shield provisions was not identified.</p>

<p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>		
<p>Article 17. Statutory Limitations</p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>		<p>Based on research conducted for this report, legislation specifically addressing statutory limitations for the prosecution of rape was not identified.</p>
<p>Article 18. Jurisdiction and Cooperation between States</p> <p>States should:</p> <ul style="list-style-type: none"> i. Establish jurisdiction over offences of rape when the offence is committed: <ul style="list-style-type: none"> ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or v. by one of their nationals. <p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances, or humanitarian crises.</p>		<p>Based on research conducted for this report, legislation specifically addressing jurisdiction and cooperation between states was not identified.</p>

<p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating, and prosecuting all rape cases, protecting, and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p>		
<p>Article 19. Prohibition of mandatory reconciliation or mediation</p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>		<p>Based on research conducted for this report, legislation specifically addressing a prohibition of mandatory reconciliation or mediation was not identified.</p>
<p>Article 20. Victim-centred protection measures</p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members and witnesses from intimidation, retaliation, and secondary victimization, including through physical protection of victims and their family members where necessary;</p> <p>(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence</p>		<p>Based on research conducted for this report, legislation specifically addressing victim-centred protection measures was not identified.</p>

<p>remotely or through the use of communication technology in a place the victim deems safe; or by utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);</p> <p>(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;</p> <p>(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;</p> <p>(e) Enabling victims to exercise their right to legal aid, interpretation, and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.</p> <p>(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:</p> <p style="padding-left: 40px;">(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</p>		
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<p>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child’s testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</p> <p>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist, or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support, and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available, and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p>		
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