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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

A framework for legislation on rape (model rape law)

Report of the Special Rapporteur on violence against women, its causes and consequences*

Summary

In this addendum to the Special Rapporteur's report on rape as a grave, systematic and widespread human rights violation, submitted pursuant to Human Rights Council resolution 41/17, the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, presents a Framework for Model Legislation on Rape, including a Model Rape Law, envisaged as a harmonization tool.

* Reproduced as received, in the language of submission only.



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I. Introduction

1. The Model Rape Law provides States and other stakeholders with a tool for implementing international standards on rape, as established under international human rights law, international humanitarian law and international criminal law, including as interpreted in the jurisprudence of relevant tribunals and soft law produced by expert mechanisms. These standards are presented in the report of the Special Rapporteur on violence against women on rape as a human rights violation and a manifestation of gender-based violence against women (A/HRC/47/26), and are applicable both in times of peace and during conflict.¹
2. In line with the report, this Framework focuses on rape as a specific form of sexual violence, although many of the standards are also applicable to other forms of sexual violence, in order to highlight and reflect specific developments at the international level that have also distinguished rape from other types of sexual violence and defined its constitutive elements.
3. These standards should be considered a minimum level of protection, which could be further expanded by States at the national level.

II. Objectives of the Model Rape Law

4. The objectives of the model legislation on rape are to:
 - (a) Protect everyone's right to a life free from rape, particularly that of women, both in the public and private spheres;
 - (b) Prevent and combat rape as a most common and widespread violation of human rights to bodily integrity and sexual autonomy, to privacy, to physical and mental health; and the rights to be free from violence, discrimination, torture, inhuman and degrading treatment; and other human rights;
 - (c) Prevent and combat rape in conflict as a crime against humanity, a war crime, a form of torture, or a constitutive element of genocide;
 - (d) Combat impunity for perpetrators and increase rates in the reporting and prosecution of rape;
 - (e) Enable victims of rape to report it, and provide them with security, agency and recovery;
 - (f) Support the revision and elimination of provisions that are discriminatory and contrary to international law;
 - (g) Eliminate from law and judicial practices all forms of gender-based discrimination, including stereotypes and myths about rape;
 - (h) Connect criminal law provisions on rape with other national laws, policies and measures for the prevention of gender-based violence against women² and girls and domestic violence, as well as the protection of and assistance to victims;³
 - (i) Support the collection of comparable data on rape and the establishment of national observatories on gender-based violence against women including rape, tasked with collecting data and producing analyses to contribute to prevention.

¹ The Special Rapporteur would like to acknowledge the comments provided to an early draft by John Cerone, Jane Connors, Eithne Dowds, Jacqueline Hunt, Johanna Nelles, Amnesty International, Equality Now, Human Rights Watch, International Women's Rights Action Watch Asia Pacific (IWRAP), UNODC and UN Women, invited to do so based on their previous contributions for the elaboration of the Report on the criminalization and prosecution of rape (A/HRC/47/26).

² Including laws on trafficking in persons, aggravated smuggling of migrants and related victim protection and assistance.

³ While the term "victim" is adopted in this document as a common term in national criminal laws, the term "survivor" could also be used by national laws. (See "The Handbook of Gender- Responsive Police Services For Women and Girls Subject to Violence", by UNODC and UN Women.).

III. Guiding Human Rights Principles and State Obligations

5. In adopting laws on rape and reviewing their efficiency, States should abide by and apply the principles of substantive gender equality, and the elimination of discrimination, harmful gender stereotypes and gender-based violence against women, as well as other human rights principles and States obligations enshrined in the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and other core UN and regional human rights instruments.⁴

A. Substantive gender equality

6. The criminalization of rape, and the implementation and interpretation of all of its relevant legal provisions should incorporate a gender perspective and be oriented towards achieving substantive gender equality, as established in Article 2.a of the Convention on the Elimination of All Forms of Discrimination against Women, and reflected in paragraph 232.c of the Beijing Platform for Action. States have the obligation to “embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle”.

B. Non-discrimination

7. Criminal provisions on rape should cover and protect all persons, without any discrimination, including men, boys and gender diverse persons. Implementation of all relevant criminal law provisions, in particular measures to protect the rights of victims, should be secured without discrimination on any ground such as sex, age, gender, race, colour, caste, language, religion, political or other opinion, national or social origin, ethnicity, association with a national minority, sexual orientation, gender identity, state of health, disability, marital status, migration status, property, birth, occupation or other status. This should include recognition of intersecting forms of discrimination and their compounded negative impact on the victims of rape or the heightened risk of rape they face.

C. Elimination of gender stereotypes

8. The criminalization of rape, and the implementation and interpretation of all relevant legal provisions, should be guided by States’ obligation to eliminate stereotypes, including by addressing and eliminating gender-based prejudicial stereotypes and rape myths, which are pervasive in society and within criminal justice systems. According to Article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, States should: “Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customary practices and all other practices which are based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women”.⁵

D. Elimination of gender-based violence against women

9. The criminalization and prosecution of rape should be guided by the understanding that, while rape could affect all persons, it predominantly affects women and girls. Therefore, it constitutes a form of gender-based violence against women that requires a gender-sensitive application of criminal law provisions based on the definition of violence against women of the UN Declaration on the Elimination of Violence Against Women, and replicated in and

⁴ See also updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, A/Res/65/228.

⁵ Also para. 124, item k of the Beijing Platform for Action.

supported by regional human rights instruments (such as the Maputo Protocol, the Istanbul Convention and the Belém do Pará Convention), as well as General recommendations No. 19 (1992), and No. 35 (2017) of the Committee on the Elimination of Discrimination against Women.

10. Under Articles 1 and 2 of the Declaration:

(a) "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

(b) Violence against women shall be understood to encompass, but not be limited to, the following:

(i.) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(ii.) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(iii.) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

11. According to General recommendation No. 19 (1992) of the Committee, gender-based violence is "violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."

12. The Istanbul Convention combines those two definitions and explicitly includes also economic violence, which is now widely recognized as form of violence against women in jurisprudence and recommendations of women human rights independent monitoring mechanisms.

13. The CEDAW Convention protects women of all ages, including girls, who are also protected under the Convention on the Rights of the Child, which protects all children. As per article 19 of the CRC, States are under the obligation to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

E. General States' human rights obligations and the obligation to act with due diligence

14. The criminalization and prosecution of rape should be based on States' positive human rights obligations to enact effective criminal law provisions to prevent and punish rape and States' negative human rights obligations to ensure that State agents refrain from committing rape.

(a) States should take all legislative and other measures to exercise due diligence to prevent, investigate, and punish perpetrators for acts of rape perpetrated by State and non-State actors, and provide access to services and immediate means of redress and protection to victims of violence for acts of rape, as well as reparations in line with international standards.

(b) States should ensure that State agents and other persons acting on behalf of the State, including contractors, refrain from rape and act in conformity with this obligation, both domestically and extraterritorially, including, but not limited to, in the context of armed conflict, political violence or other social disturbance or humanitarian intervention.

(c) States should allocate appropriate financial and human resources for the adequate implementation of laws, policies, measures and programmes to prevent and combat rape,

(d) States should ensure that all involved State agents, especially law enforcement personnel, the judiciary, health care providers, social workers and teachers receive regular and specific training and capacity building on consent and on the crime of rape as a human rights violation and a manifestation of gender-based violence.

(e) States should ensure collaboration between national and local agencies, law enforcement, national agencies or machineries on women or gender equality and/or coordination bodies on women's rights and violence against women, healthcare, social services and others in partnership with specialist civil society organizations, independent experts, National Human Rights Institutions, and other stakeholders working to address or support victims of rape and sexual violence, recognizing, encouraging and supporting their work.

IV. Constitutive elements of rape

15. States should take the necessary legislative measures to ensure the criminalization of rape based on the following constitutive elements for its definition:

A. Criminal law provisions should protect bodily integrity and sexual autonomy.

(a) Rape is a crime against the rights to bodily integrity and sexual autonomy; therefore, it should not be defined as a moral crime or a crime against morality, public decency, honour, family or society, and it should not be classified as such in criminal law provisions;

(b) Consensual sexual acts between adults should not be criminalized; criminalizing such acts interferes with the right to sexual autonomy and risks deterring victims of rape from coming forward.

B. Criminal law provisions on rape should cover and protect all persons

(a) Criminal provisions on rape should cover and protect all persons without any discrimination; men, boys and gender diverse persons should be covered. This does not change the fact that rape predominantly affects women and girls;

(b) Criminal provisions on rape should apply to rape between spouses and intimate partners, whether current or former;

(c) Criminal law provisions on rape should include incest.

C. Acts criminalized as rape

(a) Criminal law provisions on rape should explicitly include all types of penetration of a sexual nature (vaginal, anal or oral), however slight, by any bodily part or an object.

D. Consent and use of force or coercion

(a) Rape is an act of sexual nature committed without consent. Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent.

(b) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of genuine consent to the sexual act.

(c) Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

(d) Intercourse and other types of penetration of a sexual nature (vaginal, anal or oral) without consent should be criminalized as rape in all definitions.

(e) Lack of consent is presumed where rape was committed by force, or by threat of force or coercion.

V. Model Rape Law

A. Criminalization of rape

Article 1. Definition of rape

16. A person (the perpetrator) commits rape when they:

(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

(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

(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.

Article 2. On consent

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:

(a) silence by the victim;

(b) non-resistance, verbal or physical, by the victim;

(c) the victim's past sexual behavior; or

(d) the victim's status, occupation or relationship to the accused.

Article 3. Age of consent

(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.

(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.⁶

Article 4. On the incapability of giving genuine consent

18. A person is considered incapable of giving genuine consent:

(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;

⁶ The Convention on the Rights of the Child in its Article 1 defines as child a person below the age of eighteen years. There could be exceptions of criminalization of consensual sexual relationship between similar age groups of teenagers. When defining an acceptable minimum age when determining the legal age for sexual consent, protection and evolving capacities of children need to be taken into account.

(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.

Article 5. Use of force, threat or coercion

19. Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:

(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

(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.

Article 6. On presumed lack of consent

20. Lack of consent is presumed when:

(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;

(b) When an illness, bodily injury, or other particular vulnerability has an impact of the victim's ability to consent; or

(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.

21. 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:

(a) in a school, hospital, religious, correctional or care facility setting;

(b) in a professional or occupational setting;

(c) in a residential care facility, community home, voluntary home, children's home or orphanage;

(d) in the context of providing the victim medical, psychological or psycho-social support or treatment;

(e) in a guardian-ward relationship;

(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

(g) by otherwise being generally involved and responsible for the care, training or supervision of the victim.

B. Sentencing, aggravating and mitigating circumstances

Article 7. Sentencing

(a) States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive and commensurate with the gravity of the crimes.

(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.

(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.

(d) The death penalty should never be imposed for rape.

Article 8. Aggravating circumstances

22. 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.

23. 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:

(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:

- (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;

(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:

- (i.) the offence was committed against a victim who for any reason is imprisoned or detained;
- (ii.) the offence was committed against a child or against an older person;
- (iii.) the offence was committed against or in the presence of relatives of the victim or any child;
- (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;
- (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;
- (vi.) the offence was committed against a pregnant person;

(c) the ways in which the offence is carried out:

- (i.) the offence was committed by two or more people acting together;
- (ii.) the offence, or related offences, were committed repeatedly;
- (iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;
- (iv.) the offence was committed with the use or threat of use of a weapon;
- (v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances to maintain control over the victim;
- (vi.) the perpetrator had previously been convicted of offences of a similar nature;
- (vii.) the offense was filmed or photographed by the perpetrator;

(d) the consequences of rape to the victim:

- (i.) the offence resulted in severe physical or psychological harm or disability for the victim;
- (ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.

Article 9. Mitigating circumstances

24. 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.

(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;

(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.

25. Mitigating circumstances that should be prohibited include, but are not limited to:

(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.

(b) the wish of the perpetrator, or the perpetrator's family or community, to compensate for the harm.

(c) character or reputation of the perpetrator;

(d) prior history of behaviour to insinuate blame on the part of the victim.

Article 10. Withdrawal of parental rights

26. 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:

(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.

(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.

(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.

C. Investigation, prosecution and trial

Article 11. Victim-centred approach

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;

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;

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;

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.

Article 12 – Child victims and witnesses of rape⁷

(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.

(b) Every child victim or witness of rape shall be treated according to the following general principles:

(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.

(ii.) Interference in the child's private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.

(iii.) The privacy of a child victim or witness shall be protected.

(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.

(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.

(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:

(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.

(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:

(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;

(ii.) Requesting restraining orders from a competent court;

(iii.) Requesting a pretrial detention order for the accused from a competent court, with "no contact" bail conditions;

(iv.) Requesting an order from a competent court to place the accused under house arrest;

(v.) Requesting protection for a child victim or witness by the police or other relevant agencies;

(vi.) Making or requesting from competent authorities other protective measures that may be deemed appropriate.

Article 13. Investigation

(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;

⁷ In accordance with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC/RES/2005/20).

(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;

(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;

(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;

(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.

(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;

(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;

(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.

Article 14. Ex officio prosecution

(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;

(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.

Article 15. Timely and without undue delay

(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;

(b) All reports of rape should be taken seriously and investigated promptly, thoroughly and impartially;

(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.

Article 16. Evidentiary requirements, rape shield provisions

27. States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:

(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;

(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;

(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;

(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.

(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.

Article 17. Statutory Limitations

(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;

(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.

Article 18. Jurisdiction and Cooperation between States

28. States should:

- i. Establish jurisdiction over offences of rape, when the offence is committed:
- 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.

(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.

(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.

(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.

Article 19. Prohibition of mandatory reconciliation or mediation

29. The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.

(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.

(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.

Article 20. Victim-centred protection measures

30. 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:

(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;

(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 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);

(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;

(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;

(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.

(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:

(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;

(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

(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;

(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;

(v) ensuring interpretation and or translation services;

(vi) ensuring psycho-social and legal support, and covering travel expenses incurred.

(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.

VI. Other relevant laws and policies at the national level

A. Remedies and reparations

31. Remedies and reparations are a crucial part of combating rape and ensuring justice for victims. States should provide remedies and reparations to victims of rape, including victims of rape when prosecution is not possible, but not limited to the following measures:

32. States should ensure that information concerning reparation mechanisms, including all available legal, medical, psychological, social, administrative and all other services to which victims may have a right to access, is widely and publicly disseminated. States should provide legal, social and health services, including sexual, reproductive and mental health

services for a complete recovery, and satisfaction and guarantees of non-repetition. States should provide compensation to victims of rape including but not limited to the following:

- (a) Victims should have the right to claim compensation from perpetrators;
- (b) Victims should have the right to claim compensation where relevant officials and institutions have failed to perform their obligations with due diligence;
- (c) State compensation should be awarded to victims having sustained bodily injury or impairment of physical or mental health, to the extent that the damage is not covered by the perpetrator or other sources.

B. Access to abortion in cases of rape

33. All victims who claim that they are made pregnant through rape, or where there is a reasonable suspicion that the pregnancy is a result of rape or incest, should have access to a safe and legal abortion. States should repeal laws that prohibit abortions, including in case of rape, and enact laws that give victims the right to access a full range of sexual and reproductive healthcare, including access to psychological support and counselling, emergency contraception, HIV counselling, testing and post-exposure prophylaxis, safe and legal abortion and maternal health care. Women should not be criminalized and imprisoned for obtaining abortions, especially in cases of rape, incest or severe foetal impairment. States should guarantee doctor/patient confidentiality when performing abortions in cases of rape.

C. Rape Crisis or sexual violence /One-Stop Service Centres

34. All victims must be supported to access justice through timely, appropriate and gender-sensitive and disability-sensitive medical examinations, which are conducted with the voluntary, genuine and informed consent of the victim. Victims should also have access to therapeutic and psycho-social care to aid their healing. They should also be supported to access criminal justice processes if they wish to do so.

35. States should set up appropriate, easily accessible, specialist, well-resourced and funded rape crisis or one-stop service centres for victims of rape and sexual violence in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims for as long as victims need.

36. States should:

- (a) develop protocols for police and healthcare providers for the collection and preservation of forensic evidence in cases of sexual violence;
- (b) train sufficient numbers of medical and forensic staff to competently conduct the medical examination in cases of sexual violence in a sensitive and comprehensive manner and to provide the victim with same-sex support if they wish;
- (c) mandate the timely and proper collection, testing and submission to court of medical and forensic evidence;
- (d) expressly state in the law that medical and forensic evidence are not mandatorily required in order to convict a person accused of sexual violence;
- (e) prohibit the use of procedures or examinations which violate the sexual and reproductive health and rights of victims or contribute to secondary victimization, including virginity tests, two-finger tests or other similar procedures which draw adverse inferences based on the condition of the hymen or laxity of the vagina and are not based on scientific fact.

37. States should provide comprehensive and integrated support services to assist victims of rape and sexual violence, including those with insecure immigration status, which are adequately resourced and provided by specialist trained professionals, including but not limited to:

- (a) legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment;
- (b) round-the-clock phone and internet helplines which provide assistance and advice free-of-charge, including referrals to other service providers;
- (c) shelters for victims of rape and sexual violence, particularly women and children, which are adequate, accessible, safe and available in sufficient numbers; and
- (d) victim, witness and family protection mechanisms, where the victim, witness or family is facing threats or intimidation;
- (e) access to support services should not be conditional upon the victim reporting the violation to the police or on certain immigration status;
- (f) States should ensure that victims of rape have the right to free legal aid and free access to a qualified and impartial interpreter and the translation of legal documents in support of the legal case, where requested or required.

D. Training and awareness-raising

38. States should take steps to mandate national education and training for law enforcement officials, lawyers, judicial, medical and social service professionals and ensure such programmes:

- (a) provide education on national, regional and international legal instruments that offer guidance for the application of the fundamental principles of gender equality, the rule of law and the promotion and protection of the rights of women and children, especially in the context of sexual violence;
- (b) provide training on utilizing a gender-sensitive, trauma-informed, and victim-centred approach;
- (c) provide appropriate training on issues related to child victims and witnesses for all professionals working with child victims and witnesses, including strategies to mitigate risks of re-victimization, re-traumatization and secondary victimization;
- (d) States should conduct and fund public awareness-raising and education campaigns aimed at preventing sexual violence which need to be directed at persons of all ages, starting with children in an age-appropriate manner, to dismantle prejudicial stereotypes and ensure the population is educated on sex and relationships based on principles of equality, non-discrimination and human rights and consent;
- (e) States should implement awareness-raising programmes regarding human rights, sex, gender and racial equality and the right to be free from sexual violence, based on a gendered and intersectional understanding of sexual violence;
- (f) States should use educational curricula to modify discriminatory social and cultural patterns of behaviour, as well as derogatory gender and racial stereotypes, including through addressing stereotyped gender roles, promoting non-violent masculinities and integrating comprehensive sexuality education;
- (g) States should adopt and implement effective measures to encourage all media to eliminate gender-based discrimination against women in their activities, including the harmful and stereotyped portrayal of women and representations of violence against women and girls, and to enhance respect for the dignity of victims of sexual violence; and
- (h) States should support and fund psycho-social treatment and education programmes aimed at preventing perpetrators of sexual violence from re-offending.

E. Data collection and rape watch observatories

39. The collection of data on rape, through surveys and administrative statistical data, is fundamental for monitoring the efficacy of rape legislation and improving measures to

address sexual violence. There is a need to strengthen data collection and the knowledge base on rape. The collection, sharing and publication of data should never do harm to those affected or be used for discriminatory purposes.

40. States, should collect, analyze and publish yearly anonymized disaggregated statistical data on rape, including but not limited to:

- (a) The number of rape cases resulting in conviction by the Court;
- (b) The number of convicted perpetrators;
- (c) The attrition rate (rate at which cases are dropped at each stage of the investigation and prosecution);
- (d) The number of rape cases reported to the police (enforcement agencies/criminal justice authorities) by victims and the number of reports by third parties;
- (e) The number of rape cases prosecuted or the number of criminal proceedings initiated and/or any other legal action;
- (f) The number of convicted perpetrators of rape and the conviction rate in relation to reports / complaints of rape;
- (g) Administrative and judicial data on rape cases' victims and perpetrators, disaggregated by sex, age and type of violence as well as the relationship of the perpetrator to the victim, geographical location and any other factors deemed relevant, such as race/ethnicity/nationality status/immigration status/caste/sexual orientation/disability/ and gender identity;
- (h) Whether the rape was linked to other forms of gender-based violence against women and girls, including but not limited to domestic violence, femicide, disappearance, forced pregnancy and the like;
- (i) The time elapsed between reporting and the conclusion of the case;
- (j) The penalties given on conviction;
- (k) The reasons for:
 - (l) decisions to stop investigations
 - (m) decisions not to prosecute
- (n) The compensation paid to victims; and
- (o) The measures taken, including funds expended, to support services to victims.

41. States should establish an independent multidisciplinary oversight body (such as a Rape Watch/ Observatory) with the participation of experts including civil society representatives working to address or support victims of rape and sexual violence and other stakeholders. Such independent bodies should regularly review the investigation, prosecution and adjudication of sexual violence cases and be empowered to recommend changes in law, practice and procedure aimed at ensuring access to justice for victims, to observe data on prosecution of rapes, attrition rates, and to analyze emblematic case in order to recommend preventive measures.

F. State obligations in times of crises or emergencies

42. The human rights obligations of States laid out in this Framework for Model Legislation on rape (Model Rape Law) are fully applicable in times of peace and in times of conflict or war, health pandemics and disasters, natural or manmade, or any type of similar circumstances. Such crises or emergencies should not be used as a justification to interrupt nor slow down the investigation and prosecution of rape cases, as well as support services for victims. The human right to a life free from rape cannot be derogated in time of crises or emergencies.