



BARRIERS TO JUSTICE: RAPE IN AFRICA, LAW, PRACTICE AND ACCESS TO JUSTICE

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About Equality Now

Founded in 1992, Equality Now is an international human rights organization that works to protect and promote the rights of all women and girls around the world. Our campaigns are centered on four program areas: Achieve Legal Equality, End Sexual Violence, End Harmful Practices, and End Sexual Exploitation, with a cross-cutting focus on the unique needs of adolescent girls. Equality Now combines grassroots activism with international, regional, and national legal advocacy to achieve legal and systemic change to benefit all women and girls and works to ensure that governments enact and enforce laws and policies that uphold their rights. Equality Now is a global organization with partners and members all around the world. You'll find our 70+ team in places such as Beirut, Cairo, Colombo, London, Geneva, San Jose, New York, Nairobi, Tbilisi, and Washington DC.

Acknowledgments

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Faiza Jama Mohamed
Director, Africa Office

It is my absolute pleasure to present our incisive report, **Barriers To Justice: Rape In Africa, Law, Practice And Access To Justice.**

Rape and other forms of sexual violence represent one of the gravest forms of human rights violations. For many women and girls in Africa, these acts remain shrouded in silence, impunity, and systemic failures. These challenges are compounded by socio-economic and political inequalities that agitate for urgent reform.

In 2023, we embarked on an ambitious and vital journey to scrutinize rape laws across Africa, culminating in this report. The report sheds light on the glaring gaps in legislation, implementation, and access to justice through an extensive desk review of over 45 African countries and in-depth studies of nine African nations. It forms a series of reports we have been working on since 2017 following an analysis of laws in 82 jurisdictions globally, dubbed “*The World’s Shame, The Global Rape Epidemic: How Laws around the World are Failing to Protect Women and Girls From Sexual Violence.*”

This report has identified key gaps in rape law that result in routine denial of justice to survivors of sexual violence. The gaps include laws allowing the perpetrator to walk free on reaching some form of “settlement,” including marrying the victim; laws framed in terms of morality rather than bodily integrity, thereby perpetuating a cycle of violence and discrimination; laws that explicitly permit rape in marriage, even of children; laws permitting judicial discretion to reduce charges or define evidence based on a stereotyped assessment of the complainant’s behavior; laws that fail to recognize true consent is impossible in situations of dependency or extreme vulnerability; laws or practices inhibiting investigation or prosecution of sexual assault; and laws requiring witness corroboration and other overly burdensome evidence. This report is both a call to action and a blueprint for change.

It highlights the need for survivor-centered accountability, protection, and empowerment approaches. The recommendations outlined herein are not merely aspirational; they are essential steps toward dismantling systemic barriers and fostering an environment where justice is not a privilege but a right accessible to all.

It is premised that “*the law is a statement of a person’s worth by one’s government,*” and good laws and their effective implementation through a multi-sectoral survivor-centered approach will guarantee justice for rape survivors. As Africa strives toward greater gender equality and the realization of human rights for all, this report underscores that progress will remain incomplete until we confront the epidemic of sexual violence with unwavering resolve. Our collective responsibility—as policymakers, advocates, legal practitioners, and citizens—is to champion reforms that uphold dignity, equity, and justice.

May this report inspire critical reflection, bold action, and unwavering commitment to ending sexual violence and ensuring justice for every survivor. Together, we can shape a future where the rights of women and girls are not only protected but celebrated.



INTRODUCTION

Violence against women has been defined by the United Nations¹ as any act of gender-based violence (GBV)² that has resulted in or is likely to result in, physical, sexual, or psychological harm or suffering to women or girls, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life. Such violence can take the form of sexual, physical, verbal, psychological (emotional), or socio-economic and can be exhibited in many ways, from verbal violence and hate speech on the internet, to rape or murder.

This report focuses on rape, as the most serious form of sexual violence, which has also been reported to increase sharply during conflict, emergencies and climate change situations in Africa.

Rape is the brutal breach of bodily integrity, a violation of a person's dignity and will. Rape fundamentally violates an individual's sexual autonomy, disregarding their control over their own body and sexual choices.³ Legal

frameworks across different jurisdictions identify different elements as constituting this crime, which in many cases do not reflect this framing and therefore do not fully signal the unacceptable nature of rape or allow for proper accountability if it is perpetrated.

With the prevalence of rape in the African context estimated as being at 33% and as high as 50% in the context of conflict, it is critical for its definitions in the various jurisdictions within Africa, both in the context of conflict and peace, to be clear and based on human rights standards. Specifically, this means defining rape based on the lack of consent of the person affected without the influence of culture, morality, and opinion. A failure to clearly define the crime of rape based on consent opens it up to misinterpretation and misapplication and leaves many violations unpunished. To end sexual violence and bring justice for survivors, the need for better and more comprehensive laws and effective implementation of laws can not be understated.

¹ The United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence against Women article 1, 1993.

² Gender-based violence (GBV) and violence against women are two terms that are often used interchangeably, as most violence against women is inflicted (by men) for gender-based reasons, and gender-based violence affects women disproportionately. Gender-based violence refers to any type of harm that is perpetrated against a person or group of people because of their factual or perceived sex, gender, sexual orientation and/or gender identity. (See: [Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence](#))

³ High, Anna (2022), [Sexual Dignity and Rape Law, Yale Journal of Law and Feminism](#).

ABOUT THIS REPORT

This report has been produced by Equality Now in collaboration with our partners as part of our mandate as a legal advocacy organization that works to end sexual violence, including rape. It aims to enhance the understanding of laws on rape and law enforcement practices in Africa by revealing the adequacy or gaps thereof in line with regional and international human rights standards. The report also serves as a guide for countries that are yet to align their rape legislation to international and regional human rights standards.

The research upon which this report is based involved: 1) a desk review of the rape law in each country⁴, including whether it complies with international and regional standards; and 2) a deep dive into nine countries, with a view to understanding better how laws are implemented in practice.

The desk review used the following benchmarks to compare laws on rape across African countries: the definition of rape (including the age of consent provisions and positions on

marital rape), penalties for rape, the existence of remedies (restitution, compensation, rehabilitation, and satisfaction) for victim-survivors, and the existence of provisions or practices that promote impunity in rape cases.

The in-depth analysis of rape laws and implementation was conducted for the following nine countries, chosen based on geographical, language, and legal system considerations: Cameroon, Democratic Republic of Congo (Kinshasa), Madagascar, Rwanda, Senegal, Sierra Leone, South Africa, South Sudan and Zambia. The analysis is based on evidence from various desk reviews, court judgments, case study findings, and interviews conducted with justice sector actors and other stakeholders conversant with the administration of justice, as well as rape victims/survivors.

This report ends with a series of recommendations, which will be used to inform ongoing legal advocacy efforts to improve access to justice for all victims/survivors of sexual violence in Africa.



Credit: Bartosz Hadyniak / iStock

4 The text laws analyzed were from: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo (Brazzaville), Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eswatini, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, South Africa, South Sudan, Sudan, Togo, Uganda, United Republic of Tanzania, Zambia, and Zimbabwe.

KEY FINDINGS

The desk review of the legal definition and legal frameworks proscribing rape across different jurisdictions revealed the following key findings:

1. DISPARATE DEFINITIONS OF RAPE NOT PREMISED ON CONSENT

Different jurisdictions have defined rape differently, many placing emphasis on force, morality, or even context. In some instances, definitions have stipulated a combination of these factors in determining whether or not rape was perpetrated, reducing and even eliminating altogether the consent standard and resulting in confusing and inconsistent language.

For instance definitions in the following 25 countries were found to be incomplete, ambiguous or non-compliant with regional and international human rights laws standards: Cameroon, Central African Republic, Chad, Congo (Brazzaville), Equatorial Guinea, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Eritrea, Ethiopia, Kenya, Malawi, Mali, Mozambique, Niger, Senegal, Seychelles, South Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe.

2. FAILURE TO RECOGNIZE CERTAIN VIOLATIONS AS RAPE

Several definitions of rape or legal frameworks proscribing rape failed to recognize all forms of unwanted sexual penetration (anal, oral, or vaginal by use of any body part or object), however slight or no matter the context, as rape⁵.

These narrow definitions allow for impunity, for example with respect to rape committed within an intimate partner relationship, or relegate these violations to lesser offenses with lesser penalties, creating a hierarchy of abuse and sending a confusing signal about the absolute right of each individual to bodily autonomy.

3. LENIENT PENALTIES FOR RAPE

International standards require that punishment for rape should be effective, proportionate, dissuasive, and commensurate with the real gravity of the crime. Many laws reviewed provided for sentences that did not reflect the severity of the offense committed. This sends a signal to the broader society that rape is not necessarily a serious offense.

For instance, in Equatorial Guinea, Article 429 of the Criminal Code provides that “Rape of a woman shall be punished with minor confinement.”⁶ In addition, some laws permit mitigation for the crime in some circumstances, which is not permitted by governing standards and serves again only to diminish the offense.

5 The following countries expressly exempt spouses from prosecution for marital rape: Cote D'Ivoire, The Gambia, Equatorial Guinea, Eritrea (unless spouses are not living together), Ethiopia, South Sudan and Tanzania (unless spouses are separated). The following countries have separate domestic violence laws that prohibit sexual violence in marriage: Ghana, Kenya, Rwanda and Seychelles. Ghana allows for the revocability of spousal consent to sex in marital relationships. And the following countries explicitly criminalize marital/spousal rape: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Cote D'Ivoire, Eswatini, Gabon, Lesotho, Madagascar, Mozambique, Namibia, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Togo, Zambia, and Zimbabwe. The following countries have laws that are silent on marital rape: Botswana, Cameroon, Central African Republic, Chad, Congo Brazzaville, Democratic Republic of Congo, Guinea, Guinea-Bissau, Liberia, Malawi, Mali, Nigeria, and Uganda.

6 See: [Penal Code \(consolidated text of 1963\), Equatorial Guinea](#)

4. LACK OF ACCESS BY SURVIVORS TO COMPENSATION OR OTHER FORMS OF REPARATION

Victims/survivors⁷ of rape should have access to both criminal and civil remedies and the establishment of effective protection, support, and rehabilitation services. With so many legal, procedural, and societal obstacles to addressing rape, very few cases make it to court, and even fewer result in conviction. Even where financial compensation is available under law, it is difficult to access, leaving particularly poorer complainants unable to pursue their cases, especially when it would take time away from work or other responsibilities.

5. DISPARATE AGES OF SEXUAL CONSENT

Despite the African Commission on Human and Peoples' Rights recommendation of 16 years,⁸ many countries have thresholds well below this. Having a very low age of sexual consent may fail to provide adequate protection for minors from sexual abuse. At the same time, a close-in-age provision in the law with respect to adolescents that ensures genuine and willing consent free from exploitation and abuse would prevent the law from punishing truly consensual sex between peers of a similar age. Only Botswana, Eswatini, Lesotho, Mali, Namibia, Rwanda, and South Africa currently have such provisions.



Credit: Ranta Images / iStock

⁷ The terms 'victims' and 'survivors' are used in this report to reflect that those who have been subjected to sexual violence have different preferences. In the criminal justice system, the term 'victim' is frequently used and sometimes accorded specific rights. Not all those subjected to sexual violence choose to access the criminal justice system.

⁸ The age of consent to sex is 12 years in Equatorial Guinea, Mozambique, and some States in Nigeria; 13 years in Chad, Congo (Brazzaville) and Niger; 14 years in Angola, Cape Verde, Madagascar, Namibia and Togo; 15 years in Comoros, Cote D'Ivoire, Eritrea, Gabon and Mali; and 18 years in Zimbabwe. The remainder have 16 or 18 years.

The in-depth study across nine countries regarding the implementation of reviewed laws revealed additional issues:

1. LACK OF RESOURCES AND COMMUNICATION

There are huge human and resource gaps for investigators, prosecutors, expert witnesses, and judicial officers to implement the legal framework proscribing rape effectively. Additionally, the actors do not necessarily work collaboratively, placing the burden of follow-up on the victim to connect from one actor to the next to access justice, if at all. The human resource gap is compounded by the large rape caseloads, resulting in delays in the delivery of justice for rape cases or attrition of cases altogether.

2. LACK OF PUBLIC AWARENESS OF THE LEGAL PROCESS

There is little general public knowledge or awareness of the referral pathways to report and follow up on rape cases.

3. LEGAL AND CULTURAL BARRIERS

There are numerous contextual barriers and challenges within the legal systems, such as social and cultural beliefs, which impact on the reporting, investigation, prosecution and adjudication of rape cases. Further, social attitudes towards sex and consent are manifested in rape myths and stereotypes, which in practice, affect the interpretation of and lack of implementation of rape laws, even those based on international standards. Marital rape, for instance, is viewed as a fallacy since women are perceived to have consented to sex in perpetuity, having consented to the marriage.

4. COMPOUNDING EFFECTS OF CONFLICT

Several countries studied have been or are subject to conflict, which resulted in the breakdown of the rule of law and institutions and structures that support law and order. Sexual violence continues to be perpetrated in times of conflict as in times of peace, but with the breakdown of the rule of law and security resulting in the increased vulnerability of women and girls. In addition, rape is still being used as a weapon of war to denigrate, disempower, demoralize and destroy communities. In times of conflict, upheaval, and/or the breakdown of social order, the reporting of cases and collection and preservation of evidence for the purposes of prosecution, and the prosecution itself of these cases either within the national jurisdiction or externally as international crimes, has been given little attention and has proven to be a challenge.

5. SOCIAL STIGMA

There is a lot of societal interference in rape cases, with considerable pressure on victims/survivors or their immediate social support and families to settle the cases out-of-court, contributing to a lack of accountability and the impunity of the perpetrator.



Credit: LENBIR / iStock

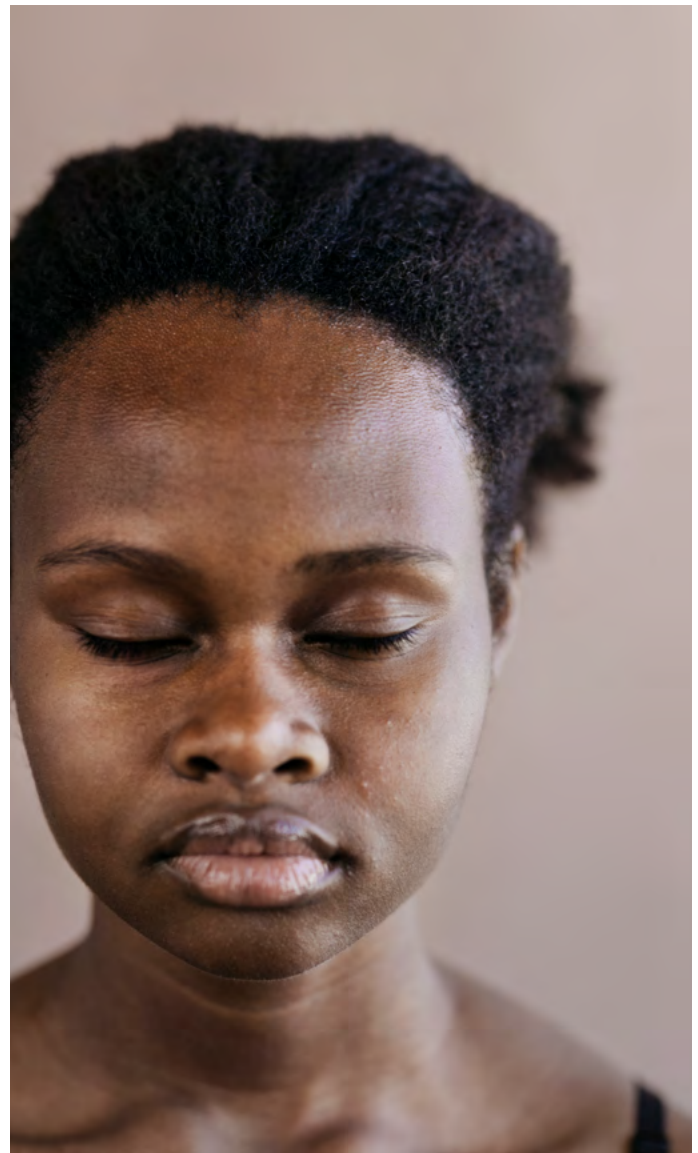
BACKGROUND

Overview of violence against women in Africa

Globally, it is estimated that 35% of women have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.⁹ According to UN Women, approximately 33% of women in Africa have experienced intimate partner violence or sexual violence in their lifetime.¹⁰ Across West, East, Central, and Southern Africa, the rate is even higher at 44%.¹¹ UNICEF has estimated¹² that 1 in every 20 girls aged 15 to 19 have experienced what it terms 'forced sex' during their lifetime.

Sexual violence is prevalent in all African countries, with women and girls being disproportionately affected. The African Development Bank's Gender Data Index 2019 reported that intimate partner sexual or physical violence ranges from 10% to 40% across the continent¹³. Statistics on rape generally are hard to come by, with many victims/survivors unwilling or unable to report, and governments methods and choices of data collection varying widely. By any measure, rape is an everyday reality that impacts millions of women and girls in Africa and worldwide.

Evidence clearly shows that the prevalence of rape increases in times of conflict and crisis.¹⁴ For example, there have been reported sexual violations during the conflict in the Tigray region of Ethiopia, Sudan, and the Democratic Republic of Congo.¹⁵ Similarly, several African countries reported higher cases of sexual violence as a whole following the outbreak of COVID-19 in early 2020, although it is hard to get statistics specifically on rape because the reports do not disaggregate sexual violence from other forms of gender-based violence.¹⁶



Credit: Rawpixel / iStock

9 [World Bank Group \(2023\) Gender-based violence \(violence against women and girls\).](#)

10 [BRIEFS_EVAW_ESARO_A4_August 2022.pdf \(unwomen.org\)](#)

11 [UN Women briefing \(2024\).](#)

12 [UNICEF \(2020\) Action to End Child Sexual Abuse and Exploitation.](#)

13 [African Development Bank Group \(2020\) Africa Gender Index 2019 - Methodological and statistical report.](#)

14 In several countries where conflict prevails, rape and other forms of sexual violence are used on a wide scale as a weapon of war. Sexual violence can constitute an international crime. Certain acts of sexual violence can constitute war crimes, crimes against humanity or crimes of genocide, such as rape, sexual slavery, forced prostitution and sterilization, or forced pregnancy. See: Special Court for Sierra Leone (SCSL), Trial Chamber II, Prosecutor v. Charles Taylor, Judgment, 18 May 2012, SCSL-03-01-T, in which Charles Taylor was sentenced for having subjected the civil population to a campaign of terror, and particularly for using sexual violence as an instrument of terror; Republic of South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 (2007); Statute of the International Criminal Court (hereinafter the "Rome Statute"), Articles 6, 7 and 8, especially 7 (1) (g), 8 (2) (b) (xxii) and 8 (2) (e) (vi) (1998); International Criminal Court, Office of the Prosecutor, General Policy Document on sexual and sexist crimes, p. 4, par. 25-35 (2014); United Nations Security Council Resolutions S/RES/1325 (2000); S/RES/1820 (2008); S/RES/1888 (2009); S/RES/1889 (2009); S/RES/1960 (2010); S/RES/2106 (2013); S/RES/2122 (2013); S/RES/2242 (2015); International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law (hereinafter the "International Protocol on the Investigation of Sexual Violence in Conflict, 2014); International Criminal Tribunal for Rwanda (ICTR), Akayesu case, ICTR-96-4; International Criminal Tribunal for the former Yugoslavia (ICTY), Kunarac case, IT-96-23; International Criminal Court, Jean-Pierre Bemba Gombo case, ICC-01/05-01/08; Extraordinary African Chambers, Judgment of Public Prosecution v. Hissène Habré, par. 1527, p. 341 and par. 1538, p. 344 (2016).

15 [UNICEF press release \(2023\) DR Congo: Children killed, injured, abducted, and face sexual violence in conflict at record levels for third consecutive year](#)

16 [Policy Paper- GBV in Africa during COVID-19 pandemic_EN 18 Feb_compressed.pdf \(unwomen.org\).](#)

African governments' commitments to end rape

Rape is criminalized in all countries in Africa, and yet it remains one of the most widespread crimes, with the majority of perpetrators not being held accountable.¹⁷

African governments have ratified several international treaties which set standards to uphold the rights of women and girls, including those who are victims/survivors of rape. These include, among others, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT),¹⁸ the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention on the Rights of the Child (CRC).¹⁹

At the regional level, governments have committed to the African Charter on Human and Peoples' Rights, which prescribes sexual violence as a form of discrimination in Article 2 and specifically discrimination against women in Article 18,²⁰ as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol),²¹ and the African Charter on the Rights and Welfare of the Child.²² Additionally, the African Union is currently undertaking consultations with different stakeholders to develop a Convention on Ending Violence against Women and Girls.²³

Governments also have guidelines from the General Recommendations and General Comments offered by the committees of independent experts and human rights bodies that monitor compliance with the above international and regional human rights treaties and provide significant jurisprudence to guide their proper implementation. For instance, the African Commission on Human and Peoples' Rights (ACHPR) has issued guidelines on combatting sexual violence and its consequences

in Africa (The Niamey Guidelines), which draw on the jurisprudence of the Commission as well as other legal and regulatory texts, particularly those adopted by the African Union, and refer to other normative international instruments, including UN human rights treaties and other texts from UN bodies and special procedures. The guidelines were developed pursuant to Article 45 (1) (b) of the African Charter on Human and Peoples' Rights, which gives the African Commission a mandate to create and draft principles and regulations relating to human rights, which African governments may use as the basis for their domestic legislation.

The Niamey Guidelines have explanatory notes to guide and support Member States of the African Union in effectively implementing their commitments and obligations to combat sexual violence and its consequences. They elaborate general principles (non-discrimination, do no harm, and due diligence) and States' obligations, namely the obligation to prevent sexual violence and its consequences, the obligation to provide protection against sexual violence, the obligation to guarantee access to justice and investigate and prosecute the perpetrators of sexual violence, and the obligation to provide effective remedy and reparation for the victims of sexual violence. This is in line with the African Charter on Human and Peoples' Rights, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), and the African Charter on the Rights and Welfare of the Child.²⁴

¹⁷ [UN \(2021\) Report of the Special Rapporteur on violence against women and girls, its causes and consequences](#)

¹⁸ Under certain circumstances, rape can be a form of torture or can constitute cruel, inhuman, or degrading treatment. See: Committee against Torture, General Comment No. 2, application of Article 2 by States Parties, CAT/C/ GC/2, par.18 (2008); United Nations Special Rapporteur on torture and other forms of cruel, inhuman or degrading treatment or punishment, A/HRC/7/3, par. 69 (2008); United Nations Special Rapporteur on Violence against Women, its Causes and Consequences, "15 Years of the Special Rapporteur on Violence Against Women, Its Causes and Consequences" (2009); UNHCR Guidance Notes on Refugee Claims Related to Feminine Genital Mutilation (2009); ICTR, the Prosecutor v. Jean Paul Akayesu, ICTR-96-4-T, Judgment on 2 September 1998, par. 597; Rome Statute of the International Criminal Court, Articles 8 (2) (a) (iii) and 8 (2) (b) (xxi).

¹⁹ Article 19 of CRC obligates States parties to protect children from all forms of violence, including sexual abuse and exploitation, and to establish systems to identify, report and investigate violence.

²⁰ The African Charter on Human and Peoples' Rights guarantees: the principle of non-discrimination; the right to equality before the law and to equal protection from the law; the right to a hearing before competent national courts; the right to physical and integrity; the right to dignity; a prohibition on slavery, human trafficking, torture, and cruel, inhuman, or degrading treatment or punishment; the right to freedom and security; the right to the enjoyment of the best possible physical and mental health; and the right to education.

²¹ The Maputo Protocol commits State Parties to the adoption of specific measures to combat violence against women, especially sexual violence (Article 3 (4); Article 4; Article 5; Article 6; Article 11 (3); Article 22 (b); Article 23 (b)), and authorizes medical abortions in situations involving sexual assault, rape, and incest (Article 14 (2)).

²² The African Charter on the Rights and Welfare of the Child (1990) guarantees the protection of children against sexual abuse and exploitation (Articles 16 and 27).

²³ See the decision (Assembly/AU/Dec.865 (xxxvii)) by the African Union to negotiate the AU Convention on Ending Violence against Women and Girls (AU CEVAWG).

²⁴ [African Commission on Human and Peoples' Rights, The Guidelines on Combatting Sexual Violence and its Consequences in Africa, 2017.](#)



DESK REVIEW

In comparing rape laws and their implementation across Africa, the following factors were considered during this review: the definition of rape (including whether a consent-based definition exists, as well as any provisions that exist around the age of consent and marital rape); penalties for rape; the existence of remedies (restitution, compensation, rehabilitation, and satisfaction) for victim-survivors; and the existence of provisions or practices that promote impunity in rape cases.

Definition of rape

Consent

States have an obligation to develop legislation that criminalizes all forms of rape. Echoing its judgment in the case of *Tayag Vertido v. Philippines*,²⁵ the CEDAW Committee, in its General Recommendation 35 stipulates that States should ensure that “the definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive circumstances.” The 2021 report of the UN Special Rapporteur on violence against women, its causes and consequences²⁶ and the framework for legislation on rape (model rape law)²⁷ underline that rape laws should provide a broad range of circumstances in which consent is immaterial, taking into consideration unequal power dynamics.²⁸

A legal definition of rape, then, should be centered on an individual’s voluntary, genuine, and willing consent to participate in the sexual act, and the consent must be assessed in the context of the surrounding circumstances. To that end, a broad range of surrounding circumstances should be considered, such as intimidation, duress, or fraud, and special attention should be paid to any dynamics of power and authority and the exploitation of positions of vulnerability, trust, influence, and dependence, such as in a correctional facility, a religious or school setting or by individuals in certain professional relationships to the survivor such as an ongoing psychotherapist-patient relationship. Consent cannot be voluntary, genuine, or willing, and participation in a sexual act is not of an individual’s free will or agency, in contexts where coercive circumstances exist, or positions of dependence or vulnerability are exploited.

It is essential for the law to recognize that voluntary, genuine, and willing consent may be modified or rescinded at any time during the course of the sexual interaction. Additionally, voluntary, genuine, and willing consent must encompass all the sexual acts engaged in; for example, a woman may consent to vaginal penetration but not oral penetration or to penetration but not without a condom. In addition, the Special Rapporteur’s report highlights circumstances when consent is not possible or should not

be required. This includes when the victim is permanently or temporarily incapacitated because of the use of alcohol or drugs or when an illness, bodily injury, or other particular vulnerability, including age, has an impact on the victim’s ability to consent.

Jurisprudence from South Africa underscores the importance of freely-given consent. In the case of *DPP v Coko*,²⁹ the Supreme Court of Appeal of South Africa held that the Sexual Offences Act of South Africa explicitly requires that consent must be given consciously and voluntarily, either expressly or tacitly, by persons who have the mental capacity to appreciate the nature of the act consented to. Further, the case concluded that consent can be very specific, for example, to oral penetration but not vaginal penetration, and that consent may be withdrawn at any moment.

Laws that maintain a force-based definition of rape signify that many acts of rape will go unpunished. This means that many other acts of rape under international and regional human rights law involving lack of consent, including in the context of exploitation of a victim’s/survivor’s vulnerability or unequal power dynamics, are left out of the ambit of rape. Even in countries whose law has a consent-based definition of rape, law enforcement is frequently prone to its own rape myths and prejudices and will not prosecute or convict unless there is physical evidence of violence, particularly that which indicates that the victim/survivor fought back.

The following 20 countries have clear definitions of rape based on consent: Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Congo - Democratic Republic of (Kinshasa), Côte d’Ivoire, Djibouti, Eswatini, Lesotho, Liberia, Madagascar, Namibia, Nigeria, Rwanda, São Tomé & Príncipe, Sierra Leone, and South Africa.

However, the following 25 countries have definitions of rape that need revisions to make them complete, clearer and in compliance with regional and international human rights laws standards: Cameroon, Central African Republic, Chad, Congo (Brazzaville), Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Malawi, Mali, Mozambique, Niger, Senegal, Seychelles, South Sudan, Tanzania, Togo, Uganda, Zambia, and Zimbabwe (see Appendix 1 for details).

²⁵ [CEDAW/C/46/D/18/2008](#)

²⁶ [A/HRC/47/26: Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention.](#)

²⁷ [A/HRC/47/26/Add.1: A framework for legislation on rape \(model rape law\).](#)

²⁸ The criminalization and prosecution of rape should be guided by the understanding that, while rape can and does affect all persons and therefore all persons should be protected without discrimination, it is predominantly perpetrated against women and girls. As a form of gender-based violence, it requires a gender-sensitive approach free from stereotypes, including the pervasive myth that if a woman cannot be shown through additional physical injury to have fought back, she ‘welcomed’ the penetration.

²⁹ [Director of Public Prosecutions, Eastern Cape, Makhanda v Coko \(Women’s Legal Centre Trust, Initiative for Strategic Litigation in Africa and Commission for Gender Equality intervening as Amici Curiae\) \(case no 248/2022\) \[2024\] ZASCA 59 \(24 April 2024\)](#)

Nature of penetration

International human rights standards indicate that the criminalization of rape should explicitly include all non-consensual acts of penetration of a sexual nature, however slight, with any body part or object. Our analysis suggests that some countries³⁰ have good definitions of rape in this regard (cover all forms of rape (vaginal, oral, and anal) and also cover rape by any object or body part), while others³¹ need revision to cover these elements. Sometimes, sexual penetration by objects or body parts other than the penis is included in the criminal code but treated as the lesser crime of sexual assault, which carries a lower penalty than the crime of rape. Even if classified separately, all crimes of non-consensual penetration should be punished equally so as not to create a hierarchy of rape and to underscore the critical issue of consent and the equal right of each individual to bodily autonomy.

Relation to bodily integrity

The CEDAW Committee's General Recommendation No.35 (2017) on gender-based violence recommended that State parties ensure that rape is characterized as a crime against the right to personal security and physical, sexual, and psychological integrity. According to Equality Now's analysis across Africa, several laws describe rape using language not based on a violation of bodily integrity or assault of a person but rather on a violation of morality or indecency committed against society. While the precise local context and interpretation of laws cannot be known from a desk review alone, defining rape based on morality rather than one of assault of bodily integrity results in subjective interpretation, which risks minimizing the harm caused and putting the focus as much, if not more, on the complainant than on the perpetrator. Since the vast majority of perpetrators are men and most victims are women, rather than objectively analyzing any unwelcome acts by the alleged perpetrator, such a definition positions the woman or girl as the repository of the so-called honor of her community, which tends to lead to judgment of her general behavior (that is, her chastity or lack of chastity) and whether consequently, she is deserving of justice. This relegates the rights of the victim/survivor and the obligations of the State from the center of interest in the rape definition.

Age of consent

The Niamey Guidelines and the UN Special Rapporteur framework model law on rape both recommend 16 years as the appropriate age for sexual consent.³² There are different thresholds for the age of consent to sexual acts across African countries. Most of the provisions on the age of consent were introduced during colonization and retained in independence and post-independence legislation, while others were established through religious and customary laws.

The age of consent to sex in Africa oscillates from 11 to 18 years.³³ Tanzania and Uganda have the age of consent at 18. A low age of consent can, without a strong definition of rape and good implementation of the law, create an opportunity for impunity for sexual violence against minors, especially in light of the various power dynamics that can exist within the community. While the capacity of children to make their own decisions does evolve with age, the law must provide enough safeguards to ensure deterrence of and punishment for the exploitation of a child's relative immaturity and general dependency, especially with respect to adult perpetrators.

30 Angola, Benin, Botswana, Burkina Faso, Burundi, Cape Verde, Congo - Democratic Republic of (Kinshasa), Côte d'Ivoire, Djibouti, Eswatini, Kenya, Lesotho, Liberia, Madagascar, Namibia, Nigeria, Rwanda, São Tomé & Príncipe, Sierra Leone, Senegal, and South Africa.

31 Congo (Brazzaville), Equatorial Guinea, Eritrea, Ethiopia, Gambia, Ghana, Guinea, Guinea-Bissau, Malawi, Mali, Mozambique, Niger, Seychelles, South Sudan, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

32 The UNCRC committee recommends for states to set an age (but does not specify which); it also recognizes the evolving capacities of children and discourages states from criminalizing consensual sex between adolescents.

33 Countries with a low age of sexual consent also fail to protect minors from sexual abuse. Ages for consent to sex in Africa range from 18 years old to just

“Romeo and Juliet” clauses

The United Nations Committee on the Rights of the Child³⁴ and the Committee on the Elimination of Discrimination against Women have recognized children’s evolving capacities and discouraged States from criminalizing non-exploitative consensual sexual activities between adolescents.³⁵ These laws, also called “close-in-age exemptions,” consider the ages and age gaps between the parties involved. They attempt to strike a balance between protecting adolescents and making room for sexual self-determination. Most African countries still do not have these provisions, and the few that have them recognize age differences of two to five years. For instance, in Rwanda, the law on child defilement stipulates that: “If child defilement is committed between children aged at least fourteen (14) years without violence or threats, no penalty is pronounced.”³⁶ What is not known is whether this provision takes into account the consent of the parties.

In South Africa, the Sexual Offences Act requires both persons to be 12 years of age or older but under the age of 16 years or, if either person is 16 or 17 years of age and the age difference between them is no more than two years.³⁷ In Botswana, the Romeo and Juliet clause offers a defense to the offense of defilement of children below 18 years if the person charged is less than two years older than the victim/survivor, not in a position of authority or trust over the victim/survivor, and not in a relationship of dependency.

Marital rape

International human rights standards require States to criminalize all forms of rape, irrespective of the relationship between the perpetrator and the victim/survivor. This includes rape in the context of intimate partnerships, including marriage. This study has noted that some African countries have failed to criminalize rape in marriage which is a breach of the due diligence standard to prevent, investigate and punish violations of rights.

The following seven countries expressly exempt spouses from prosecution for marital rape: Cote D’Ivoire, The Gambia, Seychelles, Equatorial Guinea, Eritrea (unless spouses are not living together), Ethiopia, South Sudan and Tanzania (unless spouses are separated). For example, South Sudan explicitly notes that (non-consensual) sexual intercourse within marriage does not constitute rape. The Penal Code of Côte d’Ivoire provides for the presumption of married couples’ consent to the sexual act unless proven otherwise.³⁸ In Ethiopia, the law explicitly excludes marital rape from the definition of rape, and in Eritrea, the law recognizes marital rape as punishable only when the spouses are not living together in the same household. This gap, therefore, leaves married couples who live together without remedy or recourse in the event of non-consensual sex at the hands of a partner. Similarly, in Tanzania, the law criminalizes marital rape only upon separation.

In Lesotho, it is possible to prosecute marital rape, but only if one of the following conditions apply: the complainant spouse was sick; the accused spouse had a sexually transmissible disease or other life-threatening disease; violence or threats were used to engage in the sexual act; there is desertion; there is a restraining order against the accused; or there is a separation by a court order. Such exemptions undermine the concept of bodily integrity and the concept of consent, are discriminatory, reinforce power imbalances between men and women, and perpetuate the negative stereotype that a woman, by marriage, relinquishes certain areas of control and autonomy to her husband, relegating her to a lower status within the family.

Some African States have, however, developed legislation to recognize marital rape as a form of domestic violence,

11 or 12 in some states in Nigeria (being some of the 11 States which have not yet adopted the Nigerian Federal Child Rights Act, which sets the age at 18 years), other countries with relatively low age of consent to sex at 13 years in Niger; 14 years in Cape Verde and Angola; 15 years in Togo, Guinea, Tanzania, Seychelles, Algeria, Cote d’Ivoire, Djibouti, Gabon and Mali; the rest of the countries have age of consent to sex set between 16 and 18 years.

34 The United Nations Committee on the Rights of the Child (CRC), Adolescent Health General Comment No. 4.

35 UN Committee on the Rights of the Child/UN CEDAW Committee, Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, 14 November 2014, *cedaw/C/GC/31 – crc/C/GC/18*, para. 20.

36 Article 54 of The Law Determining Offences and Penalties in General, Law No. 68/2018 of 30/08/2018.

37 [Legal Grounds: Reproductive and Sexual Rights in Sub-Saharan African Courts, volume III \(2017\), pp 49-53.](#)

38 See: Loi No. 2019-574 Portant Code Pénal, Article 403 Paragraph 3.

Penalties for rape

albeit with a lesser penalty compared to rape as defined in the sexual offenses legislation. The following four countries have separate domestic violence laws that prohibit sexual violence in marriage: Ghana, Kenya, Rwanda, and the Seychelles.

On a positive note, the following 19 countries explicitly criminalize marital/spousal rape: Angola, Benin, Burkina Faso, Burundi, Cape Verde, Cote D'Ivoire, Eswatini, Gabon, Lesotho, Madagascar, Mozambique, Namibia, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Togo, Zambia, and Zimbabwe. Zimbabwe, however, has a claw-back clause, which requires authorization by the Director of Public Prosecutions to institute proceedings for marital rape.

The laws are silent on marital rape in the following 13 countries: Botswana, Cameroon, Central Africa Republic, Chad, Congo Brazzaville, Democratic Republic of Congo, Guinea, Guinea Bissau, Liberia, Malawi, Mali, Nigeria, and Uganda, which means that rape should still be able to be prosecuted as a sexual offense. Frequently, however, the myth that rape cannot be perpetrated in marriage carries through into the criminal justice system such that police, prosecutors, and judges will not move such a case forward. For this reason, it is preferable to explicitly criminalize marital rape, either specifically or through aggravated punishments, not only to ensure access to recourse for the violated party, but to send a message through the law that all rape will be punishable. Laws that permit child marriage also offer impunity for rape of children if rape in marriage is permitted, in addition to circumventing statutory rape protections that aim to avoid the sexual exploitation of minors.

Globally, penalties for rape include temporary/permanent hard labor, the death penalty, prison terms, surgical/chemical castration, and fines. In Africa, penalties³⁹ for rape include the death penalty, prison terms, fines, and labor.⁴⁰ Some of these penalties are only in the law books but have not been carried out for many years, for example, the death penalty.⁴¹ Penalties increase or decrease depending on the existence of aggravating circumstances or upon the judicial officer's discretion (existence of compelling reasons for mitigation) respectively.⁴² For instance, in Kenya, the Sexual Offences Act provides for minimum sentences depending on the nature and gravity of the sexual offense and the age of the victim/survivor, with the maximum punishment being life imprisonment. Lesotho,⁴³ Namibia, South Africa, and Zambia each have minimum sentences for rape, which can only be deviated from in cases where the court is satisfied that there are compelling reasons for doing so.⁴⁴ Angola and Madagascar⁴⁵ also have minimum and maximum sentences that are comparatively lower than other countries. However, these can be revised based on the aggravating circumstances in the case at hand. This study has not researched whether the penalties for rape in Angola and Madagascar are comparable with penalties for crimes of similar gravity in those countries or whether rape is just not viewed as a serious crime.

Eswatini sets maximum sentences based on the age of the victim/survivor and whether or not there were aggravating circumstances. Zimbabwe does not have a mandatory minimum or maximum sentence, and it is left to the discretion of the court, depending on whether there are aggravating or extenuating circumstances.⁴⁶ South Africa and Botswana have provisions to compel a convicted person to be tested for HIV⁴⁷ infection, in which infection would

39 The majority of countries have minimum and maximum sentences ranging from as low as 1 year in Sao Tome, 2 years in Cabo Verde, and 3 years in Guinea Bissau, to life imprisonment in most countries or the death sentence as in Uganda (where the death penalty has not been carried out for a number of years).

40 Countries that lack penalties commensurate with the severity of the crime include Equatorial Guinea, where Article 430 of the Criminal Code provides that "Whoever dishonestly abuses a person of one or the other sex, concurring any of the circumstances expressed in the previous article will be punished with a minor prison sentence". Some countries have penalties of forced temporary or permanent labor, such as Congo (Brazzaville) and Central African Republic. The Gambia, Sierra Leone, Benin, Côte d'Ivoire, Guinea, Mali, Niger, Senegal, and DRC provide for long sentences for the offence of rape, including life imprisonment.

41 Equality Now opposes the death penalty and coerced castration as violations of human rights.

42 Rwanda, Gambia, Gambia, Uganda (includes a death sentence as well), Sierra Leone, Lesotho, Malawi, Namibia and Eritrea use "not less than..." language to ensure that the minimum sentence is not derogated from by the judicial officers. In Zambia, mitigating factors include where the perpetrator was reasonably under the belief that the girl was above the age of 16; in the Seychelles, mitigating factors include where the accused had reasonable grounds to believe that the victim was over 15 years old, or was the spouse of the accused.

43 In Lesotho, it is a defence for a person charged with rape of a minor to prove that he or she had reasonable grounds to believe, and did so believe, that the child had attained an age of 18 years.

44 Extenuating circumstances for other comparable offences (such as murder) include age of the offender, and intoxication/drunkenness or provocation (this would not apply for rape).

45 Madagascar recently amended its law to increase the penalty for child rape to castration.

46 The South Africa Criminal Law Amendment Act, 1997, S 51 provides that a High Court or regional court is given a discretionary power to impose a lesser sentence, if that court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the prescribed minimum sentence.

47 In Botswana the testing is mandatory and at the behest of the court, while in South Africa a survivor or the investigating officer can apply to compel

Judicial remedies for rape victims/survivors

be an aggravating factor in the sentencing. Both countries also have a National Register of Sex Offenders, which in South Africa, in addition to containing the names of those convicted of rape, also contains details of the vulnerability of the victim/survivor, such as children and persons with disabilities, which are used to ensure perpetrators will not have access to jobs working with these vulnerable groups.

In Rwanda, the law provides for a penalty of life imprisonment that cannot be mitigated by any circumstances if defilement is committed on a child under 14 years, or if defilement is committed on a child of 14 years of age or older and this has resulted into an incurable illness or disability, or if defilement is followed by cohabitation as husband and wife. In Burundi, there are no provisions for mitigating circumstances. In Ethiopia, there are provisions for aggravating circumstances, for instance, where there is evidence of use of force, physical injury, or the victim/survivor is infected with HIV. In South Sudan, the law is silent on aggravating and mitigating circumstances; however, it has a general penalty that does not exceed 14 years. In Tanzania, there are increased penalties for aggravated cases of rape, such as gang rape, which is imprisonment for life.

Some countries also provide for mitigation. For example, in Guinea, if the victim, by her or his behavior, has contributed significantly to the fact, the penalty is especially mitigated, and in Senegal, the penalties can be reduced below the minimum if there are extenuating circumstances in favor of the culprit. Courts determine extenuating circumstances on a case-by-case basis: in Equatorial Guinea, when the victim has explicitly or tacitly forgiven the perpetrator; in Botswana, the court has the discretion to consider extenuating circumstances that could result in the imposition of a lesser sentence than the statutory minimum sentence; Namibia and South African laws have substantial compelling reasons as grounds for mitigation.

Both the Convention on the Elimination of All Forms of Discrimination against Women⁴⁸ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol)⁴⁹ place upon the State the duty to prevent, investigate, punish, and provide remedies for all acts of discrimination against women wherever they occur.⁵⁰

The obligation to provide adequate remedies for gender-based violence involves ensuring the rights of women to access both criminal and civil remedies, as well as the establishment of effective protection, support, and rehabilitation services for victims/survivors. Such measures include:

- Restitution, which should restore the victim/survivor to their original situation before the violation occurred;
- Compensation, which should be provided for any economically assessable violation;
- Rehabilitation, which should include medical and psychological care, and legal and social services; and
- Satisfaction, which should include the cessation of continuing violations and guarantee the non-recurrence of the violation.⁵¹

In some countries, remedies for rape under the law are both civil and criminal, such as prison terms for the perpetrators, assessing economic damages of the victim/survivor for compensation purposes, and rehabilitation meant to address the harm suffered by survivors and aid in their recovery. When survivors face difficulties in accessing remedies, it can perpetuate feelings of frustration, injustice, and lack of support. Difficulties in accessing support also discourage survivors from reporting, which breeds impunity.

Remedies for rape serve not only to support survivors but also as a potential deterrent for future perpetrators. If there is a perception that remedies are not consistently enforced, it may reduce the effectiveness of this aspect of the justice system in deterring offenders and providing a sense of accountability. Some remedies, such as compensation,

the convicted person to be tested.

48 Article 2 of CEDAW states that provision of remedies requires that justice systems provide women with viable protection and meaningful redress for any harm that they may suffer.

49 Articles 8 and 25 of CEDAW.

50 The African Commission on Human and Peoples' Rights General Comments No. 2 of Article 14.1 (a), (b), (c) and (f), and Article 14.2 (a) and (c) of the Maputo Protocol (2014); also General Comments No. 4 of Article 5 on the right to redress for victims of torture and other punishments or cruel, inhuman, and degrading treatment (2017) and ACHPR Resolution 11 on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence (2007).

51 [CEDAW General Recommendation on Women's access to Justice.](#)

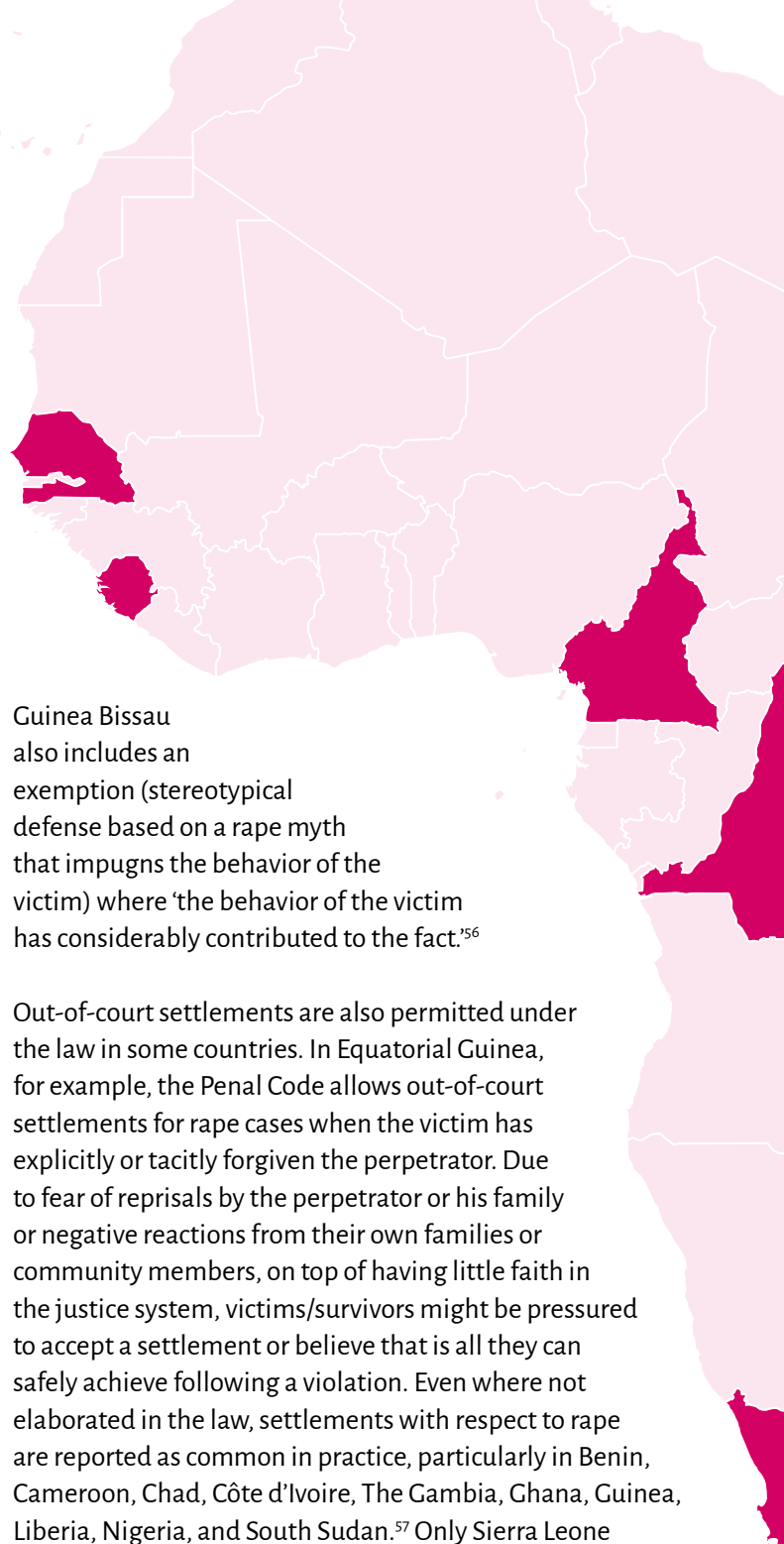
would require the government to set up a fund accessible to all victims/survivors regardless of the outcome of the case or whether the perpetrators are found guilty or not.

Among the countries studied, DRC, Kenya, Senegal, South Africa and Uganda have made efforts to make provision for survivors' funds within their laws. Botswana, Eswatini, Namibia, Rwanda, and Sierra Leone have codified the provision of medical treatment and psychosocial counseling to survivors of sexual violence. Further, these countries have codified forensic procedures to aid the collection of evidence in rape cases, but have failed to budget for these services adequately, therefore limiting the availability of these services to the survivors of rape.

Impunity

Providing justice to victims/survivors of sexual violence and ensuring perpetrators do not enjoy impunity is critical in preventing and addressing rape.⁵² The disbelief and marginalization of victims/survivors in the justice process; lack of collection and proper evaluation of evidence in rape cases; acquittal of suspects of rape based on burdensome and discriminatory evidence requirements; and the revictimization and devaluation of victims/survivors, including through out-of-court settlements strongly encouraged by the families/community (without particular regard to the wishes of the victim/survivor), is common and in certain cases aided and abetted by the law enforcement officers.⁵³ All these lead to a bigger concern of rape offenders escaping criminal liability by being unfairly released without prosecution, or acquitted. This has the effect of adding to the victims' distress and the associated psychological harm, decreasing their willingness to report and thereby reinforcing and widening the justice gap in the prosecution of rape cases, undermining women's rights, gender equality, and countries' obligations to ensure justice for survivors of gender-based violence.⁵⁴

In most countries in the region, there are no legal provisions for a full or partial exemption from the penalty for rape. However, in Gabon, the Penal Code states that where an abductor has married the abducted minor, he can only be prosecuted after the annulment of the marriage.⁵⁵ This allows for impunity of the perpetrator through marriage.



Guinea Bissau also includes an exemption (stereotypical defense based on a rape myth that impugns the behavior of the victim) where 'the behavior of the victim has considerably contributed to the fact.'⁵⁶

Out-of-court settlements are also permitted under the law in some countries. In Equatorial Guinea, for example, the Penal Code allows out-of-court settlements for rape cases when the victim has explicitly or tacitly forgiven the perpetrator. Due to fear of reprisals by the perpetrator or his family or negative reactions from their own families or community members, on top of having little faith in the justice system, victims/survivors might be pressured to accept a settlement or believe that is all they can safely achieve following a violation. Even where not elaborated in the law, settlements with respect to rape are reported as common in practice, particularly in Benin, Cameroon, Chad, Côte d'Ivoire, The Gambia, Ghana, Guinea, Liberia, Nigeria, and South Sudan.⁵⁷ Only Sierra Leone provides for criminal sanctions against anyone who engages or attempts to engage in a settlement or compromise in sexual offense cases. However, in practice, this is not enforced.

In Rwanda, while it is commendable that the law covers marital rape,⁵⁸ a provision exists which allows the spouse who has been subjected to sexual violence to withdraw the

52 Interview with women's rights activist on 24 April 2023.

53 *ibid.*

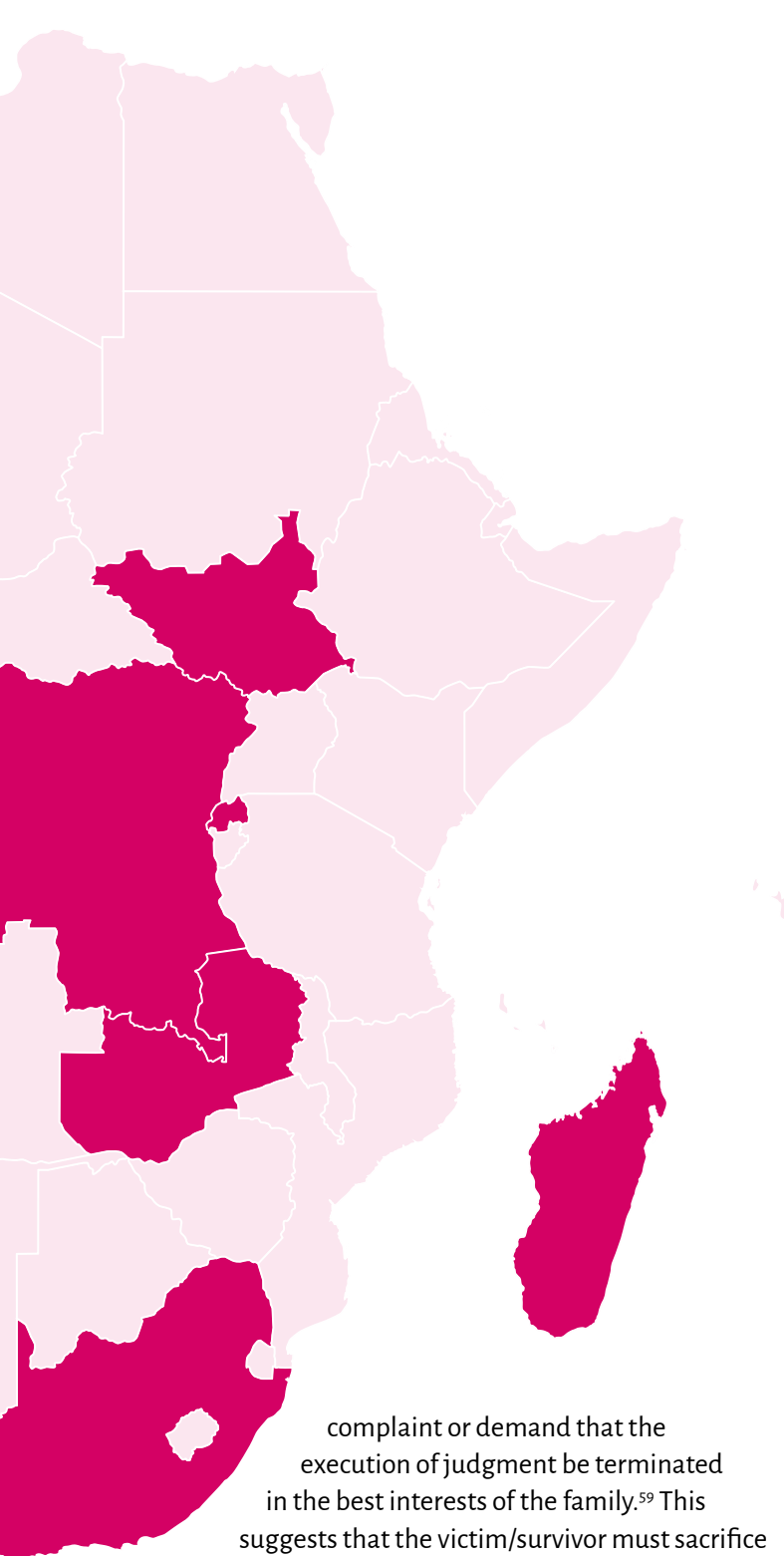
54 *ibid.*

55 Law No. 005/2021 of 06/09/2021 amending certain provisions of Law No. 006/2020 of 30 June 2020 on the Penal Code.

56 Decree-Law No. 4/93 on the Penal Code, Chapter V: "Contra a Liberdade sexual" (offenses against sexual liberty).

57 Refer to Part 2 of this report: in-depth analysis of South Sudan.

58 Law Determining Offences and Penalties in General Law No. 68/2018 of 30/08/2018, article 137.



laws is sometimes detrimental to victims'/survivors' access to justice because of the culturally low status of women in South Sudanese society.

The Sexual Offences Act 2021 in Uganda contains a provision that criminalizes “false” accusations of crimes of a sexual nature.⁶⁰ Given negative stereotypes against women and the general false myth that women have a tendency to lie about having been raped, such a provision can deter women from reporting rape. Similar to defamation suits, it can also be manipulated by perpetrators to divert attention from their crimes, knowing the prejudices prevalent in criminal justice systems.

In addition to the above legal obstacles, enforcement of rape laws is hindered by many procedural and societal obstacles. The public is poorly aware of the existing laws and procedures for accessing justice. In Côte d'Ivoire and Guinea, victims/survivors of rape are required to provide a medical certificate prior to filing a complaint with the police. This poses a challenge, especially in a country with few medical facilities. In addition, it suggests that cases will only be taken forward if the medical certificate shows 'appropriate' injury, that is, the use of additional physical violence and/or biological traces. This means that a medical certificate would have to be procured almost immediately after the rape, leaving historical cases of rape unpunished and disregarding cases of rape where consent was not given or a different form of coercion was used, or where there was no biological/physical evidence.

Perpetrators are rarely brought to justice due to low reporting, inefficient judicial institutions, corruption, withdrawal or abandonment of complaints, and the ineffectiveness of law enforcement agents in seeking evidence. Also, sufficient medical officials are not available to examine survivors, collect medical samples for evidence, and make the necessary evidential medical reports.

In the DRC and other countries where conflict exists,⁶¹ there is an added layer of complexity in relation to being able to provide access to justice to survivors of sexual violence, with little attention paid to how to improve accountability. Conflict enables particular impunity as the rule of law tends to break down; identification of the perpetrator and collection of evidence is very challenging, and court systems may not function.⁶²

complaint or demand that the execution of judgment be terminated in the best interests of the family.⁵⁹ This suggests that the victim/survivor must sacrifice justice and continue to be subjected to violence by her spouse so that the family unit is not broken up. Until this provision is amended, law enforcement should continue to investigate such cases *ex officio* and enforce the law against rape while ensuring the victim/survivor and any children are not further harmed.

In South Sudan, the pluralistic judicial systems consisting of statutory and customary law courts, which operate concurrently, sometimes limit victims'/survivors' access to justice. Additionally, the judicial officers' focus on customary

59 *ibid.*

60 Section 35, Sexual Offences Act 2021.

61 Libya, South Sudan, the Central African Republic, Northern Mozambique, Ethiopia, and Cameroon's north-west and south-west regions.

62 Refer to Part 2 of this report: in-depth analysis of DRC.

IN-DEPTH STUDIES

Laws in themselves are not enough to curb the prevalence of rape unless they are effectively implemented through a robust infrastructure comprising human and financial resources, institutional and other measures. The laws must be implemented using a multi-sectoral approach requiring law enforcement (and other government) agencies to operate in a holistic and coordinated manner with engagement from professionals, communities, and civil society organizations. All of this should be put in place to ensure justice and protection from institutional or other re-victimization as well as providing legal aid, legal information, and referral services to victims/survivors of rape.

Despite good laws being in place in some parts of Africa, the rate of rape and other forms of sexual violence being perpetrated against women and girls appears not to be reducing and, indeed, following the COVID-19 pandemic may even be on the rise. This section provides an in-depth analysis of the implementation of rape laws in selected countries from Central Africa (Cameroon and the Democratic Republic of Congo), Eastern Africa (Madagascar, Republic of Rwanda, and South Sudan), Southern Africa (Republic of South Africa and Zambia), and West Africa (Senegal and Sierra Leone), and demonstrates the extent to which weak or ineffective implementation reduces access to justice.

COUNTRY CONTEXT

Discussions with women's rights organizations indicate that the rate of reporting of rape is low. The reasons for non-reporting were cited as a lack of confidence in the justice system and fear of reprisals from the community and the perpetrator's family. Most families agreed to out-of-court financial settlements from the perpetrators and sometimes forced marriage of the survivor to the perpetrator. The national police have a division called the Proximity Female Brigade, which drives the investigation of gender-based violence and conducts public awareness campaigns such as the one conducted on 3 June 2022 in Antananarivo.⁶³ There is a group of lawyers under the National Bar Association who are dedicated to supporting victims of rape and sexual assault. The group, called PADFEM,⁶⁴ assists victims in reporting their cases to the police and encourages them to report as soon as possible in order to increase the chances of the collection of evidence. It also provides them with a safe environment to share their story. The lawyers additionally make follow-ups with the justice delivery system to ensure that reported cases are prosecuted to their logical conclusion. This kind of support to survivors is essential to lessen cases of attrition. In 2020, the Ministry of Population, Social Protection and the Promotion of Women, in collaboration with UNICEF, launched an online portal which is designed to allow the reporting of child sexual abuse online and any child pornography.⁶⁵ There are two specialized centers in Antananarivo for survivors of gender-based violence, both of which provide medical care, psychological support, legal counseling, and socioeconomic reintegration, such as vocational training. Specialized government centers also collaborate with private pharmacies to provide emergency contraceptives to survivors of sexual violence.⁶⁶

STATISTICS ON RAPE

In Madagascar, 14% of women⁶⁷ are reported to have experienced sexual violence at some point in their lifetime, and one woman in four has been subjected to physical or sexual violence by their intimate partner. Sexual violence and abuse, including rape against the girl child, is widespread in the country. The Ministry of Population, in conjunction with UNICEF in 2018, conducted research which found that only 4% of respondents had reported cases of child abuse to the police, and only 19% had reported cases of child sexual assault to the police or gendarmerie.⁶⁸ Most families agreed to out-of-court financial settlements from the perpetrators and sometimes forced marriage of the survivor to the rapist.⁶⁹ Street children were found to be especially vulnerable to rape, with most of them not reporting the cases to the police for fear of reprisals from the offenders. Some young girls were raped by their employers in domestic work arrangements, and if they tried to report or leave, the employer would not pay them. Many, therefore, opted to stay employed rather than return to the village empty-handed.

APPLICABLE NATIONAL LAWS

Rape and sexual offenses are governed by the Penal Code and the gender-based violence Law No.008/2019. The former provides for the crime of rape and indecent assault, while the latter, among other things, provides for spousal rape. Madagascar amended its Penal Code in 2001 to strengthen the laws relating to violence against women and offenses to morality through Law No.2000-21, which was further amended on 31st March 2005. According to the amendments, Article 332 of the Penal Code now defines rape as: "Any act of sexual penetration, of whatever nature, committed on the person by someone else by use of violence, coercion, threat or surprise is considered as rape." Article 332 appears to expand the definition of rape to acts of sexual penetration of any bodily orifice with any body part or object. The punishment for rape offenses is 5-10 years in prison; child rape is punished severely by chemical or surgical castration in line with a new law from 2024.

63 [US Department of State: 2022 Country Reports on Human Rights Practices, Madagascar.](#)

64 An abbreviation of 'Pool des Avocats Défenseurs des Enfants et des Femmes à Madagascar.'

65 [UNICEF press release, 2020: Launch of the international reporting portal for online sexual abuse and exploitation in Madagascar](#)

66 *ibid.*

67 [INSTAT/UNICEF Madagascar MICS6 survey, 2019](#)

68 US department of State (n1)

69 *ibid.*

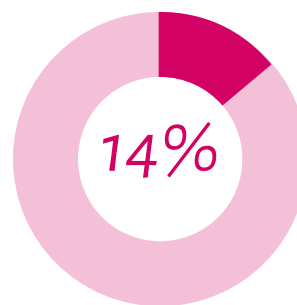


GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

The respondents interviewed raised the following crucial issues:

- Research and anecdotes point to a concerning level of underreporting of child abuse and child sexual abuse due to a lack of confidence in the justice system, precarious economic conditions, fear of social discord within the community, and intimidation.
- There is a reluctance to report cases of marital rape. Reporting marital rape is difficult due to financial and administrative hurdles regarding reporting, where the complainant has to get a medical certificate which costs approximately US\$3, an amount that many unemployed women cannot afford.⁷⁰ The country does not have a solid social protection program, therefore, women who suffer at the hands of their spouses fear that if the husband is imprisoned, this will leave them and their children destitute as they are financially dependent on him.
- Ineffective investigation and prosecution procedures for sexual violence cases. This leads to prosecutors developing their own policies for handling these cases, which may revictimize the complainant, be prone to negative myths and stereotypes with respect to women reporting rape, fall short of regional and international standards, and may not adopt a gender-based, victim-centered approach;
- Inadequate protection measures for survivors of sexual violence, especially children, besides holding the court sessions in camera, which may not be followed in all instances.
- Despite the law providing that the courts can grant reparations to survivors of rape, there are many challenges impeding access to financial compensation for rape.

“In Madagascar, 14% of women are reported to have experienced sexual violence at some point in their lifetime.”



⁷⁰ *ibid.*

COUNTRY CONTEXT

Rwanda has taken significant steps to promote a victim-centered approach in the investigation and prosecution of sexual violence cases. This includes the development of the Gender-Based Violence Technical Working Committee under the Ministry of Gender and Family Promotion, which the Ministry of Health co-chairs, mandated to implement the National Policy against Gender-Based Violence (2011-2016) and the Isange One Stop Gender-Based Violence Recovery Centres at the National Police Hospital and in 13 districts. Isange One Stop Centers have enabled survivors to obtain services (including witness protection, medical support, and psychosocial support) and legal aid before the prosecution process begins.

All the services are available at the one-stop center. After providing initial support to the victim, if she wants to pursue a case, the center (which has 50 branches) calls the bar association or a pro-bono lawyer to offer legal support and counseling to the victim/survivor. The Rwanda Investigation Bureau Unit of the Police (RIB) was also recognized for supporting survivors of sexual violence. It is a specialized organ established by Law No.12/2017 to perform investigative functions and partner with other law enforcement agencies in ensuring law and order. It supports the victim/survivor of rape to make a formal complaint, or a case may be referred to the unit via an NGO.

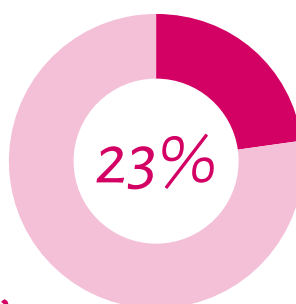
STATISTICS ON RAPE

The Demographic and Health Survey 2019-2020 reported that 23% of women aged 15-49 reported that they had experienced sexual violence at least once in their life, and 8% had experienced sexual violence in 2020.⁷¹

APPLICABLE NATIONAL LAWS

The legal framework on rape in Rwanda is covered by the Penal Code and Law No.59/2008 on the Prevention and Punishment of Gender-Based Violence. It has a consent-based definition of rape and covers coercive circumstances as well, such as threats, trickery, or by use of authority over the victim/survivor or exploitation of the vulnerability of the victim/survivor. The law covers all forms of rape (all orifices, any body part, or use of any object). Marital rape is explicitly criminalized with imprisonment of not less than three years but not more than five years,⁷² while rape generally is punished by 10-15 years. With respect to children, the law states that any person who commits any sex-related acts such as insertion of a sexual organ into the sexual organ, anus, or mouth of the child, insertion of any organ of the human body into a sexual organ or anus of a child, or performing any other act on the body of a child for the purpose of bodily pleasure, upon conviction he/she is liable to imprisonment for a term of not less than 20 years and not more than 25 years.⁷³

“23% of women aged 15-49 reported that they had experienced sexual violence at least once in their life.”



⁷¹ [National Institute of Statistics of Rwanda \(NISR\), Rwanda Demographic and Health Survey 2019-20 Final Report.](#)

⁷² Law Determining Offences and Penalties in General Law No. 68/2018 of 30/08/2018, article 137.

⁷³ Law Determining Offences and Penalties in General Law No. 68/2018 of 30/08/2018, article 133(1)-133(3).



GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- Reports of a culture of silence with respect to reporting cases. This is perpetuated by the history of patriarchy and rape myths associated with the victim's characteristics, such as their dress code, prior sexual experiences, whether they were engaged in prostitution, or when rape does not result in remarkable physical injuries (even though this is not a requirement of the law), and sometimes when committed by a person known to the victim, such as a husband – all of which have the potential to undermine justice for rape victims.
- An examination of cases demonstrates that prosecutors and judges heavily rely on medical evidence to establish a conviction for rape. Medical evidence can be an important component of evidence in rape cases. However, sole reliance on it leaves many crimes of sexual violence to go unpunished, for example, if the case is not reported immediately, if coercion or intimidation were used instead of significant physical force, or if a condom was used. It suggests, wrongly, that medical evidence is the only way of confirming the commission of rape and becomes even less relevant when the crime of rape is committed other than through direct additional violence. In a High Court case from 2009,⁷⁴ the Court clarified that medical evidence is not superior to other forms of evidence. In this case, the appellant requested that the conviction for rape be quashed on the grounds that the judge ignored the medical report, which concluded that there were no signs of sexual violence. The High Court rejected the appeal. However, respondents suggest that courts still look for forensic evidence of force to convict, despite rape being defined based on lack of consent.
- In certain cases, the community may exert pressure on the victim, the perpetrator's family, or family members to settle the matter out of court. Acquiescence to such pressure may be motivated by hostile social attitudes, fear of retaliation, lack of financial resources, and lack of support from the justice system. In cases where victims are forced to settle out of court, their withdrawal from the legal system is normally treated as based on false allegations. This was the case in *PP v. Shumbusho Alphonse*,⁷⁵ where the victim ended up sending a letter to the prosecutor noting that the act was consensual. There are also cases whereby the court dismissed the case because the victim was said to forgive the perpetrator. In some cases, perpetrators may offer victims a small amount of money for medical expenses. Once the victim has withdrawn the case, the prosecution drops the investigation and does not inquire further into the case or the real reasons for withdrawal.
- According to the Association of Rwanda Women Lawyers, which supports survivors of rape during the prosecution process, the main challenge is that rape cases are reported late. Combined with the investigation's overreliance on physical evidence, this leads to a failure of justice for victims/survivors.
- Marital rape is an issue in Rwanda. Rwanda has a GBV week and month every year, during which CSOs and police go to schools and marketplaces to raise awareness of the importance of reporting what happens at home. After these awareness-raising efforts, more cases of GBV (including sexual violence) are being reported, although there are not known to have been any prosecutions of marital rape yet.
- State actors have received training on the investigation and prosecution of rape cases, however, there is a lack of consistency and a reliance on non-governmental organizations to fund the trainings on investigation and prosecution of rape cases, so more specialized training is needed and must be sustained.

⁷⁴ *Rwanzegushira Jean Baptiste v. PP, R.P.A.* 62/09/HC/KIG, 8 May 2009.

⁷⁵ *PP v. Shumbusho Alphonse*, RP 0335/14/TGI/NYGE, 19 December 2014.

COUNTRY CONTEXT

In South Sudan, victims of rape and other forms of sexual and gender-based violence (GBV) face significant challenges in reporting crimes and seeking justice. The ongoing conflict, widespread insecurity, and deep-seated cultural norms create a hostile environment for survivors. Many are discouraged from reporting due to fear of stigma, retaliation, and a lack of trust in the legal system.

Customary law often plays a dominant role in rural areas, where local chiefs and elders resolve disputes according to traditional practices. This can lead to outcomes that prioritize community harmony over justice for the victim/survivor, sometimes resulting in forced marriages between the victim and the perpetrator or the payment of compensation to the victim's family instead of criminal prosecution.

South Sudan established a specialized GBV court in Juba in 2020, which is a positive step toward addressing rape. However, the court's effectiveness is limited by factors such as insufficient resources, lack of trained personnel, case backlog, parallel filing of cases in customary courts, and the overwhelming scale of the problem. Statistics from the Court show that women file 91% of cases. With only one such court in the entire country and a few statutory courts across the country, it is far from enough to meet the needs of survivors across South Sudan.

While the establishment of the GBV court is a good practice, its impact is currently constrained by the broader context of conflict and societal attitudes towards gender-based violence, and many victims/survivors of rape in South Sudan do not receive the protection and justice they deserve.

STATISTICS ON RAPE

A survey conducted among women aged 15-64 in three conflict-affected sites in South Sudan (Juba, Rumbek, and the Protection of Civilian Sites (PoCs) in Juba) between 2015 and 2016 revealed that approximately 35% of respondents had experienced rape, attempted rape, or other forms of sexual violence by a non-partner during their lifetime. The report by the UN Mission in South Sudan (UNMISS) documented 217 victims of rape, including gang rape committed by the Sudan People's Liberation Army (SPLA), the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO), and other armed groups during and after the fighting between 8 and 25 July 2016.⁷⁶

A 2017 survey by the International Rescue Committee and Global Women's Institute found that 65% of women interviewed from three locations in South Sudan experienced physical or sexual violence in their lifetime.⁷⁷ The report by the United Nations Human Rights Office and the UN Mission in South Sudan (UNMISS) recorded 175 cases alone between September and December 2018,⁷⁸ mainly rapes lasting hours by multiple uniformed and armed men. Another joint report released by the UN human rights body (OHCHR) and UNMISS stated that more than 134 women had been subjected to sexual violence by the government army and allied forces in the Unity region from September to December 2018.⁷⁹ According to the Health authorities in South Sudan, approximately 330 cases of rape and other issues related to GBV were responded to in 2021.⁸⁰

A study conducted by UNFPA and the Sudd Institute in 2023 shows that the prevalence of sexual and physical violence among married women aged 15-49 is rising, at 49.6%, while substantial proportions of women aged 15-64 in South Sudan experience GBV either in the form of physical (34.0%) or sexual (13.5%) violence in their lifetime.⁸¹ According to UNOCHA's 2024 Humanitarian Needs and Response Plan for South Sudan, 2.5 million people are at risk of experiencing GBV-related challenges in 2024, indicating an urgency for interventions focusing on GBV prevention, risk mitigation, and response services in priority areas across the country.⁸²

76 [UN News Service, 2017: Killings, rapes in South Sudan continued 'unabated' after July 2016 violence.](#)

77 [UN 'Africa Renewal' magazine, 2023: One-stop care centre helps women amid South Sudan's epidemic of violence.](#)

78 [Reuters, 2019: Rape still endemic in South Sudan's Unity state despite peace.](#)

79 [Sudan Tribune, 2019: UN report confirms rape cases in South Sudan's Unity.](#)

80 [Anadolu Agency \(AA\), 2022: South Sudan reports over 300 cases of gender-based violence in 2021.](#)

81 [UNFPA South Sudan, 2023: South Sudan ranks second in GBV prevalence rate in East Africa – a new study indicates.](#)

82 [UNOCHA, 2024: South Sudan: "Living as a woman is a fight we go through daily."](#)



APPLICABLE NATIONAL LAWS

South Sudan has several provisions in its national legislation to address sexual violence against women and girls in compliance with its international obligations. According to Section 247 of the South Sudan Penal Code Act, 2008: “Whoever has sexual intercourse or carnal intercourse with another person, against his or her will or without his or her consent, commits the offense of rape, and upon conviction, shall be sentenced to imprisonment for a term not exceeding fourteen years and may also be liable to a fine.”⁸³ The Penal Code Act cites 18 years as the age of consent and it prohibits incest.⁸⁴ However, it does not recognize marital rape as a form of rape. On the contrary, the Penal Code Act stipulates that “sexual intercourse by a married couple is not rape, within the meaning of this section.”⁸⁵

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- The penal code of South Sudan expressly excludes rape in marriage as a crime.
- Children continue to experience sexual abuse in their homes and in their communities, as well as sexual violence perpetrated by military and humanitarian actors and by government officials providing public services.
- Missions undertaken by the United Nations Commission on Human Rights in South Sudan to Western Equatoria and Unity States reported that there are no formal courts to deal with serious crimes like murder and rape, only customary courts.⁸⁶ Although customary courts are subordinate and answerable to statutory courts, they are more closely linked with the executive branch than to the judiciary as they are established and regulated by the Local Government Act and are administered by the local governments at the county level. This undermines the capacity of the formal courts to monitor and supervise the judicial functions of the customary courts, including the handling of rape cases by customary courts.⁸⁷
- Customary laws are not aligned with international human rights instruments and the constitutional or statutory law provisions on fundamental rights and the rights of women and girls. Customary laws affect justice for rape because there are cases where courts adjudicate contrary to the provisions of the Penal Code in favor of customary laws. In some instances, perpetrators of rape have been allowed to settle cases through traditional practices, such as paying a bride price to the victim’s family to force or coerce survivors of rape into marrying their perpetrators rather than facing criminal prosecution.⁸⁸
- It is difficult to ascertain the age of the rape survivor. The ages of the girls are not normally known by many people who are outside the family, and this is because of the lack of a birth registration system in certain parts of the country.

83 Penal Code Act 2008, section 247(1).

84 Penal Code Act 2008, section 268(3).

85 Penal Code Act 2008, section 247(3).

86 [Human Rights Council, State of Impunity: the persistence of violence and human rights violations in South Sudan - Detailed findings of the Commission on Human Rights in South Sudan \(2023\) A/HRC/52/CRP.3](#)

87 [An Overview of the Legal System of South Sudan, Hauser, Global Law School Program, 2018](#)

88 For instance, in *GoSS v Sebit Majak*, the Supreme Court decided that the consent of a woman or a girl is implied through her behavior, despite the victim being below the age of consent. In *GoSS v Makuere Marek*, the accused was convicted under section 247 of the penal code and sentenced to ten years for having had sex with the 16-year-old victim that resulted in impregnation. While the High Court in Rumbek sentenced him under the said section for having sexual intercourse with a girl aged below 18 years, the Supreme Court overturned the judgement on the ground that there is no offence of rape for sex between adolescents in the Dinka customs ‘if the girl had sexual intercourse with the accused with her will and full consent even if she is below eighteen years’. In his dissenting opinion, Stephen Simon, SCJ, concurred with the conviction of the High Court of Rumbek, arguing that once such the consent come from a girl who is below the age of eighteen, it is an act of rape. The Supreme Court, in the case of *Government of South Sudan vs Thon Marier Bouc*, held that the elements of rape such as the consent of a girl to sexual intercourse with a man, or her age, are not considered in cases of pregnancy of the girl. In this case, the girl was 16 years old. In this case, the Supreme Court clearly disregarded the statutory provision on rape of a girl below the age of 18 years, just because she was already pregnant and hence her consent and age were considered immaterial under the circumstances.

- In 2020, South Sudan's government, in partnership with UN agencies, set up the first special court to handle GBV cases. However, the newly established GBV court is only in Juba and still in its budding stages, and there is a need for trained judicial officers and prosecutors who will be using survivor-friendly approaches to enforcing the law. Cases are prosecuted in open court with no *in camera* hearings to shield or protect complainants. Judges tend to still be imbued with patriarchal attitudes which affect just outcomes. There is no witness protection, discouraging many victims/survivors from testifying or continuing with hearings.
- Local NGO actors also report out of court settlements during reporting of rape cases unless the victim is assisted by a lawyer or NGO staff.
- The conflict has also made it difficult to follow up on rape cases because of the insecurity situation. For instance, NGOs have not taken up cases for fear of their own security, especially where the alleged perpetrator is a security or military personnel, as was the case where an army official was alleged to have raped two sisters. In such cases, the police will collaborate in arresting the perpetrators but leave them at the police station to negotiate a settlement with the victim, supporting such negotiations and then getting a financial share of the agreed sum. In many cases, the "settlement" would entail the perpetrator ultimately marrying the victim.
- The law does not include close-in-age provisions (Romeo and Juliet clauses) that provide clarity in sexual relations between consenting minor peers, which could be used to avoid the punishment for rape of truly consenting teenagers.⁸⁹

ACHOL'S STORY

South Sudan



My name is Achol. I am 39 years old. I have three children aged 23, 20, and 10. Currently, I live with my 10-year-old child. I work in the quarry for a living, where I enjoy having conversations with my colleagues. We enjoy listening to and encouraging one another. I have never attended formal education. I was married, but I am currently divorced.

In my community, violence against women and girls is widespread; there are many cases of rape among women and girls, and perpetrators are not held accountable. Forced and early marriages are also rampant, where parents and relatives marry off young girls. Physical violence remains prevalent among married couples.

My parents passed away when I was very young, and when I was 15 years old, I was forced into marriage by my uncles. At 16 years old, I gave birth to my first child. While I was married, three unknown gunmen attacked and gang-raped me when I had gone to tend to the farm.

When I got home and informed my husband, he accused me of plotting the incident with those men. I did not know them and could not even recognize their faces. I reported the case to the police, but the police were unable to do anything because the perpetrators could not be identified, and tracing them was hard. I just had to drop the case.

I sought medical assistance after these men raped me. However, I felt that the medical assistance that I received was insufficient because I was in a lot of pain for a long period. The medical staff should have given me medicine to prevent me from conceiving.

I now have a last-born child as a result of rape, whose father I do not know. As a result, my husband divorced me, and I am suffering alone with this child, who is now ten years old.

⁸⁹ In the case of *GoSS v Mageth Makoi*, the accused was tried and convicted by the High Court in Rumbek in 2010 contrary to section 247 of the offence of rape under the Penal Code Act, 2008. Although both accused and the victim were below the age of 18, he was sentenced to reformatory for five years. The case was then appealed and the Supreme Court quashed the conviction on the basis that, under Dinka customary law, sex between teenagers is not a crime; however, the court failed to provide guidance whether this was a truly Romeo and Juliet case.

COUNTRY CONTEXT

Sexual violence against women and girls is widespread in Sierra Leone.⁹⁰ On 19 February 2019, the government declared a State of Public Emergency^{91,92} with respect to rape and sexual violence prior to the passage of the Sexual Offences (Amendment) Act. The amendment increased the penalties for rape from 15 years to life imprisonment and also led to the creation of specialized model sexual offenses high court divisions dedicated to adjudication of sexual offenses.

The sexual offenses model courts are sensitive to victims' needs. Their hearings are held in camera, which offers privacy. Assistance to victims is offered by Rainbow Centers, the Family Support Units (FSU) which usually operate in the same area to reduce re-victimisation and re-traumatisation. Rainbow Centers are situated in hospitals and offer free medical treatment and free medical reports. In areas where there is a Rainbow Center, victims report their cases either to the Rainbow Center or to the police. The police issue a document that victims take to the medical practitioners for medical reports. When the police have made their preliminary investigation, they will send the case to the court. Other victims can directly go to the hospital. The FSU and Rainbow Centres have counselors who assist victims of sexual violence.

APPLICABLE NATIONAL LAWS

The law applicable to rape in Sierra Leone is the Sexual Offences Act, which was amended in 2019. The 2019 amendments brought in stricter penalties for rape and other forms of sexual assault. Rape sentences were increased to a minimum of 15 years or life if it involved a child. The law conforms with international standards on laws on violence against women in that it provides a consent-based definition of rape.

Section 6 of the Sexual Offences Act (2012) provides that: "A person who intentionally commits an act of sexual penetration with another person without the consent of that other person commits the offense of rape." The Act defines "sexual penetration" as any act which causes the penetration to any extent of the vagina, anus, or mouth of a person by the penis or any other part of the body of another person, or by an object. The law also covers incest and marital rape (sections 5 and 6 of the Sexual Offences Act).

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

According to the findings of the in-depth study, FSU's financing is very low. The officers sometimes fail to make arrests when called, claiming a lack of fuel and vehicles to transport them and investigate the scene of crime. The newly created model sexual offenses court is only available in the districts of Freetown, Kenema, Makeni, and Bo City. It has yet to be replicated in other parts of the country.

STATISTICS ON RAPE

Rape and other forms of sexual assaults were at an all-time high in 2018,⁹³ prompting the President of Sierra Leone to declare rape a national emergency following the rape of a five-year-old girl, which led to her permanent disability. After the declaration of a state of emergency on rape and the diversion of state resources to address the menace, including amending the Sexual Offences Act in 2019, there appears to have been some progress: the national police Family Support Unit (FSU) reported that sexual offenses went down by almost 17%, from just over 12,000 in 2018 to just over 10,000 in 2023, according to police statistics.⁹⁴

90 According to police statistics, reported cases of sexual and gender-based violence nearly doubled in 2018 to over 8,500, a third of which involved a minor.

91 [CGTN Africa, 2023: Rape declared national emergency in Sierra Leone.](#)

92 With this declaration, the President issued a few directions to improve access to legal services and information. For instance, all government hospitals were instructed to provide every victim of rape and sexual abuse with free medical treatment and a medical certificate for use in court as medical evidence of rape.

93 [Al Jazeera, 2019: Sierra Leone's president declares rape a national emergency](#)

94 [BBC, 2024: Sierra Leone sexual violence: What difference did the national emergency make?](#)

MARIAMA'S STORY

Sierra Leone



My name is Mariama. I am 15 years old and live in a village in Bo with my father, who is a pastor, and my mother, who is a teacher. We live with my four other siblings. I go to school, and my favorite subject is Agriculture. I like to play stone-ball with my friends and dream of becoming a nurse.

I live in a community where girls face numerous challenges, including sicknesses like malaria, and are at risk of being subjected to several forms of abuse like sexual abuse. Sadly, I am a victim.

When I was 14, one of our neighbors asked me to help him fetch water, and I agreed to help. He asked me to take the water into his room. The man followed me into the room, closed the door, and sexually abused me.

After the incident, I reported the matter to my parents, who took me to the police station several kilometers from Bo town to record a statement. I was issued a medical examination request to take to the Rainbow Center. At the Rainbow Center, I received a medical examination and medication. However, I wished more examinations like lab tests had been done at that time because a month later, I found out that I had gotten pregnant as a result of the abuse.

After getting the medical statement from the Rainbow Center, the perpetrator was arrested after two days. However, I am unhappy with how my case was handled at the police station. The police asked for money, including for the perpetrator's arrest, which was challenging for my parents as they are poor. It was only with the intervention of the Defence for Children International - Sierra Leone (DCI) organization that the case proceeded. The case took over one month at the Family Support Unit before it moved to court.

When the case moved to court, I had a lawyer appointed by the State through the Director of Public Prosecutions to represent me. He was available throughout; however, I was uncomfortable with the questioning in court. Having to recount the incident over and over again made me uneasy. It was hard, especially when the perpetrator's lawyer was cross-examining me.

Even though judgment on the case has not been issued, the perpetrator remains in prison. While I received support from my parents, I got a lot of backlash and stigma from the family of the perpetrator, who accused me of lying and trying to pin another man's pregnancy on him by accusing him of rape. While most people believed my story in the community, others still supported the perpetrator and his family.*

I received a medical examination and counseling from the Rainbow Center during the trial period at the initial stages. Later on and throughout the trial and stages of the pregnancy, I received legal education and counseling from DCI.

I do not believe that the government is doing enough to protect girls. I believe there should be a police station in every community so that we do not have to travel to bigger towns to report. The lack of access to police stations makes it difficult for people to report.

**The judgment has now been issued, and the perpetrator was sentenced to 15 years' imprisonment.*

“Sexual violence against women and girls is widespread in Sierra Leone.”

COUNTRY CONTEXT

The rate of sexual violence is high in South Africa. South Africa also carries the heavy burden of the culture of violence that was used on the population until as recently as 1994, when apartheid formally came to an end.⁹⁵ South Africa has also seen many cases of ‘corrective rape’ (rape of lesbian women in an abusive so-called attempt to get them to ‘convert’ to heterosexuality).⁹⁶ This is the case even though South Africa was one of the first African countries to de-criminalize same-sex relationships and provide for same-sex civil unions.

STATISTICS ON RAPE

Official records from 2022 estimate at least 66 rapes take place per day. The actual rate of sexual violence incidents against women and girls is understood to be higher than the official estimates.⁹⁷ Conviction rates in rape cases are very low, and attrition poses a challenge to access to justice for women and girls seeking justice for rape in South Africa. For instance, between July and September 2022, over 10,000 rape cases were opened with the South African Police Service.⁹⁸ Only 410 rapists were traced and arrested during this period, with 68 being sentenced to life imprisonment.

APPLICABLE NATIONAL LAWS

Laws and policies on the prevention of sexual violence in South Africa are anchored in the Constitution of South Africa,⁹⁹ which guarantees an individual’s right to be free from all forms of violence from public and private sources. South Africa also has an obligation to protect women and girls from all forms of sexual violence under international human rights standards and the African human rights system that includes, respectively, CEDAW and the Maputo Protocol.

A robust legislative, regulatory, and administrative framework supports the implementation of South Africa’s laws and policies. The laws governing sexual offenses in South Africa are laid out in legislation and national policies, of which the Criminal Law (Sexual Offences and Related Matters) Act of 2007 is the main piece of legislation. It lays out criminal offenses of a sexual nature and defines rape in broad terms. The law was amended in November 2022 to extend the crime of incest to specify sexual penetration and the instance where one of the parties was a child, introduce the crime of sexual intimidation and expand the scope of the National Sexual Offenders Register to include persons convicted of sexual assault of all vulnerable persons (not limited to children and persons with disabilities).

The case of the *Teddy Bear Clinic for Abused Children*¹⁰⁰ declared unconstitutional the sections of the Sexual Offences Act, which criminalized consensual sex between adolescents under the age of 16, making it applicable only if the age gap between the adolescents is larger than two years. This is in line with the UNCRC General comment No. 20 (2016) on the implementation of the rights of the child during adolescence,¹⁰¹ which urges States to “avoid criminalizing adolescents of similar ages for factually consensual and non-exploitative sexual activity.”

In 2020, the government adopted a National Strategic Plan Against Gender-Based Violence and Femicide 2020-2030, which is a tool to guide programming on responding to gender-based violence (including rape and other sexual assault) in the country.¹⁰² This plan uses pillars that include prevention and rebuilding social cohesion, justice, safety and protection, response, care support and healing, economic power and research, and information management.

In 2021, the President signed into law the Prescription in Civil and Criminal Matters (sexual offenses) Amendment Act, which, among other things, expands the list of sexual offenses whose prosecution can be instituted even after 20 years has lapsed.

95 M Anderson ‘Rape in South Africa’ (2000), Georgetown Journal of Gender and the Law 789-821.

96 [University of Leiden Law Blog \(2019\), Curing ‘corrective’ rape: Conceptualising a dual-pronged approach to sexual violence against Black lesbians in South Africa](#)

97 The South African Police Service (SAP) releases periodic reports of crimes committed in the country, classified according to type, and these reports includes statistics on rape and other sexual violence incidents.

98 [South African Government News Agency, 2022: Crime against women remains “worryingly high” - Cele](#)

99 Section 12(1)(c).

100 *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* 2014 (2) SA 168 (CC).

101 CRC/C/GC/20, December 6, 2016, paras. 39-40.

102 [Republic of South Africa: National Strategic Plan On Gender-Based Violence and Femicide \(2020\)](#)



GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- In the case of *M v S* [2019]¹⁰³ (an 11-year-old raped by her father), the High Court of South Africa set out principles that could aid the administration of justice, especially in cases related to the rape of minors. In doing so, it set down standards related to court attendance, postponement, and the need to expand legal aid support to accommodate social services, medical and transport support, etc., to prevent the secondary victimization or traumatization of minor rape survivors seeking justice. This study has revealed that sexual crime courts and one stop centers are operational, and they do provide most of the services that are outlined in the case above (transport, medical and psychosocial support, and, at times, shelter).
- A serious backlog of cases and insufficient funding for the justice delivery system affect sexual violence cases. In May 2022, the Minister of Justice announced that only 19% of reported cases were going through the courts.¹⁰⁴ In one of the courts in Parow, it was reported that the backlog was due to a constant breakdown of recording equipment, which was seldom repaired.¹⁰⁵

*“Official records from 2022 estimate at least **66** rapes take place per day.”*

¹⁰³ [M v S \(A343/2018\) \[2019\] ZAWCHC 101; \[2019\] 4 All SA 110 \(WCC\); 2020 \(1\) SACR 241 \(WCC\) \(14 May 2019\)](#)

¹⁰⁴ [Statement issued by DAWN Limpopo Chairperson, 2022: Limpopo DAWN wants answers on provincial sexual offences backlog in courts](#)

¹⁰⁵ [Ground Up, 2022: Massive backlog at sexual offences court because of broken recording machines.](#)

CHRISCY'S STORY

South Africa



Chriscy Blouws is an attorney at the Women's Legal Centre, an African Feminist Law Centre based in Cape Town, South Africa.

Historically, South Africa had a legal cautionary rule that treated women's reports of sexual violence with suspicion. While this rule has been removed from the legal system, its remnants still linger on in the attitudes of our police service, prosecuting authority, the judiciary, and other legal stakeholders.

There is a persisting patriarchal perception of women and their bodies, which often portrays them as malicious, untrustworthy, or prone to falsehoods. This could be seen as one of the contributing factors for high attrition rates, low conviction rates, and cases in general that defy what women have deemed to be consent or not consent.

In the criminal justice system, once a rape charge is successfully filed with the police service, it moves to the prosecution authority. The survivor is not a party to the legal proceedings. They are merely brought in as a witness, even though the rape happened to them.

Based on the available evidence, the prosecution authority focuses on cases which have higher chances of success. As a result, the cases that go to trial are notably fewer than those initially reported. Because only a certain percentage of cases are prosecuted, the reported conviction rates sometimes appear higher than they truly are.

In addition women must navigate a legal system where only the cases with substantial evidence to prove the occurrence of rape are given consideration. However, this scenario does not align with the actual experiences of most women. When rape or sexual offenses occur in private settings, such as one's home, providing conclusive proof becomes extremely difficult.

Furthermore, survivors of rape may experience intense trauma when initially reporting the assault. They might struggle to share all the details of the incident at once. Later, as new information surfaces, their statements might change, leading to the perception that they are inconsistent. Unfortunately, the emotional and psychological impact on survivors is frequently overlooked.

I can give you a specific example of a woman we've assisted requesting reasons for the lack of prosecution. A pastor in her church raped her. She mustered the courage to report the crime to the police. However, during the reporting process, she emotionally broke down. The police official asked her to return later to file the complaint, citing that she was too distressed to give a clear statement at the time.

A few months later, a different officer was assigned to record her statement. Unfortunately, he informed her that her account did not fit the definition of rape. She again had to recount her experience to a different officer. Ultimately, the prosecuting authority decided that her case would not proceed to prosecution.

It is so evident in this instance that even the officials tasked with aiding women in such situations demonstrated a lack of clarity regarding the definition of rape. Currently, our organization assists her and many other women in similar situations to obtain the rationale behind the non-prosecution of their cases. The most recent annual statistics indicate a conviction rate of 6.3% for reported cases, which is a meager figure.

Our work advocates for legal changes mandating that the police and prosecution automatically provide detailed explanations to women when a case is discontinued and/or won't proceed to trial. This transparency is crucial in addressing our questions about the reasons behind high attrition rate in sexual violence cases in South Africa. Furthermore, empowering survivors with knowledge about their rights, legal mechanisms, and the reasoning behind case outcomes facilitates a more effective engagement with the criminal justice system. Ultimately, we seek to create feminist jurisprudence that recognises the intersectional and lived experiences of women who experience sexual violence in South Africa.

COUNTRY CONTEXT

Through its Ministry of Women, the Family, Gender and Child Protection, the Senegal government has made efforts to establish “law shops” providing judicial, legal, and psycho-social services to GBV victims and strengthening the capacity of actors in the judicial chain, including by translating the criminal code into 14 local languages. However, the text of the criminal code concerning rape itself still falls short of international and regional standards, as highlighted below.

STATISTICS ON RAPE

According to the UN Women Global Database on Violence Against Women, Senegal has a prevalence of 21.5% for lifetime physical and sexual intimate partner violence and 12.2% for physical and sexual intimate partner violence in 2021. The prevalence of child marriage stood at 30.5%.

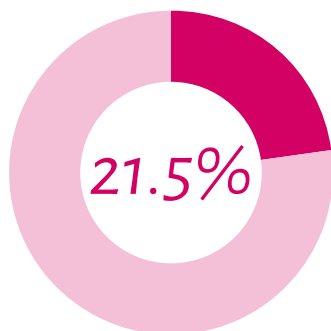
APPLICABLE NATIONAL LAWS

Article 320 of Law No. 2020-05 of 10 January 2020, modifying Law no 65-60 of 21 July 1965 of the Penal Code, provides that “any act of sexual penetration, of whatever nature, committed on another person by violence, coercion, threat or surprise is rape.” It provides a punishment of 10 years to life imprisonment. The family code allows the marriage of girls at 16 years old and since there is no provision under the law for a minimum age for sexual consent, courts have interpreted 16 years to be the age of consent.

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- One of the key issues in applying the Senegalese law on rape is the lack of definition of what amounts to “sexual penetration.” While the law refers to penetration of whatever nature, various cases have interpreted various acts of sexual penetration differently. For instance, in one case, the Dakar Regional court held that forcibly inserting one’s finger into the genital organ of another person is rape, and the accused was sentenced to 10 years in prison. In other cases, judges consider penetration as the act of inserting a penis into a vagina only.¹⁰⁶
- Senegalese legislation does not specifically stipulate a minimum age for sexual consent. However, in practice, courts have interpreted 16 years to be the age of consent.

“Senegal has a prevalence of 21.5% for lifetime physical and sexual intimate partner violence.”



106 RPA 05 of 7 January 2020, page 6.



COUNTRY CONTEXT

The long-standing conflict in the DRC has enabled high levels of impunity for crimes, with weak implementation of laws in the country, including on rape. Acts of sexual violence are rooted in a culture of silence and “honor” for the family. Despite the law denouncing rape, this culture of victim shaming means that complainants are reluctant to come forward to lodge a case or provide evidence for such cases, including for marital rape.

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

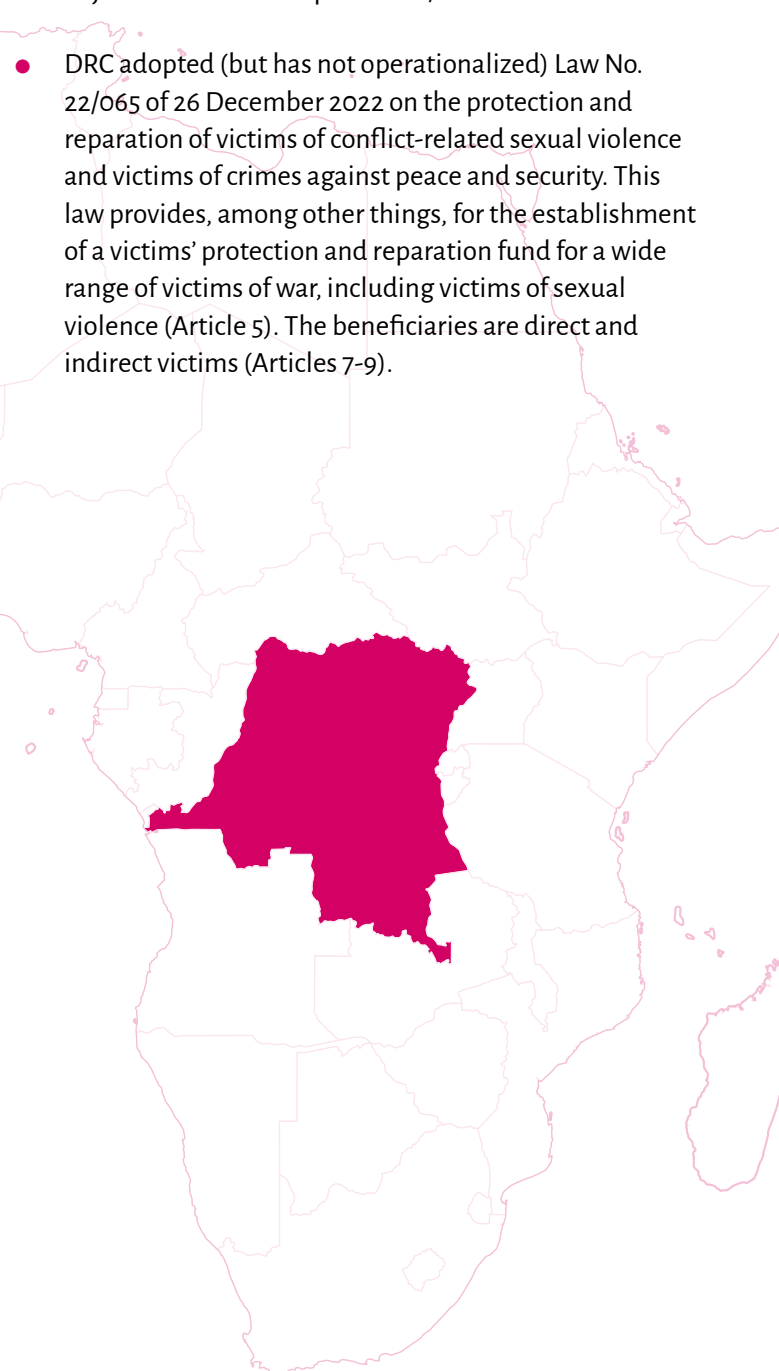
- Civil society activists working with survivors of sexual violence have said that cases take longer in the legal process because of under-resourcing both in terms of personnel and court infrastructure. Whether in conflict zones or peaceful areas, the percentage of cases in which these time limits are respected is far lower than the number of rape cases that the courts handle. Most rape proceedings exceed the time limit set by law, many of them stretching out over years. This poses an access to justice barrier for rape victims/survivors.
- DRC adopted (but has not operationalized) Law No. 22/065 of 26 December 2022 on the protection and reparation of victims of conflict-related sexual violence and victims of crimes against peace and security. This law provides, among other things, for the establishment of a victims’ protection and reparation fund for a wide range of victims of war, including victims of sexual violence (Article 5). The beneficiaries are direct and indirect victims (Articles 7-9).

STATISTICS ON RAPE

Conflict has been raging in the DRC since 1996. Comprehensive statistics on rape in the DRC have been difficult to collate, although widespread anecdotal evidence has been collected on atrocities. According to available statistics from 2011, about 48 women were raped every hour,¹⁰⁷ with 12% of women having been raped at least once and 3% of women across the country being raped between 2006 and 2007. About 22% had also been forced by their partners to have sex or to perform sexual acts against their will. The study also revealed very high levels of sexual abuse in the capital, Kinshasa. The highest levels of rape were found in North Kivu, an eastern province ravaged by conflict, where nearly 7% of women were raped at least once between 2006 and 2007. Over the past 15 years, civilians have been drawn into the conflict, which has been driven by a weak government and rich mineral resources, often in remote, forest-covered areas. The UN has called the country the center of rape as a weapon of war. Commentators have also described Congo DRC as the worst place on earth to be a woman.

APPLICABLE NATIONAL LAWS

DRC has a comprehensive law (No. 06/018 of 20 July 2006) that criminalizes offenses of sexual violence. This law describes rape as an act of penetration of a sexual nature by use of threats, force, or coercion (psychological pressure), directly or through an intermediary, and covers all forms of penetration of a sexual nature.



¹⁰⁷ [The Guardian, 2011: Forty-eight women raped every hour in Congo, study finds.](#)

COUNTRY CONTEXT

In recent years, Cameroon has been grappling with attacks by Boko Haram in the Far North and a secessionist insurgency in the Anglophone regions. Since September 2017, more than one million people have been displaced internally, and around 470,000 refugees have sought shelter in the country.¹⁰⁸ Judicial institutions have faced numerous challenges, including political interference, corruption, and inadequate resources, all of which have eroded public trust and made it challenging to hold perpetrators of abuses accountable.¹⁰⁹

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- A narrow definition of rape is a problem in Cameroon: rape is defined as when a person compels a woman or girl to have sexual intercourse with him by force. The Cameroonian law refers to physical force or moral violence, with moral violence referring to coercion as an element in the definition of the crime of rape. Further, commentators suggest that sexual intercourse is taken to mean “penetration of the penis into the vagina of the woman,” so it is interpreted not to include unwanted penetration of a sexual nature of the mouth with a penis or of the vagina or anus using objects or other body parts.
- Conflict in Cameroon has led to the inaccessibility of courts and limited access to legal aid. For instance, in the war zones of the northwest region of Cameroon, courts are closed. It has been noted that lawlessness in the conflict-hit north-west and south-west regions has led to a lot of sexual violence taking place, both from the separatist fighters and the military, especially in rural areas where there is less control from superior officers. Cases involving gang rape perpetrated by non-state armed groups and regular forces, as well as rape involving state agents, high-level government officials, and non-state actors, are especially prevalent. Consequently, if a sexual offense is committed in these areas with no courts operating, perpetrators enjoy impunity, and the victims are not able to access justice. In limited cases, courageous survivors have had to travel long distances to file complaints in urban areas such as Bamenda, but they typically lack the finances to follow up on complaints. Therefore survivors are generally able to participate in the process only at the beginning of the investigation (at the police level) but rarely have the resources to follow a trial through to the end, even if a proper investigation and evidence gathering were possible.
- In the cases studied, the courts often considered a medical certificate as the starting point of proving rape unless the accused admitted to the offense. This is very difficult to obtain in a country where there is a lack of legal/medical units in some areas.

STATISTICS ON RAPE

According to the UN Women global database on violence against women,¹¹⁰ Cameroon has a prevalence of 37.3% for lifetime physical and/or sexual intimate partner violence. In 2021 it had a prevalence of 21.5% for physical and/or sexual intimate partner violence and a prevalence of 29.8% for child marriage.

APPLICABLE NATIONAL LAWS

Law No. 2016/007 of 12 July 2016 of the Penal Code provides that whoever, using physical or moral violence, forces a person, including adolescents, to have sexual relations with him is punishable with five to ten years of imprisonment. Forced and early marriages are also criminalized. Article 356 of the Penal Code punishes parents who marry off their children before the age of 18. The age of consent to sex is 16 years, while the age of marriage is set at 18 years.

¹⁰⁸ [World Bank, Cameroon overview \(2022\)](#).

¹⁰⁹ [AfricLaw, 2023: Judicial Independence and Transitional Justice in Cameroon: A Pathway to Sustainable Peace in the ongoing Anglophone Crisis](#).

¹¹⁰ [UN Women Data Hub, Country Fact Sheet \(Cameroon\)](#).

ADEBI'S STORY

Cameroon



My name is Adeb, I am 17 years old, and I come from the Northwest Region of Cameroon. War broke out one evening in 2019 when I was with my parents and siblings at our house. Some men broke in, and raped me and my junior sisters. After that, they took my father away, and it took several days before he came back.

After the incident, we found ourselves in hospital because we had been brutally beaten. We received medical treatment at the hospital. The doctors took care of us and also advised us on what to do so as to reduce the traumatic experience.

My mum passed on because of the torture we went through as a result of the attack. Because of this, we had to leave the village to come to Badante to see if we could find a place to calm down and restart our lives again from where we left off.

At the moment, my father works as a builder, and he is the breadwinner. He has been struggling to see how we can have a brighter future, as it is hard and challenging for him as he has to fend for the family by himself, having lost our mother.

It has been a tough and difficult journey for my siblings, who not only witnessed violence but were also subjected to sexual violence. As a result, they live with anxiety and depression. Every time something or somebody hurts them, they feel bad, as though it happened yesterday.

At the time of the incident, my siblings and I were students in secondary school. We had to stop going to school due to the challenging financial situation, as we now depend on my father's little income for our livelihood. I hope that one day, I can continue with school again. Getting a chance to continue with my education is something that I continue to dream I can secure again. At the moment, I am studying computer studies, which is not part of the mainstream school curriculum, but my siblings are not in school.

As young women and girls growing up, the government needs to watch over us and ensure that such circumstances do not happen because when it happens to anyone, it is a lifetime challenge that causes pain every moment and is difficult to overcome. If they can give any form of support to any women who have gone through such experiences, it will forever be appreciated.

COUNTRY CONTEXT

Zambia has established One Stop Centers, whose purpose is to attend to survivors of sexual violence by providing comprehensive medical and psychological support services and lodge criminal cases. However, the one stop centers are not fully functional due to financial and technical resource constraints. The country has also established GBV fast-track courts to deal with such cases with expediency. The GBV courts are sparse, and the police, prosecutors, and judicial officers have capacity gaps in handling SGBV cases. Unfortunately, survivors are often requested to pay for copies of the Police Medical Examination Report Form for GBV cases, especially sexual offenses (ZP Form 32B), due to inadequate resources. This barrier may discourage survivors from reporting cases and hence not access justice. The Criminal Procedure Code in Zambia gives power to a trial judge in a criminal court to order the convicted person to pay compensation for personal injury to the complainant. Similarly, civil damages can be claimed in the civil court. The Anti-Gender-Based Violence Fund, established under part VI of the Anti-Gender-Based Violence Act, is yet to be fully operationalized and resources allocated.

APPLICABLE NATIONAL LAWS

Sexual offenses are found under Chapter XV of the Penal Code Act as ‘Crimes against Morality’. In section 132, rape is defined as follows: “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, is guilty of the felony termed ‘rape.’”

In other sections of the law, protection is provided for various types of victims, for instance, people with intellectual disabilities, with an additional penalty of a 14-year prison term in such cases.¹¹¹ The Penal Code does not cover marital rape explicitly; however, sexual abuse towards the spouse is covered by the Anti-Gender Based Violence Act No. 1 of 2011.¹¹² The crime of incest is provided for in sections 159 and 161 of the Penal Code Act.

The crime of rape is considered a felony in Zambia and is punishable by up to life imprisonment. The same applies to attempted rape. The felony of defilement, which is unlawful sexual intercourse with a child under 16 years, is similarly punishable by up to life imprisonment, while attempted defilement is punishable by imprisonment of up to 14 years. The highest sentence meted out to date was in 2007, when the court sentenced two men to 35 years’ imprisonment for raping minors.

GAPS IN THE IMPLEMENTATION OF LAWS ON SEXUAL VIOLENCE

- While the definition of rape is consent-based, lack of clarity of the term “carnal knowledge” makes it unclear whether, under the law, this offense covers penetration of a sexual nature of the vagina, anus, and mouth and includes by means of objects or any body part. Housing it under “Crimes against Morality” in the Penal Code undermines the strong principle of consent as set out in the law.

STATISTICS ON RAPE

According to the UN Women global database on violence against women, Zambia has a prevalence of 42.2% for lifetime physical and/or sexual intimate partner violence and a prevalence of 25.3% for physical and/or sexual intimate partner violence (based on 2022 data). Child marriage is at 29%.

111 Section 138 and 139 of the Zambian Penal Code Act.

112 Section 3 of the Anti-Gender Violence Act of 2011 states that “sexual abuse” includes the engagement of another person in sexual contact, whether married or not, which includes sexual conduct that abuses, humiliates, or degrades the other person or otherwise violates another person’s sexual integrity; or sexual contact by a person aware of being infected with HIV or any other sexually transmitted infection with another person without that other person being given prior information of the infection.



RECOMMENDATIONS

Based on the findings from the desk-top reviews and in-depth country studies, the following recommendations were identified as much-needed actions that governments¹¹³ in Africa should implement to tackle the issue of ending sexual violence against women and girls.

¹¹³ While the recommendations are primarily addressed to governments, they can also be adopted for use by non-governmental organizations and agencies to develop rape legislation, ensure the implementation and enforcement of rape legislation and/or, provide related services to survivors and victims of rape.

1: Laws

Ensure the crime of rape meets international human rights standards by providing:

- A clear definition based on consent rather than force, with examples of circumstances where consent is not possible, such as when the victim is intoxicated or intimidated;
- That all forms of penetration of a sexual nature are included, however slight, and there is no hierarchy of punishment based on the form of penetration;
- That marital rape is criminalized;
- For the removal of all provisions that would allow impunity;
- For the removal of all provisions that require levels of evidence that are unfair or burdensome, such as a medical certificate indicating additional injury;
- Easily accessible fair compensation and other forms of reparation, such as physical and social rehabilitation of the victim/survivor;
- For the removal of all punishments that breach human rights, such as the death penalty or physical or chemical castration;
- For punishments that fit the severity of the crime, with sentences reflecting the seriousness and extent of the offense and taking into account any aggravating factors, and any mitigating circumstances permitted under the general law disallowed as contrary to international human rights standards and having the damaging effect of signaling that sexual violence (and violence against women) could be justified in some circumstances; and
- That close-in-age provisions are contained so that truly consenting teenagers in a non-exploitative or dependency situation are not punished.

2: Implementation

Ensure good implementation of the law, including by:

- Develop and regularly updating good standards for all personnel involved in the justice process, including medical personnel, with respect to the investigation, prosecution, and adjudication of sexual violence crimes that are victim-centered, gender-sensitive, suspect-focused, and context-led, free from rape myths and negative gendered stereotypes, and which ensure equality of treatment of all victims/survivors, including reasonable accommodations for people with disabilities;
- Ensure regular training on those standards for front-line law enforcement and their supervisors;
- Promote good collaboration between agencies for a joined-up, multi-sectoral approach;
- Improve funding for the criminal justice system, particularly the police and prosecutors;
- Investigate, prosecute, and adjudicate sexual violence cases in a timely way;
- Guide holistic collection of evidence, away from a singular focus on medical evidence, to build solid cases and address the high rate of cases declined for prosecution;
- Improve court infrastructure and processes, including witness/victim protection and safeguarding, especially with respect to children;
- Improve access to properly resourced medical and access to justice facilities;
- Collect comprehensive, freely accessible data that will inform improved responses to sexual violence;
- Set up a register of sex offenders;
- Ensure Government ratification, domestication, and accountability through timely state party reporting to and implementation of recommendations from relevant treaty bodies; and
- Strengthen oversight and accountability mechanisms for state parties to comply with international instruments they are party to.

3: Alignment of laws

Increase transparency and accountability with respect to sexual violence justice, including by:

- Clarify and uphold the primacy of constitutional provisions or statutory laws over customary laws;
- Set the age of 18 as the age for marriage without exception to prevent sexual exploitation and rape of children under the pretext of “marriage”;
- Punish those who arrange or facilitate impunity, for example, out-of-court settlements and child, early, and forced marriage;
- Punish perpetrators of reprisals against victims/survivors;
- Remove punishment for so-called false allegations, which are extremely rare and only serve to dissuade victims/survivors from coming forward for fear of biased treatment by the criminal justice system; and
- Not permitting any alternative dispute resolution or plea bargains that would effectively permit impunity.

4: Victim/survivor support

Enable victims/survivors to heal from their experience and better access the justice system should they choose to do so, including by:

- Increase service provision to victims/survivors;
- Increase criminal justice consultation with and support of expert civil society groups working in this area;
- Make reporting easier and more accessible, including by disseminating information widely and through a variety of platforms on what constitutes rape and by ensuring accessible formats for limited literacy groups and persons with disabilities on how to get help to access justice and relevant support services; and
- Develop and sustain the socio-economic empowerment of women to reduce their vulnerability and allow them to move away from actual or potentially dangerous relationships where they are susceptible to intimate partner violence, including rape.

5: Public awareness

Create an environment of respect for women’s rights generally and the unacceptability of violence against women and girls, including sexual violence, including by:

- Conduct publicly-funded awareness campaigns on sexual violence, including to dispel myths and negative stereotypes as well as harmful religious and cultural practices, and with respect to sex discrimination generally;
- Ensure the general public has information about referral pathways for sexual offenses, which information is also available to and accessible by people with disabilities, and increase community engagement to support justice; and
- Ensure schools adopt age-appropriate sex and relationship education programs to teach universal respect and the importance of consent in sexual relationships.

6: Sexual violence in conflict

Minimize conflict and prevent and address sexual violence in conflict, including by:

- Increase the representation and role of women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict;
- Take all measures to ensure the prosecution of crimes of sexual violence committed in situations of emergencies, conflict, and crisis in accordance with international criminal law;
- Collaborate with civil society to improve accountability for sexual violence in conflict or crisis, including through increased capacity to collect, document, and preserve evidence; and
- Ensure that all victims/survivors of rape in conflict or times of crisis are offered as much support and as many services as possible.

7: Access to justice for victims/survivors with disability

Ensure the law and the referral systems and mechanisms are disability sensitive and make adequate provisions for access to justice for survivors with disabilities:

- Provide adequate support for survivors with disabilities;
- Ensuring that both state and non-state actors provide survivor-centered services and
- Influence social and cultural patterns of individual conduct, with a view to reducing prejudice and discrimination against persons with disabilities.

APPENDICES

Appendix 1: List of African countries that have definitions of rape that need revisions to make them complete, clearer, and in compliance with regional and international human rights laws standards.

Country	Details of gap/issue
Cameroon	Rape is defined by Law no 2016/007 of 12 July 2016 on the Penal Code. Article 296 provides that: “Is punished by imprisonment from 5 to 10 years, whoever, using physical or moral violence, forces a person, including adolescents, to have sexual relations with him”. The law presupposes that the perpetrator uses physical or moral violence. Moral violence is not defined in the law.
Central African Republic	Article 87 of Law N°10.001 of 06 January 2010 on the Penal Code defines rape as “any act of sexual penetration, of whatever nature, committed against the person of another by violence, coercion, threat or surprise, is characterized as rape.” The penal code does not define the term “sexual penetration.”
Chad	The Penal Code, Law n°001/PR/2017 of 8 May 2017, Article 349 defines rape as “any act of sexual penetration of any kind, committed against the person of another by violence, coercion, threat or surprise.” The penal code does not define the term “sexual penetration.” It is unclear whether the definition covers unwanted sexual penetration of other orifices.
Congo (Brazzaville)	The Congo Brazzaville law (translated from French) refers to “sexual desires” instead of an act of “sexual penetration.”
Equatorial Guinea	The Criminal Code (translated from Spanish) in Article 429 provides that “rape is committed while having sex with a woman using force or intimidation, when the woman is deprived of reason or sense for any reason, or when she is under twelve years of age.” The definition mentions intimidation as opposed to coercive circumstances.
Eritrea	The Penal Code in article 307(1) provides for rape that “a person who commits a sexual assault against another person by any act that involves the penetration of the body of the person assaulted is guilty of rape, a Class 6 serious offense, punishable with a definite term of imprisonment of not less than 7 years and not more than 10 years.” The definition is not clear on rape by the use of objects or unwanted sexual penetrations such as anal and oral.
Ethiopia	The Ethiopian law omits rape by objects.
Gabon	Article 256, paragraph 1 of the Penal Code defines rape as “any act of sexual penetration, of whatever nature, committed on another person, with violence, coercion, threat, surprise or trickery, whatever the nature of the relationship between the aggressor and his victim, including whether they are married.” The Penal Code does not define the terms “sexual penetration.” The definition does not seem to cover penetration of other orifices or parts of the body.
The Gambia	The laws on rape in the Gambia do not cover oral rape but specifically refer to vaginal and anal unwanted sexual penetrations.
Ghana	The Ghana 1960 Criminal Code restricts rape to “carnal knowledge,” which leaves out rape by use of objects or other body parts and thus needs to be revised.

Guinea	Article 268 of Law no 2016/ 059/AN on the Penal Code (translated from French) defines rape as “an act of sexual penetration, of whatever nature, committed on another by violence, coercion or surprise, is rape.” This definition does not explain what amounts to “sexual penetration of whatever nature.”
Guinea-Bissau	Articles 133 and 134 of the Penal Code (translated from Portuguese) criminalize “copulation” (sexual penetration) and “significant sexual act” conducted through violence, serious threat, or any other form of coercion. Similar to Guinea, Guinea Bissau’s law does not define sexual penetration.
Kenya	The law covers vaginal and anal rape; oral rape is covered as a sexual assault.
Malawi	The Malawian law refers to “carnal knowledge.” This excludes other forms of unwanted penetration, such as anal and oral.
Mali	Article 226 of the penal code (translated from French) defines rape as “any act of sexual penetration, of whatever nature, committed against another person by violence, coercion, threat or surprise”. Same gap as above.
Mozambique	The Law in Mozambique refers to non-consensual sexual intercourse; this leaves out other forms of penetration, such as unwanted sexual penetration by use of objects.
Niger	Art. 283 of the Penal Code of Niger, 2003 (translated from French), as amended by Law no. 2008-18, provides that: “Any act of sexual penetration, of whatever nature, committed against the person of another by violence, coercion, threat or surprise is rape.” The penal code does not specify sexual penetration means.
Senegal	Article 320 of Law no 2020-05 of 10 January 2020, modifying Law no 65-60 of du 21 July 1965 on the Penal Code, provides that “any act of sexual penetration, of whatever nature, committed on the person of another by violence, coercion, threat or surprise is rape.” This law does not define what sexual penetration means.
Seychelles	Article 130 of the Penal Code states that any person who sexually assaults another is guilty of an offense. The Penal Code further elaborates that sexual assault includes an indecent assault, the non-accidental touching of the sexual organ of another, the non-accidental touching of another with one’s sexual organ, or the penetration of a body orifice of another for a sexual purpose. The Penal Code covers different forms of rape (such as sexual assaults), such as sexual organs and body orifice but it does not include unwanted sexual penetration by the use of objects.
South Sudan	Section 247 of the South Sudan Penal Code Act provides that ‘Whoever has sexual intercourse or carnal intercourse with another person, against his or her will or without his or her consent, commits the offense of rape...’ This excludes other forms of unwanted sexual penetration and covers sexual intercourse or carnal intercourse only.

<p>Tanzania</p>	<p>The Sexual Offences (Special Provisions) Act in Section 5(2) which repeals Section 130 of the Tanzania Penal Code criminalizes rape, though restricting it to sexual intercourse (vaginal) by stating that it is an offence for a man to have sexual intercourse with a girl or woman under the following circumstances: (a)not being his wife or being his wife who is separated from him without her consenting to it at the time of the sexual intercourse; (b)with her consent where the consent has been obtained by the use of force threats or intimidation or by putting her in fear of death or of hurt or while she is in unlawful detention; (c)with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication induced by any drugs, matter or thing, administered to her by the man or by some other person unless proved that there was prior consent between the two; (d)with her consent when the man knows that he is not her husband, and that her consent it given because she has been made to believe that he is another man to whom, she is, or believes herself to be, lawful married; (e)with or without her consent when she is under eighteen years of age, unless the woman is his wife who is fifteen or more years of age and is not separated from the man”.</p>
<p>Togo</p>	<p>Article 211 of Law N° 2015-10 of 24 November 2015 on the New Penal Code of Togo (translated from French) provides that “rape consists imposing by fraud, threat, coercion or violence, sexual relations or penetration on another person.” The penal code does not define the terms “sexual relations” or the terms “sexual penetration.”</p>
<p>Uganda</p>	<p>The Ugandan Penal Code Act of 1954 defines rape in section 123 by making reference to carnal knowledge/sexual intercourse, thus excluding other forms of penetration that may amount to rape. It also excludes coercive circumstances and focuses on threat, intimidation, force, and misrepresentations, as follows: “...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 impersonating her husband.”</p>
<p>Zambia</p>	<p>Sexual offenses in Zambia are covered under Chapter XV of the Penal Code Act, which refers to “carnal knowledge” This excludes unwanted sexual penetration of the anus or mouth, which would also constitute rape under international human rights law.</p>
<p>Zimbabwe</p>	<p>This law covers vaginal and anal rape; it leaves out oral rape and rape by use of objects.</p>

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