
- RAPE IN THE GHANAIAN LEGAL SYSTEM -

- CALL FOR REFORM -

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Whilst this research paper is done under the supervision of Public Education Officer for the Commission on Human Rights and Administrative Justice, Mr. Ebenezer Aggrey, on the 24th November 2009, the Commission does not necessarily hold the same views.

“The Dignity Of All Persons Shall Be Inviolable” (Article 15, Chapter Five of the Constitution of the Republic of Ghana, 1992)

1. INTRODUCTION

The republic of Ghana by signing its 1992 Constitution implemented its task to protect and provide for its community. This community involves males and females. So why is the Criminal Code discriminatory when it comes to the crime of rape, in the sense that this Code is not gender-neutral or wife-friendly in its sexual offences provisions on rape?

This research paper shall look into the concept of rape within the Ghanaian legal system and why this is a human rights issue, and, for failure to provide protection to the victims of such crimes, as it is a human rights abuse for those involved.

What is rape? Rape is the physical act of any form of penetration performed on a body and a rape law is the protection of sexual autonomy from the harm of non-consensual sexual acts.¹

The research paper shall start with discussing the historical background on rape, then look at the current law on rape. It will touch upon societal attitudes and myths that could possibly offer an explanation. Then, it shall look into female rape and why the law is at fault when it comes to marital rape. Thirdly, male rape shall be discussed as a separate chapter. In order to have a full understanding of the sexual abuse legal system chapter 4 shall look into other sexual abuses and how these refer to the issues dealt with in this paper. Lastly, a comparison shall be made with other countries where male rape in particular has been penalised and what the (dis)advantages would be for the Ghanaian legal system.

¹ P. Rumney, *In Defence of Gender Neutrality within Rape*, Seattle Journal for Social Justice, Volume 6, Issue 1, 2007, p. 483
Research Paper

1.1 HISTORICAL BACKGROUND

According to Hart², a government acts according to the laws it has given itself. This means that the laws in a country can be said to be representative of the former and current government. He has also argued that the legal standards, by which the government acts, are to be recognized and accepted by the community for that government. Therefore, any act made by the Ghanaian government should be recognized as representative of the Ghanaian community, including the Criminal Code of 1960 on Sexual Offences in Chapter 6. The section of this Act is not gender-neutral, meaning that it only distinguishes female victims versus male perpetrators. Therefore a man cannot be a victim nor can a female be said to be a perpetrator. This then can be said to be the views of the community. Does the Ghanaian community not regard males to be potential victims of rape, or females to be potential perpetrators? Does the crime “male rape” not exist in Ghana? And does the Ghanaian community not want women to marry the man they love because once they do, their husband cannot rape them, whereas in the capacity of boyfriend they can.³ To be able to answer this question and look at the effects on the victims, the paper shall first look at how the rape laws have been shaped by history.

How has history treated the laws on rape? The Greek philosopher Plato posits that

“the man who forcibly violates a free woman or boy shall be slain with impunity by the person thus violently outraged, or by his father or brother or sons. And should a man discover his wedded wife being violated, he shall be guiltless if he kills the violator.”

Surely this indicates a strong incentive that the crime of rape to both a free or wedded woman, and even a boy, is not to be accepted in a community. The Biblical story of Potiphar and Joseph tells a different story though. In Genesis 39:1 - 20 the story tells how Potiphar’s wife made sexual advances towards their housekeeper Joseph. This he declined which annoyed Potiphar’s wife who out of spite showed Potiphar a torn cloak to her husband and told him Joseph had raped her. Joseph had already fled the home but was soon discovered and taken into prison. This story is supposed to show that men needed to be protected from women fabricating rape charges for revenge or to conceal their own lustful behaviour, and laws were made to provide thus.⁵

During the medieval period, the burden of proof was upon the woman who brought the suit. It was then thought that rape was to be considered a property crime against men. It was even said that the woman had no interest in her own bodily integrity and the offence was really against her father, for protecting her chastity for marketability as a bride, or against her husband, so that he would know that any progeny she would bear would be biologically his.⁶ The first country to legally recognise rape in modern times has been the United Kingdom, whom as far back as the 19th century recognised the law on rape to be too narrow. Many other European countries followed suit but the rape laws itself showed considerable loopholes and technical faults. As will be seen in chapter 2.1, rape within marriage has been an issue for many countries still, simply by referring to the marriage contract as a contract of consent to every act.⁷ What all this shows is that the law must adopt itself to its community. The next chapter shall look into the current law and will show that the common law notion⁸ that the marriage contract is a contract of consent has survived.

² Hart, *Concept of Law*, 1961, in Dixon & McCorquodale, *Cases and Materials on International Law*, p. 177

³ Obviously the author does not mean to say that as soon as a man marries, he becomes a rapist.

⁴ Rita James Simon, *A Comparative Perspective on Major Social Problems*, 2001, p. 4

⁵ Ibid, p. 4; see also N. E. Snow, *Evaluating Rape Shield Laws – why the law continues to fail rape victims*, in K. Burgess – Jackson, *A Most Detestable Crime: New Philosophical Essays on Rape*, p. 246

⁶ Joan McGregor, *Is It Rape?: On Acquaintance Rape and Taking Women’s Consent Seriously*, p. 3

⁷ N.K. Stafford, *Permission for Domestic Violence: Marital Rape in Ghanaian marriages*, 29 *Women’s Rights L. Rep.*, p. 63 where she discusses the “common law notion that women upon marriage per se give consent for sexual relations”.

⁸ A. Wertheimer, *Consent to Sexual Relations*, Cambridge Studies in Philosophy and Law, University Press Cambridge, Cambridge, UK, 2003, p. 11

1.2 CURRENT LAW AND ITS PROTECTION

The Criminal Code of 1960, Act 29 states in article 98 that

“rape is the carnal knowledge of a female of sixteen years or above without her consent”.

The mental element of the crime is having the carnal knowledge that the woman is not consenting, whereas the physical element lies in the penetration. It follows then that the law is not recognising two elements here. The first is that it limits the potential victim to the female sex, hereby excluding the male victims, and the perpetrator can only be male by virtue of article 99. Secondly, the phrase ‘without her consent’ in the Ghanaian legal system means that marital rape is exempted, since section 42 of the Criminal Code states that

“[...] save that the consent given by a husband or wife at marriage, for the purposes of the marriage, cannot be revoked [...]”.

Therefore this section has to be read as to include per se consent to sexual relations upon marriage, i.e. a husband can rape his wife, as shall be seen in chapter 2.1.⁹

Applicable law in Ghana also includes international law in as much as Ghana has ratified the specific legislation, such as the Universal Declaration on Human Rights, the African Charter, the Organization of African Unity,¹⁰ International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Cultural Rights.¹¹ As these human rights instruments are available it is necessary for the Ghanaian authorities to use them correctly so that they can become an enforceable system of rights (notwithstanding the accompanying responsibilities). However, the problem faced by international law is that certain legislative instruments contain drawback clauses which will enable the national legislator to essentially confine the protection of rights to the definitions in national law. States are hence permitted to restrict basic human rights to the extent allowed by its domestic law.¹² This can be said to contribute to the lack of protection for male rape victims; it is the discretion of the national legislator. As is said by Lauterpacht, the periphery of individual rights is an enduring feature of legal development.¹³ So it is understandable that not all legal systems have as of yet included this crime as such. Every nation undergoes its stages of legal development and it is, as said above, the community that reflects into the laws. However, the issues that are being discussed by the author in this research paper are issues that the Ghanaian community is not legally recognising but are out there and very real. The current law limits its protection to unmarried women and children. The lack of gender-neutrality and marital rape in the rape laws will not only inhibit reporting, but rapists are also being protected from any fear of discovery.¹⁴ The paper now turns to the question why the law is not recognizing these issues, thereby recognizing the fact that domestic law requires supplementary legislation.¹⁵

⁹ The Criminal Code does have protection for children codified under its article 101; therefore the author shall not look into the distinction of boy/girl.

¹⁰ Even it is argued by V.O.O. Nmehielle, *The African Human Rights System - its Laws, Practice and Institutions*, International Studies in Human Rights, Matrinus Nijhoff Publishers, Kluwer Law International, 2001, p. 75, that the OAU “does not appear to attach a particular significance to human rights in a more comprehensive light, with the particular aim of focusing on making African governments accountable for the fundamental rights of their rights”.

¹¹ So even when courts want to uphold the argument against removal of the marital exemption on the grounds that the body of a woman becomes the property of her husband upon marriage, international law supports her right to security of person over her right to the use of property.

¹² *Supra note 10*, p. 243, where the author on page 244 of same article discusses how the African Charter is not dealing adequately with women’s rights, which is in line with the argument that most international law has a masculine tone, as discussed by Charlesworth, *What are “Women’s International Human Rights?”* in Cook (ed), *Human Rights of Women: National and International Perspectives*, 1994, p. 68.

¹³ Lauterpacht, *International Law and Human Rights*, 1950, p. 68. See also Tesón, *International Human Rights and Cultural Relativism*, 25 *Virginia Journal of Human Rights*, 869, 1985, p. 895 where it is stated that “on the one hand they [relativist scholars] are anxious to articulate an international human rights standard, while on the other they wish to respect the autonomy of individual cultures”.

¹⁴ Roos & katz, *The Lived Experience of male on male rape: a review article*, *Health SA Gesondheid*, Dec. 2003, p. 2

¹⁵ *Supra note 10*, p. 76

1.3 SOCIETAL ATTITUDES AND MYTHS SURROUNDING RAPE

Societal attitudes and myths surrounding rape are the main reason why there are loopholes in the Ghanaian rape laws.¹⁶

Myths on Female Rape: research in the area of feminist theories on rape showed that underlying patriarchy and gender inequality as perceived in Ghana are factors contributing to the false beliefs about rape, rapists and their victims.¹⁷ Common ideas about female rape identify two major issues. First is the issue of acquaintance sex. This occurs where the situation involves two people that know each other and obvious violence is absent. Nonviolent non-consensual sex is assumed not to be rape. The second issue is that of consent. Where a woman does not explicitly say no and does not resist as apparently, it is submission.¹⁸ Where there is an event that consists of actual acquiescence in mind or expression that in itself is insufficient to constitute a defence to criminal wrongdoing, it is still a necessary component of such a defence. It is said that “every consent involves a submission, but it by no means follows that submission involves consent”. The reference to ‘consent’ is legal because it is a reference to that which constitutes a defence to rape,¹⁹ and it is held that valid consent must be suitably competent, voluntary and informed.²⁰ It is also said that reasonable beliefs are often tested against these societal attitudes about norms of sexual communications that go back to norms about male dominance and persistence and female submission and reluctance.²¹ Another issue concerning female rape is the idea that marital problems are solved within the household. A courtroom is thought off not to be the ideal place to solve domestic issues.²²

Myths on Male Rape: when it comes to male rape, there are a number of myths that come up. Examples include the myth that men, in general, cannot be sexually assaulted, or that only gay men sexually assault other men, or, in the case of recognising a male rape, they do not suffer as bad as women since they cannot get pregnant, thereby ignoring the (possibly higher) risks that such rape brings - HIV/AIDS and sexually transmitted diseases.²³ The myth that male rape only happens in prisons is understandable²⁴, considering the actual numbers prisons can evidence, and the fact that a judge ruled that thought should be given when sentencing to the more likely man to be a male rape victim,²⁵ but it is a myth nonetheless. The fact that statistics on male sexual assaults are a rarity contributes to encouraging the disbelief in the phenomenon.²⁶ Chapter 3 shall deal with this issue and as shall be seen, it follows

¹⁶ *Supra note 1*, p. 485 where he says that “the historic failure of the legal process in most jurisdictions to recognize rape outside the male-on-female paradigm may have also contributed to the failure of society to acknowledge male sexual victimization”. See also J. Marsh et al., *Rape and the Limits of Law Reform*, 85, 1982 where it is said that “there are junctures in the investigation at which the rape victim confronts a unique scepticism in the form of institutionalized policies and practices that the law did not address”.

¹⁷ Kofi E. Boakye, *Attitudes toward Rape and Victims of Rape; A Test of the Feminist Theory in Ghana*, University of Cambridge, Feb. 27, 2009, *Journal of Interpersonal Violence*. See also *supra note*, p. 484 when quoting S. Allen he states that “the lack of public acknowledgement of male rape has impacted the ability of victims to recognize their own victimization”.

¹⁸ *Supra note 6*, p. 1-2 and 4

¹⁹ Peter Westen, *The Logic of Consent: The Diversity and Deceptiveness of Consent as a Defense to Criminal Conduct*, Burlington VT, Ashgate Publishing, p. 25

²⁰ *Supra note 8*, p. 2

²¹ *Supra note 6*, p. 9

²² The author wishes to attract the attention to observations made during court hearings at the Court Circuit III in Cape Coast, where the presiding judge promoted reconciliation on a number of occasions in the period of the last three weeks of September; and also during a conference hosted by WiLDAF at the Cape Coast Hotel on October 29, 2009, the attending judges from the Circuit Court III Cape Coast and Supreme Court Accra opined that they prefer domestic matters to be dealt with inside the living room and that marriage is holy.

²³ Myths provided by the Male Abusive Survivors Support via their ebsite. See also *Supra note 1*, p. 483 and 487, where pregnancy is used to determine the gravity of the crime.

²⁴ See for a detailed account on rapes in American prison *Prison Rape: The Challenge of Prevention and Enforcement* by insideprison.com, May 2006, View Prison Rape Allegations, By State (2003)

²⁵ *Farmer v Brennan* 511 U.S. 825 (1994), the author recognizes this is an American case but it does show for the recognition of the crime.

²⁶ *Supra note 14*, p.2,

that male-on-male rape is not just to satisfy (homo) sexual desires and needs but most of the time it is about power and control, it is a crime of violence,²⁷ thereby defying the myths.

2. FEMALE RAPE

*“The appellant had forcibly shaved the pubic hairs of his wife and was convicted of indecent assault. On appeal, he said that since a husband cannot rape his wife, surely he cannot indecently assault her. It would only be considered indecent when it occurs between a man and a woman not being a husband and a wife. The conviction for common assault was then substituted.”*²⁸

This West African case from Nigeria surely demonstrates that societal attitudes prohibited justice been done to the woman concerned. It also shows that there is a distinction between a man and a woman, and a husband and a wife. This chapter shall look into rape within marriage and shall the briefly discuss the issue of submission.

2.1 RAPE WITHIN MARRIAGE

Since the Ghanaian legal system does not allow homosexual marriages, the author will not discuss the issue of rape within a same-sex marriage, albeit recognising that in countries where the same-sex marriages are allowed, and the law is gender-neutral on rape, these do occur and victims get recognized and compensated emotionally and in other ways. Rape could only be done in a violent way by a stranger and it had to be shown that the victim had resisted.²⁹ Therefore, rape technically was allowed within the marriage by most of the rape laws, since the husband could not be considered a stranger, allowing for not even touching upon the question of consent. It is said that in case the Criminal Code does not provide enough protection to the rape victim or get an actual conviction, the Domestic Violence act of 2007, Act 732 (hereafter DV Act) becomes an option. Article 4 of this Act states how “the use of violence in the domestic setting is not justified on the basis of consent”. Therefore, the act of marriage itself does not validate the use of force in any sexual activity. Section 23 of this Act then identifies the relation to the Criminal Code and provides that the punishment in the Act only applies to offences which under the Criminal Code are misdemeanours. The question now becomes whether the DV Act can be applied since rape is not a misdemeanour but a felony under the same Criminal Code. Therefore the perpetrator cannot be charged under the DV Act. As is explained by Nancy Kaymar Stafford in her article,³⁰ “the restriction on criminal classification leaves the DV Act inoperable in rape cases. If the DV Act is inoperable, the “not justified on the basis of consent” wording found in section 4 is irrelevant in all rape cases, including marital rape.” Therefore it leaves a married woman with the marital rape exemption in section 42(g) of the Criminal Code, meaning she cannot prosecute her husband since marital rape is not illegal under any Ghanaian law.

This points to the need for greater public learning and engagement of the relevant state agencies towards a review of the Ghanaian codes concerning rape. A call for reform should not be seen as frivolous as rape is traumatising especially when it happens in a relationship.

2.2 SUBMISSION³¹

As mentioned above, submission is the mere ‘letting it happen’ that befalls any male or female when being raped. It does not mean that person is consenting to the rape. The fact that a person just lets it

²⁷ Ibid. p. 2

²⁸ *Alawusa v Odusote* (1941) 7 WACA 140

²⁹ *Supra note 4*, p.7; see also *supra note 6*, p. 3

³⁰ *Supra note 7*, p. 63

³¹ See for an extensive research on the issue of Submission P. J. Falk, *Rape by Drugs: A Statutory Overview and Proposals for Reform*, Research Paper 09-170, March 2009, Cleveland-Marshall College of Law, Cleveland State University, 44 Arizona law review (2002): 131

happen, simply because they know they cannot ‘win the fight’ does not mean that person wants the act to happen. It used to be the thought that when a (wo)man does not physically resist penetration while verbally expressing her dissent (s)he is behaviorally consenting to the penetration and, that to sustain a charge of rape, it must be shown that the offender was required to use a degree of physical force sufficient to overcome resistance or to use the constructive force of the threat of severe bodily injury.³² However, recognized abuses such as domestic violence identify the use of sexual abuse. What often happens is that the perpetrator is not using force at all; instead they leave the victim with a choice. Submission to sexual intercourse then is often the lesser of two evils.³³ Therefore, submission to rape should be recognised as rape. Just because a person does not or cannot fight back as hard still makes it a crime. Also, when this happens in the context of domestic violence, surely the charge of rape will be one of more charges applicable to the case.

2.3 RAPE BY FEMALES³⁴

Gender-neutrality goes both ways in the sense that it not only covers male victimization but is also allows for female to be perpetrators. Even though a female cannot perform the traditional rape, she can perform non-consensual penetration upon a male or female.³⁵ Rape is the mere penetration of a body and a rape law should be there to protect the victim, regardless of the sex of victim or perpetrator. The question whether gender neutrality within the rape laws would take away the gravity of the female rape crime, has been discussed in length by several authors.³⁶ It has been stated that the traditional paradigm of male-female has grown old. Actually, a woman can be held to penetrate or rape another woman or man. This she can do through the means of objects or simply by ‘using’ the erection the man experiences because of sheer nature. The reason that any law should recognize this type of sexual assault is that it shall protect for the protection of the woman’s and man’s dignity.

³² *Supra note 8*, p. 13

³³ K. Burgess - Jackson, *A Theory of Rape*, in K. Burgess - Jackson, *A Most Detestable Crime: New Philosophical Essays on Rape*, p. 94; see also p. 96 by the same author where the discussion focuses on the many forms of rapists can take, even the flatterer who seduces the woman who at first resists. The question then becomes what should be an appropriate test for establishing the issue of consent/what are the collateral circumstances to be taken into consideration? Due to lack of time the author did not have the time or resources to look into the gender neutral rape laws in detail in relation to the law of evidence required for establishing a conviction for rape charges.

³⁴ *Supra note 1*, p. 501 for a discussion on how male rape victimization is ‘ignoring’ the gravity of the offences directed against women.

³⁵ *Ibid.* p. 502

³⁶ *Supra note 1*

3. MALE RAPE

*"I can rape, I can do whatever I want to anybody, and no-one will dare question me. That is power"
(Chena, prison leader in Zanzibar prison on the question why there is male rape in prisons)³⁷*

In Plato's time it was common for a man to openly engage in sexual relations with another man or boy in order to prevent unwanted family expansion or fulfilment of sexual needs often ignored or, as is shown from the above abstract, for power.³⁸ The fact that Ghanaian society does not recognise homosexual relations or sexual acts does not mean that it is non-existent in Ghanaian community. This chapter shall look at male rape and its place in the Ghanaian community, the effects it has on the victims and what different types of male rape exist. This chapter shall also look at why there is a need for greater public learning to call for a reform of the law so as to secure the protection of a man's human dignity.

3.1 TABOO IN SOCIETY

"The difference that Africa faces when dealing with male rape is the fact that the problem is never acknowledged, never spoken about, making it a difficult crime to report and tackle".³⁹

In a society where there are still many customary practices and a lifelong belief that homosexual or male-related sexual crimes are non-existent, it is very difficult to break the cycle. Many practice the idea that homosexuality is a sin or a disease, or that it is the choice of a certain lifestyle of that person and they can easily convert. Regardless of a person's belief, fact remains that homosexuality is real and that sexual assaults and rape do occur within the (homosexual) community. As already mentioned in Chapter 1.3 it is societal attitudes and myths that allow for non-recognition of this issue. It is a human right to be protected against rape, whether male or female. Because not only homosexual men fall prey to rapists. Society has accepted female rape which allows for a female to come out and speak about her experience, get the perpetrator punished through the legal system and have the ability to seek professional help to recuperate. However, as society has not accepted that males can fall victim to rape, they remain hidden and estranged. This is compounded by the fact that they cannot be legally recognised as victims.⁴⁰ The next paragraph shall look at the effects the experience has given survivors and how this affects the community as a whole, thereby calling on the need for public education in this area.

3.2 EFFECTS ON VICTIMS

"When intimacy becomes the anti-thesis of autonomy"⁴¹

The sole experience of undergoing a rape is traumatising enough but when it comes to male rape, on top of this, is the fact that it is not recognised in the community, neither socially or legally. This makes it difficult for any man to openly speak out when he has been raped or wanting to address the issue as such. As it is in every criminal case, the notion of it being acknowledged is sometimes enough for the victim to be able to continue life. This is exactly what gender neutrality is about. It will allow for the criminal law to correctly label the crime,⁴² which can help with the reconciliation process. Recognition of the crime can help male rape survivors accept and continue life. However, the 'male rape trauma

³⁷ BBC News, interview by Mariam Omar for the BBC Swahili Service on the 21st July 2005: "Horror of Rape in East African Prisons", www.bbc.co.uk

³⁸ See also *supra* note 32, p. 94, where it is said that "rape is not necessarily a crime of sex but a crime of violence"

³⁹ *Supra* note 35

⁴⁰ *Supra* note 14, p. 2

⁴¹ Kay L. Levine, *No Penis, No Problem*, Public Law & Legal Theory, Research Paper Series, Research Paper No. 05-37, Emory University School of Law, 2006, p. 36

⁴² *Supra* note 1, p. 509

syndrome'⁴³ may allow for them to 'self-medicate', i.e. heavily drinking/drugs and sometimes become suicidal. Survivors of male-on-male rape generally become more distrustful of other men, experience fear, discomfort and distancing with associating with large groups of men and they sometimes have somatic reactions, such as tension headaches, eating difficulties, upset stomach etc.⁴⁴ This also goes for female-on-male rape survivors, but more often these survivors experience a combination of mistrust, rage and dysfunction in their relationships with women. Another possibility is that the male rape survivor will overcompensate by becoming hyper masculine, by way of partaking in aggressive sports, committing crimes and seducing women.⁴⁵ The reason the author has inserted this paragraph is to stress on the need for greater public learning. The most dramatic effects of male rape as shown to be the stigma, shame, humiliation and embarrassment that follow. Many feel a sense of responsibility for their assault which springs from the whole idea of male invulnerability.

⁴³ *People v Yates*, 637 N.Y.S. 2d (1995), at p. 627 where it is stated that "review of literature describing the effect of sexual assault on men reveals that male victims, both homosexual and heterosexual, exhibit a well-defined trauma syndrome parallel to that found in female victims.

⁴⁴ *Supra note 14*, p. 3

⁴⁵ *Supra note 39*, p. 36-7

4 INDECENT ASSAULT

This research paper shall look into indecent assault as another sexual assault so as to determine the acknowledgment of male victims herein. A certain amount of protection provided.

Article 103 of the Criminal Code 1960, Act 29 deals with indecent assault. This article states that “whoever indecently assaults *any person* shall be guilty of a misdemeanour [...]” (my emphasis). This shows that there is no distinction here between males and females, meaning a male can fall victim to an indecent assault. It seems that the issue lies with the physical act of penetration. The assumption is that penetration can only occur between a male and a female. Not between two males or with the use of objects, as in the case of two females or male-female.

5 GLOBAL EXAMINATION OF RAPE LAWS

In order to fully appreciate the Ghanaian legal system, it seems fruitful to look at other legal systems.⁴⁶ The author has selected a few countries to compare the Ghanaian system with and hopefully in this way show that it is crucial for the victims of marital rape, submission and male rape that Ghana shall too reform the law so as to offer the best possible protection and restoration of a human’s dignity.

The modern American system has distinguished three principles that have been reformed in the eighties, i.e. the statutory requirement that a victim present evidence to corroborate her account and evidence of earnest resistance to the attack, rules of evidence that allow consideration of a victim’s sexual history to establish or impeach credibility of the victim’s accusation and lastly, the exemption of a husband from the charges of raping his wife. Reform has thus established that the victim sexual history cannot be admitted in court as evidence and the marital rape exemption has been eliminated. The law now also is gender-neutral which allows it for males to be recognised as rape victims. When we look at the English legal system, their Criminal Justice and Public Order Act of 1994 now includes male victims of rape, spouses and anal intercourse, since the law beforehand would only allow a rape charge if it was a vaginal penetration. Other European countries, such as The Netherlands and Germany, have the usage of gender-neutralised language in their laws but France, for instance, allows for marital rape and in Spain, the victim can only be female and the rapist male. When we look at some South American countries it follows that generally a virgin or an ‘honest’ woman can be raped, thereby failing to protect the unmarried non-virgins or males. In general, most Middle Eastern countries show no data on rape, hereby not recognizing the existence of any type of rape.

It is important because a male victim of rape is being denied his human rights. Where the state cannot protect him from being raped, it should at least make sure the perpetrator gets punished for the crime, that the crime is recognised and that there should be a debate in an open-minded society.

⁴⁶ Notwithstanding the fact that it has been argued that for instance ‘the laws of the Western world, supposedly the most advanced, were based on the ‘image of women as seductive and untrustworthy...combined with the socio-legal conceptions of women as property of males’, as stated by footnote 9 *supra* note 4, p. 7-18

6 CALL FOR REFORM

“Development is not possible without protection of human rights. The relationship between human rights and development has occupied a prominent place in the discourse of rights”⁴⁷

The Ghanaian legal system is too narrowly formulated which causes it to fail to provide for a certain group of victims. It is too narrow in the sense that it is limited to the unmarried female portion of the community and children, thereby ignoring the male population, female-on-female rape and married women. It has been shown that rape definitions that are gender-neutral have become influential in those jurisdictions that have engaged in significant levels of rape law reform over the last four decades.⁴⁸ This surely shows that it is becoming a global matter of concern. Already there are some Ghanaian voices to be heard regarding these issues. As follows from the Daily Graphic in an article by Salifu Nurudeen on November 12, 2009, it is because of “the tendency to judge our fellow human beings based on the standards we have set”, and that this means that “it is this poor sense of judgment that has clouded the judgment of most people”, thereby letting it happen that in the issues raised, married women and male rape victims are ignored their right to dignity. It is not just the public to voice these concerns, it is also the judiciary. From the same newspaper follows that a judge told a rapist that he is a beast for assuming a prostitute to consent to have sexual intercourse with him and recalled that ‘even she’ has human rights not to be ignored.⁴⁹

So is it time to reform these rape shield provisions? Yes, it is. Recognizing that a portion of any given community is denied their human rights because the law fails them, should give an indication that something should be done. First step is to recognize the issue and then transform this issue into a legally recognized crime, which, as shown above, shall help fix the affected person, making the whole community a better place. Therefore, the author in this research paper calls upon greater public learning in the area of marital rape, female-on-female rape and male rape victims. The second step is to communicate and get the message out there that these are real victims to real crimes, regardless of a signed marriage contract or perception of masculine non vulnerability. Because sometimes even when an event is criminalized, society is not always aware or receptive of the crime concerned.

⁴⁷ N.J. Udombana, *The Third World and The Right to Development: Agenda for the Next Millenium*, HRQ 22 (2000), p. 765 in R. Murray, *Human Rights in Africa - From the OAU to the African Union*, Cambridge university Press, Cambridge, the UK, 2004, p. 237

⁴⁸ P. Rumney, *Gender Neutrality, Rape and Trial Talk*, International Journal for the Semiotics of Law, Vol. 21, 2008, p. 139

⁴⁹ Daily Graphic, August 20, 2009