



# Rape Sentencing Study 2011

findings, implications and way forward

by Jill Thompson

# Study Objectives

- Compile and compare the laws relating to sentencing of sexual offences in the africa region and identify countries that have enacted minimum sentences for rape, defilement and/or sexual assault.
- Compare approaches to minimum sentencing across the region.
- Consider the application and efficacy of minimum sentences as a strategy in sexual offences cases based on the experience of other countries around the world.

# Method: Desk Review

- analysis of relevant legislation from 12 countries in east, central and southern africa
- review of international peer-reviewed literature on minimum sentencing (africa and globally)
- selected reports on rape sentencing in africa (south africa and namibia)

# Findings: law review

- 11 of the 12 countries have amended Sexual Offences Laws in past 15 years; 9 of 12 have enacted minimum sentences for rape and/or child rape/defilement
- countries have adopted a wide range of approaches: i.e. Zambia: high mandatory minimums (no discretion) vs. South Africa: statutory minimums with substantial discretion to reduce; severity of sentence for rape ranges from no minimum to minimum life imprisonment
- different approaches re: use of aggravating and mitigating factors

# Findings: Lit Review

- few countries outside africa have mandatory minimums for sexual offences
- trend is away from minimums toward detailed sentencing guidelines
- Commentators critical of south african approach (too much discretion) and high mandatory minimums (no discretion/ risk of disproportionate sentences)
- minimum sentences do not deter crime where risk of reporting/conviction is low

# Conclusions

- sentences for sexual offences should be consistent and proportionate. Although data is limited, research from south africa and elsewhere suggests that some of the sentencing approaches adopted in africa will not achieve this.
- Recommended approach: lower minimum sentence increased for aggravating circumstances. High maximum.
- Limit judicial discretion to mitigate; disallow mitigation based on rape stereotypes
- sentencing guidelines are needed where not explicit in legislation

# Further questions

- how are sentencing laws being implemented?
  - are judges imposing minimum sentences? Have sentences for rape increased since reforms implemented?
  - On what grounds, if any, are sentences being reduced or increased from statutory minimums?
  - what guides sentencing: statute, case law, sentencing guidelines, judicial instructions?
- what is the impact of minimum sentences on cases, courts, and survivors? are objectives of reforms being met?
- what sentencing regime appears most effective?

# Challenges

- collection of data on sentencing and information on specific cases (i.e. outcomes, time to court, sentencing factors): statistics may not be available or accessible
- quantitative research likely to be time and labour intensive (manual review of cases at court level may be required)
- limited published case law on sexual offences cases in some countries.
- focus groups with stakeholders may provide some useful data on implementation and impact

# Implications for Advocacy

- choose your sentencing approach with care
  - minimums generally effective at increasing sentences for rape but very high mandatory minimums may be problematic
  - avoid too much or too little discretion to depart from minimum
  - recommended approach: lower minimum with harsher sentences required for aggravating circumstances; statutory guidelines

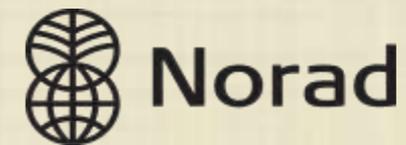
# Implications for Advocacy (Cont.)

- no easy solutions: higher sentences alone will not make much difference
- More action needed on prevention/ building capacity of law enforcement and courts
- other law reforms needed: definition of rape (consent vs coercive circumstances); evidentiary protections/ victim-friendly courts to increase reporting/convictions

# Next Steps?

- Study to be available soon
- No further research planned
- recommend follow up with in depth study of selected countries with different sentencing approaches to assess effectiveness and impact; Combine focus groups with analysis of available data and case studies

# thank you



- jill thompson, consultant ([jillandsteve2006@gmail.com](mailto:jillandsteve2006@gmail.com))