

May 2020

Submission to the United Nations Special Rapporteur on violence against women, its causes and consequences: Questionnaire on criminalization and prosecution of rape

The Global Justice Center's submission is pursuant to the call for the United Nations Special Rapporteur on violence against women, its causes and consequences' forthcoming thematic report on rape as a grave and systematic human rights violation and gender-based violence against women. The Global Justice Center is an international human rights organization dedicated to advancing gender equality through the rule of law. Our program areas focus on justice and accountability for sexual and gender-based violence, particularly as part of mass atrocity crimes and where domestic legal systems discriminate on the basis of gender. The following answers to this questionnaire are divided into two country contexts - I) Iraq, and II) Myanmar.

I. Iraq

Definition and scope of criminal law provisions

- 1) Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

CHAPTER EIGHT: Social offences¹

SECTION FIVE: Offences involving adoption, the care of minors, endangering the young or old and the desertion of the family

Article 385 - Any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18 is punishable by a term of imprisonment not exceeding 10 years or by detention.

It is considered an aggravating circumstance if the victim is forced or if she loses her virginity or contracts venereal disease as a result of the offence or if the offender is responsible for the victim's upbringing or supervision or has some measure of authority over her. Any action or measure in respect of such action may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister.

CHAPTER NINE: Moral indecency – public etiquette

SECTION ONE: Rape, buggery, indecent assault

¹ The following translated provisions can be found at Global Justice Project: Iraq (GJPI) Annotated and Amended Translation, Penal Code No. 111 of 1969 (as amended to 14 March 2010), <http://gjpi.org/2009/04/12/penal-code-111-of-1969/>.

Article 393 - (1) Any person who has sexual intercourse with a female without her consent or commits buggery with any person without their consent is punishable by a term of imprisonment not exceeding 15 years.

(2) The following are considered to be aggravating circumstances for this offense:

(a) If the victim at the time of the act was under 18 years old

(b) If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender's servant.

(c) If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him.

(d) If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times.

(e) If the victim contracts venereal disease as a result of the offense.

(f) If the victim loses her virginity or loses her virginity as a result of the offense.

(3) If the offense leads to the death of the victim, the penalty will be life imprisonment.

(4) If the victim was a virgin, the court must order that she receive appropriate compensation.

Article 394 - (1) Any person who, outside of marriage, has sexual intercourse with a woman with her consent, or commits buggery with a person with their consent, is punishable by a period of imprisonment not exceeding 7 years if the victim is between the ages of 15 and 18. If the victim was under the age of 15, the offender is punishable by a period of imprisonment not exceeding 10 years.

(2) It will be considered an aggravating circumstance if the act occurred under circumstances described in Paragraph 393.

(3) If the victim was a virgin, the court must order that she receive appropriate compensation.

Article 395 - Any person who seduces a woman over the age of 18 with a promise of marriage, has sexual intercourse with her and subsequently refuses to marry her is punishable by detention.

Article 396 - (1) Any person who sexually assaults a man or woman or attempts to do so without his or her consent and with the use of force, menaces, deception or other means is punishable by a term of imprisonment not exceeding 7 years or by detention.

(2) The penalty will be a term of imprisonment not exceeding 10 years if the person against whom the offence is committed is under 18 years of age or the offender is a person described in Sub-Article 2 of Article 393.

Article 397 - Any person who sexually assaults a boy or girl under the age of 18 without the use of force, menaces or deception is punishable by detention. The penalty will be a term of imprisonment not exceeding 7 years or detention if the offender is a person described in Sub-Article 2 of Article 393.

Article 398 - If the offender mentioned in this Section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed. Legal proceedings will resume or the sentence will be reinstated, according to the circumstances if such marriage ends in divorce brought about by the husband without legal justification or in a divorce ordered by the court

for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of the proceedings. The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped or for their resumption or for the reinstatement of the sentence.

2) Based on the wording of those provisions, is the provided definition of rape:

- a) **Gender specific, covering women only** YES/NO
Yes.
- b) **Gender neutral, covering all persons** YES/NO
No.
- c) **Based on the lack of consent of victim** YES/NO
Yes.
- d) **Based on the use of force or threat** YES/NO
No.
- e) **Some combination of the above** YES/NO
No.
- f) **Does it cover only vaginal rape?** YES/NO
Yes.
- g) **Does it cover all forms of penetration?** YES/NO. If yes, please specify.
No.
- h) **Is marital rape in this provision explicitly included?** YES/NO
Yes.
- i) **Is the law silent on marital rape?** YES/NO
No.
- j) **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?** YES/NO
N/A
- k) **Is marital rape excluded in the provisions, or is marital rape not considered as a crime?** YES /NO
No, marital rape is included in the provisions and treated as an exception to rape, where criminal actions against perpetrators of rape or sexual assault are null and void (and any sentence already passed is quashed) if the perpetrator “then lawfully marries the victim” (Article 398).

3) Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No.

4) What is the legal age for sexual consent?

According to Penal Code Article 385, it appears to be 18 years old.

5) Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No.

6) Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

The criminal sanctions vary under the different Penal Code provisions. Under the provision for statutory rape, the term of imprisonment is not to exceed 10 years or by detention (Article 385). The term of imprisonment for rape and buggery without consent is not to exceed 15 years (Article 393) Additionally, if the offense leads to the death of the victim, the penalty will be life imprisonment. The term of imprisonment for rape and buggery with consent is not to exceed 7 years if the victim is between the ages of 15 and 18; if the victim was under the age of 15, the offender is punishable by a period of imprisonment not exceeding 10 years (Article 394).

According to a United Nations report, Order No. 31 of the Coalition Provisional Authority² increased the maximum penalty for rape to life imprisonment.³

7) What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Under Articles 393 and 394, if the victim was a virgin, the court must order that she receive appropriate compensation.

Aggravating and mitigating circumstances

8) Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

Yes, under Article 385 for statutory rape, “[i]t is considered an aggravating circumstance if the victim is forced or if she loses her virginity or contracts venereal disease as a result of the offence or if the offender is responsible for the victim's upbringing or supervision or has some measure of authority over her.”

Under Article 393 for rape or buggery without consent, “[t]he following are considered to be aggravating circumstances for this offense: (a) If the victim at the time of the act was under 18 years old (b) If the offender was a relative of the victim to the third generation, or if the offender is the guardian, protector, or custodian of the victim or has authority over the victim or the victim is the offender’s servant (c) If the offender was a public official, religious leader, or doctor and used the power of his position or the trust in him (d) If the offense is committed by two or more people in order to prevail over the resistance of the victim or if they commit the offense multiple times (e) If the victim contracts venereal disease as a result of the offense (f) If the victim loses her virginity or loses her virginity as a result of the offense.”

² Coalition Provisional Authority Order Number 31: Modifications of Penal Code and Criminal Proceedings Law, https://govinfo.library.unt.edu/cpa-iraq/regulations/20030921_CPAORD31.pdf.

³ United Nations ESCWA, UNFPA, UN Women, UNDP, Iraq: Gender Justice & The Law (2018), https://arabstates.unfpa.org/sites/default/files/pub-pdf/Iraq%20Country%20Assessment%20-%20English_0.pdf (citing Coalition Provisional Authority Order Number 31 Modifications of Penal Code and Criminal Proceedings Law).

Article 394 also considers the same aggravating circumstances as under Article 393.

It is notable that Article 423 includes an aggravating factor, where if a woman over 18 is kidnapped and it is accompanied by any sexual intercourse with the victim or an attempt to have intercourse with her, the penalty is death.⁴

- a) **Is rape by more than one perpetrator an aggravating circumstance?**
YES/NO
Yes, see Article 393(2)(d).

- b) **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO**
Yes, see Article 393(2)(b) and (c).

- c) **Is rape by spouse or intimate partner an aggravating circumstance?**
No.

9) Does the law foresee mitigating circumstances for the purposes of punishment?
YES/NO If yes, please specify.

Yes, the law details that if the offender “then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed” (Article 398). However, under certain circumstances if the marriage ends in divorce the legal proceedings may resume or sentence be reinstated, and a number of interested persons may apply for the proceedings, investigation, procedures or execution of the sentence to be stopped or resumed or for the reinstatement of the sentence.

10) Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

Besides the provision regarding marriage between the offender and victim noted above in Article 398, there do not appear to be any other provisions with respect to reconciliation.

- a) **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

Reporting on practices in Iraq indicates that in some cases rape victims are pressured to marry their perpetrators by their families.⁵

⁴ Global Justice Project: Iraq (GJPI) Annotated and Amended Translation, Penal Code No. 111 of 1969 (as amended to 14 March 2010), Article 423, <http://gjpi.org/2009/04/12/penal-code-111-of-1969/>.

⁵ OECD, Social Institutions & Gender Index: Iraq, 5 (2019), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/IQ.pdf>.

11) Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.

Yes, under Article 398 if the offender “then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, then the sentence will be quashed”.

a) If the perpetrator marries the victim of rape? YES/NO

Yes.

b) If the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

No.

Prosecution

16) Please provide information on the statute of limitations for prosecuting rape.

Under Penal Code Article 150, “An offence lapses for the following reasons: (1) the death of the accused (2) a general amnesty (3) the dropping of charges by the victim in such circumstances as are prescribed by law.”⁶

War and/or conflict

21) Is rape criminalized as a war crime or crime against humanity? YES/NO

No.

**24) Has the Rome Statute of the International Criminal Court (ICC) been ratified?
YES/NO**

No.

Data

25) Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

As part of data keeping, it is important to note that Daesh’s systematic, brutal campaign of violence beginning in 2014 marked an increase in sexual and gender-based violence including acts of rape.⁷

Other

26) Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

⁶ Global Justice Project: Iraq (GJPI) Annotated and Amended Translation, Penal Code No. 111 of 1969 (as amended to 14 March 2010), Article 150, <http://gipi.org/2009/04/12/penal-code-111-of-1969/>.

⁷ See Global Justice Center, *Letter in Support of Filing OTP-CR-397/15* (Dec. 17, 2015), <http://globaljusticecenter.net/documents/GJC.AmicusLetter&Annex.ICC.12.17.2015.pdf>

Iraq's current laws fall far short of the requirements for justice.⁸

There are a number of additional concerns with respect to reporting rape under Iraq's laws. For one, Article 3 of the Criminal Procedure Code establishes that prosecution for rape only begins if the victim affirmatively acts.⁹ Complaints relating to rape will not be accepted more than three months after the victim "became aware of the offence or from the disappearance of any compelling excuse" which prevented the complainant's submission of the complaint.¹⁰ If the victim withdraws their complaint, they "lose their right to criminal justice."¹¹

Further, Penal Code Article 385 criminalizes "any person who has carnal knowledge of a girl to whom he is not married with her consent when she has not yet reached the age of 18."

Problematically though, a prosecution of this crime "may only be brought on the basis of a complaint by the victim or her ancestor, descendant, brother or sister." Victims of rape and sexual violence may be unwilling to initiate such proceedings.¹² In conservative societies like Iraq, women face societal barriers in reporting sexual violence crimes, including fear of retribution from, or against, family members.¹³

International standards do not require victim initiation or participation for prosecution of rape or sexual violence¹⁴ and such requirements should not be any part of accountability for rape.

⁸ For more information, see Global Justice Center, *Iraq's Criminal Laws Preclude Justice For Women And Girls* (Mar. 2018), <http://www.globaljusticecenter.net/files/IraqiLawAnalysis.4.6.2018.pdf>.

⁹ Criminal Procedure Code art. 3(A)(iii). Under Article 3(A), a complaint must be made by "the aggrieved party or someone taking his place in law" regarding certain offenses, including "[t]heft, rape, breach of trust, fraud, or acquisition of items by these means, if the aggrieved party is a spouse or descendent of the perpetrator and these items were not seized legally or administratively or legally transferred to another person." While the provision could possibly be read to require victim-initiated complaints only in cases of rape where the victim is a spouse or descendent of the perpetrator, the reference to "these items" arguably limits the relationship qualifier, leaving the provision to require victim-initiated complaints in all cases of rape. See also Penal Code art. 385 (complaint must be brought by victim or ancestor). The Criminal Procedure Code also specifies that the right to submit a complaint does not transfer to heirs. Criminal Procedure Code art. 9(D). See also, UNAMI, Promotion and Protection of Rights of Victims of Sexual Violence by ISIL, ¶ 23.

¹⁰ Criminal Procedure Code art. 6.

¹¹ Criminal Procedure Code art. 9(F). Article 8 also specifies that complaints will be dismissed if not "followed up on" by complainants within three months in cases where submitting a complaint is required. Criminal Procedure Code art. 8.

¹² UNAMI, Promotion and Protection of Rights of Victims of Sexual Violence by ISIL, ¶ 23.

¹³ Penal Code arts. 128, 409, 417(4) (committing specified crimes out of shame or with "honourable motives" is a mitigating excuse); U.N. Assistance Mission for Iraq & Office of the High Comm'r for Human Rights, Report on Human Rights in Iraq: July to December 2016, at 28-29; Huda Ahmed, Freedom House, Iraq, in *Women's Rights in the Middle East and North Africa* 1, 7-8 (2010); U.S. Dep't of State, Iraq 2016 Human Rights Report 49-52 (2017) (victims of sexual or domestic violence "did not usually report it to authorities or pursue legal remedies" because of social stigma and risk of familial retribution or because they feared family protection units "would immediately inform their families of their testimonies"); Miriam Puttick, Ceasefire Ctr. for Civilian Rights & Minority Rights Group Int'l, *The Lost Women of Iraq: Family-Based Violence During Conflict* 18, 28-29 (2015), <http://minorityrights.org/wp-content/uploads/2015/08/Lost-Women-English.pdf>; U.K. Home Office, Country Policy and Information Note, Iraq: Kurdish 'Honour' Crimes (2017), <https://www.justice.gov/eoir/page/file/995246/download> (honor crimes continue in Kurdistan despite its repeal of honor as a mitigating circumstance).

¹⁴ U.N. Women, *Handbook for Legislation on Violence Against Women* (2012), at 34-35.

Of particular note, Iraq's existing laws are unable to punish the most egregious of Daesh's gender crimes, including rape. International standards include more comprehensive, gender-neutral definitions of rape, without a marital exception under any circumstances, and a clarified definition of consent which takes coercive environments into account.

Additionally, the international crimes of genocide, crimes against humanity, and war crimes should be criminalized under Iraq's domestic law in order to allow for investigation and prosecution of acts of rape as these distinct crimes, thereby also providing an opportunity to build a more complete historical record, honor the experiences of victims, and ensure full accountability.

Finally, various groups have noted an increased urgency, especially given the current COVID-19 pandemic, for Iraq to pass the Anti-Domestic Violence Law and ensure it is in line with international standards.¹⁵

II. Myanmar

Definition and scope of criminal law provisions

- 1) Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.**

Myanmar's Penal Code remains largely the same as when it was passed in 1861. The only material amendments to these relevant provisions, made in 2016 and 2019 and reflected below, have been regarding age and punishments.

From the 1861 Myanmar Penal Code, and as amended in 2016 and 2019:¹⁶

Of Rape 375. A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions First.-- Against her will. Secondly.-- Without her consent. Thirdly-- With her consent, when her consent has been obtained by putting her in fear of death or of hurt. Fourthly. -- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly. -- —With or without her consent, when she is under fourteen [Amended in 2016 to: sixteen] years. Explanation.-- Penetration is sufficient to constitute the sexual intercourse necessary to the offence

¹⁵ Human Rights Watch, *Iraq: Urgent Need for Domestic Violence Law* (Apr. 22, 2020), <https://www.hrw.org/news/2020/04/22/iraq-urgent-need-domestic-violence-law>; UN in Iraq raises the alarm: Time to endorse the anti-domestic violence law, UNICEF (Apr. 19, 2020), <https://www.unicef.org/iraq/press-releases/un-iraq-raises-alarmtime-endorse-anti-domestic-violence-law>.

¹⁶ The following original provisions can be found at Myanmar Penal Code (1861), https://www.burmalibrary.org/docs6/MYANMAR_PENAL_CODE-corr.1.pdf. Amendments to these provisions of the Penal Code were made in 2016 and March 2019.

of rape. Exception.-- Sexual intercourse by a man with his own wife, the wife not being under thirteen [Amended in 2016 to: fifteen] years of age, is not rape.

[Original] 376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

[As amended March 2019] 376. (1) Whoever commits rape except the offences of rape contained in sub-sections Punishments (2) and (3), shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2) Whoever commits rape against a woman who is his own wife and is not under twelve years of age, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(3) Whoever commits rape against a woman who is under twelve years of age shall be punished with imprisonment for life, or with imprisonment for a term of twenty years.

Of Unnatural Offences 377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

2) Based on the wording of those provisions, is the provided definition of rape:

a) Gender specific, covering women only YES/NO

Yes.

b) Gender neutral, covering all persons YES/NO

No.

c) Based on the lack of consent of victim YES/ NO

Yes, in part.

d) Based on the use of force or threat YES/ NO

Yes, in part.

e) Some combination of the above. YES / NO

Yes.

f) Does it cover only vaginal rape? YES /NO

Unclear. Article 375 mentions “sexual intercourse” and in explanation offers “Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.” Article 377 covers “carnal intercourse against the order of nature”.

According to Gender Equality Network’s report, “[c]arnal intercourse” refers to non-vaginal sex and includes anal sex, acts of homosexuality and bestiality.”¹⁷

g) Does it cover all forms of penetration? YES/NO. If yes, please specify.

Unclear, Article 375 mentions “sexual intercourse” and in explanation offers

¹⁷ Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws*, 8 (Jan. 2013), https://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf.

“Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.” Article 377 covers “carnal intercourse against the order of nature”.

h) Is marital rape in this provision explicitly included? YES / NO

Yes.

i) Is the law silent on marital rape? YES/NO

No.

j) Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO

N/A

k) Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO

Marital rape is included under the definition of rape as an exception to rape. The law also sets out a less severe punishment for marital rape than rape.

3) Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No.

4) What is the legal age for sexual consent?

According to Penal Code Article 375, 16 years old.

5) Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No.

6) Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Myanmar’s Penal Code provides for a penalty for rape of “imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine” (Article 376(1)). The punishment for rape against a woman who is the perpetrator’s wife and not under twelve years of age “shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both” (Article 376(2)). The punishment for rape against a woman who is under twelve years of age is imprisonment for life, or imprisonment for a term of twenty years (Article 376(3)).

Under Article 377, the punishment for “unnatural offences,” carnal intercourse against the order of nature with any man, woman or animal, is transportation for life, or imprisonment for a term which may extend to ten years, and also liability for a fine.

7) What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Myanmar’s Penal Code fails to ensure rape victims full rights to reparations.

Aggravating and mitigating circumstances

- 8) **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

Myanmar's Penal Code considers rape against a woman under twelve years of age to possibly warrant a more severe punishment (Article 376(3)).

- a) **Is rape by more than one perpetrator an aggravating circumstance?**

YES/NO

No.

- b) **Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO**

Yes, the law considers more severe punishments if the victim is under a certain age (Article 376(3)).

- c) **Is rape by spouse or intimate partner an aggravating circumstance?**

No.

- 9) **Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.**

The Myanmar Penal Code considers a lesser punishment if the victim is married to the perpetrator (Articles 375, 376(2)).

- 11) **Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator? YES/NO If yes, please specify.**

The Myanmar Penal Code states as an exception that sexual intercourse between spouses if the wife is not under fifteen years of age is not rape (Article 375).

- a) **If the perpetrator marries the victim of rape? YES/NO**

The Myanmar Penal Code seems to imply that the parties already be married before the rape occurs.

- b) **If the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/NO**

No.

Prosecution

- 18) **Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.**

No. According to Gender Equality Network's report Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws, "[t]here are very few -- if any -- legislative protections for taking of evidence from victims of rape."¹⁸ Further, "[i]n cases of rape and sexual assault, government hospitals must obtain permission from the local police before

¹⁸ Gender Equality Network, *Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws*, 8 (Jan. 2013), https://www.burmalibrary.org/docs20/Myanmar_Law+CEDAW-en-red.pdf

they are permitted to examine and treat patients, in order that evidence is not destroyed. This is regrettable, as women need to be assured the right to medical treatment regardless of whether or not they choose to report the crime.”¹⁹

19) Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO

No. According to Gender Equality Network’s report Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws, “[t]he Evidence Act states that past sexual conduct and character evidence may be introduced in cross-examination to impugn a witness’ credibility, with the weight to be given the evidence at the judge’s discretion. The court may also draw an adverse inference from a witness’ refusal to answer questions.”²⁰

20) Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

According to Gender Equality Network’s report Myanmar Laws and CEDAW: The Case for Anti-Violence Against Women Laws, “[a]rrangements for *in camera* (private) testimony may be made so that the victim does not have to testify in an open court before the public. [However,] [t]here is no legal protection for the victim from retaliation after the trial.”²¹

War and/or conflict

21) Is rape criminalized as a war crime or crime against humanity? YES/NO

No.

24) Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

No.

Data

25) Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

As an article in the Bangkok Post states, “[a]ccording to government statistics, there were 1,405 rape cases in 2017, up from 1,110 the year before -- around two thirds committed against children.”²²

Notably for data keeping, as the United Nation’s Independent International Fact-Finding Mission on Myanmar and others have reported, Myanmar military forces (Tatmadaw) carried out widespread sexual and gender-based violence including rape against Rohingya civilians during “clearance

¹⁹ *Id.* at 8-9.

²⁰ *Id.* at 9 (citing The Evidence Act (1872), s 155 (4)).

²¹ *Id.* at 9.

²² *Rape in Myanmar is 'silent emergency'*, Bangkok Post (Mar. 2, 2020), <https://www.bangkokpost.com/world/1869804/rape-in-myanmar-is-silent-emergency>.

operations” beginning in 2016 and escalating further in 2017.²³ The Tatmadaw is notorious for committing systematic rape against ethnic communities and has been addressed in every single of the United Nations Secretary General’s reports on Conflict-Related Sexual Violence.

Other

26) Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

Myanmar’s laws do not incorporate a comprehensive, gender-neutral definition of rape in line with international standards and best practices. The recently introduced Prevention of Violence against Women Law (PoVAW) is an important opportunity for Myanmar to bring its domestic laws in line with international obligations and ensure adequate redress for violence to all women. The amended definition of rape should clarify that the relationship between the parties – the victim and the perpetrator – does not matter. Additionally, the definition of sexual violence should not import antiquated definitions from the Penal Code, including “unnatural offenses”; the criminalization of unnatural offenses will violate international protections for LGBTIQI persons. Further, the definition of consent should be clear regarding the requirements of consent - it should specify who bears the burden to prove lack of consent, and include a broader range of coercive environments and circumstances where lack of consent is presumed, including those caused by armed action, conflict or states of emergency, which is recommended under international standards.

Any conflicts with respect to definitions or penalties should be resolved between the provisions of the PoVAW law and any contradictory laws already in place, including the Penal Code, the Criminal Code, and the Constitution.

Victims of rape should also have access to comprehensive sexual and reproductive health services, including safe abortion care, without the requirement of approval by a Medical Examination Board.

A notable domestic structural impediment to accountability for the military is that the Myanmar Constitution grants the military amnesty for any and all crimes, including sexual violence against women. Accordingly, the PoVAW law should ensure jurisdiction over the military for crimes of violence against women in civilian courts. It should also make clear that any actors who commit crimes in the context of conflict, including police and border guards, in addition to the military, will be prosecuted under the law and do not have immunity.

Additionally, the international crimes of genocide, crimes against humanity, and war crimes should be criminalized under Myanmar’s domestic law in order to allow for investigation and prosecution of acts of rape as these distinct crimes, thereby also providing an opportunity to build a more complete historical record, honor the experiences of victims, and ensure full accountability.

²³ See Human Rights Council, *Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts*, U.N. Doc. A/HRC/42/CRP.4 (Aug. 22, 2019), https://www.ohchr.org/Documents/HRBodies/HRCouncil/FFM-Myanmar/sexualviolence/A_HRC_CRP_4.pdf.