**Call for submissions to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

All submissions should be sent to vaw@ohchr.org by **20 May 2020**. Kindly indicate if you DO NOT wish your submission to be made public.

**Questionnaire on criminalization and prosecution of rape**

**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.

Sexual assault and sexual harassment are serious problems and challenges in the social life of women and children in Afghanistan. Article 3 of the Law on the Prevention of Harassment of Women and Children defines the harassment, which is at the same time related to sexual harassment, as such:

Harassment include physical contact, illegitimate desire, verbal, non-verbal abuse, and any act that may cause psychological or physical harm or insult to the human dignity of the woman and the child.

Also, Article 636 of the country's penal code states: A person who uses force or other threatening means or threats to commit sexual intercourse and who abuses the inability of victims receives his / her consent, or feeds him / her with poisonous substances or other substances that cripple his / her intellectual or mental capacities, or penetrate his organs or other objects in her / his front or back way, is known as the offender of sexual assault.

Article 637 of this law stipulates that the perpetrator of the crime of rape is sentenced to long imprisonment.

Article 638 states that whenever a man has sexual intercourse with a minor, his act is recognized as rape and the consent of the victim is not valid.

Article 639 states that committing the crime of rape is recognized in the following circumstances as aggravating case and is punishable by life imprisonment.

1. If the victim is a child.
2. If the perpetrator has aborted the fetus by performing the act of rape.
3. If the perpetrator has a high degree of influence and authority over the victim
4. If the victim has become pregnant as a result of the act of rape
5. If the act of rape causes injury or severe psychological damage to the victim
6. Rape has led to sexually transmitted diseases
7. The perpetrator is an aggressor, including an incestuous or temporary rapist
8. If the perpetrator dies as a result of rape, the perpetrator shall be sentenced to death.
9. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only. YES/NO
	2. Gender neutral, covering all persons. YES/NO
	3. Based on the lack of consent of victim. YES/ NO
	4. Based on the use of force or threat. YES/ NO
	5. Some combination of the above. YES / NO. Please specify.
	6. Does it cover only vaginal rape? YES /NO
	7. Does it cover all forms of penetration? YES/NO Please specify.
	8. Is marital rape in this provision explicitly included? YES / NO
	9. Is the law silent on marital rape? YES/NO
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO marital rape is not considered as a crime?

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1. What is the legal age for sexual consent?

Afghan laws do not allow premarital sex. Sex before marriage is an act of adultery and the perpetrator is punished according to the law. Officially, two people can have sex when they get married. According to Article 70 of the Civil Code, a certain age is set for marriage, so that a girl at the age of 16 and a boy at the age of 18 can marry. This is one of the cases of gender inequality in the country.

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

This is not specifically stated in the law. According to Article 70 of the Civil Code, a certain age is set for marriage, so that a girl at the age of 16 and a boy at the age of 18 can marry.

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

Sexual assault is considered a crime under the country's penal code, as Article 637 of the law states that a person who commits a crime of rape is sentenced to long-term imprisonment.
Article 638 states that whenever a man has sexual intercourse with a minor, his act is recognized as rape and the victims consent is not valid.

Article 639 states that in the following circumstances committing the crime of rape is known as aggravating state of punishment and the offender is punishable by life imprisonment.

1. If the victim is a child.
2. If the perpetrator has aborted the fetus by performing the act of rape.
3. If the perpetrator has a high degree of influence and authority over the victim
4. If the victim has become pregnant as a result of the act of rape
5. If the act of rape causes injury or severe psychological damage to the victim
6. Rape has led to sexually transmitted diseases
7. The perpetrator is an aggressor, including an incestuous or temporary rapist
8. If the perpetrator dies as a result of rape, the perpetrator shall be sentenced to death.
9. 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?

The Law on the Elimination of Violence against Women, which was enacted in 2009 by the decree of the President states in its Article 17, paragraph 3, that apart from imprisonment, the perpetrator shall also be subject to pay an sum equal to Mahr, such as compensation, to the victim.

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
	1. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
	2. 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
	3. Is rape by spouse or intimate partner an aggravating circumstance? YES/NO
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.
3. 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?
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
4. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
	1. if the perpetrator marries the victim of rape? YES/NO
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO
3. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO
4. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO
5. Please provide information on the statute of limitations for prosecuting rape.

From a legal point of view, the investigation of the crime of rape, including rape with coercion and threat, is not prohibited, but there is other issue like the issue of insecurity and some challenges which are answered in the last question, question 27.

1. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?

Pursuant to paragraph 1 of Article 72 of the Criminal Procedure Code of the country, the punishment for a criminal case, if the crime is committed, will be waived after 10 years.

But in general, the lapse of time for execution or capital punishment usually ends after 25 years, for life imprisonment after 20 years, and for long imprisonment after 10 years.

On the other hand, the issue of the child has not been stated in exceptions of lapse of time or limitation.

1. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES/NO If yes, please specify.

According to the Criminal Code, in order to prove the crime, the testimony of the witnesses, the accused, the suspects, the experts and the medical examinations, as well as the investigation of the situation and circumstances of the offender, help to prove the crime.

1. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?

This is not explicitly stated in the law, but the attorney asks the victim to describe the story once during the trial so that everyone can hear it.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
3. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
4. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

**Data**

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

In the last 4 years, about 851 cases of rape have been addressed by the courts and the prosecutor's office in the country, and decisions have been taken in accordance with the country's penal code.

**Other**

1. 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

Rape cases are relatively not dealt with decisively and there are some fundamental issues

1. Lack of decisively treatment of criminals and continuation of the culture of impunity from punishment
2. Interference of influential people in dealing with cases
3. Limited access of women to justice in the remote provinces of the country
4. The existence of illegal weapons with the irresponsible individuals and groups
5. Lack of security and weakness of government in remote areas of the country
6. Lack of necessary support for the victims by the family
7. Concealment of crimes and non-referral of some victims to the justice and judicial institutions of the country.