**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**. Kindlyindicate 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.

Albania has constantly revised its domestic legislation and approximated it to the international standards.The Criminal Code has been revised constantly to include new criminal offences and new forms of hidden—direct or indirect—violence against women and increasingly harsher penalties against perpetrators. Some of the amendments to the Criminal Code were inspired by the Istanbul Convention, especially the amendments made after 2013 (made by Law 133/2013).

The Criminal Code criminalizes sexual violence as a separate criminal offence. It is provided for in Article 107/a, and includes the performing of actions of a sexual nature on the body of another person through the use of objects. The legislation specifically provides for the cases where this offence is committed with accomplices, against several persons, more than once, or against children from 14 to 18 years old and against children under 14 years old, as well as when it results in the death or suicide of the victim.

However, the Criminal Code has a special section on sexual crimes, which also includes Article 107/a: Section VI: Sexual Crimes. The sexual crimes laid down in this Section also include cases involving spouses or partners, such as:

 Sexual or homosexual intercourse with children (Article 100);

 Sexual or homosexual intercourse by violence with a child who is 14-18 years old (Article 101);

 Forced sexual or homosexual intercourse with adult women (Articles 102 and 102/a);

 Sexual or homosexual intercourse with persons who are unable to defend themselves (103);

 Sexual intercourse with extended family members or under custody (106), etc.

The Albanian criminal legislation also criminalizes forced sexual intercourse between spouses or cohabitating partners (Article 102 of the Criminal Code). This Article provides that: “Sexual intercourse by violence with adult females or between spouses or cohabitants, without the consent of either of them, shall be punishable by three to ten years imprisonment.” The Article provides for the aggravating circumstance when the sexual intercourse by violence is done with accomplices, more than once, or when the victim had serious health consequences; it also provides for the qualifying circumstance when the act has caused the death or suicide of the aggrieved person.

1. 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/NOPlease 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
2. To what extent legislation in your country excludes 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 relevant articles with corresponding translations.
3. What is the legal age for sexual consent?

A person is considered to be an adult when he or she is at least 18 years old. Which means that anyone under 18 years old is a child.

Thus, any sexual intercourse with children under 14 years old or children who have not reached sexual maturity yet are punishable. The provision also includes qualifying and aggravating circumstances

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

The criminal legislation makes the distinction between children under 14 years old—or minors who have not reached sexual maturity (Article 100)—and minors from 14 to 18 years old (article 101).

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

In the former case, punishment is not linked to the use of violence against, or obtaining the consent from, the child.. Unlike Article 100, Article 101 includes the element of violence against children from 14-18 years old and children having reached sexual maturity.

1. 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?

**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

When sexual intercourse with violence is committed in collaboration or more than once, or when the injured party is affected serious for health, sentenced to imprisonment from five to fifteen years.

* 1. 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

Article 103

Sexual or homosexual intercourse with persons ofunable to defend himself

(Amended by law no. 8733, dated 24.1.2001)

Performing sexual or homosexual intercourse, whilebenefiting from the physical or mental incapacity of the injured personor, by being placed in an unconscious state, is punishable by imprisonmentfrom five to ten years.

* 1. Is rape by spouse or intimate partner an aggravating circumstance? YES/NO

Sexual intercourse with violence, with adults orbetween spouses or cohabitants, without the consent of one ofthey are sentenced to three to ten years in prison.

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

No, it doesn’t.

1. 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?

It is not foreseen as a mitigating situation in the Criminal Code.

* 1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

We don’t have information about this.

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

No, there isn’t.

* 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 for information on the statute of limitations prosecuting rape.
6. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?

There isn’t any provision.

1. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES/NO If yes, please specify.
2. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?

Under article 58 / b of the Procedure Criminal Code are provided “The rights of the sexually abused victim and the victim of human trafficking”.

In addition to the rights provided for in Articles 58 and 58 / a of this Code, sexually abused victim and victim of trafficking human beings are also entitled to:

a) be questioned without delay by a judicial police officer or prosecutor of the same sex;

b) refuse to answer questions about life private, which is clearly not related to the criminal offense;

c) request to be heard through audiovisual means, according to the provisions of this Code.

Also, victims of sexual offenses, trafficking or offenses committed within the family, when requested, may be questioned as witnesses through audio and audiovisual means. (article 361/8)

1. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.

Mentioned above.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO

Rape is criminalized as crime against the person.

1. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

No, there isn’t.

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
2. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

Yes, the Rome Statute of the International Criminal Court has been ratified by law no.8984, dated 23.12.2002.

**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.

**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.