**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](mailto: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.

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| **Criminal Code of the Republic of Armenia**  **Article 138. Rape.**  1. Rape, sexual intercourse of a man with a woman against her will, using violence against the latter or some other person, with threat thereof, or taking advantage of the woman’s helpless situation, is punished with imprisonment for the term of 3 to 6 years.  2. The rape which:  1) was done by a group of persons;  2) was done against the aggrieved or other person with particular cruelty;  3) was done against a minor,  4) caused the death of the aggrieved or heavy consequences, by negligence;  5) *not in force*;  6) pregnant woman;  7) using weapons or items used as weapons;  8) committed against a person serving a sentence in a correctional institution, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceman in a military unit, a person treated or examined in a medical facility, or a person deprived of liberty in other cases prescribed by law by a staff member of a relevant institution  is punished with an imprisonment for the term of 4 to 10 years.  3. The actions mentioned in part 1 or 2 of this Article, committed:  1) by a parent or educator or an employee of an educational or medical or disciplinary institution or other person who is in charge of rearing or care the person under the age of eighteen.  2) against an aggrieved under 14 years of age,  is punished with an imprisonment for the term of 8 to 15 years with deprivation of the right to hold certain posts or practice certain activities for up to 3 years or without that.  4. According to Articles 138 and 139 of this Code, a person who has been permanently or temporarily deprived of the opportunity to resist a perpetrator or capability to understand or realize the nature of an act committed against her/him, as well as a person under 12 years of age is considered helpless.  The Criminal Code of Armenia (CCA) devotes chapter 18 to crimes against sexual immunity and sexual freedom.  Rape is a criminal offence in Armenia under Article 138 of the CCA. The definition of rape only covers “sexual intercourse of a man with a woman” and requires that the act be performed against the will of the victim. Moreover, the offence includes another constituent element, out of three possibilities: either the perpetrator uses violence, threat or takes advantage of the woman’s helpless situation. Article 139 covers other types of sexual assault and includes the same constituent elements and sanction as in rape. |

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only. YES/NO

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| YES |

* 1. Gender neutral, covering all persons. YES/NO

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| NO, it is gender specific, covering women only |

* 1. Based on the lack of consent of victim. YES/ NO

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| Yes, The definition of rape only covers “sexual intercourse of a man with a woman” and requires that the act be performed against the will of the victim |

* 1. Based on the use of force or threat. YES/ NO

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| YES |

* 1. Some combination of the above. YES / NO. Please specify.

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| The offence includes constituent element: either the perpetrator uses violence, threat or takes advantage of the woman’s helpless situation |

* 1. Does it cover only vaginal rape? YES /NO

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| Yes, a charge of rape also requires proof of penetration. The provision is interpreted as sexual act that can cause pregnancy. |

* 1. Does it cover all forms of penetration? YES/NO Please specify.

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| The article does not explicitly specify forms of penetration. Article 138 covers sexual activity which causes pregnancy. Other forms of penetration are covered under Article 139 on violent sexual actions. |

* 1. Is marital rape in this provision explicitly included? YES / NO

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| No, marital rape is not explicitly and separately included in the article or in the CCA.  Armenian criminal law does not specifically disallow marital rape or any other form of sexual assault in the context of an intimate or family relationship.  Conversely the relationship between the victim and the perpetrator does not constitute a defence or mitigating circumstance and therefore domestic sexual  violence is prosecuted under the general sexual assault statutes. |

* 1. Is the law silent on marital rape? YES/NO

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| Yes |

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

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| It could be inferred that yes, marital rape is covered in general provision, as the article on rape or other provisions does not exclude this offence. Armenian criminal law does not specifically disallow marital rape or any other form of sexual assault in the context of an intimate or family relationship. Conversely the relationship between the victim and the perpetrator does not constitute a defence or mitigating circumstance and therefore domestic sexual  violence is prosecuted under the general sexual assault statutes. |

* 1. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO

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| No. See previous point J. |

1. 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.

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| Armenian criminal legislation does not include any provision which 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. |

1. What is the legal age for sexual consent?

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| The Criminal Code of Armenia (CCA) devotes chapter 18 to crimes against sexual immunity and sexual freedom. Combined revision of these articles of the CCA shows that legal age for consent is 16, as Article 141 foresees criminal offence of sexual acts with a person under 16. Article 141 states that it can be inferred that sexual offence with a person’s consent above this age is not criminalised. Further, Article 141 provides that sexual act with person aged under 12 (irrespective of his/her consent) is punished under Article 138 and 139 of the CCA. |

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

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| With regards this criminal offence - rape - Armenian criminal legislation does not include provisions that differentiate for sexual activity between peers. |

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

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| Rape, sexual intercourse of a man with a woman against her will, using violence against the latter or some other person, with threat thereof, or taking advantage of the woman’s helpless situation**, is punished with imprisonment for the term of 3 to 6 years.**  The rape which:  1) was done by a group of persons;  2) was done against the aggrieved or other person with particular cruelty;  3) was done against a minor,  4) caused the death of the aggrieved or heavy consequences, by negligence;  5) pregnant woman;  6) using weapons or items used as weapons;  7) committed against a person serving a sentence in a correctional institution, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceman in a military unit, a person treated or examined in a medical facility, or a person deprived of liberty in other cases prescribed by law by a staff member of a relevant institution **is punished with an imprisonment for the term of 4 to 10 years.** |

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?

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| The legislation does not specifically provide reparation to the victim of rape and/or sexual violence after conviction of the perpetrator. Explicit reparation for the victim of rape and/or other sexual violence is not enshrined in the regulations it is covered under general provisions.  Apart from criminal and criminal procedural provisions the law ‘on the Prevention of Domestic Violence, Protection of Victims of Violence and Restoration of Peace in the Family’ encompasses a number of provisions on providing psychological, social, legal and other necessary services to victims of domestic violence. |

**Aggravating and mitigating circumstances**

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

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| Article 138 of the Criminal Code foresees aggravating circumstances when sentencing rape cases which are enshrined in Article 138 part 2:  The rape which:  1) was done by a group of persons;  2) was done against the aggrieved or other person with particular cruelty;  3) was done against a minor,  4) caused the death of the aggrieved or heavy consequences, by negligence;  5) pregnant woman;  6) using weapons or items used as weapons;  7) committed against a person serving a sentence in a correctional institution, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceman in a military unit, a person treated or examined in a medical facility, or a person deprived of liberty in other cases prescribed by law by a staff member of a relevant institution **is punished with an imprisonment for the term of 4 to 10 years.**  Second, the Criminal Code of the RA also foresees separate article which establishes general circumstances aggravating the liability and punishment for all offences enshrined in the Code.  **Article 63. Circumstances aggravating the liability and punishment.**  1. Circumstances aggravating the liability and punishment are as follows:  1) repeated committal of crime; committing crime as a trade, occupation;  2) causing severe consequences by the crime;  3) committal of crime in a group of individuals, in an organized group or as a part of criminal association;  4) particularly active role in the crime;  5) involvement into the committal of the crime of persons who obviously suffer from mental disorder or who are intoxicated, as well as involvement of persons who are still under age for criminal liability;  6) committal of crime by ethnic, racial or religious motives, for religious fanatism, as revenge for other people’s legitimate actions;  7) committal of crime to conceal another crime or in order to facilitate this crime;  8) committal of crime against an obviously pregnant woman, against children, other insecure and helpless persons, or against persons dependent from the perpetrator;  9) committal of crime against a person or one’s spouse, or close relative, which is related to the implementation of service or public duty by this person;  10) committal of crime by a person whereby breaching the military or professional oath;  11) committal of crime with particular cruelty, treating the aggrieved with humiliation or torture;  12) committal of crime in a way that is dangerous for the society;  13) committal of crime under martial law or emergency situation, in conditions of a natural or other civil disaster, as well as during mass disorder and turmoil;  14) committal of crime under the influence of alcohol, narcotic drugs or other intoxicating substances;  2. Based on the nature of the crime, the court may consider the circumstances mentioned in points 10 and 14 of part 1 of this Article not aggravating.  3. When assigning punishment the court cannot take into account other circumstances not mentioned in part 1 of this Article.  4. If the circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it cannot be repeatedly taken into account as a circumstance aggravating the liability and the punishment. |

* 1. Is rape by more than one perpetrator an aggravating circumstance? YES/NO

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| Yes |

* 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

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| Yes, Article 138.2.7 states:  The rape which is committed against a person serving a sentence in a correctional institution, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceman in a military unit, a person treated or examined in a medical facility, or a person deprived of liberty in other cases prescribed by law by a staff member of a relevant institution is punished with an imprisonment for the term of 4 to 10 years. |

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

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| No |

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

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| The Criminal Code of the RA foresees separate article which establishes general circumstances mitigating the liability and punishment for all offences enshrined in the Code.  **Article 62. Circumstances mitigating liability and punishment.**  1. Circumstances mitigating liability and punishment are as follows:  1) committal of a not grave and medium-gravity crime, for the first time, by coincidental circumstances;  2) being under age at the moment of committal of the crime;  3) being pregnant when committing the crime or when assigning the punishment;  4) caring for a child under 14 years of age at the moment when assigning the punishment;  5) committal of crime as a result of hard living conditions or out of compassion;  6) committal of crime due to breach of proportionality of necessary defense, capturing a perpetrator, urgent necessity, justified risk or carrying out orders or instructions;  **7) illegal or immoral behavior of the aggrieved which determined the crime;**  8) committal of the crime under threat or enforcement, or under financial, service or other dependence;  9) surrender, assistance in solving the crime, exposing other participants of the crime, in searching the illegally acquired property;  10) offering medical or other assistance to the aggrieved immediately after the crime, voluntary compensation for the property and moral damage inflicted by the crime, or other actions aimed at the mitigation of the damage inflicted to the aggrieved.  2. When assigning a punishment, other circumstances, not mentioned in part 1 of this Article can be taken into account as mitigating ones.  3. If a circumstance mentioned in part 1 of this Article, is envisaged in the appropriate article of the Special Part of this Code as an element of a crime, then it cannot be repeatedly taken into account as a circumstance mitigating the liability and the punishment.  The Criminal Code of Armenia include mitigating circumstances referring to the provocative behaviour of the victim. Under Article 62 the code foresees mitigating circumstances among which the illegal or immoral behaviour of the victim is included. |

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?

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| NO |

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

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

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| NO |

* 1. if the perpetrator marries the victim of rape? YES/NO

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| NO |

* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

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| NO |

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

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| YES |

1. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

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| NO |

1. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO

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| NO |

1. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO

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| NO |

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

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| **The Criminal Code of the RA**  **Article 19. Types of crime.**  1. Crimes are categorized, by nature and degree of social danger, as not very grave, medium gravity, grave and particularly grave.  2. The willful acts, for the committal of which this Code envisages maximal imprisonment of two years, or for which a punishment not related to imprisonment is envisaged, as well as acts committed through negligence, for which this Code envisages a punishment not exceeding three years of imprisonment, are considered not very grave crimes.  3. Medium-gravity crimes are those willful acts for which this Code envisages a maximal punishment not exceeding five years of imprisonment, and the acts committed through negligence, for which this Code envisages a maximal punishment not exceeding ten years of imprisonment.  4. Grave crimes are those willful acts for which this Code envisages a maximal punishment not exceeding ten years of imprisonment.  5. Particularly grave crimes are those willful acts for which this Code envisages a maximal imprisonment for more than ten years or for life.  **Article 75. Exemption from criminal liability as a result of expiry of the statute of limitation.**  1. The person is exempted from criminal liability, if the following periods of time have elapsed after the committal of the crime:  1) 2 years, since the day of committal of not grave crime;  2) 5 years, since the day of committal of medium-gravity crime;  3) 10 years, since the day of committal of grave crime;  4) 15 years, since the day of committal of particularly grave crime.  2. The prescription period is calculated from the day of committal to the moment when the sentence comes into legal force.  3. The prescription period is disrupted, if prior to the expiry of these period, the person commits a new medium gravity crime, grave crime or particularly grave crime. In this case the calculation of the prescription period begins from the moment of committal of the new crime.  4. The prescription period is suspended, if the person avoids investigation or trial. In this case the prescription period resumes from the moment of arrest or surrender. Particularly, the person can not be subjected to criminal liability, if 10 years have elapsed since the day of committal of the not grave or medium-gravity crime, and 20 years have elapsed, in the case of a grave or particularly grave crime, and no the prescription period was not disrupted with new crimes.  5. The court decides the issue of application of the prescription period to a person who committed a crime punishable by a life sentence. If the court does not deem possible to exempt the person from criminal liability due to the expiry of the prescription period, the life sentence is not applied.  6. The expiry of the prescription period is not applicable to persons who committed crimes against peace and human security envisaged in Articles 384, 386-391, 393-397 of this Code. Prescription periods are not applied to the persons who committed crimes envisaged in the RA international agreements, provided the agreement prohibits the application of the prescription period.  7. The calculation of the statute of limitations for a person who has committed a crime under Articles 132.2 and 168 of this Code, under Articles 138-142 of this Code against a minor under starts when victims reaches the age of eighteen. |

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

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| Article 75. Exemption from criminal liability as a result of expiry of the statute of limitation.  The calculation of the statute of limitations for a person who has committed a crime under Articles 132.2 and 168 of this Code, under Articles 138-142 of this Code against a minor under starts when victims reaches the age of eighteen. |

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

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| The main difficulty with the Article 138 provisions on rape is the use of a forcebased definition. The absence of consent is not the qualifying element. Accordingly, the victim has the burden of proving concurrent violence, threats or her own helpless situation. |

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?

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| There are no specific provisions on rape shields. |

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

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| There are no provisions explicitly established to avoid re-victimizations during the prosecution and court hearing. |

**War and/or conflict**

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

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| In general, yes. Article 390 of the CCA enshrines criminal offence - serious breach of international humanitarian law during armed conflicts- which encompasses provisions general provisions, namely Article 390.1.3 states ‘The following serious violations of international humanitarian norms during armed conflict against persons not immediately engaged in military actions or defenseless persons, the injured, ill, medical personnel or clergy, sanitary units or sanitary means of transportation, POWs, civilians, civil population, refugees, protected persons or other protected persons during military actions **willfully inflicted serious sufferance or other actions threatening man’s physical or mental state is punished with imprisonment for 12-20 years, or for life**’. Other parts of the Article enshrine aggravated circumstances.  **Article 390. Serious breach of international humanitarian law during armed conflicts.**  1. The following serious violations of international humanitarian norms during armed conflict against persons not immediately engaged in military actions or defenseless persons, the injured, ill, medical personnel or clergy, sanitary units or sanitary means of transportation, POWs, civilians, civil population, refugees, protected persons or other protected persons during military actions:  1) murder,  2) torture and inhuman treatment, including biological experiments;  3) willfully inflicted serious sufferance or other actions threatening man’s physical or mental state,  is punished with imprisonment for 12-20 years, or for life.  2. The committal of the following acts seriously violating international norms with respect to persons and facilities mentioned in part 1 of this Article:  1) inflicting damage to health,  2) forcing a protected person or POW to serve in the opponent army,  3) deprivation of a protected person or POW from impartial court trial,  4) illegal deportation, removal and arrest of a protected person, or deprivation of freedom otherwise,  5) taking hostages,  6) illegal, willful destruction or realization of property not caused by military necessity,  is punished with imprisonment for 5-12 years.  3. The following acts seriously breaching international humanitarian norms, causing grave damage to human physical or mental state during armed conflicts:  1) assault on civilian population or individual civilians;  2) not selective assault which inflicts damage to the civilian population or civilian facilities, if it is obvious that such assault will cause large losses amongst civilians or extremely large losses to civilian facilities, if such damages are redundant for the achievement of specific and immediate military supremacy;  3) assault on facilities and equipment containing hazardous forces, if it is obvious that the assault will cause extremely large damage to civilian facilities, if such damages are redundant for the achievement of specific and immediate military supremacy;  4) targeting unprotected areas and demilitarized zones,  5) assault on a person who, obviously for the perpetrator, ceased immediate participation in military actions,  is punished with imprisonment for 13-20 years, of for life.  4. The following acts seriously breaching the norms of international humanitarian law during armed conflicts:  1) re-population by the aggressor state of part of one’s own population in the occupied territories, or depopulation of the whole population or part thereof in the occupied territory, or movement within the occupied territory or beyond its boundaries,  2) unjustified delay in the repatriation of POWs or civilians,  3) humiliation of a person’s self-esteem, based on apartheid or racial discrimination, application of inhuman and other humiliating practices,  4) targeting specially protected, clearly marked, cultural, spiritual and historical monuments, works of art, ceremonial places, and inflicting large damage to the latter as a result of assault, if these facilities are not in near proximity from military objectives and if there is no information attesting to the use of these historical monuments, works of art, ceremonial places by the enemy for military purposes,  is punished with imprisonment for 8-12 years,  5. During armed conflicts, medical intervention not necessitated by the health condition of the persons under jurisdiction of the enemy, arrested or otherwise detained, and detrimental for the physical or mental condition of the latter violating universally recognized medical norms, particularly, even with consent of these persons, inflicting physical injuries to people, subjecting them to medical or scientific experiments, harvesting parts of body or tissues for transplantation,  is punished with imprisonment for 8-12 years.  6. Other violations of the norms of international humanitarian law, agreements envisaged by international agreements during armed conflicts:  is punished with imprisonment for up to 5 years. |

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

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| No  Article 75.6 of the CCA states that:  The expiry of the prescription period is not applicable to persons who committed crimes against peace and human security envisaged in Articles 384, **386-391**, 393-397 of this Code. Prescription periods are not applied to the persons who committed crimes envisaged in the RA international agreements, provided the agreement prohibits the application of the prescription period. |

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

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| N/A |

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

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| 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.

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| N/A |

**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.