



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

The United Nations Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, in her thematic report to be presented to the UN General Assembly in September 2020 will address **States' responsibility to criminalize and prosecute rape as a grave and systematic human rights violation and gender based violence against women, in line with international human rights standards.**

Rape has been recognized as crime of sexual violence, a war crime, a crime against humanity and/or genocide in specific circumstances and it has been criminalized and prosecuted in a large number of States and jurisdictions but in different ways, that is: rape has different definitions (force /consent), different scopes (women, men, marital rape, all types of penetrations), with different aggravating and mitigating circumstances, with different sanctions, and with different statutes of limitations for its prosecution. While victims of rape can also be men and boys, it predominantly affects women and as such, falls under the definition of gender based violence against women as act of violence against women.

Globally, we know that rape is frequently not reported, and if reported seldom prosecuted with vigor; if prosecuted, results in very low numbers of convictions (attrition rates are high) and all this results in impunity for the majority of perpetrators; women thereby lose faith in the criminal system, do not report it, and the result is the mixture of low reporting rates and a culture of impunity and rape becomes normalized.

In general, there is lack of data on rape reporting, prosecution and conviction including on the relationship(s) between the victim and the perpetrator.

The international human rights framework on rape as a human rights violation and gender-based violence against women (GBVAW) has been significantly improved, but those improved standards are not fully incorporated into legislation and practice at the national level.

The aim of this report is to collect as much information as possible on the criminalization and prosecution of rape, and to thereby support and encourage a process of harmonization of national criminal laws and systems and practice with international standards on rape and sexual violence in both peacetime and during conflicts.

In her report, the Special Rapporteur intends to provide recommendations to States and other stakeholders on key international human rights standards that should be integrated in national criminal justice responses in order to harmonize them with accepted international standards; to provide access to justice and support for victims of rape; to break the cycle of impunity; and to prosecute perpetrators, ensuring that they are not protected by hidden domestic norms that are still part of criminal law or criminal procedure.

To that end, the Special Rapporteur on violence against women would like to invite all States, National Human Rights Institutions, civil society actors, international organisations, academics and other stakeholders from all countries to send responses to the questionnaire below.





(Due to limited time and resources, please send information including provision of the criminal law in English. If sent in other languages, translation services are not available and it could not be considered at this stage of information gathering).

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

Please indicate who is providing the response, along with contact details.

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.

The Penal Code that was issued in 2018 stated in Article (257) "Whoever engages in sexual intercourse, without consent, with a male or female, shall be punished by imprisonment for a period no less than (10) ten years and not exceeding (15) fifteen years. If the victim is under (15) fifteen years of age, if the victim suffers from physical or mental disability that renders him unable to resist, if the act causes chronic venereal disease, if the act leads to his death, if the offender is responsible for his upbringing, supervision, caretaking, or is someone who has authority over him, if the victim is a paid employee of his or of any of those previously mentioned, or if the crime is committed by (2) two persons or more, the punishment shall be life imprisonment".

Child Law No. (22/2014) prohibited many actions that endanger the child's safety, including rape as stated in Article (56) paragraph (b) "It is prohibited to any person to undertake any of the following acts: b. Rape, non-violent indecent assault or sexual harassment against a child;". In addition, it stipulated in Article (72) the prescribed penalty for anyone who commits those acts prohibited under the previous article that stated "Any person who commits any of the prohibited acts stipulated by articles (55) and (56) of the present law shall be subject to imprisonment for a period of not less than five (5) years and not more than fifteen (15) years and a fine of not less than five thousand Omani riyals (OR 5000) and not more than ten thousand Omani riyals (OR 10000)".

2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific, covering women only YES/NO
 - b. Gender neutral, covering all persons YES/NO
 - c. Based on the lack of consent of victim YES/ NO
 - d. Based on the use of force or threat YES/ NO
 - e. Some combination of the above. YES / NO





- f. Does it cover only vaginal rape? YES /NO
g. Does it cover all forms of penetration? YES/NO. If yes, please specify.

Article (257) of the Penal Code is clear as to punish whoever engages in sexual intercourse, without consent whether the victim is male or female that includes all forms of sexual penetration, whether vaginal or anal. The article does not state any conditions or specific forms of sexual intercourse.

- h. Is marital rape in this provision explicitly included? YES / NO
i. Is the law silent on marital rape? YES/NO
j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO
k. There are provisions in the law that criminalize marital rape which stated in provisions of both the Penal Code as mentioned in above answers as well as in the Personal Status Law (32/97) that refers to good cohabitation and no material or moral harm to both genders in marital relations.
k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? Not excluded / Although not stated explicitly, marital rape is considered a crime as mentioned above.

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?

18 years old.

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

There are not but if the crime is committed by a juvenile, they are trialed according to the procedures stipulated in the Juvenile Accountability Act (30/2008), and the juvenile is "every male or female who has not completed eighteen years of age" according to the definition contained in the same law.





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

The penalty prescribed of rape is imprisonment for a period of no less than (10) ten years and not exceeding (15) fifteen years, and the punishment is increased to life imprisonment in some legal cases for the text of Article (257) of the Penal Code previously mentioned.

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?

Victims are entitled to claim compensation for the direct damage caused to them as a result of the crime, as Article (20) of the Criminal Procedure Law No. (97/99) stipulates that: "A person who has been caused direct personal injury an account of an offence may file a suit for his/her civil rights with a court hearing a civil action in any condition whatsoever till the door of pleading is closed with his description as a co-plaintiff in a civil action, after the payment of the prescribed compensation. This shall not be acceptable before the Appellate Court. A civil right claimant may claim his/her right during preliminary investigation by an application submitted to a member of Public Prosecution. He/she may also include a Civil Right Officer in the suit filed by him/her or in preliminary investigation. A civil right claim may be made by notifying the accused or by an application at the session where the civil action is being heard if the accused is present. If it has already been accepted in the preliminary investigation, the reference of the civil action to the court shall include the civil suit.

In Addition, provisions of the same chapter in relation to the compensation requests submitted by those affected by the crime, Article (23) of the same law stipulates "the court shall in the same judgment which it issues in the civil action, decides on the demands of the compensation submitted to it by the litigants. If it that judgment in the civil suit shall lead to delay in the decision on the civil action, it shall rule in the civil action alone and postpone the hearing of the civil suit or refer to the competent civil court. A civil right claimant may waive his/her case before the court hearing a civil action and file it with competent civil court. This shall not affect the proceedings of the civil action. If the civil right claimant files his/her suit with a civil court and then a civil action is brought, he/she may, if he/she abandons his suit, file it with court hearing the civil action".





Aggravating and mitigating circumstances

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

Article (257) of the Penal Code (7/2018) stipulates the aggravating circumstances in which the penalty is imprisonment, which is: "Whoever engages in sexual intercourse, without consent, with a male or female, shall be punished by imprisonment for a period no less than (10) ten years and not exceeding (15) fifteen years. If the victim is under (15) fifteen years of age, if the victim suffers from physical or mental disability that renders him unable to resist, if the act causes chronic venereal disease, if the act leads to his death, if the offender is responsible for his upbringing, supervision, caretaking, or is someone who has authority over him, if the victim is a paid employee of his or of any of those previously mentioned, or if the crime is committed by (2) two persons or more, the punishment shall be life imprisonment".

- Is rape by more than one perpetrator an aggravating circumstance? YES/NO
- 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
- Is rape by spouse or intimate partner an aggravating circumstance? Not mentioned

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

No, there aren't explicit texts provided for these circumstances, but the reasons for mitigation were mentioned in the Penal Code (7/2018) in general for all crimes, according to the circumstances of the crime or the offender, where Article 80 states "If the court sees that the circumstances of the crime or the convict call for mercy, it may commute the prescribed punishment in the following manner: (a) if the punishment prescribed for the felony is the death sentence, it is commuted to life imprisonment or imprisonment for a period no less than (5) five years. (b) if the punishment prescribed for the felony is life imprisonment, it is commuted to imprisonment for a period no less than (3) three years. (c) if the punishment prescribed for the felony is temporary imprisonment, it is commuted to imprisonment for a period of no less than a year".





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?

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

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

However, there is what is known as impediments to criminal responsibility, which are cases where the perpetrator is not criminally responsible, as Article 49 of the Penal Code (7/2018) stipulated "Whoever has not completed nine years of age at the time of the commission of the crime shall not be criminally liable. The estimation of age is not recognized without an official document, and in the absence of such a document, his age shall be estimated by the means of the competent body". In addition, Article 50 stipulated "Whoever, at the time of the commission of the crime, is in a state of loss of perception or volition due to insanity, mental handicap or coma arising from narcotic or intoxicating drugs or substances of any kind given to him against his will or without his knowledge, or for any other reason science determines that it causes loss of perception or volition, shall not be criminally responsible".

- a. if the perpetrator marries the victim of rape? YES/NO, it is not provided in any legal texts.
b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/NO

Prosecution

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

13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO. This crime is not one of the crimes pending on the victim's complaint, so anyone who knows about the crime can report it.





14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES/NO. This crime is considered one of the crimes that the public prosecutor raises before the competent court, and it is not permissible to waive it, and it is not one of the crimes that were stipulated to be filed and initiated as a public lawsuit before the judicial authorities to file a complaint from the victim, so it is not possible to concede or settle this crime.

15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO

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

Article (16) of the Penal procedure law (97/99) stipulated "A civil suit shall expire with the passage of twenty years in offences where the sentence is death penalty or life imprisonment; ten years in offences; three years in acts of misdemeanor and one year in violations, starting from the day of the commission of the crime ...".

However, Article (18) stipulates that "The period during which the public lawsuit is adjourned shall be interrupted by investigation, accusation or trial procedures Likewise, by a criminal order or by procedures for collecting evidence to be made in the face of the accused. If he is notified of it in an official capacity, the period resumes from the day of interruption. If procedures that interrupt the period are multiple, the validity of which starts from the date of the last procedure".

In the case of multiple accused persons, Article (19) stipulates that "If the number of accused is more than one, the discontinuation of period for anyone of them shall lead to discontinuation in respect to the remaining accused". Accordingly, the statute of limitations period is-(20) twenty years in the aggravating circumstances, in which the penalty is life imprisonment, and in other than these circumstances the statute of limitations period is (10) ten years.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify. All of the mentioned documents may be evidences.





19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

War and/or conflict

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

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.

