**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.
2. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only YES/NO No
	2. Gender neutral, covering  all persons   YES/NO Yes
	3. Based on the lack of consent of victim YES/ NO sometimes or some cases
	4. Based on the use of force or threat  YES/ NO sometimes or some cases
	5. Some combination of the above.  YES / NO  Yes
	6. Does it cover only vaginal rape?  YES /NO No
	7. Does it cover all forms of penetration? YES/NO. If yes, please specify. Yes, all type of sexual intercourse
	8. Is marital rape in this provision explicitly included? YES / NO No, as it is not considered as rape
	9. Is the law silent on marital rape? YES/NO Yes , as it is not considered rape
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO No
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO is not included and not considered a crime
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.
4. What is the legal age for sexual consent?
5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.
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?

**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?
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. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO
4. Are 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.
6. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES/NO
7. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify.
8. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO
9. 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**

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.

**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.

Please find below responses to the questioner from OHCHR Yemen Country Office:

1.

Article 269 of the Republican Decree Law No 12 for the Year 1994 concerning Crimes and Penalties states that whenever the legal penalty has fallen for one of the fixed reasons, punishment is through imprisonment for a period not exceeding seven years for anyone who assaults by rape any person be it male or female without consent. The sentence shall be imprisonment for a period not less than two years and not more than ten years if the crime is committed by two persons or more, or the guilty is in charge of the victim or under his protection or upbringing or care or treatment, or the victim is injured because of the incident with a grave harm to his body or health, or the victim happens to conceive due to the crime. The punishment shall be imprisonment for a period not less than three years and not more than fifteen years if the age of the female victim does not exceed fourteen years or the act led to the suicide of the victim. It is deemed rape, every sexual insertion which is committed on the other person be it male or female, without consent.

2.

The aforementioned provision of the law consists of a combination of gender specific and neutral definitions. When referring to the first part of the provision, it is found that it consists of gender-neutral rules and therefore applicable equally to all persons, female and male, in which it generally states that the punishment imposed is imprisonment for a period up to ten years for anyone who assaults by rape any person be it male or female.

Despite the general rule mentioned above, the same provision provides a gender-specific rule, in which the punishment of imprisonment is increased to be for a period not less than three years and not more than fifteen years if the age of the female victim does not exceed fourteen years or the act led her to commit suicide.

Although, article 269 does neither prescribe nor touch on the use of force or threat in the definition of rape, however, it is clearly stated under the law that the offence is deemed to be rape when committed without consent.

The text of the same article does not specify a particular type of penetration in order to constitute a rape offence, however it manifestly indicates that all forms of sexual insertion are considered rape.

The Law no. 20 of the year 1992 concerning Personal Status in Yemen contains provisions related to marriage, in which article 6 defines marriage as ‘a commitment between spouses via a legal contract through which a man enjoys his woman lawfully’.

Although the Crimes and Penalties Law addresses sexual violence, criminalizes rape, and also provides for increased penalties for aggravated forms of rape. However, the law does not include marital rape, in fact article 40 of the Personal Status Law allows the husband to have sexual relations with his wife, whenever he pleases, and she should allow that in return.

3. 4. And 5.

Generally speaking, being or having an illegal sexual relationship between the alleged perpetrator and the victim does not criminalize the perpetrator for a rape offence, if committed with a consent. However, such act falls under an adultery offence, as any kind of unlawful sexual activity are unacceptable in Yemeni society and such practices are against Islamic law. Therefore, the punishment for a married person who has engaged in unlawful sexual intercourse is death, and for an unmarried person who has engaged in unlawful sexual intercourse is to be punished with whipping for 100 lashes.

Therefore, any type of unlawful sexual intercourse or relationship is deemed to be an offence and thus prohibited, including sexual activity between peers, and even if a consent is given. For such, there is no legal age provided by the law to give sexual consent.

6. and 8.

The punishment for rape is imprisonment up to 15 years depending on the circumstances and consequences of the offence, its effects on the victim, status and number of the perpetrator/s, and also on the age and gender of the victim.

At first, article 269 of the Crimes and Penalties Law prescribes that the sanction is imprisonment for a period not exceeding seven years for anyone who rapes any person be it male or female without consent.

In view of the gravity of the crime and its effects on the victim, the same article states that, the punishment is to be imprisonment for a period not less than two years and not more than ten years in the following cases:

* the crime is committed by two persons or more, or
* the perpetrator is in charge of the victim, under his responsibility, protection, upbringing or care, or
* the crime caused grave harm to the victim’s body or health, or
* the female victim got pregnant as a result of the crime.

Further, the foregoing article, under aggravating circumstances, imposes a greater penalty of imprisonment for a period not less than three years and not more than fifteen years, if the rape crime:

* committed on a girl does not exceed fourteen years, or
* led the victim to commit suicide.

10. and 11.

The applicable Crimes and Penalties Law does not infer that a reconciliation between the perpetrator and victim is allowed as a legal response in rape cases. Besides, the Act does not include any provision allows for the non-prosecution of perpetrator.

The judiciary is actually obliged to prosecute the alleged perpetrator of rape offence when a complaint is reported.

In fact, some families feel ashamed to report cases of rape to the authorities fearing to experience social stigma, particularly for those related to the victims’, and thus tend to conceal and keep secret the commission of such offence.

However, reconciliations may take place, beyond the law, as a social practice in such rape cases, by which a mediation process would take place between the families of the perpetrator and victim to solve the issues relating to rape by marrying off the two parties or paying an amount of money as a compensation for the victim, with the assurance that such reconciliations are taking place outside the judicial system.

14. and 15.

The general prosecution is permitted to arrange for a settlement only if the punishment is fines or payment of damages for injuries pursuant to article 301 of Criminal Procedure Law. In other words, the prosecution and the court are not allowed to arrange for any settlement in serious offences and when the punishment is imprisonment, like in the case of rape, regardless who the victim is.

16. and 17.

The national laws do not provide any provisions that limit the prosecution of rape cases. Moreover, the law does not have a specific a statute of limitations for rape offences, however it can be understood from article 38 of the Criminal Procedure Law, that the right to hear criminal lawsuit expire for the serious or major crimes after ten years has passed since the occurrence of the crime, except in those crimes involving the penalization by equal retribution acts, or where the blood money or wound money is one of the punishments stipulated for the crime.

18.

According to article 45 of Law no 21 for the year 1992 concerning Evidence, in rape cases, without the perpetrator’s confession, the rape survivor must provide four male witnesses to establish that a rape had in fact been committed.

The medical evidence is accepted by the law, and should be corroborated by the witnesses’ statements or the perpetrator’s confession.

19.

The general rule is that the sessions of the court must be open to the public. Despite the fact that there is no provision in the law preventing the judges and lawyers to discuss or expose the woman’s sexual history, whenever relevant, during trials, the court still have the discretion to decide by virtue of article 263 of Criminal Procedures Law that some or all of the trial session shall be closed, be attended only by those who are related to charges, for, inter alia, the maintenance of proper public conduct, or for fear of revealing confidential matters on the private lives of the parties to charges. However, in all cases the announcement of the verdict or ruling must be made in a session open to the public.

20.

All persons are granted the right of justice, by virtue of article 95 of Yemeni Constitution, which includes the right to defense at all stages of investigation and trial as well as a right to obtain a legal aid for those who cannot afford it.

In addition, such rights regarding the provision of legal aid were explicitly mentioned in article 9 of Criminal Procedure Law which stipulates that the right to defense is guaranteed to all persons in all stages of the procedures of handling criminal cases, including the investigation period, and the government must provide for the poor and hard pressed a defense lawyer from the accredited lawyers.

21.

Yemen has not incorporated into its domestic legislation the definitions of genocide, crimes against humanity, war crimes and the crime of aggression. Therefore, the national laws do not consider acts of rape as a war crime or crime against humanity, however Yemen has ratified several international conventions and treaties, including the Fourth Geneva Convention related to the Protection of Civilian Persons in Time of War 1949, which states in its article 27 that protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault.

24.

Yemen has not ratified the Rome Statute pf the ICC.

25. and 26.

Number of cases reported and documented by YCO are described below:-

* During 2020, OHCHCR documented the rape of three displaced girls and two displaced boys; and, the attempted rapes of four displaced women and three girls, allegedly committed by civilians inside and nearby the camps In addition, OHCHR received an allegation of rape committed against one girl. The documented cases of sexual violence are an illustration of the heightened risks to gender-based violence women, girls and boys face while in displacement in Lahej and Aden governorates. Referring to the social context, in the southern areas of Yemen, families are more keen to report sexual incidents to the police station unlike the situation in the northern governorates where people are conservative on such issues and don’t report on them in fear of stigma.

With respect to sexual violence directly attributable to parties to the conflict, OHCHR documented the attempted rape of a displaced woman by a solider belonging to the belt security forces in Aden Governorate in April 2020.

* During 2019, In reference to the SG report on Conflict related sexual violence report for 2019, YCO documented six cases of conflict-related sexual violence against three women, one girl and two boys. In one of the incidents, the two boys were raped by unidentified armed men in Ta‘izz Governorate. Two other incidents took place in Aden, allegedly committed by Southern Transitional Council troops. Sudanese soldiers stationed in Hudaydah Governorate were responsible for one attempted rape in April and one verified case of rape in September. The Group of Eminent International and Regional Experts (Group of Eminent Experts on Yemen) documented 37 cases of sexual violence that occurred between 2016 and 2019, by members of the Security Belt Forces. Yemeni armed forces were also implicated (see A/HRC/42/17). Moreover, the Group of Eminent Experts reported on sexual violence in detention centres, including secret prisons, in Houthi-controlled areas. In one case, a boy detained in the Political Security Organization detention centre, was subjected to sexual assault, namely beatings on his genitals, forced nudity and threats of rape. The Group of Eminent Experts concluded that there are “reasonable grounds to believe that all parties to the conflict committed gender-based violence, including sexual violence.