

SUBMISSION

TO THE UN SRVAW THEMATIC REPORT ON RAPE AS A GRAVE AND SYSTEMATIC HUMAN RIGHTS VIOLATION AND GENDER- BASED VIOLENCE AGAINST WOMEN

Coalition to Stop Violence against Women

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Ըսդհեմ կանաց նկատմամբ
բռնության կուլինգիա

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ABOUT COALITION TO STOP VIOLENCE AGAINST WOMEN:

On October 1, 2010, 20-years-old Zaruhi Petrosyan died in the result of severe beatings. After the incident, the organizations concerned with that issue founded the Coalition to Stop Violence against Women (CSVW), which demanded a just investigation and prevention of such incidents. Since 2010, the CSVW acts as a platform for joint advocacy of several local non-governmental organizations in their fight against violence against women in Armenia. Throughout these years, we united our efforts to push for legislative amendments, policy changes, nation-wide awareness raising and campaigning. Elimination of violence and discrimination against women is the responsibility of the State and of the Government of Armenia. This is, unfortunately, an issue with deep roots and a wide scope and unless it is addressed and solved, dignity, human rights and democracy cannot be upheld in Armenia. Our team calls all the stakeholders to join the efforts in combatting violence against women. The “New Armenia”, which we are all trying to build, must be the state where every woman is confident that her rights to be free from violence and discrimination are protected and realized fully.

CSVW MEMBER ORGANIZATIONS:



[Women's Support Center](#) (WSC) is working on preventing and responding to domestic violence. It offers confidential comprehensive support to victims of domestic violence and their children also free socio-psychological support, legal and court representation. WSC has 2 safe houses for women and their children.



[Women's Rights Center](#) (WRC) is dealing with the problems of domestic violence against women and providing women survivors with psychological and legal consulting and protection in the court.



[Women's Resource Center](#) (WRC) is a feminist human rights organization with a vision to establish equality and self-determination of women in Armenian society and to eradicate limitations and pressures of all kind women are subjected to within the existing patriarchal societal order.



[Sexual Assault Crisis Center](#) (SACC) is working with women who were sexually abused and provides psychological and legal counseling.



[Society without Violence](#) (SWV) provides gender education to various social and age groups throughout non-formal education; workshops and training sessions and advocates for the establishment of gender-sensitive educational system in formal education.



[Pink Armenia](#) is a human rights defender non-governmental organization founded in 2007. Vision of Pink Armenia is to have a society, where human rights of all are protected and everybody is accepted regardless of sexual orientation and gender identity and/or gender expression. Organization aims to create a safe space for LGBT people by promoting well-being and protection in all spheres of life.



["Agate" Rights Defense Center for Women](#) with Disabilities advocate the development, adoption and enforcement of inclusive, gender sensitive and human rights-based legislation and policies in Armenia. It is empowering women with disabilities, developing leadership skills and promoting the rights of persons with disabilities to education, independent living, employment and political participation.



[Real World. Real People](#) (WRP) provides care and support services to people living with HIV and their family members as well as social-psychological support, legal counseling , peer-to-peer counseling.



[Spitak Helsinki Group](#) provides free legal consultation to all citizens as well as free psychological consultation and support to women and children.

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.

Criminal Code of the Republic of Armenia provides for separate classification of the rape as a gender specific crime, covering only vaginal penetration acts and the violent sexual acts for other types of sexual intercourse.

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) (annulled); 6) committed against an obviously pregnant woman; 7) was committed with the use of a weapon or other object used as a weapon or with the threat of using it; 8) has been committed against a person serving a sentence in a correctional facility, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceperson in a military unit, a person treated or examined in a medical institution or otherwise deprived of liberty; by the employee of the 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,

1)against an aggrieved under 18 years of age, by a parent or pedagogue or an employee of an educational or medical or educational institution or another person who is responsible for his / her upbringing or care for a 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, depriving them of the right to hold certain positions or engage in certain activities for a period of three years or without it.

4. By the meaning of Articles 138 and 139 of this Code, a person who has been permanently or temporarily deprived of the opportunity to resist a criminal or to realize or understand the nature of an act committed against him, as well as a person under 12 years, is considered helpless.

Article 139. Violent sexual actions.

1. Sexual actions, including homosexual acts against the aggrieved, by using force against the latter or other persons, or threat of using force, or by taking advantage of the aggrieved person's helplessness, are punished with an imprisonment for the term of 3 to 6 years.

2. The same actions: 1) 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) (annulled); 6) committed against an obviously pregnant woman; 7) was committed with the use of a weapon or other object used as a weapon or with the threat of using it; 8) has been committed against a person serving a sentence in a correctional facility, a person detained at a place of detention or a place of arrest, a person held in a disciplinary battalion, a serviceperson in a military unit, a person treated or examined in a medical institution or otherwise deprived of liberty; by the employee of the relevant institution; is punished with an imprisonment for the term of 4 to 10 years.

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

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?

The legal age for sexual consent is 16.

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

No.

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

Imprisonment for the term of 3 to 6 years. For the act with aggravating circumstances: imprisonment for the term of 4 to 10 years (under part 2 of art. 138 and 139) or imprisonment for the term of 8 to 15 years (under part 3 of art. 138 and 139).

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?

The legislation of RA provides compensation for the victim of the crime, the compensation is provided only for material damage, including damage to health caused by rape or other sexual acts.

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

See the answer to the question 1.

- a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
- b. 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
- c. Is rape by spouse or intimate partner an aggravating circumstance? YES/NO

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

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.*

This list is not comprehensive, and the court can take into account other circumstances, not mentioned above.

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?

The reconciliation is not prohibited in any case of criminal harassment. But in cases of public prosecution, such as rape and violence sexual acts, reconciliation between the victim and the perpetrator is not a grounds to suspend the investigation.

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

As the reconciliation is not prohibited legally it can be practiced by the parties on their own will.

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

A perpetrator can be exempted from criminal liability as a result of expiry of the statute of limitation (after 10 or 15 years since the day of committal of the crime depending on the type of the crime). The calculation of the statute of limitations for a person who has committed a crime

under Articles 138-141 of this Code shall begin from the moment the victim reaches the age of eighteen.

According to the Code of Criminal Procedure of RA criminal case can not be instituted and criminal prosecution may not be started and the instituted criminal case is subject to suspension, if:

- 1) *in the absence of any criminal act punishable under the Criminal Code;*
- 2) *if the alleged act contains no corpus delicti;*
- 3) *if the alleged act, which has resulted in damages, is legitimate under criminal law;*
- 4) *in the event of absence of a complaint of the injured, in cases prescribed by this Code;*
- 5) *in the event of reconciliation of the injured party and the suspect or the accused, in cases prescribed by this Code;*
- 6) *the prescription has expired;*
- 7) *against the person and upon a cause, with respect to whom and upon which cause the court has already passed a judgment and such judgment has entered into legal force, or any other enforceable judicial decision is available to exclude criminal prosecution.*
- 8) *against the person and upon the same charge, with respect to whom and upon which charge the agency for inquest, the investigator, or the prosecutor has already made a decision denying criminal prosecution, and such decision is still in force.*
- 9) *At the moment of commitment of the crime the person had not reached the age punishable by law, as established by law. 13 of 159*
- 10) *The person died, except the cases when the proceedings are necessary to rehabilitate the rights of the deceased or to resume the case on occasion of new circumstances with regard to other persons.*
- 11) *The person refused to complete the crime of one's own accord, if the action already committed has no other formal elements of crime.*
- 12) *The person is liable to exemption from criminal liability as stipulated in the General Part of the Criminal Code of the Republic of Armenia.*
- 13) *Amnesty act has been adopted.*
 - a. **if the perpetrator marries the victim of rape? YES/NO**
 - 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**
14. **Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO**
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.

See the answer to the question 11.

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.

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.

During 2015–2016 the Investigative Committee of Armenia initiated 288 criminal cases, from which 157 in 2016 and 131 in 2015. In 2015 57 cases were prosecuted (sent to court) and in 2016 – 62 cases were prosecuted (<http://www.saccarmenia.org/files/uploads/ReportE.pdf>).

According to the publicly available information from the website of Judicial Information System during the years 2015-2020 overall 268 sexual assault violence cases were heard in Armenian courts (<http://www.datalex.am/?app=AppInfographic>).

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.

The barriers which affect the reporting and prosecution of rape and to the accountability of perpetrators in Armenia can be structured in the following main circumstances:

- Legal procedures
- Secondary victimization and victim blaming
- Luck of understanding of trauma
- Other social factors

Legal procedures: In Armenian legal system there are still numerous procedures which influence on the reporting and prosecution of rape cases. Many survivors' that report the case to the Police are pointedly warned of the consequences of false testimony, implying doubts about their testimony right from the start. Over the course of numerous interrogations, investigators repeat the same question incessantly to ostensibly identify inaccuracies and inconsistencies in their testimony, theoretically to ensure that the latter tells the truth.

Another legal procedure which affects the reporting and prosecution of rape cases is virginity tasting. According to provision 6 of the Order No. 87-N of the Minister of Health that relates to state standards for the organization of forensic medical examinations within state guaranteed, free-of-charge medical support and service provisions, the initial examinations of live individuals' people is conducted, including the identification of sexual condition, sexual integrity, whether or not the person is a virgin. The Sexual Assault Crisis Center's (SACC) experience has shown that virginity tests for cases of rape are conducted even months after the incident, while even two weeks are too long to identify the intactness of the hymen.

Secondary victimization and victim blaming: From the moment the survivor reports the case to the police in Armenia, they go through a lengthy and cumbersome process. Recounting the experience over and over again during both the investigation and the trial can lead to secondary victimization. For example, they may be asked to recount the events during the examination of the crime scene, interrogation, cross-examination, as well as forensic expertise or other types of examinations, or many other instances that can directly lead to secondary victimization, if those actions are not taken from a perspective valuing and centering the psychological wellbeing of the survivor.

Victim blaming is another practice which is spread among the law enforcement agencies in Armenia. During one interrogation of a SACC client, the latter's condition deteriorated to such an extent that the investigator was forced to call an ambulance. Survivors have also noted the presence of unrelated people in their interrogation rooms, while they were meant to be recounting traumatic

and intimate events – for example, another investigator or someone else invited by that investigator waiting to be interrogated for a different crime altogether – obviously limited survivors' comfort and willingness to openly talk about their experience in front of so many people. The questions raised by investigators are frequently insensitive, sometimes unprofessional, or driven by personal interest. When examining the case of a married woman, one investigator actually checked with her husband if after the rape, he and his wife have had sexual intercourse. Investigators do not have the knowledge and skills to sensitively work with persons subjected to sexual violence, they can easily cause secondary victimization to the survivor, and actually impede the efficacy of their investigation or lead it.

Overall Armenian patriarchal society is very strict towards the victims of sexual violence and victim blaming is a spread practice. The stereotypes circulated in the society that encourage a woman to be “smart, obedient, wise, and chaste” put the responsibility of preventing violence on her shoulders. The woman is always seen as the party that “provokes” and “incites” it. The woman “incites” sexual violence through her clothing, behavior, or even her hairstyle or makeup. The legal system, as a rule, reproduces that same behavioral model, subjecting women who have undergone violence to double trauma.

Lack of understanding of trauma: During the investigation and trial, authorities do not consider the emotional state of the person subjected to sexual violence and the impact of possible psychological trauma, especially that which can be caused, even unintentionally, by their own actions. The investigative process for cases of sexual violence is in no meaningful way – like in the number of interrogations it includes, available sensitivity guidelines, or any other court procedure – different from the investigative process for any other crime. Sexual violence is treated functionally the same way as a property dispute for instance. The connection between trauma and sexual abuse is seldom made by the legal system of Armenia.

Other social factors: The SACC's experience shows that the defense of suspects in sexual violence crimes in Armenia is mostly built on the violation of the principle of privacy for the victim and is conducted by revealing sensitive information and resorting to the exploitation of moral norms by bringing up details from the past relations. The investigative body frequently undertakes actions to uncover details about the victim's past, like their number of past partners (boyfriends, fiancés, husbands, etc.), the nature of those relationships, past sexual experience or lack thereof. It is vital to note, that regardless of any existing legislation on the protection of personal data and privacy, the official database of legal information has records of all public trials, which are accessible to the public without the redaction of personal data. Reading those, one can not only ascertain the victim's name, surname, address, and case details, but also details included in the ruling related to the victim's intimate life, such as their past sexual experiences, the status of their hymen, etc. All of this gravely violates the survivor's right to privacy. Access to justice for women from small communities is another challenge which influences on their decision to report the case to the Police as many women prefer not to report to their local law enforcement bodies due to privacy issues.