

**Submission to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

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**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.

**Criminal Code of Armenia**

**Article 138. Rape**

1. Rape, that is, a sexual intercourse of a man with a woman against her will with the use of violence or of a threat thereof with respect to the latter or to another person, or with the use of a helpless state of the woman is punished with imprisonment for the term of 3 to 6 years.

2. The rape which:

1) was committed by a group of persons;

2) was committed against the victim or other person with particular cruelty;

3) was committed against a minor,

4) caused the death of the victim or heavy consequences, by negligence;

5) (defeasible provision)

6) was committed against obviously pregnant woman,

7) was committed with the weapon or other object used as weapon or with the threat to use it,

8) was commited against persons who are kept in places of detention, who undergo military service, who are being cured or diagnosed in medical institutions or in other cases when the person is deprived of liberty according to the law by the personnel of the respective institution

is punished with an imprisonment for the term of 4 to 10 years.

3. The act envisaged in the first or second part of this article committed:

a) against a person who has not reached the age of eighteen by parents, teachers, or employees of educational or medical institution or care institution, or by other persons who had the obligation of care towards the person;

b) against a person who has not reached the age of fourteen

shall be punishable by imprisonment from eight to fifteen years with deprivation of the right to hold specific positions or to perform specific activities for the period of 3 years, or without it.

4. For the purposes of Articles 138 and 139 of this Code, a person in a helpless state is defined as a person, who by the force of circumstances is permanently or temporarily unable to resist the perpetrator or to understand the character of the deed committed against them, as well as a person who has not reached twelve years of age.

**Article 139. Violent Actions of Sexual Character**

1. Committing actions of sexual character, including homosexual actions against the will of the victim with the use of violence or with a threat thereof with respect to the victim or to another person, or with the use of a helpless state of the victim..

shall be punishable by imprisonment for a term of three to six years.

1. The same action, which

1) was committed by a group of persons;

2) was committed against the victim or other person with particular cruelty;

3) was committed against a minor,

4) caused the death of the victim or heavy consequences, by negligence;

5) (defeasible provision)

6) was committed against obviously pregnant woman,

7) was committed with the weapon or other object used as weapon or with the threat to use it,

8) was committed against persons who are kept in places of detention, who undergo military service, who are being cured or diagnosed in medical institutions or in other cases when the person is deprived of liberty according to the law by the personnel of the respective institution

is punished with an imprisonment for the term of 4 to 10 years.

3. The act envisaged in the first or second part of this article committed:

a) against a person who has not reached the age of eighteen by parents, teachers, or employees of educational or medical institution or care institution, or by other persons who had the obligation of care towards the person;

b) against a person who has not reached the age of fourteen

shall be punishable by imprisonment from eight to fifteen years with deprivation of the right to hold specific positions or to perform specific activities for the period of 3 years, or without it.

**Article 140.** **Compulsion to Perform Sexual Intercourse or Actions of Sexual Character**

1. Compulsion to sexual intercourse or actions of sexual character, including compulsion to homosexual actions by means of blackmail, threat of destruction, damage, or theft of property, or with abuse of material or any other dependence of the victim, if there is no indicia of crimes provided for by Articles 132 [Trafficking or Exploitation] or 132.2 [Trafficking or Exploitation of a Child] of this Code

shall be punishable by imprisonment for a term of one to three years.

1. The action specified in Part One of this Article, which was committed knowingly against a person who is under the age of sixteen, shall be punishable by imprisonment for a term of five to twelve years.

**Article 141. Sexual Intercourse or Actions of Sexual Character with a Person Who Has Not Reached the Age of Sixteen Years**

1. Sexual intercourse or other sexual actions committed by a person of eighteen years of age knowingly in respect of a person who has not reached the age of sixteen year in the absence of evidence of crimes under Articles 138 or 139 or Part Two of Article 140 of this Code,

shall be punishable by the imposition of a fine in the amount of one hundred to two hundred fifty times the minimum wage or imprisonment for a term not exceeding 2 years.

2. The deed provided for by part 1 of this Article committed:

1) by a person of 21 years of age;

2) by a group of people;

3) in respect of the same person repeatedly

shall be punishable by imprisonment for a term of four to ten years.

3. The action specified in Part One or Part Two of this Article, which was committed:

1) against a person under the age of eighteen by a parent or teacher or employee of an educational or medical or correctional institution or another person assigned the obligation of such person’s upbringing or care;

2) against a person under the age of fourteen,

shall be punishable by imprisonment for a term of five to twelve years with deprivation of the right to occupy certain positions or engage in certain activities for a period not exceeding 3 years, or without deprivation of such right.

**Article 142. Depraved Actions**

1. The commission of lecherous actions by a person who has reached age of 18 years knowingly in respect of a person who has not reached the age of sixteen years, or by a person who has reached age of 16 years knowingly in respect of a person who has not reached age of 14 years

shall be punishable by the imposition of a fine in the amount of one hundred to two hundred fifty times the minimum wage or imprisonment for a term not exceeding 2 years.

2. The deed provided for by part 1 of this Article committed:

1) by a person who has reached age of 16 years with the use of violence or threat thereof;

2) by a person who has reached age of 21 years knowingly in respect of a person who ahs not reached age of 16 years;

3) by a person who has reached age of 18 years knowingly in respect of a person who has not reached age of 14 years;

4) in respect of the same person repeatedly;

5) by a group of persons;

6) with the use of electronic communication

shall be punishable by imprisonment from two to five years.

3. The action specified in Part One or Part Two of this Article, which was committed:

1) against a person under the age of eighteen by a parent or teacher or employee of an educational or medical or correctional institution or another person assigned the obligation of such person’s upbringing or care;

2) against a person under the age of twelve,

shall be punishable by imprisonment for a term of three to seven years with deprivation of the right to occupy certain positions or engage in certain activities for a period not exceeding 3 years, or without deprivation of such right.

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only YES
   2. Gender neutral, covering  all persons   NO
   3. Based on the lack of consent of victim NO
   4. Based on the use of force or threat  YES
   5. Some combination of the above NO
   6. Does it cover only vaginal rape?   YES
   7. Does it cover all forms of penetration? YES [[1]](#footnote-1). If yes, please specify.
   8. Is marital rape in this provision explicitly included? NO
   9. Is the law silent on marital rape? YES
   10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES
   11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   NO
2. 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

1. What is the legal age for sexual consent?

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

Article 141 of Armenian Criminal Code stipulates criminal responsibility for sexual intercourse or other sexual actions committed by a person of 18 years old in respect of a person who has obviously not reached the age of 16 years. This means that sexual activities between peers under 18 years old cannot be considered as statutory rape and bring to criminal responsibility. However if there has been violence, threat of violence or other components of the rape and violent acts of sexual character, than it will be considered as rape and bring to criminal responsibility if the perpetrator is above 14 years old.

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

Sanctions for rape and violent actions of sexual character is imprisonment. The non-aggravated crime is punishable by imprisonment from three to six years and aggravated forms of crime – till 15 years of imprisonment. As an additional form of punishment deprivation of the right to hold specific positions or to perform specific activities for the period of no more than 3 years is prescribed for the cases when the perpetrators work in educational or medical institutions.

Sanction for the Compulsion to Perform Sexual Intercourse or Actions of Sexual Character is also imprisonment 1 to 3 years for non-aggravated crime and 5 to 12 – for the aggravated crime.

Sanctions for non-aggravated statutory rape may be fine up to 250.000 AMD (around 450 Euros) or imprisonment up to 2 years. Aggravated forms of statutory rape are punishable with imprisonment up to 12 years.

Sanctions for non-aggravated depraved actions may be fine up to 250.000 AMD (around 450 Euros) or imprisonment up to 2 years. Qualified forms of aggravated actions are punishable with imprisonment up to 7 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?

There is only possibility to get compensation for material damages caused to the victim (e.g. medical operations or others costs). It is not possible to claim non-material damages from individuals.

**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
   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
   3. Is rape by spouse or intimate partner an aggravating circumstance? NO
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES

If yes, please specify.

Mitigating circumstances for the purposes of punishment are general for all crimes and are stipulated in the article 62 of Armenian Criminal Code and include following:

1) commission of a not grave and medium-gravity crime, for the first time, by coincidental circumstances; 2) being under age at the moment of commission of the crime; 3) being pregnant when committing the crime or when assigning the punishment; 4) caring for a child under 14 years old at the moment when assigning the punishment; 5) commission of crime as a result of hard living conditions or out of compassion; 6) commission 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) commission 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.

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES If so, at what stage and what are the consequences?

Reconciliation in permitted only for non-aggravated Statutory rape, non-aggravated Depraved Actions, if the perpetrator compensated the damages or remedied the harm caused to the victim and reconciled with the victim. In this case the perpetrator is released from criminal liability.

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

We are not aware of reconciliation cases as a common practice. Sometimes, victims just take back their application and stop to cooperate with the police or investigators. In those circumstances, criminal cases are usually closed.

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES If yes, please specify.
   1. if the perpetrator marries the victim of rape? NO
   2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES only for non-aggravated Compulsion, non-aggravated Statutory rape and Depraved Actions including aggravated.

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES
2. Is rape reported to the police prosecuted ex parte (private prosecution)? NO
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? NO
4. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO
5. Please provide information on the statute of limitations for prosecuting rape.

Statute of limitation for non-aggravated forms of rape are 10 years and for aggravated forms – 15 years. There are shorter statutes of limitation for non-aggravated forms of statutory rape and depraved actions – 2 or 5 years. However, for the victims of sexual violence crimes, statutes of limitations start to be counted from the day they get 18 years old. The main problem with statutes of limitation is that it is counted till the day when the final judgment is in force, which means that lengthy proceedings sometimes bring to the expiration of statute of limitation.

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YES
2. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  NO[[2]](#footnote-2) If yes, please specify.
3. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? NO
4. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? NO. If yes, please specify.

**War and/or conflict**

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

During 2015–2016 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>

Data on the cases of 2019-2020 on monthly basis was officially requested by our organization from Investigative Committee but the provision of it was rejected due to inconsistence with the format they collect official statistics.

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

**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.

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:

1. Legal procedures
2. Secondary victimization and victim blaming
3. Luck of understanding of trauma
4. 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 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 make up. The legal system, as a rule, reproduces that same behavioral model, subjecting women who have undergone violence to double trauma.

Luck 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.

1. There are 2 articles in criminal code that define rape and violent actions of sexual character - articles 138 and 139. Sanctions for both of them are identical, but “Rape” as such covers only vaginal penetration where the victim can be only woman. Violent actions of sexual character cover all other forms of sexual penetration. [↑](#footnote-ref-1)
2. There are no legislative requirements but in practice they are mandatory part of investigation process. [↑](#footnote-ref-2)