

**RE: Questionnaire on criminalization and prosecution of rape
Definition and scope of criminal law provisions**

Attention: The United Nations Special Rapporteur on violence against women
Ms. Dubravka Šimonović

By E-mail: vaw@ohchr.org

Submitted by: Nazra for Feminist Studies

Contact: mozn@nazra.org

Dear Madam Rapporteur,

Greetings from Nazra for Feminist Studies. We take this opportunity to appreciate your efforts to bring forth evidence-based knowledge on realities of violence against women around the world. In our submission to you request to provide information on criminalization and prosecution of rape, we attempted to bring to your attention the most relevant stipulation of laws and legislation in Egypt as well as provide detailed description of law articles whenever needed.

Thank you again for providing us with such an opportunity and we look forward to further cooperation with your mandate.

Sincerely,

Mozn Hassan
Executive Director
Nazra for Feminist Studies

Questionnaire

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.

1.1. [Nazra]: Egypt's Criminal Law approach towards rape and similar forms of violence are exhibited in two legal instruments:

- Criminal Code/Article 267: Having complete sexual intercourse with a female without her free consent the assailant shall be punished by death sentence or lifetime imprisonment. Death sentence in cases where the victim/survivor is under 18 or the offender/assailant is the survivor/victim's ascendant, guardian or supervisor or works in the survivor/victim's home, the penalty is the legal maximum. Where both conditions are met, the penalty is life imprisonment with hard labor.
- Criminal Code/Article 268: Whoever indecently assaults a person by force or threat or attempts such assaults shall be punished with hard labor for three to seven years. If the victim/survivor of the said crime has not attained complete 18 years of age, or the perpetrator is among those described in the second clause of Article 267, the period of penalty may be extended to the ceiling determined for temporary hard labor. If these two conditions combine, the ruling shall be a sentence to permanent hard labor.

2. Based on the wording of those provisions, is the provided definition of rape:

2.1. [Nazra]

- 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.

3.1. **[Nazra]**: In accordance with the Article 267, to prove the rape crime the survivor/victim's (Consent) non-approval and disagreement shall be proved, which it would be something that can be questioned by attempts to prove a consensual relationship, whether there is an actual sexual relationship or the possibility of living together at the same place without a legal frame.

4. What is the legal age for sexual consent?

4.1. **[Nazra]**: The legal age for marriage (Legitimate Sexual Consent) is 18 Years

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

5.1. **[Nazra]**: The sexual law would be addressed within two cases: Regulating legitimate and legal relationships (dealing with marriage and its provisions) and criminalization illegal sexual activities (Sexual assault, Sexual abuse, debauchery and immorality crimes, Breaching public morals) under which LGBTQI are being ruled.

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

6.1. **[Nazra]**: Article 276 (Criminal Code) is concerned by the rape (complete sexual intercourse with a female without her free consent) and imposes lifetime imprisonment (25 years) or death sentence. Death sentence in cases where the survivor/victim is under 18 or the offender/assailant is the Survivor/victim's ascendant, guardian or supervisor or works in the survivor/victim's home.

Article 268 (Criminal Code) is concerned by the sexual assaults / indecent assaults (including oral rape/ anal rape / vaginal rape with instruments, tools or fingers): rigorous imprisonment (Type of penalty/punishment that includes special prisons where the prisoners fill in government-designated jobs. The duration is not less than 3 years and not more than 15 years). The rigorous imprisonment duration is not less than 7 years in case the victim/survivor has not attained complete 16 years of age or the perpetrator is the survivor/victim's ascendant, guardian or supervisor or works in the survivor/victim's home. Where both conditions are met, the penalty is life imprisonment

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?

7.1. **[Nazra]**: The survivor/victim compensation will be to claim a civil right during the investigations process/ a trial court to seek the compensation and determine the compensation amount.

Aggravating and mitigating circumstances

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

8.1. **[Nazra]**

- 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.

9.1. **[Nazra]** [Clarification]: The law does not establish conditions for penalty/punishment's mitigating, but in general there are grounds for permissibility and prohibitions in the penal law, including:

Article 62 (Criminal Code): No penalty shall be imposed on one losing consciousness or the faculty of choice in his work at the time of committing the deed: either due to insanity or mental disability, or to unconsciousness resulting from drugs whatever their kind if he takes them forcibly or unknowingly.

A person who, at the time of the crime, was suffering from a health or mental disorder that has diminished his awareness or choice, remains criminally responsible and the court shall take into account this circumstance when determining the duration of the sentence

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?

10.1. **[Nazra]**: The Criminal Code does not include any reconciliation between the perpetrator and the victim/survivor subsequently there is no waiver, under her civil right the survivor/victim can decide to waive compensation. However, the victim/survivor can amend her statements and deny the crime. The Public Prosecution shall verify the veracity of her statements.

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

- 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

11.1. [Nazra]: There is no article, provision or text that allows the perpetrator not to be punished by marrying or reconciling with the survivor/victim.

Prosecution

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

12.1. [Nazra]: Rape or sexual/indecent assault can be reported by the Public Prosecution or by both the witness of the crime and by the victim / survivor

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

13.1. [Nazra]: [Ibid]

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

14.1. [Nazra]: The law does not allow amicable or judicial settlement in rape and sexual assault crimes against those below 18 years old, nor in the case of children.

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.

16.1. [Nazra]: Article (15) of the Criminal Procedure Code “Unless otherwise stated by law, criminal lawsuits shall be abated upon the elapse of a ten--year period as of the date of commission of the crime.....” This is in case that no legal measures were taken in the lawsuit.

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

17.1. [Nazra]: The guardian of the child or the child her/himself can take steps to report the crime and start litigation. Otherwise, the reporting must be made before the statute of limitation period in the Criminal Procedure Code has been completed (10 years with condition that no action is taken in filing the lawsuit during this period, taking into consideration several conditions:

Last paragraph in Article (3) of the Criminal Procedure Code “Unless otherwise stated by law, no complaint may be accepted after the elapse of a three-month period as of the date the victim is informed of the crime and of the perpetrator thereof”

Article (5) of the Criminal Procedure Code: “If the victim of a crime is younger than fifteen years of age or is deemed to be mentally incompetent the complaint shall be made by the guardian thereof”.

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

18.1. [Nazra]:

18.1.1. To prove a rape crime (sexual intercourse with a female without her consent), the completion of the crime's pillars is a must: the occurrence of sexual intercourse shall be as per its concept and definition in the law (to be without consent / agreement/ approval), where the proof is a burden on the survivor/victim.

18.1.2. Certain matters can be proven by forensic medicine such as the presence the perpetrator's sperm (to prove vaginal penetration), and the presence of effects of resistance or violence or the use of force to prove the victim/survivor non-approval/disagreement/unconsent.

18.1.3. Although the Criminal Procedure Code permits various evidences to be used as a proof, such as witnesses, surveillance cameras, text messages, and others, it is required to be legal evidence, the nature of sexual violence crimes is linked to secrecy most of the time and it is difficult to find witnesses or incident register, thus the occurrence of the crime is difficult to be proved. In the case of rape without the presence of traces of resistance or clear violence, the perpetrator invokes the consent of the survivor to the sexual process, the law defines coercion as "it may be material or moral, and material coercion is achieved by committing an act of force and violence on the woman's body, which affects the victim/survivor to be paralyzed, has no power to resist, this does not have to leave traces of wounds on the victim/survivor, the necessity is to paralyze the victim's resistance, which depends on her personal circumstances and her health condition. There are other factors that are considered the rule of coercion, such as surprise, deception and other methods of fraud, and seizing the opportunity of the victim/survivor to lose her feeling during sleep, or fainting, or lack of feeling because of drunkenness, or madness, to lose her power. "The concept of coercion, obviously, ignores the impact of trauma on victims/survivors, which may exterminate them to resist or react.

18.1.4. The law also ignored the power relations between women and men and their psychological and material impacts on the victim/survivor, which strongly affects the consent/approval/agreement factor. It is sufficient for the perpetrator to be a man to let the survivor/victim feels fear and intimidation without saying or doing anything that the law may consider as a threat. That was happened in one of the rape cases where Nazra provided legal support to the survivor/victim at the beginning of 2017; the Prosecutor treated the survivor/victim sarcastically and ironically out of his blaming culture because she went to the perpetrator's place by her own and free will. The competent Prosecution acknowledged that there was no need or reason file a criminal case, excluding the suspicion of a felony and issuing a decision to preserve the case and to restrict it administratively at the end of 2017.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO

19.1. **[Nazra]**: The perpetrator can use any means or evidence permitted in the Criminal Procedure Code to prove something that might help him in the case, for instance some of the Defense Bodies are able to try to prove consent /approval/agreement in the sexual relationship by acknowledging that the survivor/victim has a bad reputation or she is providing sexual services for money, as situation that might involve exposing matters in the life of the survivor/victim. We have no case law or legal precedents on this matter; however, information is provided by lawyers in this field.

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

20.1. **[Nazra]**:

20.1.1. The measures taken in sexual violence cases to avoid harm and abuse are ineffective: The accused imprisonment or the financial bails or that he and his family are not exposed to the survivor or her relatives by signing a declaration are not enough to guarantee the protection of the victim/survivor from the threat or pressure during investigations or revenge after the end of investigations.

20.1.2. There is also the possibility to activate the confidentiality of hearings to protect victims/survivors, but it is an inadequate measure as Egyptian Law does not include an integrated philosophy to protect victims/survivors and preserve the confidentiality of their data during the investigation and litigation process.

20.1.3. For Example: S.T. known through the media by "Girl of the Mall", was subjected in 2017 to a horrific revenge crime by H.A., who had molested and beat her two years earlier, which led to his imprisonment for two weeks in the case No. 12501 of 2015, where the perpetrator was tracking the victim/survivor, on October 14, 2017, hit her in the face with a white "cutter" weapon while she was at a pharmacy in Heliopolis. The medical report indicated that there was a cut wound on the face with the length of 20 cm. According to the victim/survivor, the perpetrator was trying to slaughter her, but she turned, causing a wound to her face, and fled. The perpetrator was arrested on the same day, and he was held for four days by pending investigation. It worth to mention that the perpetrator H.A. was also accused in a rape case in 2001.

War and/or conflict

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

21.1. **[Nazra]**: Egypt is not a party in the Rome Statute of the International Criminal Court, moreover the Egyptian Criminal Law does not include any provisions to consider rape as a war crime or to consider how to deal with in war periods. However, in war, Military Laws that differ from natural law are applied and under them penalties can be increased in relation with a number of crimes.

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

Ibid

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

Ibid

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

Ibid

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.

25.1. [**Nazra**]: The Egyptian government does not provide official data on the number of reports in rape cases or even on the number of cases in which judicial decisions were taken condemning the perpetrator.

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.

26.1. [**Nazra**]:

26.1.1. Of course, social stigma and the complexity of the so-called "honor" issues are an impediment to report rape and sexual assault cases, as the victim/survivor fears the consequences of subsequent reporting, which may reach the possibility to be violated by her family as a punishment for compromising her prejudice and honor or for getting rid of the scandal.

26.1.2. As for the legal part and the philosophy of law, there are a kind of complications that make the process of litigation more difficult and threaten the victims/survivors, consequently constitute an obstacle to reporting or achieving justice in this type of crime:

26.1.3. Unlike the aforementioned, there is the problem of defining the crime of rape, according to the definition of the Egyptian Law and the Egyptian Jurisprudence: "everyone who has a complete sexual intercourse with a female in a natural manner without her free consent".

26.1.4. Many rape crimes are considered "indecent / sexual assault" crimes, which is contrary to the truth, as anal rape or rap through fingers and tools causes the same material and psychological damage to the survivor/victim. This affects the efforts to address violence against women on different levels. On one hand, the law and the state do not acknowledge the rape that the survivor/victim was subjected to, even if they attribute it to another legal description, which make the survivor/victim suffer from bitterness and disappointment. On the other hand, this uncontrolled legal and human rights classification leads to inaccurate results when

the rates of rape crimes are confined within the Egyptian society, whether by the state or by civil society organizations.

26.1.5. We have the protection of survivors/victims privacy and maintaining the confidentiality of their data during notification and litigation, over the course of Nazra's work, many violations of the right to privacy have been monitored by either the state or the media, which is very risky, as it would be tolerated to abort any attempts by the state or feminist organizations and groups or positive individual initiatives to address these crimes. For example, Article 268 of the Criminal Procedure Code guarantees to the Court to held secret hearing sessions, with the exception of the principle of open trials, in order to preserve public moral, prejudice and honor, which applies to adjudication of sexual assault crimes. That was what the South Cairo Court ordered on Wednesday, June 25, 2014, to hold a session in the deliberation room, but after the session, the Court's Body announced its decisions at the hall, including the full names and data of the survivors/victims. This deflected the relevance of the court's decision regarding the confidentiality of the circulation of sessions and violated the rights of survivors/victims to keep their personal data confidential.

26.1.6. Regarding Forensic Medicine:

- In sexual violence crimes when the Public Prosecutor orders to deliver the survivors/victims has to be checked by the forensic medicine department, they are sent along with a police officer who always refuses to allow the survivors/victims to board their private cars or to accompany a relative, which means that the Forensic Medicine Authority does not contact the survivor/victim or bother itself coordinating with the Public Prosecution about the appropriate mechanism to deal with the victim/survivor considering her psychological and health conditions and status.

- During the survivors/victims medical examination, there is no psychiatrist or psychologist who helps in understanding the condition and the status of the survivor/victim, calming her and rehabilitating her psychologically before undergoing the medical examination procedures and explaining its steps, which sometimes causes psychological trauma to some the survivors/victims, triggering and bringing back memories of the violations they suffered.

- There are no private rooms appropriately equipped for survivors/victims of sexual violence and sometimes the medical examination is done without a cover considering the humanity of the survivors/victims.

26.1.7. The investigation process at the Public Prosecution:

- The Public Prosecution offices do not have adequate conditions to receive survivors/victims of rape or sexual assault, there are no waiting places or rooms, only few seats are scattered in a public space in front of the interrogation rooms.

Submitting their statements, sometimes survivors/victims might be in rooms where more than one prosecutor is continuing to investigate other crimes so they have to provide details of the incident and the case in front of a relatively large number of people.

- During the investigation, the survivor/victim is forced to explain the circumstances of the incident more than once in very accurate details, to answer falls of questions, without taking into account the trauma that the survivor/victim has experienced, her feelings, her fear, anxiety and tension.

- During investigations, the survivor/victim status is not been considered, neither the way asking, or the process of confronting the accused. The Criminal Procedure Code - Chapter Six and Seven - stipulate the necessity of confronting the accused with other defendants, witnesses, and the victim/survivor to adjudicate the investigation and reach the truth. But it does not regulate in any of the technical frameworks, specific procedures or precautionary measures methods that combine the importance of confrontation and getting acquainted with the accused and the victims/survivors' thoughts and psychological and mental status, the stressful situation that they are going through, and how to calm them avoiding nervous breakdown or severe trauma. That was what happened to one of the victims/survivors in "June 8 lawsuit", where the Public Prosecution on June 10, 2014, in the presence of her lawyer and without any alert, let one of the suspects showed directly, with the presence of a guard, to the victim/survivor in the investigation room at a distance that did not exceed one meter without any glass barrier to cause her nervous breakdown.