**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**

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

**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 Criminal Code of Ethiopia of 2004**

**Article 620 Rape**
(1) Whoever compels a woman to submit to sexual-intercourse outside wedlock, whether by the use of violence or grave intimidation, or after having rendered her unconscious or incapable of
resistance, is punishable with rigorous imprisonment from five years to fifteen years.
(2) Where the crime is committed:

a) on a young woman between thirteen and eighteen years of age; or
b) on an inmate of an alms-house or asylum or any establishment of health, education, correction, detention or internment which is under the direction, supervision or authority of the accused person, or on anyone who is under the supervision or control of or dependent upon him; or .
c) on a woman incapable of understanding the nature or consequences of the act, or of resisting the act, due to old-age, physical or mental illness, depression or any other reason; or
d) by a number of men acting in concert, or by subjecting the victim to act of cruelty or sadism, the punishment shall .be rigorous imprisonment from five years to twenty years.

(3) Where the rape has caused grave physical or mental injury or death, the punishment shall be life imprisonment.
(4) Where the rape is related to illegal restraint or abduction of the victim, or where communicable disease has been transmitted to her, the relevant provisions of this Code shall apply concurrently.

**Article 621.- Compelling a Man to Sexual Intercourse.**A woman, who compels a man to sexual intercourse with herself, is punishable with rigorous imprisonment not exceeding five years.

**Article 622.- Sexual Outrages Accompanied by Violence.**Whoever, by the use of violence or grave intimidation, or after having in any other way rendered his victim incapable of offering resistance, compels a person of the opposite sex, to perform or to submit to an act corresponding to the sexual act, or any other indecent act, is punishable with simple imprisonment for not less than one year, or rigorous imprisonment not exceeding ten years.

**Article 623.- Sexual Outrages on Unconscious or Deluded Persons, or on Persons Incapable of Resisting.**Whoever, knowing of his victim's incapacity, but without using violence or intimidation, performs sexual intercourse, or commits a like or any other indecent act, with an idiot, with a feeble-minded or retarded, insane or unconscious person, or with a. person who is for another reason incapable of understanding the nature or consequences of the act, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.

**Article 624- Sexual Outrages on Persons in Hospital, Interned or Under Detention.**Whoever, by taking advantage of his position, office or state, has sexual intercourse or performs an act corresponding to the sexual act or any other indecent act with an inmate of a hospital, an alms-house or an asylum, or any establishment of education, correction, internment or detention, who is under his direction, supervision or authority, is punishable, according to the circumstances of the case, with simple imprisonment for not less than one year, or with rigorous imprisonment not exceeding fifteen years.

**Article 625.- Taking Advantage of the Distress or Dependence of a Woman.**Whoever, apart from the cases specified in the preceding Article, procures from a woman sexual intercourse or any other indecent act by taking advantage of her material or mental distress or of the authority he exercises over her by virtue of his position, function or capacity as protector, teacher, master or employer, or by virtue of any other like relationship, is punishable, upon complaint, with simple imprisonment.

**Article 626 - Sexual Outrages on Minors between the Ages of Thirteen and Eighteen Years**(1) Whoever performs sexual intercourse with a minor of the opposite sex, who is between the ages of thirteen and eighteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from three years to fifteen years.
(2) A woman who causes a male minor between the ages of thirteen and eighteen years, to perform sexual intercourse with her, is punishable with rigorous imprisonment not exceeding seven years.
(3) Whoever performs an act corresponding to the sexual act or any other indecent act upon a minor, of the opposite sex who is between the ages of thirteen and eighteen years, induces him to perform such an act, or deliberately performs such an act in his presence, is punishable with simple imprisonment not less than three months or with rigorous imprisonment not exceeding five years.
(4) Where the victim is the pupil, apprentice, domestic servant or ward of the criminal, or a child entrusted to his custody or care, or in any other way directly dependent upon or subordinate to him, the punishment shall be:

1. with rigorous imprisonment from five years to twenty years in respect of the crime specified in sub-article- (1) above;
b) with rigorous imprisonment from three years to ten years in respect of the crime specified in sub-article (2) above; or
c) with rigorous imprisonment not exceeding seven years in respect of the crime specified in sub-article (3) above.
(5) Where the sexual outrage has caused grave bodily or mental injury to or death of the victim, the relevant provision of this Code shall apply concurrently.

**Article 627.- Sexual Outrages Committed on Infants.**(1) Whoever performs sexual intercourse with a minor of the opposite sex, who is under the age of thirteen years, or causes her to perform such an act with her, is punishable with rigorous imprisonment from thirteen years to twenty-five years.

A woman who causes a male minor under the age of thirteen years, to perform sexual intercourse with her, is punishable, with rigorous imprisonment not exceeding ten years.
(3) Whoever performs an act corresponding to the sexual act or any other indecent act upon a minor, of the opposite sex who is under age of thirteen years, induces him to perform such an act, or deliberately performs such an act in his presence, is punishable with rigorous imprisonment not exceeding ten years.
(4) Where the victim is the pupil, apprentice, domestic servant or ward of the criminal, or a child entrusted to his custody or care, or in any other way directly dependent upon or subordinate to him,

a) in respect of the crime prescribed in sub-article (1)above the punishment shall be more severe on such a person than when it is committed by other persons;
b) in respect of the crime prescribed in sub-article (2)above the punishment shall be rigorous imprisonment from three years to fifteen years.
c) In respect of the crime prescribed in sub-article (3)above the punishment shall be rigorous imprisonment from three years to fifteen years.

(5) Where the sexual outrage has caused grave bodily or mental injury to or death of the victim, the punishment shall be rigorous imprisonment for life.

In all cases involving rape or sexual outrage (Article 620-627), the punishment shall be rigorous imprisonment from five years to twenty-five years, where the relevant provision does not prescribe a more severe penalty:

a) where the victim becomes pregnant; or
b) where the criminal transmits to the victim a venereal disease with which he knows himself to be infected; or
c) where the victim is driven to suicide by distress, anxiety, shame or despair

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only. YES/NO
	2. Gender neutral, covering all persons. YES/NO
	3. Based on the lack of consent of victim. YES/ NO

However, consent does not matter if the victim is a minor, i.e. under the age of 18.

* 1. Based on the use of force or threat.YES/ NO
	2. Some combination of the above.YES/ NO. Please specify.

Use of force or consent doesn’t matter when victim is under the age of 18 years

* 1. Does it cover only vaginal rape? YES /NO;

Article 620 refers to sexual intercourse.

* 1. Does it cover all forms of penetration?YES/NOPlease specify.

Article 622 and following criminalize acts corresponding to the sexual act, or any other indecent act

* 1. Is marital rape in this provision explicitly included? YES / NO;

It is explicitly excluded in Article 620.

* 1. Is the law silent on marital rape?YES/NO

It explicitly excludes it as an act of rape.

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO.

Article 620 explicitly excludes it.

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

Not considered as a crime for various cultural reasons.

1. To what extent legislation in your country excludes 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 relevant articles with corresponding translations.

No legal provision dealing with such circumstances.

1. What is the legal age for sexual consent?

18 years old.

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

No.

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

It depends on the gravity of the offence. Please refer to articles referred to under Question #1.

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?

**The Civil Code provides:**

**Art. 2114. - Indecent assault:**

1. Where a person has been sentenced by a criminal court for rape or indecent assault, the court may award the victim fair compensation by way of redress.
2. In such an event, compensation may also be awarded to the husband of the woman, or to the family of the girl who has been raped.

**Art. 2116. – Custom**

* 1. In fixing the amount of the fair compensation provided for in the preceding Articles, and in establishing who is qualified to act as representative of the family, the court shall have regard to local usages.
	2. The court may not disregard sucit usages unless they are anachronistic or manifestly contrary to reason or morals. \_
	3. The compensation awarded for moral injury may in no case exceed one thousand Ethiopian dollars.

**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? YES/NO

Marital rape is not criminalized, so is not an aggravating circumstance.

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

General provisions are provided under Article 82 of the Criminal Code. These might include previous good character of the offender, manifesting sincere repentance, making compensation to the damage and other conditions as accepted by the court.

1. 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?

Rape as per the law is not reconcilable.

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

It is common practice that rape cases are reconciled by community leaders, especially in the rural areas, and settlement is paid to the family of the girl/woman. Usually the victim is not compensated.

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

For the act of rape, it is 15 years, but the limitation period might be lower if the act falls under the other articles of sexual act. Please refer to Article 217 of the Criminal Code.

**Article 217.- Ordinary Limitation Periods.**

(1) The limitation period of a criminal action shall be as follows:

(a) twenty-five years for crimes punishable with death or rigorous imprisonment for life;

(b) twenty years for crimes punishable with rigorous imprisonment exceeding ten years but not exceeding twenty-five years;

(c) fifteen years for crimes punishable with rigorous imprisonment exceeding five years but not exceeding ten years;

(d) ten years for crimes punishable with rigorous imprisonment not exceeding five years;

(e) five years for crimes punishable with simple imprisonment exceeding one year;

(f) three years for crimes punishable with simple imprisonment not exceeding one year, or with fine only.

(2) In respect of concurrent crimes:

(a) the period of limitation for one of the crimes shall apply to all of them where the maximum penalty of each crime is the same;

(b) the period of limitation for the most serious crime shall apply to the other crimes where the maximum penalties of the concurrent crimes are different.

1. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?

No clear provision on this but a child can report after attaining adulthood if the case is not barred by period of limitation/statute of limitation/

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

The prosecution needs to meet the burden of proof and for that reason all evidence direct or circumstantial including witness and expert evidence and medical report are required.

1. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?

None.

1. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.

During court trial, victims are entitled to give their statement behind the screen.

**War and/or conflict**

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

**Article 270.- War Crimes against the Civilian Population.**

Whoever, in time of war, armed conflict or occupation organizes, orders or engages in, against the civilian population and in violation of the rules of pubic international law and of international humanitarian conventions:

…

(f) Compulsion to acts of prostitution, debauchery or rape; oris punishable with rigorous imprisonment from five years to twenty five years, or, in more serious cases, with life imprisonment or death.

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

According to Article 28 (1) of the Constitution:

**Crimes Against Humanity**

1. Criminal liability of persons who commit crimes against humanity, so defined by international agreements ratified by Ethiopia and by other laws of Ethiopia, such as genocide, summary executions, forcible disappearances or torture shall not be barred by statute of limitation. Such offences may not be commuted by amnesty or pardon of the legislature or any other state organ.
2. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
3. 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.

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**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.
* Victims fear further retaliation from perpetrators.
* Lengthy investigation and court proceeding frustrate victims.
* Victim support and witness protection is weak.