**Maldives’ responses to the Questionnaire on Criminalization and Prosecution of Rape, by the Special Rapporteur on Violence against Women, its Causes and Consequences**

## 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.***
	1. Law Number 17/2014 (Sexual Offences Act)

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| 6 | “Rape” is given the meaning of, with the inclusion of the exceptional circumstance provided in section 20 of this Act, the penetration, however slight, of the sex organ or any body part of a person by a sex organ of another person, without consent of the victim, provided they are not married. |
| 14 | (a) | It is an offence to rape a person. |
| (b) | For the purpose of the offence stated in subsection (a) of this section, consent of a person will not be present in the following circumstances. |
| (1) | Where the consent was obtained by threatening to kill or torture, or by torturing, or by threatening to kill or torture a relative or a relative through marriage; or |
| (2) | Where the consent was obtained by making false representations based on false realities; or |
| (3) | Where the consent was obtained by deceiving the nature of the act; or |
| (4) | Where the consent was obtained by deceiving the relationship of the perpetrator to the victim. |
| (c) | Where a dangerous weapon is used to commit the offence stated in subsection (a) of this section, the offence is punishable by 20 (twenty) to 25 (twenty-five) years imprisonment. In other circumstances, the offence is punishable by 15 (fifteen) to 20 (twenty) years imprisonment. |
| 15 | (a) | It is an offence to attempt to rape a person, or to aid or abet in committing the rape of a person. |
| (b) | Where a dangerous weapon is used to commit the offence stated in subsection (a) of this section, the offence is punishable by 10 (ten) to 15 (fifteen) years imprisonment. In other circumstances, the offence is punishable by 7 (seven) to 10 (ten) years imprisonment. |
| 20 | (a) | Even though the offence of rape stated in section 14 of this Act would not generally be considered by this Act as an offence that can be committed between those married, in the following exceptional circumstances, if the husband has sexual intercourse with the wife without the consent of the wife, then it will be considered as marital rape. |
| (1) | A case for dissolution of the marriage is in a court where all the hearings have been conducted, pending judgement; or |
| (2) | The husband or wife has filed for divorce and the proceedings are ongoing at court, where all the hearings have been conducted, pending judgement; or |
| (3) | The husband is aware that he has a dangerous contagious disease, and has sexual intercourse with his wife to transmit the disease to the wife; or |
| (4) | Though not divorced, the husband and wife are living separately under mutual agreement for their best interests. |
| (b) | For the purpose of the offence stated in subsection (a) of this section, consent of the wife will not be present in the following circumstances. |
| (1) | Where the consent was obtained by threatening to kill or torture, or by torturing, or by threatening to kill or torture a relative or a relative through marriage; or |
| (2) | Where the consent was obtained by making false representations based on false realities; or |
| (3) | Where the consent was obtained by deceiving the nature of the act. |
| (c) | Where a dangerous weapon is used to commit the offence stated in subsection (a) of this section, the offence is punishable by 3 (three) to 5 (five) years imprisonment. In other circumstances, the offence is punishable by 1 (one) to 3 (three) years imprisonment. |
| (d) | The conviction of a husband of a crime stated in subsection (a) of this section, is not in itself a reason or situation to cause any loss to the existing marriage or its status under Shariah, or to their existing children or children to be conceived or to the status of any of those children, or to the property between them or the status of such property. |

* 1. Law Number 9/2014 (Penal Code of the Maldives)

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| 130 | (a) | It is an offence to commit an act of rape. |
| (b) | Judge should accept that consent was present during sexual intercourse between a husband and a wife, unless proven otherwise. |
| (c) | “Rape” is given the meaning of, any penetration, however slight, of the vagina or anus of a female by the sexual organ of a man or another body part or object, or the penetration, however slight, of the anus of a man by the sexual organ of another man or another body part or object without the consent of the person. Attaining satisfaction is not required. |
| (d) | (1) | If the offence stated in subsection (a) of this section is committed in the following circumstances, it is a Class 2 felony. |
| (i) | The victim is 14 (fourteen) years of age or less; or |
| (ii) | Force or threat of force is used to compel submission to intercourse. |
| (2) | If the offence stated in subsection (a) of this section is committed in the following circumstances, it is a Class 3 felony. |
| (i) | The victim is under 18 (eighteen) years of age and compared to the age of the victim, the perpetrator is 4 (four) or more years older; or |
| (ii) | The perpetrator knows that the victim cannot comprehend the nature of the act; or |
| (iii) | The perpetrator is in a position of guardianship of the victim. |
| (3) | In other circumstances, the offence stated in subsection (a) of this section is a Class 1 misdemeanour. |

Note: Specialized Acts prevail over the Penal Code in the Maldives. Therefore, although the Penal Code includes the offence of rape, all rape charges are brought under the Sexual Offences Act.

* 1. Additionally, child sexual offenders are subjected to a specific regime established pursuant to Law Number 12/2009 (Special Provisions Act to Deal with Child Sex Abuse Offenders).
1. ***Based on the wording of those provisions, is the provided definition of rape:***
2. ***Gender specific, covering women only?*** No.
3. ***Gender neutral, covering all persons?*** Yes.
4. ***Based on the lack of consent of victim?*** Yes.
5. ***Based on the use of force or threat?*** No.
6. ***Some combination of the above? If yes, please specify.***

Only lack of consent of the victim is required. Use of force or threat is an aggravating factor in considering punishment under the Penal Code.

1. ***Does it cover only vaginal rape?*** No.
2. ***Does it cover all forms of penetration? If yes, please specify.***

Yes. The definition of rape covers the penetration, however slight, of the sex organ or any other body part of a person by a sex organ of another person, without the consent of the victim.

1. ***Is marital rape in this provision explicitly included?***

Yes. The definition of rape provided for in the Sexual Offences Act, includes the exceptional circumstance provided in section 20 of the Act – which is marital rape.

1. ***Is the law silent on marital rape?*** No.
2. ***Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?***

It is covered in the Sexual Offences Act. See response to Question 1 (Section 20 of the Sexual Offences Act)

Furthermore, under the Penal Code, rape in all scenarios are criminalized, and while the Penal Code upholds the concept of marriage as a state of consent, it also recognises that this consent can be rebutted without laying any parameters as to how this would be done.

1. ***Is marital rape excluded in the provisions, or is marital rape not considered as a crime?***

See response to Question 2 (j) above.

1. ***Are there 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 with corresponding translations.***

No.

1. ***What is the legal age for sexual consent?***
	1. Under section 24 of The Special Provisions Act to Deal with Child Sex Abuse Offenders, a child under 13 (thirteen) years of age shall not be deemed to be in a position to give consent under any circumstance. Even where such a child consents, such consent shall be considered null and void.
	2. Furthermore, section 25 of the Act states that unless otherwise established, it shall be deemed that a child between the age of 13 (thirteen) and 18 (eighteen) years of age did not give consent to carry out sexual acts, and that the sexual act was carried out without the child’s consent.
2. ***Are there provisions that differentiate for sexual activity between peers? If so, please provide them.*** No.
3. ***Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.***
	1. See response to Question 1 above:
		1. Sections 14 (c), 15 (b) and 20 (c) of the Sexual Offences Act.
		2. Section 130 (d) of the Penal Code of the Maldives.

Note: Under the Penal Code, a Class 2 (two) felony has a baseline penalty of 6 (six) years’ imprisonment and can go all the way up to 15 (fifteen) years. For Class 3 (three) felony, the baseline penalty is imprisonment for 3 (three) years, 2 (two) months and 12 (twelve) days, and can go all the way up to 8 (eight) years. For Class 1 (one) misdemeanour, the baseline penalty is 4 (four) months and 24 (twenty-four) days, and can go all the way up to 1 (one) year.

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?***
	1. Under the Sexual Offences Act, a victim of rape / sexual violence has the right to pursue a claim in the civil court against the defendant for the following economic and non-economic losses:
2. Medical expenses of the victim, including past, present and future, resulting from the act of rape / sexual violence;
3. Damages for physical injuries directly sustained as a result of the offence;
4. Damages for the annihilation of a body part directly incurred as a result of the offence;
5. Damages for incapacitation of a body part directly incurred as a result of the offence;
6. Damages for the restriction of the victim to continue with the victim’s normal life due to the failure or annihilation of a body part directly incurred as a result of the offence;
7. Damages for the pain and suffering of the victim directly caused as a result of the offence;
8. Damages caused due to obstacles in finding a job, directly caused as a result of the offence;
9. Legal costs for pursuing the claim.
	1. Furthermore, the Special Provisions Act to Deal with Child Sex Abuse Offenders, also contains provisions where civil lawsuits can be filed to obtain monetary compensation for the following:
10. Physical injuries sustained by the child;
11. Costs incurred due to physical harm to the child;
12. Psychological damages caused to the child;
13. Damages caused as a result of the terrifying ordeal suffered by the child;
14. Damages caused to the child’s standing in society at a young age.

**Aggravating and mitigating circumstances**

1. ***Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?***
	1. Under the Sexual Offences Act, the only aggravating factor stated for rape sentences is if a dangerous weapon is used to commit the crime (See response to Question 1, section 14 (c) of the Act).
	2. However, additional factors are listed as separate offences rather than aggravating circumstances. For example, raping a *mahram* (member of one’s family with whom marriage would be considered illegal in Islam) is a separate offence with a penalty of 15 (fifteen) to 25 (twenty-five) years imprisonment. Raping a person who does not have the mental capacity to give consent due to an inability is also a separate offence, with a penalty of 15 (fifteen) to 20 (twenty) years imprisonment. Raping a person who is mentally incapacitated or is physically disabled and therefore does not have the ability to defend themselves, the penalty is 10 (ten) to 15 (fifteen) years imprisonment. Furthermore, threatening, blackmailing, deceiving, drugging, using force, kidnapping, restricting movement to commit a sexual offence are all listed as separate offences in the Sexual Offences Act.
	3. Similarly, under the Special Provisions Act to Deal with Child Sex Abuse Offenders, additional factors are listed as separate offences. For example, if the perpetrator of a sexual offence against a child is in a position of trust, the penalty is 15 (fifteen) to 18 (eighteen) years imprisonment. If the perpetrator is a member of the child’s family, the penalty is 20 (twenty) to 25 (twenty-five) years imprisonment. If the child was drugged, the penalty is 25 (twenty-five) years imprisonment. If the act of sexual violence against a child was committed by multiple perpetrators, the penalty for each perpetrator is 20 (twenty) to 25 (twenty-five) years imprisonment.
	4. Under the Penal Code of the Maldives, aggravating factors for all offences include, greater culpability level than required by the defined offence, causing serious bodily harm, cruelty, criminal record and refusal to compensate the victim.
2. ***Is rape by more than one perpetrator an aggravating circumstance?***

Under the Sexual Offences Act, while it is not listed as an aggravating circumstance, if rape is committed by more than one perpetrator, all of them will be culpable for committing the offence of rape, regardless of the extent of involvement.

Under the Special Provisions Act to Deal with Child Sex Abuse Offenders, as mentioned above at 8.3, if the act of sexual violence against a child was committed by multiple perpetrators, the penalty for each perpetrator is 20 (twenty) to 25 (twenty-five) years imprisonment.

1. ***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)***

As mentioned at 8.2 above, raping a person who does not have the mental capacity to give consent due to an inability, or raping a person who is mentally incapacitated or is physically disabled and therefore does not have the ability to defend themselves are listed as separate offences rather than aggravating circumstances. The imbalance of power between the perpetrator and the victim is not addressed in the Sexual Offences Act.

However, as pointed out in 8.3 above, under the Special Provisions Act to Deal with Child Sex Abuse Offenders, if the perpetrator of a sexual offence against a child is in a position of trust, or if the perpetrator is a member of the child’s family, the prescribed penalties are harsher. Section 13 of the Special Provisions Act to Deal with Child Sex Abuse Offenders, lists out the persons who are in a position of the child’s trust.

1. ***Is rape by spouse or intimate partner an aggravating circumstance?*** No.
2. ***Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.***
	1. Mitigating factors are not listed in the Sexual Offences Act.
	2. If the act of sexual violence is committed by a child, they will still be culpable under the Special Provisions Act to Deal with Child Sex Abuse Offenders. However, they will be diverted unto special diversion mechanisms under Law Number 18/2019 (Juvenile Justice Act).
	3. Mitigating factors applicable for all offences under the Penal Code of the Maldives include, expression of genuine remorse, substantial cooperation with authorities, partial justification, partial excuse and extreme emotional distress.
3. ***Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?*** No.
4. ***Regardless of the law, is reconciliation permitted in practice? and what is the practice in this regard?***

Yes. While it is permitted, it is not practiced in the Maldives.

1. ***Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.***
	1. There are no provisions for non-prosecution of a perpetrator of rape under the Sexual Offences Act.
	2. However, there are non-exculpatory defences under the Penal Code of Maldives, including unfitness to plead, stand trial or be sentenced, diplomatic immunity and previous prosecution for the same offence.
	3. As noted under 1.2 above, all rape charges in the Maldives, are brought under the Sexual Offences Act and not the Penal Code. However, as per the First Amendment to the Penal Code of the Maldives, perpetrators charged under specialised acts (including the Sexual Offences Act), will get the benefit of the defences stated in the Penal Code, including non-exculpatory defences.
2. ***If the perpetrator marries the victim of rape?*** No.
3. ***If the perpetrator loses his “socially dangerous” character or reconciles with the victim?*** No.

**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 bargains or “friendly settlement” of a case allowed in cases of rape of women?*** No.
4. ***Are plea bargains or “friendly settlement” of a case allowed in cases of rape of children?*** No.
5. ***Please provide information on the statute of limitation for prosecuting rape.***
	1. The Sexual Offences Act does not impose limits as to when a rape case can be charged. The statute of limitation of 8 years for felonies and 3 years for misdemeanours as provided for in the Penal Code of the Maldives, is not applicable to the offence of rape.
	2. However, Law Number 12/2016 (Criminal Procedure Act) does lay down periods for investigation and prosecution of a crime from the time of arrest, upon expiry of which prosecution is barred.
6. ***Which are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?***
	1. See response 16.1 to Question 16 above.
7. ***Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? If yes, please specify.***
	1. No. All the forms of evidence are considered admissible. There are no specific requirements of any particular form of evidence.
8. ***Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?***
	1. No. However, as a rule, the prosecution will object to such questions raised during the trial.
9. ***Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.***
	1. Under section 58 of the Sexual Offences Act, all trial hearings concerning rape must be closed, so as to protect the identity of the victim. Furthermore, the media is prohibited from reporting any information pertaining to the victim.
	2. Victims are also given the opportunity to give their testimony without revealing their identity, or through audio or video conferencing. This ensures that a victim does not have to face the perpetrator during the trial.

**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?*** No.
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?***

Yes. Maldives deposited its instrument of accession to the Rome Statute on 21 September 2011.

**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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|  | **2015** | **2016** | **2017** | **2018** | **2019** |
| **Reported** | 5 | 8 | 8 | 10 | 9 |
| **Cased and investigated** | 4 | 6 | 6 | 9 | 7 |
| **Charged** | 2 | 2 | 0 | 0 | 2 |

Note: These statistics were obtained from the Maldives Police Service. The Prosecutor General’s Office provided a combined figure for sexual offences prosecutions, which were 54 cases in the past two years and 234 cases in the past 5 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.***
	1. There are no legal barriers for reporting and prosecuting rape cases. However, once an alleged perpetrator is charged, it may take years before a judgment is delivered. This delay in the trial stage has affected the public’s trust in the system, and is one of the main reasons why such cases are not reported. Government of Maldives has undertaken a massive judicial reform initiative, which seeks to expedite the delivery and enhance the quality of justice.
	2. Even when a case is reported, other challenges include obstacles in gathering essential evidence due to delayed reporting. Maldives Police Service collaborates with NGOs as well as the United Nations Children’s Fund (UNICEF) to increase awareness of the public about the law and procedures for reporting crimes against women and children.
	3. The biggest challenge, however, is the social stigma surrounding the reporting of rape that has remained prevalent in the country. Victims who come forward are subjected to impractical standards of honour, social exclusion and rejection by family and loved ones. The damages inflicted by rape are not only physical. Severe psychological trauma and fear of retaliation from the perpetrator may also keep them from reporting. There are also concerns of lack of confidentiality on the part of authorities, which makes victims hesitant to come forward in the close-knit societies we live in.
	4. However, with more awareness programmes being conducted throughout the Maldives, it is important to note that there has been an increase in the number of rape cases reported over the past few years.

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17th May 2020