**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.

**Ans: According to the Section 375 of Penal Code, a man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:**

**First - Against her will.**

**Secondly - Without her consent**

**Thirdly - With her consent, when her consent has been obtained by**

 **putting her in fear of death or of hurt.**

**Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.**

 **Fifthly - With or without her consent, when she is under sixteen years of age.**

**Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.**

**Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.**

**According to the Section 376 of Penal Code, Whoever commits rape shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

**According to the Section 377 of Penal Code, Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.**

**Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.**

**According to the Section 561(1) of Criminal Procedure Code, notwithstanding anything in this code, no magistrate except a district magistrate shall-**

**(a) Take cognizance of the offence of rape where the sexual intercourse was by a man with his wife.**

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only.

**Yes**

* 1. Gender neutral, covering all persons.

Yes (According to Section 377of Penal Code)

* 1. Based on the lack of consent of victim.

**Yes**

* 1. Based on the use of force or threat.

**Yes**

* 1. Some combination of the above. . Please specify.

**Yes (According to Section 375 of Penal Code)**

* 1. Does it cover only vaginal rape?

**Yes**

* 1. Does it cover all forms of penetration? Please specify.

**Yes (According to Section 375 of Penal Code)**

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

**Yes**

* 1. Is the law silent on marital rape?

**No**

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?

**Yes**

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

**No**

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.

**None.**

1. What is the legal age for sexual consent?

**The legal age for sexual consent is over 16 years old.**

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

**None.**

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

**According to the Section 376 of Penal Code, Whoever commits rape shall be punished with imprisonment for a term of twenty years, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

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 no specific provision of reparation to the victim of rape but according to the Section 16 of Anti Trafficking in Persons Law, the Central Body and relevant working groups shall, with respect to the trafficked victims carry out with special arrangement for remedy of their physical and mental damage, giving vocational education based upon education and technique and medical examination and medical treatment with their consent.**

**According to the Section 33 of Anti Trafficking in Persons Law, the court shall, in passing a sentence for any offence provided in this law, pass an order for confiscation or disposal in accordance with the stipulations of the property involved in the offence, which have been seized as exhibits. It may pass an order to pay damages to the trafficked victim from the money confiscated or from the proceeds of sale of property or from the fine.**

**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?

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* 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)

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* 1. Is rape by spouse or intimate partner an aggravating circumstance?

**The law does not foresee aggravating circumstances when sentencing rape cases.**

**Yes, the law foresee mitigating circumstances when sentencing rape cases, b and c.**

1. Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.

**No.**

1. 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?

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* 1. Regardless of the law, is reconciliation permitted in practice? and what is the practice in this regard?

**Reconciliation between the victim and the perpetrator is allowed as part of legal response. According to the Section 494 of the Criminal Procedure Code, any Public Prosecutor may withdraw from the prosecution of any person of the offence. Such withdraw,**

1. **If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;**
2. **If it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offences or offences.**
3. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.
	1. if the perpetrator marries the victim of rape?

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* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim?

**There is no provision in the criminal code that allows for the non-prosecution of perpetrator.**

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)?

According to the Schedule 2 of the Criminal Procedure Code, rape case is cognizable offence and every person can report the first information report to relevant police station.

1. Is rape reported to the police prosecuted ex parte (private prosecution)?

Every person can report the first information report to relevant police station.

1. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women?

**No.**

1. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children?

**No.**

1. Please provide information on the statute of limitations for prosecuting rape.

**There is no limitations for prosecuting rape.**

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

**Yes, according to the criminal procedure code, the victim of rape can report after reaching adulthood.**

1. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? If yes, please specify.

**Medical evidence such as medical record is mandatory requirement and, semen and clothes are also need to proof.**

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?

**No provisions.**

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

**No Provisions.**

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity?

**There is no provision about this in Myanmar.**

1. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?

**No.**

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?

**There is no explicit provision excluding statutes of limitation for rape committed during war and armed conflict.**

1. Has the Rome Statute of the International Criminal Court (ICC) been ratified?

**Myanmar has not signed or ratified the Rome Statute of the International Criminal Court (ICC) yet.**

**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.

**There are (8588) cases prosecuted from 2015 to 2019**

**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.

**All forms of violence against children are prohibited by Child Rights Law. Prevention and protection of violence against women bill is undergoing review at present. After enacting the laws, there will be more effective for all forms of violence against women.**