**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.

These crimes fall under the title "Assault on Honor" and are mentioned in section one of Chapter Seven of the Penal Code. These crimes are not limited to rape only, but rather include other practices that fall under the concept “similar forms of serious sexual violence that are not classified as rape”. This includes, in particular, the following articles:

**Article 489** of the Penal Code[[1]](#footnote-1) which states:

“1- Any person who has sexual intercourse with someone other than their spouse, without their consent, whether by violence or threat shall be punished with permanent hard labour.

2- The sentence shall be the death penalty if:

 A- the victim is less than 15 years of age.

 B- The offence was perpetrated at gunpoint”.

**Article 490** “Every person who has intercourse with someone other than his wife who is unable to resist due to physical or psychological deficiency or due to acts of deception performed shall be liable to a term of nine years’ imprisonment at hard labour”

**Article 491:"** Every person who has sexual intercourse with a minor under 15 years of age shall be liable to a term of nine years’ imprisonment at hard labour. 2.The said term shall be not less than 15 years if the child is under 12 years of age”.

**Article 492: “**1- Every person who has sexual intercourse with a minor over 15 years but under 18 years of age and who is a legitimate or illegitimate ascendant of the minor or is related by marriage to an ascendant of the minor, or who is the minor’s de jure or de facto guardian, or who is a servant of any of the said persons, shall be liable to a term of nine years’ imprisonment at hard labour. **2-** The same penalty shall apply where the offender is a civil servant, cleric, or the director or a staff member of an employment office and commits the offence by abuse of his authority or the facilities at his disposal by virtue of his office.”

**Article 493:** “1. Every person who uses force or threats to compel a person to submit to or engage in an indecent act shall be liable to a term of not less than 12 years’ imprisonment at hard labour. 2. The minimum term shall be 18 years if the victim is under 15 years
of age”.

**Article 494:** “A penalty of up to 15 years’ imprisonment at hard labour shall be imposed upon every person who resorts to a means of deception or takes advantage of a physically or mentally handicapped person in order to commit an indecent act against that person or induce him or her to commit such an act”.

**Article 495:** “1. Every person who commits an indecent act against a minor under 15 years of age or induces the minor to commit such an act shall be liable to a term of nine years’ imprisonment at hard labour. 2. The said term shall be not less than 12 years if the child is under 12 years of age”.

Article 496: “Every person who is one of the persons referred to in article 492 and who commits an indecent act against a minor between 15 and 18 years of age or who induces the minor to commit such an act shall be liable to a term of imprisonment of up to 15 years at hard labour”.

Article 497: “Where the offender is one of the persons referred to in article 492, the penalties contemplated in articles 489-491 and 493-195 shall be increased as stated in article 247”.

**Article 499:** “1. Every public employee who seeks to seduce the wife of an inmate or detainee or person subject to his authority, or any female relative of such a person, shall be liable to a term of imprisonment of nine months to three years. 2. Every public employee who seeks to seduce the wife or a female relative of a petitioner whose case has been entrusted to him or to his superiors for a decision shall be liable to the same penalty. 3. Where the offender actually seduces any of the women referred to above, the penalty shall be doubled.”

**Article 500:** “1. Every person who abducts a girl or woman by deception or violence for the purpose of marriage shall be liable to a term of imprisonment of three to nine years. 2. The penalty shall also be applicable in the case of an attempt to commit the offence in question.”

**Article 501:** “Every person who abducts any person, male or female, by deception or violence for the purpose of committing an indecent act shall be liable to nine years at hard labour. Where the indecent act is actually committed, the penalty shall be not less than 21 years.”

**Article 502:** “The above penalties shall be applicable where the offence is committed without deception or violence if the victim is a minor under 15 years of age.”

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
	4. Based on the use of force or threat **YES**/ NO
	5. Some combination of the above.  **YES** / NO
	6. Does it cover only vaginal rape?  **YES** /NO
	7. Does it cover all forms of penetration? YES/**NO**. If yes, please specify. Although there is no explicit provision about this, the Syrian courts do indeed embrace this narrow concept of rape.
	8. Is marital rape in this provision explicitly included? YES / **NO**
	9. Is the law silent on marital rape? **YES**/NO
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/**NO**
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   **YES** /NO Marital rape is not considered a crime because it is seen as part of the husband's rights resulting from the marriage contract.
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** – Knowing that marital rape is not considered a crime.

1. **What is the legal age for sexual consent?**

The legal age of marriage stipulated in the Personal Status Law, which now requires the completion of eighteen years of age (while granting the family judge the authority to allow the marriage of persons under this age within conditions stipulated in the personal status law).

Moreover, the Syrian Penal Code criminalized in Article 491 sexual relations with a minor under the age of fifteen, noting that the same law criminalizes in article 492 having a sexual relation with a minor who has reached the age of fifteen and has not reached the age of eighteen if the perpetrator was a person who has authority or guardianship over the minor.

Article 505 of the Penal Code states that: “Every person who touches or fondles, in an indecent manner, a male or female minor under 15 years of age, or a young girl or woman over 15 years of age without her consent, shall be liable to imprisonment for a term of up to one and one-half years”.

Article 506 of the Penal Code states that: “Every person who indulges at encouraging a minor below 15, or a girl or woman above 15, for indecent acts or addressed them in an indecent way shall be liable to three days of imprisonment and/or a fine not to exceed 2000 SYP”.

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

It is not clear what is meant by peer. If it was meant to refer to homosexual relations, the Penal Code criminalized such relations according to Article 520, which states that every sexual intercourse “contrary to nature” is punishable by imprisonment for up to three years.

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

Article 489 of the Penal Code included the following sanctions:

1- Permanent hard labour.

2- Death penalty if the victim is less than 15 years of age or if the offence was perpetrated at gunpoint.

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 Syrian legislations did not include any specific reference to this issue. Such reparation is subject to the general rule stated in Paragraph 1 of Article 138 of the Penal Code: “1- Every crime that inflicts material or moral damage to others obliges the perpetrator to pay a compensation”.

**Aggravating and mitigating circumstances**

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

Yes, according to article **489** of the Penal Code if the victim is less than 15 years of age or if the offence was perpetrated at gunpoint, the sentence should be death penalty instead of Permanent hard labour.

* 1. **Is rape by more than one perpetrator an aggravating circumstance?  YES/NO**

Article 498 of the Penal Code stated that: “1- Under the provisions of Article 247, the penalties for felonies stipulated in this chapter are increased: If it was committed by two or more persons, who participated in overcoming the resistance of the victim, or have assaulted him or her in succession”[[2]](#footnote-2).

* 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) YES/NO**

Yes, according to Article 497 of the penal code: “Where the offender is one of the persons referred to in article 492, the penalties contemplated in articles 489-491 and 493-195 shall be increased as stated in article 247”.

**Article 492**: “1. Every person who has sexual intercourse with a minor over 15 years but under 18 years of age and who is a legitimate or illegitimate ascendant of the minor or is related by marriage to an ascendant of the minor, or who is the minor’s de jure or de facto guardian, or who is a servant of any of the said persons, shall be liable to a term of nine years’ imprisonment at hard labour. 2. The same penalty shall apply where the offender is a civil servant, cleric, or the director or a staff member of an employment office and commits the offence by abuse of his authority or the facilities at his disposal by virtue of his office”.

* 1. **Is rape by spouse or intimate partner an aggravating circumstance? NO**
1. Does the law foresee mitigating circumstances for the purposes of punishment? **YES**/NO If yes, please specify.

The Syrian legislations did not include any specific reference to this issue. Noting that if a valid marriage is concluded between the perpetrator and the victim, the perpetrator may benefit from the mitigating excuse.

Aarticle 508 the Penal Code offers the possibility of mitigating the punishment of the rapist if a valid marriage is concluded between the perpetrator and the victim. In this case, the perpetrator may benefit from the mitigating excuse according to the provisions of article /241/ provided that the punishment is imprisonment for no less than two years[[3]](#footnote-3)**.** The trial of the perpetrator will be prosecuted again if the marriage ends either with the divorce of the woman without a legitimate cause, or because a divorce is ordered in the interest of the victim before the passage of five years on the marriage. Knowing that the period that the rapist had served will be counted as part of the punishment.

Aarticle 508 the Penal Code: “1- If a valid marriage is concluded between the perpetrator of any felony listed in this chapter and the victim, the perpetrator may benefit from the mitigating excuse according to the provisions of article /241/ provided that the punishment is imprisonment for no less than two years. 2- Trial of the perpetrator is prosecuted again if the marriage ends either with the divorce of the woman without a legitimate cause, or because a divorce is ordered in the interest of the victim before the passage of five years on the marriage; the period he had served is counted as part of the punishment.”[[4]](#footnote-4)

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?** according to article 508 mentioned above.

In principle, the Syrian legislator entrusts the state with the right to punish and prosecute. The state exercises, through its judicial institutions, the right to initiate public proceedings, prosecute perpetrators, and implement penalties. However, the legislator excluded from this a number of crimes that directly affect personal rights. In such crimes, initiating the public proceedings is suspended on the will of the victim, and the pardon of the victim after the verdict have the same effect of suspension of penalty. This is specifically related to crimes in which the public proceedings depend on the complaint of the injured party, or its initiation depends on a personal claim, as is the case in the crime of adultery (Article 475 of the penal code), noting that rape is not among these crimes.

On the other hand, it is generally the right of the victim to pardon the perpetrator (or conclude a peace with him) in all crimes that affect a person with damage to his body, money and honor. Because victim’s claim is a civil claim related to compensation, and it has no effect on the public prosecution. If the perpetrator reconciles with the injured person on or without a financial compensation, then this reconciliation is only related to personal rights, and does not include the criminal offense, because the victim has no right to punishment. However, the jurisprudence proceeded to consider dropping the personal right as a mitigating reason which is dependent on the discretionary power of judge - in crimes in which the public prosecution does not depend on a complaint or a personal allegation. In homicide crimes, for example, the court often waives a third or half of the punishment as a result of dropping the personal right[[5]](#footnote-5).

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

There is no fixed rule in this regard, as this crime may results in silence to avoid stigma, or killing both the victim and the perpetrator together or one of them. However, the marriage of the rapist to his victim can be considered one of the manifestations of that reconciliation, which will lead to a reduction in the punishment of the rapist.

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

Yes, according to article 508 if a valid marriage is concluded between the perpetrator and the victim, the perpetrator may benefit from the mitigating excuse according to the provisions of article /241/ provided that the punishment is imprisonment for no less than two years. Trial of the perpetrator is prosecuted again if the marriage ends either with the divorce of the woman without a legitimate cause, or because a divorce is ordered in the interest of the victim before the passage of five years on the marriage; the period he had served is counted as part of the punishment.

* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/**NO** - Syrian legislations do not contain any reference to this issue.

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

If a valid marriage is concluded between the perpetrator and the victim, the perpetrator may benefit from the mitigating excuse.

1. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/**NO**
2. Please provide information on the statute of limitations for prosecuting rape.

There are two types of statute of limitations:

limitations on the criminal proceedings, as stipulated in the Code of Criminal Procedure (Articles 437 - 439): That is, the possibility of initiating a lawsuit against the perpetrator of the crime after a period of time has elapsed since the commission of the crime.

limitations on the penalty, as stipulated in Articles 161 to 167 of the Penal Code: That is, the possibility of executing the imposed penalty after a specified period of time has elapsed since the date of the judgment.

With regard to the statute of limitations for the lawsuit, i.e. the possibility to initiate a case regarding crime of rape as a criminal offense, Article 437 of the Criminal Procedures Law stipulates that:

“1- The public proceedings and the personal case shall be dropped after 10 years from the date of occurrence of the felony if there is no prosecution in respect of it during that period.

2- The two aforementioned cases shall also be dropped upon the lapse of ten years starting from the date of the lase action that have been taken if the case was raised, investigations were conducted, and no judgment was passed in it”.

Regarding the statute of limitations for punishment, and given that the crime of rape is a criminal offense, it is subject to Article 162 of the Penal Code, which states that:

For the limitations on the penalty, and given that the crime of rape is a felony, it is subject to Article 162 of the Penal Code, which states that:

 “1. For felonies punishable by the death penalty or life imprisonment, the statutory limitation is 25 years.

2. For felonies punishable by a term of imprisonment, the statutory limitation is double the term of imprisonment to which the offender was sentenced by the court, but not in any case more than 20 years or less than 10 years.

3.For felonies punishable by any other penalty, the statutory limitation is 10 years.

4. The statute of limitations starts from the date of the judgement if it was issued in absentia and from the day the convicted person evaded execution if the judgment was in presence”.

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

Syrian legislations do not contain a reference on this issue. The matter is subject to the general rule regarding the statute of limitations for the felony which is 10 years from the date of its occurrence

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

The Code of Criminal Procedure stated in article 175 that in felonies, misdemeanors and infractions legally accepted evidence can include all means, and the judge shall rule according to his/her personal conviction.

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

Syrian legislations do not contain any reference to this issue.

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

Syrian legislations do not contain any reference to this issue.

**War and/or conflict**

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

Syrian legislations do not contain any reference to this issue.

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

Syrian legislations do not contain any reference to this issue. Consequently, it is subject to the general rule regarding suspension of limitations. According to the Syrian legislations some causes may arise and lead to the suspension of the statute of limitations after it has started. In such cases, only the preceding and the following period shall be calculated. Such causes may also lead to delaying the start date of limitations. What is meant by suspension of the statute of limitations is to delay its initiation or suspend its validity within a period of time for a legal or actual cause.

These reasons may be actual or physical, such as suspension of courts due to a war, revolution, earthquake, or invasion of the country, and other reasons, so the statute of limitations will be suspended until this situation ceases.

In addition, the Syrian legislator adopted the statute of limitations to the penalty. Article (167/2) of the Penal Code states that: “The statutory limitation shall cease to run in the event of any [legal or material impediment beyond the](https://context.reverso.net/translation/english-arabic/legal%2Bor%2Bmaterial%2Bimpediment%2Bbeyond%2Bthe) offender's control that [interrupts](https://context.reverso.net/translation/english-arabic/interrupts) the execution of the sentence or other measure.”

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

Syrian legislations do not contain any reference to this issue.

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

The Syrian government signed the Rome Statute without ratifying it, what makes it a non-binding party to the Statute until now.

**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.**

No information available on this.

**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 Syrian context has led to the commission of such crimes due to the conditions of war, the illegal carrying of weapons, and the decline of state authority and law.

The victim/survivors fear family, community and perpetrator's reprisals, as well as the stigma that will haunt her and her family for decades.

The victim lacks any protection in light of the lack of special protection for women from the violence they are exposed to and the absence of guarantees that they will enjoy the necessary protection and care.

Depending on the circumstances of each case, the family may resort to either of the following options:

Non-disclosure due to the fear of scandal.

Killing the victim in order to protect the honor.

Personal retaliation against the perpetrator.

Surrounded by such attitudes, some survivors hesitate to name their experience as sexual assault, to discuss it with others, or to seek assistance—legal or otherwise

1. This article was amended in relation to increasing the severity of the punishment by law No. 11/2013. The old text was as follows:

“1- Any person who has sexual intercourse with someone other than their spouse, without their consent, whether by violence or threat shall be punished with hard labour for at least fifteen years.

2- The punishment shall be no less that twenty-one years if the person raped has not completed 15 years of age”. [↑](#footnote-ref-1)
2. Note that Article 247 of the Syrian Penal Code stated that: “If the law does not specify the effect of an aggravating cause, then the aforementioned reason requires an aggravation of the penalty as follows: The death penalty replaces Permanent hard labor, and each temporary penalty increases from one third to one half, and the fine is doubled”. [↑](#footnote-ref-2)
3. Note that Article 241 of the Syrian Penal Code stipulates how to reduce penalties when there is a mitigating excuse as follows: “If the act is a felony requiring execution, hard labor for life, or life imprisonment, then the punishment is converted to imprisonment for at least one year. If the act constituted one of the other felonies, the imprisonment would be from six months to two years. If the act is a misdemeanor, the penalty does not exceed six months, and it can be converted into an offensive penalty. Moreover, if the act was a violation, the judge could reduce the penalty to half of the exasperating fine”. [↑](#footnote-ref-3)
4. This text is an amendment and an increase in the severity of the previous text, which was an “exculpating excuse” that gives the rapist an opportunity for avoiding the entire punishment. It included that:

“1- If a valid marriage is concluded between the perpetrator of any felony listed in this chapter and the victim, the prosecution is suspended, and if a judgement was rendered, enforcement of the imposed punishment is suspended.

2- Prosecution or enforcement of the punishment shall be resumed if, within three years in case of a misdemeanour or five years in case of a felony, the marriage ends with the divorce of the woman without a legitimate cause, or because a divorce is ordered in the interest of the victim”. [↑](#footnote-ref-4)
5. Perhaps this stance is derived from the Islamic Sharia, which states that reconciliation abolishes retribution, while the society's right to a reinforcing punishment remains. [↑](#footnote-ref-5)