

*Response of the Jordanian National Commission for Women (JNCW) to the request of the United Nations Special Rapporteur on VAW to contribute to thematic report on rape as a grave and systematic human rights violation and gender-based violence against women by answering a* 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 Jordanian Penal Code in its section on Crimes against Morality and Public Ethics in chapter Crimes against Honor provides articles on rape (Articles 292, 293, 294, 295) and indecent acts (articles 296, 297, 298, 299).

The penalties for rape, ill-treatment, abduction, and indecent assault have been increased under the amendments to the Penal Code of 2017.

Below are the transcripts of the articles both on rape and indecent acts (crimes against honour).

**Article 292: Rape**

Any person who has sexual intercourse with a female, other than his wife, without her consent, whether by coercion or threat or deception, shall be sentenced to at least 15 years.

The sentence shall be the death penalty if the victim is less than 15 years of age.

The penalty shall be 20 years’ imprisonment if the victim has completed the 15th year and has not completed the 18th year.

**Article 293: Rape of a Vulnerable Female**

Any person who practices adultery with a female (rather than wife) who cannot resist due to her weakness, physical, psychological or mental disability is considered as committing crime stipulated for in Article 292 herein and is charged by the same sanctions stipulated in referred to Article.

**Article 294: Sexual Intercourse with a Female between Fifteen (15) or Eighteen (18) Years of Age**

1.Any person who practices adultery with female (rather than wife) who completed her 15 years old and under the 18 years old, shall be subject to be sentenced, at least, seven temporary work years.

2. If the female victim age completes the 12 years of her age and does not reach 15 years old, the sanction minimum sentence is fifteen years.

3. Should the female victim is under 12 years old then the criminal is considered as perpetrator of the crime stipulated for in Para 2, article 292 of this law and is subject to sanction assigned thereto.

**• Decision of the Court of Cassation No. 2272/2016 dated 21/12/2016**: The agreement and consent of the victim shall not be considered. This decision makes it clear that the courts do not accept the consent of the minor, and impose the penalty of rape in case sexual intercourse was a female – other than the wife - if she has not completed the age of eighteen. The legislator also imposed punishment of the perpetrator of this offense and determined the punishment depending on the age of the minor. This refers to the protection of the victim which is guaranteed by the law for this type of crimes[[1]](#footnote-1).

**Article 295**

 1a If the female completes her 15 years old but does not complete her 18 years old, and the criminal is one of her descent family; whether legitimate (Shari’a) or otherwise, one of her unmarriageable persons, who is assigned to raise, care of her or has legal or legitimate authority over her; the criminal is sentenced for 20 years work.

1b the sanction shall be work for life, if the victim completes her 12 years and less than 18 years old.

 1b If the criminal has guardianship over the female victim, he shall be deprived from such guardianship. 2 Same sanction referred to in the previous Para applies to the criminal who is religious person or recruitment office director or working therein and commits the act in breach to his authority or facilities he derives from such authority*.*

**Articles 296-299 and Article 320: Indecent acts**

**Article 296: (any sexual act that does not amount to rape**)

Anyone who violates the law by force or threat shall be punished by imprisonment for a period of not less than four years. The minimum sentence shall be five years if the victim has completed 15 years and has not yet attained the age of 18 years. The minimum sentence shall be seven years if the victim has completed 12 years of age and has not attained the age 15 years.

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

* 1. **Gender specific, covering women only YES/No** (Articles 292, 293, 294, 295)
	2. **Gender neutral, covering  all persons   YES/No** (Articles 296, 297, 299)
	3. **Based on the lack of consent of victim YES/ NO**
	4. **Based on the use of force or threat  YES/ NO** (articles 292, 293, 296, 298, 299)
	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. –** NOT SPECIFIED
	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**. The marital rape is not criminalized
1. **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.**
2. **What is the legal age for sexual consent?**

18 years

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

*N/A*

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

The criminal sanctions and duration of such criminal acts depend on different circumstances such as age of the victim, his/her vulnerability status, or status of the perpetrator. Please for more specific information refer to relevant articles listed above.

**Article 300.** The penalty stipulated for the felonies defined in articles (292,293,294,296,298, 299) shall be toughened by adding from one third to one half of it if the accused is one of the persons mentioned in article (295).

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?**

Under article 6 of Jordan’s domestic violence protection law (2017), the Ministry of Social Development’s Family Section (Family Protection Department) must ensure that the survivor is offered the provision of medical services and shelter. The law stipulates that the court can add other measures deemed necessary for the protection of the survivor and her dependents (article 16).

**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** *(Articles 301 )*
	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** (*Articles 300 and 301 of the Penal Code)*

**Article 301: Aggravating Circumstances**

1. Sanction imposed on Crimes stipulated for in the previous Articles of the 1st. chapter, in increased by adding one third to half of it if:

a. Is committed by two persons or more to overcome the victim resistance or the obscenity sequences practiced by such persons.

b. If the victim suffers sexual disease or the victim lost her virginity.

2. If any of the pre-mentioned crimes led to:

a. Wilful death of the victim, the sanction shall be 15 years temporary hard work.

 b. The victim suffering immune disease and the committing person know about his suffer from such disease; the sanction shall be work for life.

***c.* 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.**

In 2017 the Jordanian parliament abolished the article 308 that allowed rapists to escape punishment if they marry their victims*.*

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?**

The article 8 of the Domestic violence protection law 2017 stipulates that reconciliation and mediation services are provided as an option if there are no criminal charges.

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

Many victims lack the support of their family and relatives, who might exercise pressures on the victims to ensure they do not file complaints or waive their personal right. Families are concerned over their honour and social stigma. Also, in some cases the victims’ families faces pressures and threats from the perpetrator’s family not to pursue any legal action or dropping the case**.**

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

No, Friendly settlement is not applicable in Jordan.

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

No. Article 308 of the Penal code, stipulates: Mitigating causes may not apply in assault crimes as mentioned in this chapter, if the victim did not complete the eighteen years of age at the time of the crime, male, female or disabled, and the offender has completed eighteen years of age**.**

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

Article 338 of the the Criminal procedure code:

 The lawsuit of the public right and the lawsuit of the personal right shall be forfeited after the lapse of ten years from the date of the felony, if no prosecution has been instituted thereon within that period

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

Yes, in condition if he reports it within ten years from the date of the felony.

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

Article 147 of the the Criminal procedure code:

 All means of evidence shall be held in the felonies. The judge shall rule according to his personal conviction. If the law provides for a specific method of evidence, it must be observed.

1. **Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial? YES/NO**
2. **Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.**

**War and/or conflict**

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

Not in criminal code but according to Rome statute which is considered to be part of national legislation.

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

 Jordan signed the Rome Statute on 7 October 1998 and deposited its instrument of ratification of the Rome Statute on 11 April 2002**.**

**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.**

 According to the Annual Statistical Report 2018 issued by the Department of Statistics:

140 complaints of rape were reported in 2018.

In previous years the data were the following:

145 complaints in 2017,

138 complaints in 2016

122 complaint in 2015.

No information available on prosecuted and sanctioned cases on rape.

**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.**

Fear of social stigma is a major factor which takes part of the reluctance of victims to follow legal action of gender-based violence. Most victims have false or incomplete information about legal procedures and do not have the correct knowledge about available legal procedures and solutions, and therefore hesitate to seek legal assistance. The cost of litigation and the ensuing fees, expenses and travel allowance to and from the Court is also a major barrier to accessing justice, as these add up to court fees and attorney fees. SGBV victims are at times reluctant to engage in legal proceedings as they fear being subjected to threats and violence from the perpetrator. The decision to pursue legal action is particularly difficult if the perpetrator is a close family member and/or if the victim depends financially on the perpetrator. The lack of adequate safeguards to protect the victim from the perpetrator during and after the litigation process is a concern, especially in light of the fact that alternatives to safe shelters are limited in Jordan**.**

1. **Guidance for the provision of legal support to victims of gender-based violence, ARDD Legal Aid, 2019.**  [↑](#footnote-ref-1)