

Committee on the Elimination of Discrimination against Women

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

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Information on Uzbekistan for Consideration by the Committee on the Elimination of Discrimination against Women at the 81st Session (07 Feb 2022 - 25 Feb 2022)**Introduction:**

1. We respectfully submit this report for consideration during Uzbekistan's sixth periodic review by the Committee on the Elimination of Discrimination against Women ('the Committee') during its 81st Session (07 Feb 2022 - 25 Feb 2022). This submission details concerns with regard to laws related to rape and other forms of sexual violence and procedures and practices which effectively deny access to justice for survivors of sexual violence.
2. Despite recent developments to put in place a framework for the protection of women's rights and combating gender-based violence, Uzbekistan's legal system continues to provide a number of opportunities for perpetrators to escape criminal liability or punishment, namely through the way sexual violence crimes are defined; allowing for the direct release of a perpetrator from liability or punishment in certain circumstances; and through the way sexual violence crimes are investigated and prosecuted, including with respect to adolescent girls.
3. This submission is in reference to Equality Now's 2019 report, "Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia,"¹ which identified gaps in the law, thereby allowing for actual and potential impunity for perpetrators of sexual violence crimes. This submission is also in reference to the 2021 publication of Equality Now and Nemolchi.uz, "A Culture of Shame: Sexual Violence and Access to Justice in Uzbekistan,"² which identifies and analyses barriers to justice for sexual violence in Uzbekistan.

¹ Equality Now, Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia, 2019, at: https://www.equalitynow.org/roadblocks_to_justice

² Equality Now & Nemolchi.uz, A Culture of Shame: Sexual Violence and Access to Justice in Uzbekistan, 2021, at: <https://www.equalitynow.org/resource/a-culture-of-shame-sexual-violence-and-access-to-justice-in-uzbekistan/>

Information about the authors of the submission:

4. **Equality Now** is an international human rights NGO with the mission to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now is registered in London, New York, and Nairobi, and has consultants based in various parts of the world. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now's work.
5. **Nemolchi.uz** is an independent information project against violence in Uzbekistan, created in 2017. It was created to draw attention to violence against women and change the attitude of society towards this issue. It is a platform where readers can find useful information about what gender based violence is, how to deal with violence, and where to get help. Victims of gender-based violence can tell their stories anonymously and receive psychological support. The mission of Nemolchi.uz is to defeat gender-based violence through education.
6. **NIHOL** - Initiative's Development and Supporting Centre – is a non-governmental, non-commercial, public organisation established by women leaders in Tashkent and the Tashkent region and registered in August 2003. The main office of NIHOL is in Tashkent, Uzbekistan. The mission of NIHOL Centre is comprehensive development and supporting citizen's initiatives (especially youth, women, and people with disabilities) in rural areas on using their rights and freedoms in building up civil society and democratisation of public progress through providing them with education, information and consulting.

Recommendations given to Uzbekistan in the Concluding Observations on the Fifth Periodic Report of Uzbekistan and scope of this submission

7. We reiterate the Concluding Observations on the fifth periodic report of Uzbekistan³ and underscore, in particular, the recommendations urging the government to:
 - put in place a comprehensive strategy to eliminate discriminatory stereotypes and patriarchal attitudes, as well as raise awareness of the criminal nature of harmful practices, including child and forced marriage;⁴
 - ensure that women and girls who are victims of violence have access to immediate means of redress, including compensation, and protection, and that perpetrators are prosecuted and adequately punished;⁵
 - encourage women to report incidents of domestic, sexual and other forms of violence to the police and limit the use of mediation by officials in mahalla by destigmatising victims and raising the awareness of the police and the general public to the criminal nature of such acts;
 - provide adequate assistance and protection to women who are victims of violence by establishing shelters, including in rural areas, and enhancing cooperation with non-governmental organisations providing shelter and rehabilitation to victims;

³ CEDAW, Concluding observations on the fifth periodic report of Uzbekistan, 24.11.2015, CEDAW/C/UZB/CO/5, at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUZB%2fCO%2f5&Lang=en

⁴ Ibid, §16

⁵ Ibid, § 18(a)

- collect statistical data on domestic, sexual and other forms of violence against women, disaggregated by age and relationship between the victim and the perpetrator.
8. The legal provisions and practices detailed in our submission highlight the failure of the State to comply with its duty to provide equal protection under the law to survivors of sexual violence (Article 2(c) of CEDAW); failure of law enforcement to protect women from sexual violence (Article 2(c) and (e)); and that the decisions and failings of the authorities and their agents constitute demonstrable direct and indirect discrimination against women (Article 2(d)); as well as failing to recognise and identify the gender dimension of sexual violence during the prosecution of the accused and in the punishment of this crime (Article 2 (e)). In violation of the Convention, Uzbekistan has also failed to enact criminal law provisions to effectively prosecute sexual violence and gross manifestations of violence against women (Article 2 (b)). We submit that the root causes of the failures of the State are its non-compliance with the obligation to transform gender hierarchies and stereotypical attitudes towards women, contrary to Articles 2 (f) and 5 (a) of the Convention and the obligation to combat violence against women and provide access to justice to survivors, as described in General Recommendations 19, 33 and 35 of the Committee.

Definitions of sexual violence crimes enabling impunity for perpetrators

9. The requirement to introduce a consent-based definition of rape and other forms of sexual violence which ensures that all coerced and non-consensual acts of a sexual character are criminalised is a well-established principle under international human rights and criminal law, including by this Committee.⁶ Currently, the definition of rape in Uzbekistan's Criminal Code focuses on the requirement of force, threat of force or helplessness (Article 118).⁷ Definitions of other forms of sexual violence enshrined in the law, including the offences of 'Violent Satisfaction of Sexual Need in Unnatural Form' (Article 119) and Compulsion of Woman to Sexual Intercourse (Article 121), do not comply with recommendations by this Committee⁸ as they do not envisage a broad range of coercive circumstances and have disproportionately low penalties attached to them. Article 121 is, by its nature, equivalent to rape, though it is treated as a less serious crime enabling light sentences and enables various opportunities for the perpetrator to go unpunished. Any kind of violence or threat of violence should also be considered as an aggravating circumstance rather than constituting elements of rape.

Marital rape being overlooked as a crime

10. The Committee's General Recommendation 35 provides that States should ensure that a "definition of sexual crimes, including marital and acquaintance or date rape, is based on the lack of freely given consent and takes into account coercive

⁶ CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35 ("CEDAW Committee General Recommendation No. 35"); CEDAW Committee, *Vertido v Philippines*, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); R.P.B. v Philippines, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

⁷ Article 118. Rape that is, a sexual intercourse committed with use of violence, threats, or abuse of helpless state of the victim... shall be punishable by imprisonment for a term of three to seven years.

⁸ CEDAW Committee, *Vertido v Philippines*, Communication No. 18/2008, § 8.9 (b) and CEDAW Committee General Recommendation No. 35, § 33.

circumstances.”⁹ The Committee and the Human Rights Committee have recommended that the States of the former Soviet Union specifically criminalise marital rape, including Kyrgyzstan (2018),¹⁰ Tajikistan (2018),¹¹ Belarus (2016),¹² Latvia (2014)¹³ and Lithuania (2014).¹⁴ As countries of the former Soviet Union, they share similar definitions of sexual violence crimes and similar criminal justice systems to Uzbekistan. It follows that recommendations given to these countries are relevant to all countries that retain similar legal contexts, including Uzbekistan.

11. Even though the provisions on sexual violence in the Criminal Code of Uzbekistan are formulated in a way that they theoretically cover all situations of rape irrespective of the relationship between the victim and the perpetrator, there is a widespread perception among the public and law enforcement that rape cannot be committed in marriage. This leads to marital rape being largely overlooked. The explicit criminalisation of marital rape or defining it as an aggravating factor would help mitigate this problem. Even though Articles 118 (Rape) and 119 (Violent Satisfaction of Sexual Need in Unnatural Form) provide that the crime is aggravated if committed knowingly against a close relative, this is effectively interpreted as a blood relative rather than a wife or an intimate partner.
12. Failure to explicitly criminalise marital rape, or classify it as an aggravating circumstance, together with failure to provide ex officio/public prosecution of the crime by the authorities (see below on public prosecutions), leads to the authorities being reluctant to investigate and prosecute marital rape. It is also a critical factor contributing to the crime being overlooked and unrecognised by law enforcement and the promotion of “reconciliation” over justice and the safety of the woman concerned.

Ex officio investigation/prosecution by the State for all sexual violence crimes

13. International human rights standards are clear in requiring authorities to respond seriously to all cases of gender-based violence to ensure access to justice, including through the use of State-led prosecutions. In its General Recommendation 35, the Committee provides that States should “Ensure effective access of victims to courts and tribunals; ensure authorities adequately respond to all cases of gender-based violence against women, including by applying criminal law and as appropriate ex officio prosecution to bring the alleged perpetrators to trial in a fair, impartial, timely and expeditious manner and imposing adequate penalties.”¹⁵

⁹ CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

¹⁰ CEDAW Committee, Inquiry concerning Kyrgyzstan under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 21 September 2018, CEDAW/C/OP.8/KGZ/1, § 92.b.

¹¹ CEDAW Committee, Concluding Observations on the sixth periodic report of Tajikistan, 9 November 2018, CEDAW/C/TJK/CO/6, § 26.

¹² CEDAW Committee, Concluding Observations on the eighth periodic report of Belarus, 18 November 2016, CEDAW/C/BLR/CO/8, § 23.a.

¹³ UN Human Rights Committee, Concluding Observations on the third periodic report of Latvia, 11 April 2014, CCPR/C/LVA/CO/3, § 9.a.

¹⁴ CEDAW Committee, Concluding Observations on the fifth periodic report of Lithuania, 24 July 2014, CEDAW/C/LTU/CO/5, § 25.e.

¹⁵ CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 14.07.2017, CEDAW/C/GC/35, § 44.

14. In the case of O.G. v. the Russian Federation, the Committee commented that “the fact that a victim of domestic violence has to resort to private prosecution, where the burden of proof is placed entirely on her, denies the victim access to justice”¹⁶ and recommended that Russia “[a]dopt comprehensive legislation to prevent and address violence against women, including domestic violence, [and] introduce ex officio prosecution of domestic and sexual violence.”¹⁷ These remarks with respect to the Russian Federation are very pertinent to Uzbekistan which has a similar legal framework.
15. The criminal code of Uzbekistan classifies sexual violence crimes as ones prosecuted under private-public prosecution procedures and does not therefore ensure ex officio/public prosecution. Further, reconciliation is allowed as the basis of releasing a perpetrator from liability for some sexual violence crimes.
16. Article 325 of the Criminal Code of Uzbekistan details which criminal cases are initiated upon a victim’s claim. The Article states that criminal cases of crimes provided for by ... part one of Article 118 [Rape], part one of Article 119 [Sexual assault], part one of Article 121 [Compulsion] ... of the Criminal Code shall be initiated only upon a victim’s claim with a request for prosecution of the perpetrator. In exceptional cases, when victims, due to helpless state, dependence on the defendant or other reasons, are unable to defend their right and legal interest, the prosecutor shall initiate the criminal case without the victim’s claim.
17. The provisions in the law set out in this section suggest, and are effectively interpreted as meaning, the victim herself has to file a specific complaint for rape and other acts of sexual violence for the crime to be prosecuted. Even if medical professionals report evidence of rape of their patients to the police, charges will not be filed unless the patient is proactively willing to do so. Frequently when domestic violence is reported, any allegation of sexual violence within those charges will be ignored and not recorded. Consequently, rape is not prosecuted in many situations, including where women are not able or willing to file a complaint because they fear the perpetrator or when they are pressured by the perpetrator, the perpetrator’s family or their own family to reconcile.
18. It is also reported that many times for an act as serious as rape, which requires a rigorous response from the criminal justice system, only protection orders are issued and criminal charges are not pressed.¹⁸ Rape will generally not be prosecuted unless there is (a) physical evidence that the woman or girl fought back and (b) biological evidence of ejaculation. This means that any delay in reporting or investigating will make prosecuting rape virtually impossible. Threats of violence are often ignored and it is rare that the helpless state of the victim is taken into account.¹⁹

Training future investigators and prosecutors to investigate sexual violence crimes

¹⁶ CEDAW, O.G v Russian Federation, no.91/215, 06.11.2017, CEDAW/C/68/D/91/2015, §7.7; See also X and Y v Russia, No. 100/2016, (2019), CEDAW/C/73/D/100/2016

¹⁷ CEDAW, O.G v Russian Federation, no.91/215, 06.11.2017, CEDAW/C/68/D/91/2015, §9.

¹⁸ Equality Now & Nemolchi.uz, A Culture of Shame: Sexual Violence and Access to Justice in Uzbekistan, 2021, p.9.

¹⁹ Ibid.

19. Law textbooks do not teach students, who become investigators and prosecutors, to view rape from the perspective of lack of informed consent, but rather to first and foremost make sure that the victim is not lying when she claims to have been raped and to check if she could have prevented the crime. That is, the actions of a rape victim are those that are initially investigated and evaluated as possible slander. In particular, in the textbook "Criminology" published on the website of the Tashkent Law University (2018, ISBN: 978-9943-380-67-7) in Chapter 25 on the investigation of rape, it is indicated that it is important to check whether the victim was aware of the possible consequences of a meeting in private with a suspect; whether it was possible to foresee that the victim would likely be harassed in specific conditions; whether the suspect in these conditions could adequately assess the true intentions of the "partner"; whether practical steps were taken by the victim to decisively discourage sexual intercourse attempts; whether the suspect realised that by his actions he would be grossly trampling the will of the victim, and committed his acts forcibly (p. 369). Separately, it is stated that "in investigative practice, the facts of slander are often encountered," therefore the investigator must find out whether the victim is slandering.
20. Moreover, according to this textbook, indicators of a false accusation might be: a late filing of an application or under pressure from relatives or acquaintances; signs of mental disabilities in the applicant; or positive characterisation of the suspect (p. 370). Also, the possibility of a false accusation, according to the authors of the textbook, might be evident when relations between partners worsen, for example, in cases of betrayal, jealousy, refusal to marry, insult, etc., fear of condemnation from others for extramarital affairs (p. 370). The authors of the textbook also point out that "one of the tactical means of exerting a positive influence on the liar is a confrontation" (p. 371).
21. The above textbook is problematic because it perpetuates deeply entrenched stereotypes on rape, which the Committee has criticised numerous times, and denies access to justice and right to dignified treatment to victims.
22. In addition, the law provides the possibility of releasing a perpetrator of certain sexual violence crimes from liability as a result of reconciliation with the victim. Article 66(1) of the Criminal Code provides that "A person, who committed a crime provided by Articles ... 121 (Compulsion of a Woman to Sexual Intercourse)... of this Code, may be released from criminal liability, if they have admitted their guilt, reconciled with the victim and remedied the damage caused..."
23. Reconciliation is often used and abused resulting in perpetrators of sexual violence escaping any form of criminal punishment or repercussions for their criminal behaviour, including avoiding a criminal record. In practice, lawyers and relatives of the accused make various attempts to obstruct the victim's access to justice and force the victim and her relatives to reconcile. Reconciliation is used even in cases where the offender has already been sentenced to imprisonment for rape. For example, in the case of J.U., who in February 2021 was sentenced to 5 years for the rape of a minor, the victim withdrew her claims after being married to him and he counter-claimed she had libeled him. His punishment was then changed to that imposed for restriction of

freedom.²⁰ It is difficult to determine whether the victim was pressured, but the fact that the perpetrator was freed from prison, that the victim was not charged with libel, and no claims now exist between the parties calls into question whether justice was served in this case, particularly as it concerned rape of a minor. Given the way the laws are framed and the authors' knowledge of similar cases, including the lack of proper investigation and analysis of rape cases by law enforcement and the favouring of perpetrators, this case appears to be representative of how rape cases are commonly dealt with in Uzbekistan.

Barriers for adolescent girls

24. Adolescent girls in Uzbekistan are particularly vulnerable to sexual violence. Adolescence and the intersection of other vulnerabilities makes it easier for criminals to create a coercive and exploitative environment. Particularly in more rural areas, young women are often married off to their rapists as a means of "settling" the case and raped women are perceived as worthless in their communities. In one case for example, in 2020, it was reported that a 17-year-old girl was made to marry as a second wife to a man who raped her and the marriage aimed to "save her from shame." A few months later she was found hanged. The man was convicted of inducement to suicide and polygamy, but not of rape.²¹
25. When it comes to rape of underage girls, if the minor does not sustain physical injuries and show signs of resistance, despite evidence of coercion and exploitation of the victim's vulnerability, the perpetrator will only be charged for "consensual sex" with a minor under the age of 16 (Article 128 of the Criminal Code), rather than rape. Reduced charges and light sentences are also common when the victim is an adolescent girl. A common belief among law enforcement is that girls make up accusations of rape in order to get something out of the accused, while minors are more vulnerable to manipulation, deceit, duress, and coercion, which is often wrongly interpreted by law enforcement that the sexual act happened with the minor's "willingness."
26. An illustrative example of the above is a 2020 case of a 14-year-old girl who was repeatedly raped by a man 17 years senior using various forms of coercion, though he was only charged under the article of "consensual sex with someone who has not reached the age of 16" rather than rape and was only sentenced to three years in prison.²² Another illustrative example is the case of a 14-year-old girl who was gang-raped by her teacher and his friends with deceit and coercion, though, after significant delays the perpetrators were only convicted of "consensual sex with a minor" rather than gang-rape and were given only four and two years respectively in prison.²³

²⁰ See <https://www.gazeta.uz/ru/2021/06/10/umirov-case/>

²¹ See A Culture of Shame p. 6 for case details.

²² See A Culture of Shame p. 7 for case details.

²³ See A Culture of Shame p. 8 for case details.

Recommendations:

Amend the definition of rape and its penalties

- Amend the definition of rape and other forms of sexual violence to focus solely on the absence of voluntary consent, given as the result of the person's free will assessed in the context of the surrounding circumstances;
- Ensure that all crimes of sexual violence provide penalties that are commensurate with their gravity. Remove "community service", "correctional labour" and conditional sentences as forms of punishment for sexual violence and put in place deterrent prison sentences.

Address marital rape

- Explicitly criminalise rape in marriage and intimate partner relationships as a separate article in the Criminal Code of Uzbekistan, or as an aggravating circumstance within the existing sexual violence articles.

Ensure ex officio prosecutions

- Ensure that the Criminal Procedure Code of Uzbekistan provides that all sexual violence crimes are investigated/prosecuted ex officio by the State and that the investigation/prosecution does not depend on the complaint of the victim or their legal representative;
- Ensure that the reconciliation procedures are not applied, either formally or informally, to leave perpetrators of sexual violence unpunished;
- Ensure that in cases of sexual violence, perpetrators are brought to justice, rather than being restricted by protection orders only;
- Support law enforcement with proper tools to promote a victim-centred approach to investigations, prosecutions, and adjudications of sexual violence crimes which will also address prejudicial stereotypes in the system;
- Create a special unit for the investigation of sexual crimes under the prosecutor's office.

Training of investigators, prosecutors and judges in sexual violence crimes;

- Develop manuals on the investigation, prosecution and adjudication of sexual crimes based on international human rights law and standards developed by the Committee;
- Develop programmes for relevant educational institutions to train special investigators, prosecutors, judges, lawyers on sexual violence crimes;
- Develop courses for continuous education for investigators, prosecutors and judges working on sexual violence;
- Compile statistics for reported and convicted rape crimes disaggregated based on the victim's and perpetrator's sex, age, race, ethnic origin, nationality, immigration status, disability, sexual orientation, gender identity, and involvement in prostitution, publicise the data and use it to inform better prevention and accountability measures with respect to sexual violence.

Protect adolescent girls

- Ensure that rape against minors and adolescent girls is properly investigated and prosecuted to the full extent of the law and that victims are treated with dignity. This would include ensuring that if there is evidence of rape then that is the charge that is

brought, rather than the lesser charge of ‘Sexual Intercourse with Person under Sixteen Years of Age’.

Raise public awareness

- Create public information campaigns aimed at the prevention of sexual violence. They should address the topic of victim-blaming, including shifting stigma from the victim to the perpetrator and focusing on equality, respect, and non-discrimination;

Services

- Provide comprehensive psycho-social support for victims regardless of whether they are granted victim status through the criminal justice system.