



Committee on the Elimination of Discrimination against Women
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Information on List of Issues for Uzbekistan for Consideration by the Committee on the Elimination of Discrimination against Women at its Pre-sessional Working Group for the 78th session (13-17 July 2020)

Introduction:

1. Equality Now respectfully submits this letter in advance to the 78th Pre-sessional Working Group of the Committee on the Elimination of Discrimination against Women ('the Committee') for consideration of the List of Issues in relation to Uzbekistan's sixth periodic review. Our submission details our 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.

Information about the author of the submission

3. 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 has offices in London, New York, Nairobi and Beirut, as well as consultants based in various parts of the world. Ending sexual violence, ending sex trafficking, ending harmful practices and achieving legal

equality are the main areas of Equality Now's work. 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.

4. We reiterate the Concluding Observations on the fifth periodic report of Uzbekistan² 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;³
 - 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;⁴
 - 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 destigmatizing 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;
 - collect statistical data on domestic, sexual and other forms of violence against women, disaggregated by age and relationship between the victim and the perpetrator.

5. 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

¹ https://www.equalitynow.org/roadblocks_to_justice

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fUZB%2fCO%2f5&Lang=en

³ Para 16

⁴ Para 18(a)

and 35 of the CEDAW Committee.

Definitions of sexual violence crimes enabling impunity for perpetrators

6. 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.⁵ Currently, the definition of rape in Uzbekistan's Criminal Code focuses on the requirement of force, threat of force or helplessness (Article 118).⁶ Additional definitions of other forms of sexual violence foreseen 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 Committee⁷ as they do not envisage a broad range of coercive circumstances and have disproportionately low penalties attached to them. Any kind of violence or threat of violence should also be considered as an aggravating circumstance rather than constituting elements of rape.

Recommendations:

- 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.

We respectfully ask the Committee to request of the government of Uzbekistan the following:

- Will the government commit to proposing and adopting amendments to Articles 118, 119 and 121 of the Criminal Code to ensure that the definitions of sexual violence crimes are in compliance with standards developed by the CEDAW Committee and cover all forms of sexual violence acts committed without the victim's voluntary consent given as the result of a person's free will?
- Will the government commit to amend penalties for Articles 118, 119 and 121 to make sure that they commensurate to the gravity of the crimes?

⁵ 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).

⁶ 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.

⁷ CEDAW Committee, *Vertido v Philippines*, Communication No. 18/2008, § 8.9 (b) and CEDAW Committee General Recommendation No. 35, § 33.

- To provide disaggregated information and statistics regarding to what extent community labour, conditional sentences and correctional labour are applied as punishment for sexual violence.

Marital rape

7. CEDAW'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 circumstances."⁸ CEDAW and the Human Rights Committee have to date recommended that the States of the former Soviet Union specifically criminalise marital rape, including Kyrgyzstan (2018),⁹ Tajikistan (2018),¹⁰ Belarus (2016),¹¹ Latvia (2014)¹² and Lithuania (2014).¹³ As countries of the former Soviet Union, they continue to share similar definitions of sexual violence crimes, as well as similar criminal justice systems. Therefore, recommendations given to these countries are relevant to all countries that retain the similar legal context, including Uzbekistan.
8. Despite the introduction of a Domestic Violence Law in 2019, there are still no legal provisions for rape committed in marriage and intimate relationships as either a separate crime or as an aggravating circumstance of existing sexual violence provisions. According to Article 3 of the Law, sexual violence is recognised as a "a form of violence against women that infringes on sexual integrity and sexual freedom by committing acts of a sexual nature, without their consent" but there is no recognition in either this Law or the Criminal Code that such acts can be perpetrated within marriage or an intimate relationship. Moreover, 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 could effectively be interpreted as a blood relative, rather than also including a wife or an intimate partner.
9. 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

⁸ CEDAW, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

⁹ 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.

¹⁰ CEDAW Committee, *Concluding Observations on the sixth periodic report of Tajikistan*, 9 November 2018, CEDAW/C/TJK/CO/6, § 26.

¹¹ CEDAW Committee, *Concluding Observations on the eighth periodic report of Belarus*, 18 November 2016, CEDAW/C/BLR/CO/8, § 23.a.

¹² UN Human Rights Committee, *Concluding Observations on the third periodic report of Latvia*, 11 April 2014, CCPR/C/LVA/CO/3, § 9.a.

¹³ CEDAW Committee, *Concluding Observations on the fifth periodic report of Lithuania*, 24 July 2014, CEDAW/C/LTU/CO/5, § 25.e.

and prosecute it. It is also one of the critical factors leading to the crime being overlooked and unrecognised by the law enforcement system, even to the extent of promoting “reconciliation” over justice and the ongoing safety of the woman concerned.

Recommendation:

- 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.

We respectfully ask the Committee to request further information from Uzbekistan on the following issues:

- What steps is the government undertaking to reform the Criminal Code to expressly criminalise rape in marriage and intimate partner relationships or treat it as an aggravating circumstance within the existing sexual violence articles?

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

10. International human rights standards are clear in requiring authorities to respond seriously to all cases of gender-based violence, including through prosecution led by the State, to ensure access to justice. 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.”¹⁴

11. In the case of *O.G. v. the Russian Federation*,¹⁵ the CEDAW 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**”. These remarks with respect to the Russian Federation are very pertinent to Uzbekistan which has a similar legal framework.

12. 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

¹⁴ CEDAW Committee General Recommendation No. 35, § 44.

¹⁵ *O.G v Russia* *ibid* § 9

¹⁶ Communication No. 91/2015 (2017) § 7.7; See also *X and Y v Russia*, No. 100/2016, (2019), CEDAW/C/73/D/100/2016

prosecution. Further, reconciliation is allowed as the basis of releasing a perpetrator from liability for some sexual violence crimes.

13. Article 325 of the Criminal Code of Uzbekistan provides which criminal cases are initiated upon a victim's claim. The Article states that *criminal cases on 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 the victim due to helpless state, dependence on the defendant or other reasons is unable to defend their right and legal interest, the prosecutor shall initiate the criminal case without the victim's claim.*
14. 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...*
15. Reconciliation is often used and abused with the result that perpetrators of sexual violence escape 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.
16. The above provisions suggest, and are effectively interpreted as meaning, that the victim has to file a specific complaint for rape and other acts of sexual violence for the crimes 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.

Recommendations:

- 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.

We respectfully ask the Committee to request further information from Uzbekistan on the following issues:

- What steps is the government undertaking to ensure that all sexual violence crimes are investigated and prosecuted ex officio?
- What steps is the government undertaking to ban all forms of reconciliation, including formal and informal procedures, and ensure that perpetrators of sexual violence are punished even when they reconcile with the victim?