



# A CULTURE OF SHAME: SEXUAL VIOLENCE AND ACCESS TO JUSTICE IN UZBEKISTAN

# THE GLOBAL CONTEXT

Around the world, rape and sexual abuse are everyday violent occurrences. Rape is always an act of violence and an expression of power and control. However, the way laws are framed in many countries dismisses this reality. The law should never interpret a woman's lack of physical resistance to sexual violence as acquiescence.

It is not easy for an individual to report rape. Many fear not being believed, humiliation by law enforcement, being blamed by their communities, or lack of access to justice among other obstacles.

**All governments need to do more to:**

PREVENT SEXUAL  
VIOLENCE

PROVIDE BETTER ACCESS TO  
JUSTICE FOR VICTIMS (INCLUDING  
SPECIALIZED SERVICES)

EFFECTIVELY  
PUNISH SEXUAL  
VIOLENCE CRIMES



## ABOUT NEMOLCHI.UZ

Nemolchi.uz is an independent information project against gender based 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. Now it is a platform where readers can find useful information about what 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, awareness raising, and creating a platform for victims of gender based violence to be heard and seek help. NeMolchi.uz is fighting to destroy the culture of silence and shame that promotes gender-based violence, and is committed to influencing policy decisions to protect the rights of girls and women, enhancing compliance with the law, and enhancing government accountability.

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## ABOUT EQUALITY NOW

Equality Now is an international human rights organization founded in 1992 to protect and advance the rights of women and girls around the world. Its campaigns focus on four programmatic areas: legal equality, ending sexual violence, ending harmful practices and ending sexual exploitation, with a cross-cutting focus on the special needs of adolescent girls.

Equality Now connects grassroots activism with international, regional, and national accountability mechanisms to bring about legal and systemic change for the benefit of all women and girls. It works to get governments to enact and enforce laws and policies that support women and girls' rights in line with international human rights standards.

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# THE SITUATION IN UZBEKISTAN

Article 46 of the Constitution of Uzbekistan speaks of the equality of men and women. In addition, Uzbekistan ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) in 1995, pledging to ensure equality between men and women and to protect women from violence. However, Uzbekistan's laws on rape and other forms of sexual violence, as well as the procedures and practices in use, effectively deny survivors of sexual violence access to justice.

In 2019, Equality Now issued Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence In Eurasia which analyzed gaps in the law and its implementation and provided examples of impunity for perpetrators of sexual violence crimes in the 15 countries of the former Soviet Union, including Uzbekistan.

## Specific issues identified with respect to Uzbekistan include:

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**1** A definition of rape based on use of violence, threats or abuse of the helpless state of the victim rather than on voluntary, genuine, and willing consent assessed in the context of any surrounding circumstances.

**2** A potential release from criminal liability or punishment for statutory rape of a minor under the age of sixteen, in certain circumstances.

**3** A potential release from criminal liability or receiving light penalties for 'compulsion of a woman to sexual intercourse' - an act equivalent to rape which should be defined as such - or forced marriage if the perpetrator has 'reconciled' with the victim.

**4** A potential release from criminal liability for 'loss of a socially dangerous nature' of the perpetrator at the time of investigation or trial.

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**5** The failure to ensure that all allegations of rape are investigated automatically by law enforcement rather than on the initiative of the victim.

**6** The common practice of charging lesser crimes than those of rape or not charging acts of sexual violence at all.

**7** The common practice by law enforcement of discouraging the victim to pursue a prosecution for rape.

**8** The common practice of law enforcement to blame the victim for the violence done to her.

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This document looks at these obstacles in more detail, particularly by reference to cases brought to the attention of Nemolchi.uz, and offers recommendations on what should be done in order for Uzbekistan to ensure access to justice for sexual violence crimes and ensure the country is in line with its own constitution as well as the international standards by which it is bound.





## INTERNATIONAL HUMAN RIGHTS STANDARDS ON SEXUAL VIOLENCE, INCLUDING RAPE

International human rights law<sup>1</sup> provides that the definition of rape should be based on the lack of genuine, free, and voluntary consent of the victim which is to be assessed in the context of the surrounding circumstances. Additionally, there should be no requirement of any evidence of physical resistance.

The investigation and prosecution of rape should be undertaken ex-officio - automatically by the state - and prosecution should not depend on the complaint of the victim only. The criminal justice system must not be influenced by rape myths and stereotypes that constitute discrimination and deny justice for sexual violence. All criminal justice procedures must be victim-centered and victims must be provided necessary assistance and support throughout the process.

<sup>1</sup> See among others: Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/35, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, §5 and 44; Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, Article 36; M.C.v. Bulgaria, ECtHR, 2003, § 102-107 and 163; Opuz v. Turkey, no. 33401/02, ECtHR, 2009, §139 and 145; Committee on the Elimination of Discrimination against Women, CEDAW/C/GC/33, General Recommendation No. 33 on women's access to justice, § 27.

# CASE STUDIES

Women in Uzbekistan experience multiple and intersecting forms of discrimination that have a cumulative negative impact on them. Poor women and adolescent girls are particularly vulnerable to sexual violence. The intersection of these vulnerabilities makes it easier for criminals to create a coercive and exploitative environment. Particularly in more rural areas, young women are married off to their rapists as a means of ‘settling’ the case and raped women are perceived as worthless in their communities. Even in open court, a prosecutor has been heard to ask a girl why she did not take the financial compensation offered by the perpetrator rather than bringing the case to court.

## CASE 1

### **A girl who was forced to marry after being raped was found hanged**

In the summer of 2020, a young girl N. was found hanged in Uzbekistan. A few months earlier, she had been raped by a married man, G. Sh., and she had subsequently agreed to marry him as a second wife to avoid what would have been seen as her shame. The girl was 17 years old.

Her mother wanted to contact the law enforcement agencies to report the original rape, but the rapist begged her not to do this, saying that he had a family and children and promising to marry the girl (to enter into a religious marriage). Because of fear of public condemnation, raped women are often forced to marry their rapist, so the mother agreed to his terms. Nobody asked N. her opinion, but she would have been aware that she would have been the object of public condemnation for the rape and not the rapist.

On 3 March 2020, the rapist G. Sh. made a nikah (religious wedding ceremony) with N. and said that he was taking her to live in an apartment in Karshi. With the beginning of COVID quarantine, he moved the girl to the house where his official wife and four children lived. But the legal spouse was not able to tolerate another woman in the home and drove the girl out onto the street. The girl began to live in another house.

According to N.’s mother, the girl complained about quarrels and conflicts with G.Sh. On 7 May, her daughter’s birthday, they did not communicate. G. Sh. sent only a video of her. On 9 May, the girl was found hanged, which was deemed a suicide although no details have been revealed about the circumstances of the death.

The head of the press service of the General Prosecutor’s Office Khayot Shamsutdinov reported that by the verdict of the Shakhrisabz District Criminal Court dated 14 April 2021, G. Sh. was found guilty under clause “a”, part 2, Art. 103 “Driving to suicide” and Art. 126 “Polygamy” of the Criminal Code of the Republic of Uzbekistan and sentenced to 7 years 6 months in prison. However, he was not charged with rape.

## CASE 2

### A man who raped a child multiple times was jailed for three years

A 31-year-old man, A.S., who lives in a mahalla (parish) in the Bukhara region, often visited his new acquaintance, Sh. R., who was also a shepherd.

A.S. got the phone number of Sh.R.'s 7th grader daughter, who was 14 years old and started sending her inappropriate and suggestive messages through SMS. He told the underage girl that he had divorced his wife and would marry her. The girl was frightened by the messages of a man who was 17 years older than her. She asked him not to write to her like that, fearing punishment from her parents. Nevertheless, A.S. started regularly visiting their house under the pretext of meeting his new friend.

On 14 November 2020 when the girl returned from school, A.S., despite the girl's resistance, grabbed her by the arm, forced her to sit in the back seat of his car, locked the doors and drove off. On the farm, he forcibly dragged the resisting girl out of the car and raped her.

Then A.S. ordered the girl not to tell anyone about what had happened and promised to marry her after she finished 11th grade. He began to call the underage girl frequently to meet up and threatened that if she refused him he would tell everyone that they had had intercourse. Fearing gossip, the girl would meet up with him.

The repeated rapes exhausted the girl mentally and physically. She could not stand the constant threats from A.S. and, on 21 January 2021, told her mother, M.R., about what had happened to her. On 22 January, when he was questioned by the police about events, A.S. put all the blame on the underage girl, saying that she herself had offered dating.

Rape of a minor is a criminal offense which should be prosecuted under Article 118, part 3, paragraph a, of the Criminal Code of Uzbekistan. However, the Supreme Court of Uzbekistan has judged<sup>2</sup> that coercion into sex through blackmail is the same as consensual sex. The regional court found the defendant guilty of only a lesser crime under paragraph "a" of part 2 of Article 128 (Sexual intercourse with a person under the age of sixteen) of the Criminal Code, effectively agreeing with the perpetrator that sex had been consensual and denying the violence against and exploitation of the girl by A.S. He was sentenced to three years imprisonment.

<sup>2</sup> <https://www.lex.uz/acts/2414124?fbclid=IwAR3AwZQ5BVViDMvfNgvaZ6LVaovLSak3ysYIrrxnwpuMagNwHtaAO3BTuQs> at para 8

## CASE 3

### 14-year old girl was gang-raped by her teacher and his friends

A 14-year old girl was raped by her teacher and his friends. He tricked the girl to come and meet him, saying he would not report her to the police for not reporting she found someone else's purse provided she "paid her debt." He took her to the apartment he rented specifically for the rape and invited two of his friends to join.

He arranged a game of "bottle" where the winner of the game was able to make a wish. His wish was to "have sex" with the girl, which he and his friends did. The investigator charged the teacher under Article 128 of the Criminal Code (sexual intercourse with a person under the age of sixteen), but did not charge the other two men. Only after a new lawyer was hired, more than a month after the rape, were all the men detained and taken into custody. However, the case is still considered only under Article 128. The girl's mother and her lawyers are fighting for justice so that the case can be considered a gang rape and for a charge under Article 118.

In November 2021, the teacher was convicted and sentenced to four years in prison and the rest of the perpetrators – for two years in accordance with Article 128. The victim and her lawyers will continue the legal battle for these persons to be convicted under Article 118.



# TRENDS IN HOW SEXUAL VIOLENCE CRIMES ARE ADDRESSED

**In Uzbekistan, steps have recently been taken to create a framework for protecting women's rights and combating gender-based violence. However, the legal system still provides a number of opportunities for criminals to escape criminal responsibility or punishment, both because of the way the law is written as well as the way in which sexual crimes are investigated and prosecuted, including against adolescent girls.**

The above case studies illustrate the stigma attached to sexual violence and that society often blames the female victim for lack of 'chastity,' even when she has been raped. There is no similar stigma attached to men's lack of 'chastity' nor a society-wide condemnation of the victim-blaming that makes survivors reluctant to come forward when they have suffered sexual violence, that exposes them to further abuse, such as repeated further rapes and unwanted marriage; and that means that even if they do apply to the criminal justice system they are likely to meet the same societal prejudices and discrimination in the legal processes.

Sexual violence against women in Uzbekistan is not properly investigated nor prosecuted. For example, protection orders may be issued for a number of violent crimes, including domestic and sexual violence (for example rape, attempted rape, or molestation of minors), general assault and hooliganism, among others. They are given out by the police in situations of particular violence or degrading harassment to protect the victim from further aggression by the perpetrator. This means that a) the perpetrator is known to the police and b) in instances of sexual violence, it has been recognized by law enforcement that the perpetrator has not only committed sexual violence against the victim, but must also be prevented from re-offending.

However, a protection order alone is never a sufficient legal mechanism against perpetrators of sexual violence - perpetrators should be prosecuted and proportionate and deterrent sanctions imposed.

According to the official statistics of the Ministry of Internal Affairs, 79 protection orders were issued to victims of sexual violence in the first eight months of 2021. Sexual violence as a crime against sexual freedom is criminally punishable. In theory then, the aggressors in all 79 cases, whose identity and actions were known to and effectively acknowledged by the police, should have been formally charged with sexual violence. However, of the 26,105 total number of protection orders issued in the first eight months of 2021 for any form of violent crime, only 59 people were prosecuted.

Statistics are not available from the Ministry on whether these cases related to domestic or sexual violence, general assault, hooliganism or something else, although it is understood about 85% of protection orders are issued for domestic violence, which frequently includes sexual violence (although not recorded as such). What is clear, however, is that even if all of the 59 cases prosecuted related to sexual violence, either as a separate incident or

in the context of domestic violence, which statistically is highly unlikely, that still leaves 20 cases relating to sexual violence - that is at least 25% of crimes so serious they necessitated the issuance of protection orders - which never made it to trial at all.

*“Sexual violence against women in Uzbekistan is not properly investigated nor prosecuted.”*

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.

Reduced charges and light sentences are 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. In reality, minors are not always aware of what constitutes sexual violence and whether it is criminalized. Moreover, minors are more vulnerable to manipulation, deceit, duress,

and coercion, which is often wrongly interpreted by law enforcement as though the sexual act happened with the minor's "willingness."

In the three cases above, these trends can be seen in the types of charges that are made against perpetrators of sexual violence. They are also reflected generally in many other cases brought to Nemolchi.uz. In both cases illustrated here where the victim is alive, only charges of 'Sexual Intercourse with Person under Sixteen Years of Age' were brought despite evidence of coercion and exploitation of the victim's vulnerability. This might have been because of the limited definition of rape, requiring force to have been used and that in addition law enforcement interpreted this very narrowly, ignoring the effective helpless state of the girls which could have brought their abuse squarely under the definition. Similarly, law enforcement may have been susceptible to the prejudicial stereotypes of society more broadly and, without rigorous investigation or understanding and recognition of exploitation and power imbalances, have tended to blame the girl and believe the perpetrator's version of events.



In the first case where N. died and there was no charge of sexual violence at all, it could also be that charges were not pursued on the basis that, by marrying N., G. Sh. had effectively reached a settlement or 'reconciled' with her and lost his 'socially dangerous' nature. The context of the N.'s death, at the very least, should have given cause for deeper investigation as to the conditions which led to her death. In addition, there is no automatic ex-officio investigation into such cases and a requirement that such investigations must be initiated by the victim; in this case the victim was no longer alive to be able to push her case. Finally, it does not appear as if the crime of forced marriage was investigated at all, as the perpetrator was merely charged with polygamy.

Lack of transparency in the criminal justice system and the government's lack of comprehensive government data ,prevents full analysis of each individual case. Rape is such a taboo subject that cases are considered closed to outside scrutiny such that it is difficult even for journalists to write about. However, the testimonies brought to NeMolchi.uz over several years about failings in implementation of the law, together with information identified by Equality Now about problems with the law itself, indicates that Uzbekistan has much to do to improve access to justice for sexual violence crimes.

# WHAT SHOULD BE DONE?

## NeMolchi.uz and Equality Now recommend that the Uzbek government:

- Creates 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 as well as develop age appropriate school programs that provide sex and relationship education focusing on equality, respect, and non-discrimination
- Amends the definition of rape to remove the requirement for force and replace it with a definition that focuses on whether there was unequivocal and voluntary consent to sex, what steps the accused had taken to establish this and setting out a broad range of coercive circumstances which negate consent. The definition must be fully in line with the jurisprudence of the Committee overseeing the implementation of the CEDAW Convention.
- Explicitly criminalizes rape in domestic settings, with respect to both legal marriages and informal unions.
- Ensures that all cases of sexual violence are properly and automatically investigated by the State rather than relying on victims to file a case.
- Supports 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. Such support might include a procedures manual, such as the one developed by Equality Now, the Council of Europe and UN Women in collaboration with the Ministry of Internal Affairs and the General Prosecutor's Office of Georgia as well as local and international experts, including judges, and regular and repeated training of investigators, prosecutors and judges.
- Removes legal loopholes that allow a perpetrator of sexual violence to escape criminal liability if he reaches a settlement or reconciliation with the victim.
- Ensures funding for comprehensive psycho-social support for victims regardless of whether or not they wish to proceed with pursuing a case through the criminal justice system.
- Reviews law enforcement attitudes towards adolescent girls and ensures that cases are properly investigated and prosecuted to the full extent of the law. This would include ensuring that if there is evidence of rape then that is the charge that is brought, rather than the charge of 'Sexual Intercourse with Person under Sixteen Years of Age.'

# CONTACT

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