**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.

**Article 609 bis of the Penal Code**

Sexual Assault

Whoever, by force or by threat or abuse of authority, forces another person to commit or suffer sexual acts is punished with imprisonment from six to twelve years.

The same punishment will be given to whoever induces another person to commit or suffer sexual acts by: 1) abusing the conditions of physical or mental inferiority of the victim at the time of the event, 2) misleading the victim hiding own identity.

In less serious cases, the penalty may be reduced by no more than two thirds.

Other relevant provisions: art. 609 ter, 609 quater, 609 quinques, art. 609 sexies, 609 septies, 609 octies of the Penal Code. Art. 472, 362, 392 Code of criminal procedure.

No official translation available.

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only YES/NO

No

* 1. Gender neutral, covering all persons   YES/NO

Yes

* 1. Based on the lack of consent of victim YES/ NO

No

* 1. Based on the use of force or threat YES/ NO

Yes

* 1. Some combination of the above.  YES / NO

No

* 1. Does it cover only vaginal rape?  YES /NO

No

* 1. Does it cover all forms of penetration? YES/NO. If yes, please specify.

Yes, it only mentions “sexual acts”

* 1. Is marital rape in this provision explicitly included? YES / NO

No

* 1. Is the law silent on marital rape? YES/NO

Yes

* 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO

Yes

* 1. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO

No

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.

No

1. What is the legal age for sexual consent?

14 or 13 between minor with 4 years age difference

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

Yes age limit is 13 for consensual sex between minors with maximum 4 years age difference

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

5 to 10 years imprisonment in basic case, increased in aggravated circumstances

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 Italian legal system identifies two potential paths for victims of violence to pursue in requesting compensation for damages. One is in the civil court, the other

in the criminal court by filing as a civil claimant in the case brought against the offender. At the end of proceedings, the criminal law Judge may issue a generic sentence for damages, to be paid in civil proceedings; awarding damages in full there and then, or referring the case to a separate civil lawsuit, for which the victim must shoulder the expense. To the extent to which damages have been ascertained, the Judge can issue a provisional sentence effective immediately, with the option (or burden) for the victim to resort to the Civil Judge for definitive quantification of the damages (article 539 of the Criminal Procedural Code). This involves further trial expenses for the victim, who must embark on a second lawsuit and await the outcome, clearly drawing out the timeframe involved. In most cases, women who are victims of violence, following a lengthy wait for the result of the criminal judgment, do not enter a civil suit for definitive ascertainment of damages suffered, not least because the perpetrator has often disposed of any assets in the meantime, or the guarantees for ensuring the compensation is actually obtained no longer apply (resignation from work, registering property in the name of others, amongst others).

Victims of sexual violence can ask access to the Victim Compensation Fund, established in pursuance to Council Directive 2004/80/EC. It has been recently updated, still clearly insufficient

**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

It is a specific crime punished with harsher criminal sanctions

* 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

* 1. Is rape by spouse or intimate partner an aggravating circumstance

Yes

1. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

Yes in less serious cases – not specified

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?

No

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

Yes with different “creative” solution by courts

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

No

* 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

No (only in aggravated circumstances or if connected to another ex officio prosecuted crime)

1. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

Yes

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

Only in minor cases

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

No

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

The victim has 1 year time to decide to ask for the crime to be prosecuted

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

No

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

No

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

Yes, but rarely applied

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

Yes, art. 472 c.p.p. regarding questions on sexual history, rarely applied.

2012/29/EU victim directive – art. 21 and 22 – protected hearing for vulnerable victims

**War and/or conflict**

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

No (ordinary criminal law applies in these contexts)

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

Yes (see question n. 16)

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

 No

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

Yes, Law 20.12.2012 n. 237

**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.

Number of cases of rape (sexual violence) reported:

2014 (4.257);

2015 (4.000);

2016 (4.046);

2017 (4.634);

2018 (4.887)

Number of cases of rape (sexual violence) prosecuted:

2016 (2.932 out of 5.755);

2017 (3.116 out of 5.824)

Number of cases of rape (sexual violence) sanctioned (final judgment):

2017 (1.568);

2016 (1.357);

2015 (1.501)

Data available in ISTAT (https://www.istat.it)

**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.

Judicial stereotyping is a cross-cutting issue in cases of violence against women. As a consequence, their right to a fair and just trial is disproportionately affected. There is an extensive misunderstanding surrounding the expectation of a woman’s behaviour, which implicitly allows the idea that victims bear partial responsibility for the violence. Authorities dealing with situations of violence against women risk, especially in cases of sexual violence, show a propensity to blame women victims thereby exposing them to secondary victimisation. Trails can be a traumatizing experience for survivors.