**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 provisions on rape in the Turkish Penal Code are as follows:

**Sexual Assault**

**Article 102**

(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of two to ten years, upon the complaint of the victim. If the said sexual behaviour ceases at the level of sexual importunity, the term of imprisonment shall be from two years to five years.

(2) Where the act is committed by means of inserting an organ, or other object, into the body, the offender shall be punished with a term of imprisonment no less than twelve years. If the act is committed against the offender’s spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.

(3) Where the offence is committed:

a) against a person who is physically or mentally incapable of defending themself;

b) by misusing the influence derived from a position in public office or a private working relationship;

c) against a person with whom he has third degree blood relation or kinship, or by stepfather, stepmother, half-sibling, adopter or adopted child,

d) by using weapons or together with the cooperation of more than one person,

 e) by using the advantage of environment where people have to live together collectively, the punishments imposed according to above paragraphs are increased by one half.

the penalties imposed in accordance with paragraphs above shall be increased by half.

(4) Where greater force than is necessary to suppress the resistance of the victim is used during the commission of the offence the offender shall also be sentenced to a penalty for intentional injury in addition.

(5) Where, as a result of the offence, the victim enters a vegetative state, or dies, a penalty of aggravated life imprisonment shall be imposed.

**Child molestation**

**Article 103**

(1) Any person who abuses a child sexually is sentenced to an imprisonment from eight years to fifteen years. If the said sexual abuse ceases at the level of sexual importunity, the term of imprisonment shall be from three years to eight years. If offender of the offence ceased at the level of importunity is a child, commencement of an investigation and prosecution depends on the complaint of the victim’ parents or guardian.

Sexual molestation covers the following acts;

a) All kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack the ability to understand the legal consequences of such act,

b) Sexual behaviours committed against other children by force, threat, fraud or another reason affecting the willpower.

(2) In case of performance of sexual abuse by inserting an organ or instrument into a body, the offender is sentenced to a term of imprisonment no less than sixteen years.

(3) If the offense is committed;

a) by participation of more than one person in the offense,

b) by using the advantage of the environment where people have to live together collectively,

c) against a person with whom he or she has third degree blood relation or kinship, or by stepfather, stepmother, half-sibling or adopter,

d) by his/her guardian, tutor, instructor, caregiver, custodial parents or by those who provide him/her with health care or are under an obligation to protect, look after or supervise him/her,

e) by undue influence based on public office or employment relationship, the punishment

to be imposed according to the above subparagraphs is increased by one half.

(4) In cases where the sexual abuse is conducted against the children identified under subparagraph (a) of the first paragraph by use of force or threat, or against the children identified under sub-paragraph (b) therein by use of arms, the punishment to be imposed according to the above paragraphs is increased by one half.

(5) In case of use of force and violence during sexual assault in such a way to result in serious consequences of intentional injury, the offender is additionally punished for intentional injury.

6) In case of vegetative state or death of a person as a result of the offense, the offender is sentenced to aggravated life imprisonment.

**Sexual intercourse between/with persons not attained the lawful age**

**Article 104**

(1) Any person who had a sexual intercourse with a child who completed the age of fifteen, without using force, threat and fraud, is sentenced to a term of imprisonment from two years to five years upon filing of a complaint.

(2) If the offence is committed by a person who is under a restraint of marriage with the victim, the offender is sentenced to a term of imprisonment from ten years to fifteen years without a complaint being filed.

(3) If the offence is committed by a person providing care for a child prior to adopting the child or by a person who is under an obligation to protect, look after or supervise the child under custodial relationship, the offender is sentenced to a punishment under the second paragraph without a complaint being filed.

**Offences Against Humanity**

**Article 77**

(1) The systematic performance an act, described below, against a part of society and in accordance with a plan with a political, philosophical, racial or religious motive shall constitute a crime against humanity:

...

f) Sexual assault; sexual abuse of children;

…

**Torture**

**Article 94**

(1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally, or affects the person’s capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years.

…

(3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years.

…

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

*a.      Gender specific, covering women only* ***NO***

*b.     Gender neutral, covering  all persons* ***YES***

*c.      Based on the lack of consent of victim* ***NO***

*d.     Based on the use of force or threat* ***YES***

*e.      Some combination of the above.* ***YES****.*

**For sexual intercourse with children between 15-18 years old and marital rape, the law-maker accepts the possibility of the consent**.

*f.       Does it cover only vaginal rape?* ***NO***

*g.      Does it cover all forms of penetration?* ***YES****. If yes, please specify.*

**The law-maker uses the wording of “inserting an organ, or other object, into the body”.**

*h.     Is marital rape in this provision explicitly included?* ***YES***

*i.        Is the law silent on marital rape?* ***NO***

*j.        Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?* ***YES***

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

*3.     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**. However, marital rape is subject to the victim’s complaint (no ex officio prosecution).

Also, currently news regarding the preparations of a draft law by the Government for granting amnesty to the men who married underage girls are reflected in the media. We hear that the bill will be granting amnesty to those perpetrators with less than 15 years age difference with the child, and this amnesty that will legitimise sexual abuse of children will come to the parliament in the coming weeks. According to the draft-bill that that will provide an amnesty for the perpetrators already convicted for child molestation for example, a perpetrator who raped a 14 years-old child will fall under this impunity if they get married and remain married for a period of time. We still do not know the details of the draft-bill since the Government do not share any information with independent right-based CSO’s, however, we know that the Government since 2016, has been trying to undertake various legal amendments and implementation schemes, including this amnesty, that will open up the way for child, early and forced marriages.

*4.     What is the legal age for sexual consent?*

It is 15.

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

There is no special provision for sexual activity between peers. Any sexual intercourse with a child under the age of 15 is subject to prosecution without any complaint, whereas filing a complaint is sought for those who completed the age of fifteen.

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

The only sanction prescribed in the criminal code is imprisonment. The duration of imprisonment differs from 2 years to aggravated life imprisonment, depending on aggravating circumstances. For instance, sexual assault is sentenced to imprisonment for a term of two to ten year, however, if the victim enters a vegetative state, or dies as a result of the offence, aggravated life imprisonment is imposed.

*7.     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?*

There is no special provision in terms of reparation to the victim of sexual violence after conviction. The victim may ask for compensation for the sexual violence under the general provisions of private law, however, there is no such an example in precedent so far.

***Aggravating and mitigating circumstances***

*8.     Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?*

*a.      Is rape by more than one perpetrator an aggravating circumstance?* ***YES***

*b.     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***

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

***NO.* Contrary, marital rape is subject to complaint of the victim (no ex officio prosecution).**

*9.     Does the law foresee mitigating circumstances for the purposes of punishment?* ***YES***

 *If yes, please specify.*

As a general mitigation provision, “unjust provocation” is often used in cases of violence against women, including rape and sexual violence. In prosecution of almost all violence against women case including sexual violence in Turkey, perpetrators benefit from “unjust provocation” provision by victim-blaming in prosecution for instance arguing that the victim’s dress was too tempting, or victim and the perpetrator had alcohol together, or they had sex before, or the victim insulted the perpetrator. In cases where the victim is sex-worker and/or transgender, the perpetrators benefit from “unjust provocation” as a mitigation in the punishment by arguing that “they thought the victim is a woman but not a transgender, so they went mad when they realised the ‘truth’”. See the related provision of the Turkish Penal Code below:

 **Article 29 – Unjust Provocation**

Any person who commits an offence in a state of anger or severe distress caused by an unjust act shall be sentenced to a penalty of imprisonment for a term of eighteen to twenty four years where the offence committed requires a penalty of aggravated life imprisonment and to a penalty of imprisonment for a term of twelve to eighteen years where the offence committed requires a penalty of life imprisonment. Otherwise the penalty to be imposed shall be reduced by one-quarter to three- quarters.

*10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response?* ***NO****If so, at what stage and what are the consequences?*

*a.      Regardless of the law, is reconciliation permitted in practice?* **YES** *and what is the practice in this regard?*

**According to the statistics, in 29 % of the applications made to the police, women were reconciled with their husbands and in 13 % of the applications nothing was done.[[1]](#footnote-1) In practice, the police may refuse to take action or try to reconcile the parties by stating that “these are the family matters”, if the perpetrator is the husband or a family member.**

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

*a.      if the perpetrator marries the victim of rape?* ***NO***

*b.      if the perpetrator loses his “socially dangerous” character or reconciles with the victim?* ***NO***

***Prosecution***

*12.               Is rape reported to the police prosecuted ex officio (public prosecution)?* ***YES***

**Except the marital rape. Marital rape is subject to the victim’s complaint.**

*13.               Is rape reported to the police prosecuted ex parte (private prosecution)?* ***NO***

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

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

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

The Turkish Penal Code adopts different statute of limitation which varies upon the length of the imprisonment, but not the type of the crimes. According to the law, criminal proceedings shall be discontinued upon the lapse of,

a) Thirty years for offences requiring a penalty of aggravated life imprisonment,

b) Twenty-five years for offences requiring a penalty of life imprisonment,

c) Twenty years for offences requiring a penalty of imprisonment of not less than twenty years,

d) Fifteen years for offences requiring a penalty of imprisonment of more than five years and less than twenty years,

e) Eight years for offences requiring a penalty of imprisonment of not more than five years or a judicial fine.

Thus, statute of limitation is minimum 15 years for rape and child molestation.

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

**No specific provision. But there is general statute of limitation which is 15 years in child molestation*.***

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

**Medical evidence is not a mandatory requirement for proof of rape in the law, however, in practice, indeed it is.**

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

*20.                Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?* ***NO****. If yes, please specify.* **In 2017, Forensic Interview Rooms were designated as a pilot scheme in a few cities. It is a separate room assigned to attorneys and public prosecutors to watch the meetings of the children and the social worker in interview rooms. However, Forensic Interview Rooms are not available in all cities and courthouses and prosecutors are not eager to use such mechanism since they do not have enough information on it. Also, even if the testimony was recorded in the Forensic Interview Rooms, the judges still may ask the children be present at the trial, in practice.**

***War and/or conflict***

*21.               Is rape criminalized as a war crime or crime against humanity?* ***YES***

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

*23.               Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?* ***NO***

*24.               Has the Rome Statute of the International Criminal Court (ICC) been ratified?* ***NO***

***Data***

*25.               Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.*

There is no systematic data provided by the Ministry of Justice regarding crimes against sexual integrity.

According to the latest data which is from 2018[[2]](#footnote-2);

* 18.732 cases of rape were reported to the prosecutor directly from the victim or from the police.
* 8.494 of these 18.732 cases of rape (45,3%) were prosecuted.
* We do not have the exact data on sanction on rape exclusively, however, according to the statistics, the sanction rate on all types of crimes against sexual integrity is 51,4%.

According to the 2017 statistics[[3]](#footnote-3);

* There is no data on how many rape case was reported to the prosecutor
* 8.399 cases of rape were prosecuted.
* In 4305 cases of these 8.399 cases (51.3%), sanction decision was made.

According to the 2016 statistics[[4]](#footnote-4);

* There is no data on how many rape case was reported to the prosecutor.
* 9.304 cases of rape were prosecuted.
* In 4865 cases of these 9.304 cases (52,3%), sanction decision was made.

According to the 2015 statistics[[5]](#footnote-5);

* There is no data on how many rape case was reported to the prosecutor.
* 10.499 cases of rape were prosecuted.
* In 5.109 cases of these 10.499 cases (48,7%), sanction decision was made.

***Other***

*26.               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.*

Throughout Turkey, 38 % of ever-married women have been subjected to lifetime physical and/or sexual violence. However, while gender based violence is so prevalent in Turkey, vast majority (89 %) of women who have been subjected to physical and/or sexual violence did not apply to official institutions or non-governmental organizations. In other words, only 11 % of women, or one in ten women have been subjected to physical and/or sexual violence, have applied to institutions or organisations. Among these 11%, the percentage of women who applied to police is 7 %. Moreover, in 29 % of the applications made to the police, women were reconciled with their husbands, 23 % of the applications resulted in giving cautionary decisions, 41 % of them resulted in referral of the police to other institutions like women’s shelters and in 13 % of the applications nothing was done.[[6]](#footnote-6) Due to lack of judicial data, the percentage of applications referred to the public prosecutor is not known.

According to the Judicial Statistics in Turkey in 2018, in 47 % of the complaints on offenses against sexual inviolability, the public prosecutor has made decision of non-prosecution, and only in 34,7 % of the complaints, the public prosecutor has made to open a public prosecution. In the cases which a public prosecution has been initiated, the percentage of verdict of conviction is 51,4. In other words, only in half of the cases which a public prosecution has been conducted, the perpetrator has been punished.

One of the important factors for the sexual violence to remain unpunished is **not to report the violence**. As the statistics proved that, 89 % of women who are subjected to sexual violence do not report it to police or judiciary. According to the studies, primary reason for not reporting is sense of guilt and embracement that women experienced. Women think that they will be subjected to victim-blaming and will have to tell what happened in detail over and over again in the police. Thus, sexist prejudices cause many events to remain unrequited before being brought to justice.

On the other hand, it is true that offences against sexual inviolability remain unpunished even if when women report it, as seen in the abovementioned statistics. The biggest reason that leads to **impunity** in proceedings of offenses against sexual inviolability is throwing out the case due to lack of evidence, by not believing in women’s account on how women defines what did happen. Therefore, when the victims subjected to sexual offences, -mostly women, according to the statistics- are applied to the judiciary, the cases are decided to non-prosecute or dismissed on the grounds that the offence is not proved beyond reasonable doubt due to lack of evidence. Consequently, such difficulty in proof in sexual offences helps the perpetrators to get away with sexual offences.

Moreover, difficulties in proof is accompanied **by sexist bias and myths** about sexual violence. Indeed, in sexual offences, police, prosecutors and judges acting with sexist bias can feel free to make assessments in favour of the perpetrator instead of women’s account, for instance when women wear tight jeans or low-cut, when women do not go and report the offence to the police immediately, when a woman is polyamorous or when a woman gets alcohol in new year night. Examples can be varied by many different aspects. Behind these practice of the judiciary, mostly sexist bias and myths about sexual violence lay out. In such a picture, women who decided to report the violence they subjected to, have to struggle with these sexist bias which exist in all levels of the judiciary.

As is seen, there is an undeniable link between the ratio of women who do not report the violence and the ratio of verdict of conviction. Pursuant to the surveys, most women do not report violence and do not feel encouraged to do so because they think that police and judicial systems are **unsupportive**.

1. Hacettepe University Institute of Population Studies, “Research on Domestic Violence against Women in Turkey”, 2015, available at <http://www.hips.hacettepe.edu.tr/eng/english_main_report.pdf> [↑](#footnote-ref-1)
2. Republic of Turkey Ministry of Justice, Judicial Statistics 2018, available in Turkish at <http://www.adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/2082019153842istatistik2018.pdf> [↑](#footnote-ref-2)
3. Republic of Turkey Ministry of Justice, Judicial Statistics 2017, available in Turkish at <http://www.adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/2682019155449istatistik2017.pdf> [↑](#footnote-ref-3)
4. Republic of Turkey Ministry of Justice, Judicial Statistics 2016 available in Turkish at <http://www.adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/27820191126572016.pdf> [↑](#footnote-ref-4)
5. Republic of Turkey Ministry of Justice, Judicial Statistics 2015 available in Turkish at <http://www.adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/27820191140372015.pdf> [↑](#footnote-ref-5)
6. Hacettepe University Institute of Population Studies, “Research on Domestic Violence against Women in Turkey”, 2015, available at <http://www.hips.hacettepe.edu.tr/eng/english_main_report.pdf> [↑](#footnote-ref-6)