All submissions should be sent to vaw@ohchr.org by**20 May 2020**. You are kindly requested to indicate if you DO NOT wish your submission to be made public.

Please indicate who is providing the response, along with contact details.

**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 198 of the Maltese Criminal Code establishes that:

*198. (1) Whosoever shall engage in non-consensual carnal connection, that is to say, vaginal or anal penetration of a sexual nature with any bodily part, and, or, any object, or oral penetration with any sexual organ of the body of another person shall, on conviction, be liable to imprisonment for a term from six to twelve years:*

*Provided that penetration with any bodily part and, or object shall be deemed to be complete by its commencement, and it shall not be necessary to prove any further acts.*

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

1. Gender specific, covering women only YES/NO – **NO**
2. Gender neutral, covering all persons   YES/NO – **YES**
3. Based on the lack of consent of victim YES/ NO – **YES**
4. Based on the use of force or threat YES/ NO – **NO**
5. Some combination of the above.  YES / NO – **NO (Force and threats are aggravating circumstances)**
6. Does it cover only vaginal rape?  YES /NO – **NO**
7. Does it cover all forms of penetration? YES/NO. If yes, please specify. **– YES Any form of vaginal and anal penetration and any oral penetration with any sexual organ of the body of another person.**
8. Is marital rape in this provision explicitly included? YES / NO – **YES (As Per Article 202 (h)(i) of the Criminal Code, it is an aggravating circumstance, in that, the punishment shall be increased by one or two degrees)**
9. Is the law silent on marital rape? YES/NO – **NO**
10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO – **YES**
11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NO - **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.

**There are no provisions of the law that exclude criminalization, but it is an aggravating circumstance.**

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

**Sixteen years and there is a legal presumption that in case of persons under twelve years, any unlawful carnal knowledge and any other indecent assault, is presumed to be non-consensual.**

**5.** Are there provisions that differentiate for sexual activity between peers? If so, please provide them. – **NO**

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

**Any person convicted for the crime of rape shall be liable for imprisonment for a term from six to twelve years. However, as per Article 202 of the Criminal Code, in certain instances, such as in cases concerning spouses, the punishment prescribed shall be increased by one to two degrees, meaning that from a term of imprisonment for a term from six to twelve years, it shall increase, with the first degree for a term from seven to twenty years and with the second degree from eight to thirty years.**

**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?

**As per the Criminal Code, in addition to any punishment to which the person convicted of rape may be sentenced, the Court may order the offender to make restitution to the injured party of any property or proceeds stolen or knowingly received or obtained by fraud or other unlawful gain to the detriment of such party by or through the offence, or to pay to such party such sum of money as may be determined by the Court as compensation for any such loss as aforesaid or for any damages or other injury or harm, including moral and, or, psychological harm caused to such party by or through the offence, and any such order may include both a direction to make restitution and, in default, to pay as aforesaid. The order shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.**

**Also, as per Subsidiary Legislation 9.12, the victim may apply under the Criminal Injuries Compensation Scheme where the claimant may get up to an amount which shall not exceed the sum of twenty-three thousand and three hundred euro (€23,300).**

Aggravating and mitigating circumstances

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

Yes, Article 202 of the Criminal Code estabishes the punishment shall be increased by one or two degrees in the following cases:

(a) when the offender has availed himself of his capacity of public officer, or when the offender is a servant of the injured party, with salary or other remuneration, or any person otherwise having abused of his authority over the injured party;

(b) when the crime is committed by any ascendant, tutor, or institutor;

(c) when the crime is committed on any prisoner by the person charged with the custody or conveyance of such prisoner;

(d) when the offender has, in the commission of the crime, been aided by one or more persons;

(e) when the offender has, in the commission of the crime, made use of any arms proper or improper;

(f) when the person on whom the crime is committed, or any other person who has come to the assistance of that person, has sustained any bodily harm;

(g) when the person violated is a minor;

(h) when the crime is committed on the person of:

(i) the current or former spouse, civil union partner or cohabitant; or

(ii) the brother or sister; or

(iii) an ascendant or descendant; or

(iv) another person having or having had a child in common with the offender; or

(v) another person living in the same household as the offender or who had lived with the offender within a period of three year preceding the offence; or

(vi) another person who is or had been formally or informally engaged with a view to get married; or

(vii) other persons who are related to each other by consanguinity or affinity up to the third degree inclusively:

Provided that in this paragraph "spouse" includes the person whose marriage with the offender has been dissolved or declared null;

(i) when the crime is committed in the presence of, or within hearing distance of a minor;

(j) the offence, or related offences, were committed repeatedly;

(k) the offence was committed against a vulnerable person within the meaning of article 208AC(2);

(l) the offence was committed with the threat of a weapon;

(m) the offence resulted in severe physical or psychological harm for the victim;

(n) the offender has been previously convicted of offences of a similar nature:

1. Is rape by more than one perpetrator an aggravating circumstance?  YES/NO – **YES**
2. 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/NO - **YES**
3. Is rape by spouse or intimate partner an aggravating circumstance? - **YES**

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

**10.** 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?

**The crime of rape is prosecuted ex officio by the Executive Police, however, in practice, if it is declared that the victim and the perpetrator have reconciled, the court would take that declaration into consideration when attributing punishment. Notwithstanding this, the law clearly indicates that the punishment attributable can never be less than that indicated by law.**

11. 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 – **NO (But if the victim of rape has not as yet testified, being the spouse of the perpetrator, he/she can choose not to testify)**
2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO - **NO**

Prosecution

**12.** Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO - **YES**

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

**14.** Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES/NO – YES (But always within the parameters established by law)**

**15.** Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO - **YES (But always within the parameters established by law)**

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

**The only limitations indicated in the law, are the general provisions of prescription.**

**17.** Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   **YES/NO – NO (There are no specific articles of the law dealing with this issue, but the only limitation is the general provision of prescription. Considering that rape of a minor carries a maximum punishment of up to thirty years, the prescriptive period for such an offence, would be of twenty years).**

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/NO If yes, please specify. – **NO (However each crime has to be proved beyond any reasonable doubt and the prosecution is duty bound by law to bring the best evidence possible. Accordingly, although as per article 638(2) of the Criminal Code the testimony of one witness if believed by those who have to judge of the fact shall be sufficient to constitute proof thereof, in as full and ample a manner as if the fact had been proved by two or more witnesses, medical evidence would strongly corroborate the testimony given by any victim.)**

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO – **NO (In most cases, Judges and Magistrates don’t allow these questions in cross-examinations as being completely irrelevant.)**

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify. – **YES (The Victims of sexual offences give their testimony by video conferencing and are never brought in front of the perpetrator to give their evidence)**

War and/or conflict

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

- **YES**

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

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

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

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.

Other

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.

**The major barrier we have in the Maltese system consists primarily at the reporting stage. Victims in Malta have to report these incidents at the police station where they are assisted by the police on duty. These police officers are not trained in the particular area and thus, and do not have the necessary knowledge to cater for such specific and delicate situations.**

**Although the Police force has a specialized branch, due to personnel limitation, they are not always directly involved in the investigation and subsequent prosecution.**

**On the same basis, after receiving reports concerning sexual offences, the police inform the Duty Magistrate who appoints a number of court experts to help in a Magisterial Inquiry. Here again, here should be specific appointed Magistrates who receive these reports and specifically trained court experts who examine the victims and gather the evidence present. This would help avoiding re-victimization.**

**There is also a tendency for court experts to be appointed without specific training on gender based violence and sexual violence. This often leads to insensitive questioning and attitudes, with victims reporting experiences of secondary victimisation in this process.**

**The Maltese Law Courts also do not keep date tracking prosecutions and convictions. This creates challenges in evaluating the efficacy of the local legal system in helping victims of sexual violence.**