**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.**

１ Penal Code Provision for punishment of “rape”

○Article 177　(Forcible Sexual Intercourse)

A person who, through assault or intimidation, forcibly commits sexual intercourse, anal intercourse or oral intercourse (hereinafter referred to as "sexual intercourse, etc.") with another person of not less than thirteen years of age is guilty of the crime of forcible sexual intercourse. and is punished by imprisonment for a definite term of not less than 5 years. The same applies to a person who commits sexual intercourse, etc. with another person under thirteen years of age.

○Article 178, Paragraph 2 (Quasi Forcible Sexual Intercourse)

A person who commits sexual intercourse, etc. with another person by taking advantage of a loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist, is punished in the same manner as prescribed in the preceding Article.

○Article 179, Paragraph 2

(Sexual Intercourse by Person Having Custody of Person under 18)

A person who commits sexual intercourse, etc. with another person under eighteen years of age by taking advantage of the influence arising from having custody of that other person is punished in the same manner as prescribed in Article 177.

○Article 180 (Attempts)

An attempt of the crimes prescribed for in Articles 176 through the preceding Article is punished.

○Article 181, Paragraph 2 (Forcible Sexual Intercourse Causing Death or Injury)

　A person who commits a crime prescribed under Article 177, paragraph (2) of 　Article 178, paragraph (2) of Article 179, or an attempt of the above-mentioned crimes and thereby causes the death or injury of another is punished by imprisonment for life or for a definite term of not less than 6 years.

○Article 241 (Robbery; Forcible Sexual Intercourse; Causing DeathThereby)

　(1)　If a person who commits the crime of robbery or an attempt thereof also commits the crime of forcible sexual intercourse. (excluding the crime prescribed under paragraph (2) of Article 179; hereinafter the same applies in this paragraph) or an attempt thereof, or a person who commits the crime of forcible sexual intercourse or an attempt thereof also commits the crime of robbery or an attempt thereof, that person is punished by imprisonment for life or for a definite term of not less than 7 years.

(2)　In the case referred to in the preceding paragraph, if the person only commits attempts of both crimes, the punishment may be reduced, except when the person thereby causes the death or injury of another; provided, however, that the voluntary abandonment of commission of either crime leads to the punishment being reduced or the offender being exempted.

(3)　A person who, by commission of an act that constitutes the crime referred to in paragraph (1), causes the death of another is punished by the death penalty or life imprisonment.

○Penal Code Article 243 (Attempts)

An attempt of the crimes prescribed under Articles 235 through 236, and 238 through 240, and paragraph (3) of Article 241 is punished.

○The General Provisions of Penal Code (e.g. Chapter XI Complicity, etc.) also apply.

２　The provisions of the Code of Criminal Procedure generally apply to all criminal cases and are not limited to “rape” cases, but in particular, the following are considered to be relevant to victims of “rape” cases.

(Provisions on witness interrogation)

○Article 157-4

(1)　In the examination of a witness prescribed in the following items, the court 　may, when the court finds it appropriate, after hearing the opinions of the public prosecutor and the accused or the defense counsel, have the witness be present in a place other than the place where the judge and persons concerned in the case are present for examination of the witness (limited to the same premises), and examine the witness via means that allow for recognition of each other's presence and communication through the transmission of visual images and sound:

(i)　the victim of the crimes or attempted crimes provided for in Articles 176 to 178-2, or 181, Articles 225 or Article 226-2, paragraph (3) (limited to cases with the purpose of indecency or marriage; the same applies in this item hereinafter), Article 227, paragraph (1) (limited to cases with the purpose of accessory to a person who commits the crime provided for in Article 225 or Article 226-2, paragraph (3)) or paragraph (3) (limited to cases with the purpose of indecency), or the first sentence of Article 241 of the Penal Code;

(ii)　the victim of the crimes provided for in Article 60, paragraph (1) or in paragraph (2) of the same Article pertaining to Article 34, paragraph (1), item (ix) of the Child Welfare Act (Act No. 164, 1947), or Articles 4 to 8 of the Act on Punishing Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (Act No. 512, 1999);

(iii)　in addition to those prescribed in the preceding two items, a person who, taking into account the nature of the crime, said person's age, mental or physical condition, the relationship with the accused, or due to other circumstances, is likely to be under pressure and whose mental wellbeing would be negatively affected while testifying at the place where the judge and persons concerned in the case are present for examination of the witness.

(2)　In the examination of a witness using the measures prescribed in the preceding paragraph, the court may, when it is supposed that the witness will be requested to testify on the same facts again in another criminal procedure, after hearing the opinions of the public prosecutor and the accused or the defense counsel and with the consent of the witness, record the examination, the testimony and the circumstances surrounding the witness on a recording medium (limited to that which is able to record images and sound simultaneously).

(3)　The recording medium on which the examination, the testimony and the circumstances surrounding the witness are recorded in accordance with the preceding paragraph is attached to the case records as part of the written statements.

○Article 158

(1)　The court may, after hearing the opinions of the public prosecutor and the accused or the defense counsel, and when the court deems it to be necessary, taking into account the importance of the witness, said witness's age, occupation, physical condition and other circumstances and the gravity of the factual background, summon a witness for examination to a place outside of the court or examine said person at said person's present location.

(2)　In the case prescribed in the preceding paragraph, the court must give the public prosecutor, the accused and the defense counsel an opportunity to know in advance of the particulars to be examined.

(3)　The public prosecutor and the accused or the defense counsel may request the court to examine other necessary particulars in addition to the particulars for examination prescribed in the preceding paragraph.

(Provisions regarding charges and accusations)

○Article 230

A person who has been injured by an offense may file a criminal complaint.

○Article 231

(1)　A statutory representative of a victim may file a criminal complaint independently.

(2)　When a victim has died, said victim's spouse, a lineal relative, sibling may file a criminal complaint, but not when this is against the express wishes of the victim.

○Article 232

Where the statutory representative of a victim is the suspect, the spouse of the suspect, a blood relative within the fourth degree of kinship or a relative by affinity within the third degree of kinship of the suspect, then a relative of the victim may file a criminal complaint independently.

○Article 233

(1)　With respect to the offense of defamation of a deceased person, said person's relatives or descendants may file a criminal complaint.

(2)　The provisions of the preceding paragraph apply also where, with respect to the offense of defamation, the victim has died without filing a criminal complaint, but not when this is against the express wishes of the victim.

○Article 234

Where there is no person who can file a criminal complaint with regard to an offense prosecutable upon a criminal complaint, a public prosecutor may, upon the application of an interested party, designate a person who can file a criminal complaint.

○Article 235

(1)　With respect to an offense prosecutable upon a criminal complaint, no criminal complaint may be made after the lapse of six months from the day on which the complainant knew the offender; provided however, that this does not apply to the following:

(i)　a criminal complaint concerning the offenses proscribed in Articles 176 to 178, 225 or Article 227, paragraph (1) (limited to offenses committed for the purpose of assisting the person who committed the offense of Article 225) or paragraph (3) of the Penal Code, or a criminal complaint with regard to attempts of these offenses;

(ii)　a criminal complaint made by the representative of a foreign power pursuant to the provisions of Article 232, paragraph (2) of the Penal Code or a criminal complaint made with regard to an offense against a foreign mission sent to Japan as prescribed in Article 230 or 231 of the Penal Code, by such mission.

(2)　A criminal complaint in the case prescribed in the proviso to Article 229 of the Penal Code may not be valid unless it is made within six months from the day on which a decision declaring the marriage void or annulling it became final.

○Article 236

Where there are two or more persons entitled to file a criminal complaint, failure by one of them to observe the time period for complaint does not affect the others.

○Article 237

(1)　A criminal complaint may be withdrawn at any time before the institution of prosecution.

(2)　A person who has withdrawn a criminal complaint may not file the criminal complaint again.

(3)　The provisions of the preceding two paragraphs apply mutatis mutandis to a claim regarding a case which is to be accepted on a claim.

○Article 238

(1)　A criminal complaint made against one or more accomplices in an offense prosecutable upon a criminal complaint or the withdrawal thereof has effect with respect to the other accomplices.

(2)　The provisions of the preceding paragraph apply mutatis mutandis to an accusation or claim, or the withdrawal thereof, regarding a case which is to be received upon an accusation or claim.

○Article 239

(1)　Any person who believes that an offense has been committed may file an accusation.

(2)　A government official or local government official must file an accusation when they believe an offense has been committed.

○Article 240

A criminal complaint may be made by a representative. The same applies to the withdrawal of a criminal complaint.

○Article 241

(1)　A criminal complaint or an accusation must be filed with a public prosecutor or a judicial police officer in writing or orally.

(2)　A public prosecutor or judicial police officer must make a written statement when they have received an oral criminal complaint or accusation.

○Article 242

A judicial police officer must, when they have received a criminal complaint or accusation, send the document and articles of evidence regarding the complaint or the accusation to a public prosecutor promptly.

○Article 243

The provisions of the preceding two Articles apply mutatis mutandis to the withdrawal of a criminal complaint or accusation.

○Article 244

A criminal complaint or withdrawal thereof made by the representative of a foreign country pursuant to the provisions of Article 232, paragraph (2) of the Penal Code may be filed with the Minister for Foreign Affairs notwithstanding the provisions of Article 241 and the preceding Article. The same applies to a criminal complaint or withdrawal thereof regarding an offense against a foreign mission sent to Japan as prescribed in Article 230 or 231 of the Penal Code, made by such mission.

(Notification of prosecution/non-prosecution)

○Article 260

If a public prosecutor has instituted prosecution or made a disposition not to institute prosecution regarding a case with respect to which a criminal complaint, accusation or claim has been filed, the public prosecutor must notify the person who filed the criminal complaint, accusation or claim promptly. This also applies to cases where a public prosecutor has withdrawn the prosecution or has sent the case to a public prosecutor of another public prosecutor's office.

○Article 261

If a public prosecutor has made a disposition not to institute prosecution regarding a case with respect to which a criminal complaint, accusation or claim has been filed, the public prosecutor must promptly notify the reason for the disposition upon the request of the person who filed the criminal complaint, accusation or claim.

(Non-disclosure of particulars identifying victims in court)

○Article 290-2

(1)　In handling the following cases, if a request is made by the victim or others of such case (meaning the victim or if the victim has died or suffers from a serious physical or mental disorder, said victim's spouse, a lineal relative, sibling; the same applies hereinafter), the legal representative for such victim or an attorney who has been entrusted by such persons, and when the court finds it appropriate after hearing the opinions of the accused or the defense counsel, it may render a ruling to such effect that particulars identifying the victim (meaning the name and address of the victim or other particulars which will identify the victim of such case; the same applies hereinafter) not be disclosed in an open court:

(i)　cases involving the crimes provided for under Articles 176 through 178-2 or Article 181 of the Penal Code, the crimes provided for under Article 225 or Article 226-2, paragraph (3) of the same Code (limited to cases with the purpose of indecency or marriage; the same applies in this item hereinafter) or the crimes provided for under Article 227, paragraph (1) (limited to cases with the purpose of accessory to the person who commits the offense provided for under Article 225 or Article 226-2, paragraph (3)) or paragraph (3) (limited to cases with the purpose of indecency), or Article 241 of the same Code or attempts of these crimes;

(ii)　cases involving the crimes provided for in Article 60, paragraph (1) of the Child Welfare Act or the crimes provided for in Article 60, paragraph (2) of the same Act as it relates to Article 34, paragraph (1), item (ix) of the same Act, or the crimes provided for in Articles 4 through 8 of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children;

(iii)　in addition to the cases given in the preceding two items, cases where it is deemed that there is the risk that the reputation or the peaceful social life of the victim or others will be seriously harmed through particulars identifying the victim being disclosed in an open court in the form of the mode of the crime, the state of the damage, and due to other circumstances.

(2)　The request set forth in the preceding paragraph must be made to the public prosecutor in advance. In this case, the public prosecutor is to notify this to the court together with the prosecutor's opinion.

(3)　In addition to the particulars prescribed in paragraph (1), in handling a case where the court finds a risk of physical or property harm, threat to or confusion of the victim or victim's relatives through disclosing in an open court the mode of the crime, the state of the damage, and due to other circumstances, when it finds it appropriate after hearing the opinions of the public prosecutor and the accused or the defense counsel, it may render a ruling to such effect that particulars identifying the victim not be disclosed in an open court.

(4)　Where the court comes to find that it is inappropriate for particulars identifying the victim not to be disclosed in an open court with regard to a case where the ruling set forth in paragraph (1) or the preceding paragraph was rendered, that the case no longer comes under the cases given in paragraph (1), item (i) or item (ii) owing to the applicable penal statute being withdrawn or altered pursuant to the provisions of Article 312 or that the case no longer comes under the cases given in item (iii) of the same paragraph or the cases provided for in the preceding paragraph, it must rule to rescind the ruling set forth in paragraph (1) or the preceding paragraph.

(Opportunity for victims to state an opinion in court)

○Article 292-2 (1)　The court is to, when a request is made by the victim or others, or the legal representative of such victim to state an opinion on the sentiments or other opinions relating to the case, have them state their opinions on the trial date.

(2)　A request for the statement of opinions prescribed in the preceding paragraph must be made to the public prosecutor in advance. In this case, the public prosecutor is to notify this to the court together with the prosecutor's opinion.

(3)　The presiding judge or the associate judges may, after the victim or others, or the legal representative of such victim have stated their opinions, question them in order to clarify the purport of the statements.

(4)　The persons concerned in the case may, after the victim or others, or the legal representative of such victim have stated their opinions, question them in order to clarify the purport of their statements, with notification to the presiding judge.

(5)　The presiding judge may place restrictions on statements of opinion by the victim or others, or the legal representative of such victim or questions to be asked by persons concerned in the case to the victim or others, or legal representatives of such victim which overlap with previous statements or questions, or which are irrelevant to the case, or are otherwise inappropriate.

(6)　The provisions of Article 157-2, Article 157-3 and Article 157-4, paragraph (1) apply mutatis mutandis to the statement of opinion under the provisions of paragraph (1).

(7)　The court may, when it deems it inappropriate, considering the state of the proceedings and other circumstances, have the victim or others, or the legal representative of such victim submit written opinions in lieu of oral statements, or prohibit the stating of opinions.

(8)　When a document has been submitted under the provisions of the preceding paragraph, the presiding judge must make this clear on the trial date. In this case, the presiding judge may, when said judge finds it appropriate, read out the document or give an outline thereof.

(9)　The statement pursuant to the provisions of paragraph (1) or the document pursuant to the provisions of paragraph (7) may not be used as evidence for fact finding of the crime.

(Non-disclosure of victim identification when disclosing evidences)

○Article 299-3

When providing the opportunity to learn of the name and address of a witness, or the opportunity to inspect documentary or material evidence, pursuant to the provisions of Article 299, paragraph (1), if it is deemed that there is the risk that the reputation or the peaceful social life of the victim or others will be seriously harmed or the risk of physical or property harm, threat or confusion to the victim or victim's relatives through particulars identifying the victim being disclosed, the public prosecutor may notify the defense counsel to such effect and request that such particulars not be disclosed to the accused or other persons involved in the case, unless the particulars identifying the victim are necessary for the defense of the accused; provided however, that when requesting that the particulars not be disclosed to the accused, of the particulars identifying the victim, these particulars are limited to those other than the particulars given in the charging sheet.

○Article 299-4

Article on measures concerning disclosure of name or address of witness, etc

○Article 299-5

Article on ruling relating to the measures of Article 299-4

○Article 299-6

Article on limitation of inspection of documents, evidence and trial records

○Article 299-7

Article on measures for violation by defense counsel

(Provisions for the accused to leave the court)

○Article 304-2

When examining a witness and finding that the witness is unable to testify sufficiently owing to the pressure of being in the presence of the accused (including cases where the measures prescribed in Article 157-3, paragraph (1) or the means prescribed in Article 157-4, paragraph (1) are taken), the court may have the accused leave the courtroom during the testimony of the witness after hearing the opinions of the public prosecutor and the defense counsel, only when defense counsel is present. After the witness has testified, the court must let the accused enter the courtroom, give the accused an outline of the testimony and give said person the opportunity to examine the witness.

(Victim participation)

○Article 316-33

(1)　The court may, when it finds appropriate, make a ruling to allow the victim or others, or the legal representative of said victim to participate in the proceedings of the case after hearing the opinions of the accused or the defense counsel and taking the nature of the crime, the relationship with the accused and other circumstances into consideration if the victim or others concerned in the case involving the following crimes, or the legal representative of said victim or an attorney who has been entrusted by said persons makes a request to participate in the proceedings of the case:

(i)　crimes causing death or injury to a person through an intentional criminal act;

(ii)　crimes provided for in Articles 176 through 178, Article 211, Article 220 or Articles 224 through 227 of the Penal Code;

(iii)　in addition to the crimes given in the preceding item, crimes where the criminal acts include criminal acts of these crimes (except for the crimes given in item (i));

(iv)　attempts of the crimes given in the preceding three items.

(2)　The request set forth under the preceding paragraph must be made to the public prosecutor in advance. In this case, the public prosecutor is to notify this to the court together with the prosecutor's opinion.

(3)　The court must, when it has become clear that the person allowed to participate in the proceedings of the case pursuant to the provisions of paragraph (1) (hereinafter referred to as the "Participating Victim") was not or no longer is the victim or others, or legal representative of said victim in said case, or where said case no longer falls under the category of a case that involves a crime given in any of the items of the same paragraph owing to the applicable penal statute being withdrawn or altered pursuant to the provisions of Article 312, rule to revoke the ruling set forth under the same paragraph. The same applies when it is deemed inappropriate to allow participation in the proceedings of the case taking into account the nature of the crime, the relationship with the accused and other circumstances.

○Article 316-34

　(1)　The Participating Victim or the entrusted attorney may appear on the trial dates.

(2)　The Participating Victim must be notified of the trial dates.

(3)　Where there are a large number of Participating Victims or entrusted attorneys, the court may request all or some of said persons to select a representative from among themselves to appear on the trial dates when it deems it to be so necessary.

(4)　The court may, taking into consideration the state of the proceedings, the number of Participating Victims or entrusted attorneys or other circumstances and when it deems it to be inappropriate, decide not to permit appearance on all or some of the trial dates.

(5)　The provisions of each of the preceding paragraphs apply mutatis mutandis to cases where witnesses are to be examined or inspection is to be conducted in the trial preparation.

○Article 316-35

The Participating Victim or the entrusted attorney may state an opinion to the public prosecutor relating to the authority exercised by the public prosecutor pursuant to the provisions of this Code with regard to the case. In this case, if the public prosecutor exercises or does not exercise their authority, where necessary, said prosecutor must explain the reason for this to the person who stated such opinion.

○Article 316-36

(1)　In examining witnesses, if the Participating Victim or the entrusted attorney makes a request to examine a witness, the court is to hear the opinion of the accused or the defense counsel and, taking into consideration the state of the proceedings, the content of the particulars of the request for examination, the number of persons making the request and other circumstances, permit the person who made the request to examine the witness on particulars necessary to challenge the probative value of the statements of the witness with regard to the particulars relating to the circumstances (except for particulars relating to fact-finding) when it finds appropriate.

(2)　The request set forth under the preceding paragraph must be made to the public prosecutor clarifying the particulars to be examined immediately after conclusion of the examination by the public prosecutor (where the prosecutor does not conduct an examination, after the examination by the accused or the defense counsel). In this case, the public prosecutor must notify this to the court together with the prosecutor's opinion except in cases where said prosecutor is to personally examine said particulars.

(3)　Other than the cases provided for in Article 295, paragraph (1) to paragraph (3), the presiding judge may place restrictions on the examination if the examination by the Participating Victim or entrusted attorney leads to particulars other than the particulars provided for in paragraph (1).

○Article 316-37

(1)　The court is to, when the Participating Victim or the entrusted attorney has made a request to ask the accused questions seeking the statement set forth in Article 311, paragraph (2), hear the opinion of the accused or the defense counsel and when it deems it necessary for the purpose of the Participating Victim or entrusted attorney stating an opinion pursuant to the provisions of this Code, it is to permit the person who made the request to ask the accused questions when it finds appropriate, taking into consideration the state of the proceedings, the content of the particulars to be asked subject to the request, the number of persons making the request and other circumstances.

(2)　The request set forth in the preceding paragraph must be made to the public prosecutor clarifying the particulars to be asked in advance. In this case, the public prosecutor is to notify the court of this, together with the prosecutor's opinion except in cases where said prosecutor is to personally request a statement on such particulars.

(3)　Other than the cases provided for in Article 295, paragraph (1) and paragraph (3), the presiding judge may place restrictions on the questions if the questions to be asked by the Participating Victim or entrusted attorney are particulars which are irrelevant for the purpose of the statement of opinion provided for in paragraph (1).

○Article 316-38

(1)　The court is to, when the Participating Victim or the entrusted attorney makes a request to state an opinion on the finding of facts or the application of law, if it finds appropriate, permit the person who made the request to state an opinion on the trial date within the scope of facts specified as counts after the public prosecutor has stated an opinion pursuant to the provisions of Article 293, paragraph (1), taking into consideration the state of the proceedings, the number of persons making the request and other circumstances.

(2)　The request set forth in the preceding paragraph must be made to the public prosecutor giving an outline of the opinion to be stated in advance. In this case, the public prosecutor is to notify the court of this together with the prosecutor's opinion.

(3)　Other than the cases provided for in Article 295, paragraph (1) and paragraph (3), the presiding judge may place restrictions on the statement of opinion if the opinion stated by the Participating Victim or entrusted attorney is outside the scope of the provisions of paragraph (1).

(4)　The statement pursuant to the provisions of paragraph (1) is not to constitute evidence.

○Article 316-39

(1)　If the Participating Victim appears on the trial date or in the trial preparation pursuant to the provisions of Article 316-34, paragraph (1) (including cases to which these provisions apply mutatis mutandis pursuant to the provisions of paragraph (5) of the same Article; the same applies hereinafter in paragraph (4)), when, taking into account the Participating Victim's age, mental or physical condition or other circumstances, the Participating Victim is likely to feel extreme anxiety or tension, the court may, after hearing the opinions of the public prosecutor and the accused or the defense counsel, have the Participating Victim accompanied by a person who is appropriate for easing the Participating Victim's anxiety or tension, and is unlikely to disturb the examination of the witness by a judge or persons concerned in the case or an act seeking a statement from the accused, or the statement of persons concerned in the case, or is unlikely to unduly influence the content of the statements.

(2)　The person accompanying the Participating Victim pursuant to the provisions of the preceding paragraph must not behave in any manner which may disturb examination of the witness by a judge or persons concerned in the case or an act seeking a statement from the accused, or the statement of persons concerned in the case, or which will unduly influence the content of the statements.

(3)　Where the court deems that the person permitted to accompany the Participating Victim pursuant to the provisions of paragraph (1) is likely to disturb examination of the witness by a judge or persons concerned in the case or an act seeking a statement from the accused, or the statement of persons concerned in the case, or is likely to unduly influence the contents of the statements, or otherwise deems that it is inappropriate to have the person accompany the Participating Victim, it may rule to revoke the ruling set forth in the same paragraph.

(4)　The court may take measures between the accused and the Participating Victim so that the accused is unable to discern the presence of the Participating Victim limited to only when defense counsel is present, if the Participating Victim appears on the trial date or in the trial preparation pursuant to the provisions of Article 316-34, paragraph (1), after hearing the opinions of the public prosecutor and the accused or the defense counsel, when the pressure which the Participating Victim is under is likely to negatively affect their mental wellbeing while being present, being examined, questioned or testifying in the presence of the accused and finding it appropriate, taking into account the nature of the crime, the Participating Victim's age, mental or physical condition, relationship with the accused, or due to other circumstances.

(5)　The court may take measures so that the spectators and the Participating Victim cannot be aware of each other's presence, if the Participating Victim appears on the trial date pursuant to the provisions of Article 316-34, paragraph (1), after hearing the opinions of the public prosecutor and the accused or the defense counsel, when it finds appropriate, taking into account the nature of the crime, the Participating Victim's age, mental or physical condition or effects upon said Participating Victim's reputation or other circumstances,.

**2. 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

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

　　　See the answer to question 2-e.

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

See the answer to question 2-e.

**e. some combination of the above YES/NO If yes, please specify**

Yes

　○Assault, intimidation or lack of consent is required:

Forcible Sexual Intercourse (except for the case where a person commits sexual intercourse, etc. with a victim under thirteen years of age.)

　○Lack of consent is required:

Quasi Forcible Sexual Intercourse (except for the case where a person commits sexual intercourse, etc. with a victim under thirteen years of age.)

　○Punishable regardless of Assault, intimidation or lack of consent:

　　　Sexual Intercourse by Person Having Custody of Person under 18

　　In the case where a person commits sexual intercourse, etc. with a victim under thirteen years of age.

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

No

**g. Does it cover all forms of penetration? YES/NO**

Yes

Not only sexual intercourse, but also anal and oral intercourse are subject to the offense of Forcible Sexual Intercourse. If a foreign object is inserted into the vagina, the act can be considered as another offense such as the offense of Forcible Indecency.

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

No

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

No

**j. Is marital rape coverd in the general progvisions or by legal precedent even if it is not explicity included? YES/NO**

Yes

**k. 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 repationship/had a sexual relationship? If so, please submit it with corresponding translations.**

No

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

Thirteen years old

**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.**

Offense of Forcible Sexual Intercourse:

imprisonment for a definite term of not less than 5 years

Offense of Quasi Forcible Sexual Intercourse:

imprisonment for a definite term of not less than 5 year

Offense of Sexual Intercourse by Person Having Custody of Person under 18:

imprisonment for a definite term of not less than 5 year

Offense of Forcible Sexual Intercourse Causing Death

Imprisonment for life or for a definite term of not less than 6 years

Offense of Robbery; Forcible Sexual Intercourse:

Imprisonment for life or for a definite term of not less than 7 years

Offense of Robbery; Forcible Sexual Intercourse; Causing Death Thereby:

Death penalty or imprisonment for life

**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?**

Chapter 7 of the Act on Measures Incidental to Criminal Proceedings for Protecting the Rights and Interests of Crime Victims prescribes a system in which the court in charge of a criminal case may make a conviction and then continue hearing a claim for damages and order the perpetrator to pay damages. Victims of offenses such as Forcible Sexual Intercourse, etc. are eligible to use this system.

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

Yes

〇In the case of Forcible Sexual Intercourse, Quasi Forcible Sexual Intercourse, Sexual Intercourse by Person Having Custody of Person under 18 and others, the penalties will be aggravated if injuries or deaths occur.

〇If death occurs as a result of Robbery or Forcible Sexual Intercourse, the sentence will be aggravated.

**a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO**

〇According to the legal text, it is not regarded as an aggravating factor for punishment. However, in practice, it is difficult to give a general answer. Depending on the case, rape by multiple perpetrators can be found to be an aggravating factor.

**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/NO**

○According to the legal text, it is not regarded as an aggravating factor for punishment. However, in practice, it is difficult to give a general answer. Depending on the case, rape of a particularly vulnerable individual can be found to be an aggravating factor.

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

Yes

〇See the Penal Code Article 241

(1)　If a person who commits the crime of robbery or an attempt thereof also commits the crime of forcible sexual intercourse. (excluding the crime prescribed under paragraph (2) of Article 179; hereinafter the same applies in this paragraph) or an attempt thereof, or a person who commits the crime of forcible sexual intercourse or an attempt thereof also commits the crime of robbery or an attempt thereof, that person is punished by imprisonment for life or for a definite term of not less than 7 years.

(2)　In the case referred to in the preceding paragraph, if the person only commits attempts of both crimes, the punishment may be reduced, except when the person thereby causes the death or injury of another; provided, **however, that the voluntary abandonment of commission of either crime leads to the punishment being reduced or the offender being exempted.**

○Reductions of punishment for accessories and attempts are also stipulated in the General Provisions of Penal Code.

**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?**

Yes

○Regarding the permission of reconciliation between the perpetrator and the victim of crimes related to “rape” such as the offense of “Forcible Sexual Intercourse”, etc., no special provision different from other offenses is stipulated. The victim and the perpetrator can make an agreement as a civil settlement.

○In order to reduce the burden of the victim invoking a civil trial against the perpetrator to obtain and enforce a judgment, a system has been established in which the court can carry out compulsory execution based on the agreement described in the trial record when the court describes the content of the agreement which the perpetrators and the victims jointly request to enter in the trial record of the criminal case. (Chapter 6 of the Act on Measures Incidental to Criminal Proceeding for Protecting the Rights and Interests of Crime Victims).

○Regarding the consequences, it is difficult to give a general answer, but depending on the case, it may be a mitigating factor in court.

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

N/A

It is difficult to answer because the meaning of “reconciliation regardless of the law” is unclear.

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

Yes

○The prosecutor may not file a prosecution where prosecution is deemed unnecessary owing to the character, age, and environment of the offender, the gravity of the offense, and the circumstances or situation after the offense. (Article 248 of the Code of Criminal Procedure)

Article 248　Where prosecution is deemed unnecessary owing to the character, age, and environment of the offender, the gravity of the offense, and the circumstances or situation after the offense, prosecution need not be instituted.

1. **If the perpetrator marries the victim of rape? YES/NO**

No

1. **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

Prosecution is filed by a public prosecutor (Code of Criminal Procedure Article 247).

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

No

However, if a person is dissatisfied with the disposition not to prosecute made by a public prosecutor, he/she may apply to the Committee for Inquest of Prosecution to examine the disposition. In certain circumstances, based on the decision for institution of prosecution made by the Committee for Inquest of Prosecution, prosecution may be instituted.

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

No

It is difficult to answer because the meaning of “plea bargain” or “friendly settlement” is unclear. “Rape” crimes such as Forcible Sexual Intercourse are not subject to the Prosecutorial Agreement Proceeding according to Article 350-2 of the Code of Criminal Procedure.

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

Same as the answer to the question 14.

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

　○Forcible Sexual Intercourse, Quasi Forcible Sexual Intercourse, Sexual Intercourse by Person Having Custody of Person under 18: 10 years

○Forcible Sexual Intercourse Causing Injury: 15 years

○Forcible Sexual Intercourse Causing Death: 30 years

○Robbery; Forcible Sexual Intercourse: 15 years

○Robbery; Forcible Sexual Intercourse; Causing Death Thereby: no statute of limitation

**17. Which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any? YES/NO**

As long as the time period for the statute of limitations does not lapse, victims can report the cases at any time.

**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

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

No

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

Yes

○Provision of witness attendance during witness examination, screening of witnesses during witness examination, witness examination by video link method, and witness examination outside the court (Article 157-4 to Article 158, Code of Criminal Procedure)

Article 157-4　(1)　In the examination of a witness prescribed in the following items, the court may, when the court finds it appropriate, after hearing the opinions of the public prosecutor and the accused or the defense counsel, have the witness be present in a place other than the place where the judge and persons concerned in the case are present for examination of the witness (limited to the same premises), and examine the witness via means that allow for recognition of each other's presence and communication through the transmission of visual images and sound:

(i)　the victim of the crimes or attempted crimes provided for in Articles 176 to 178-2, or 181, Articles 225 or Article 226-2, paragraph (3) (limited to cases with the purpose of indecency or marriage; the same applies in this item hereinafter), Article 227, paragraph (1) (limited to cases with the purpose of accessory to a person who commits the crime provided for in Article 225 or Article 226-2, paragraph (3)) or paragraph (3) (limited to cases with the purpose of indecency), or the first sentence of Article 241 of the Penal Code;

(ii)　the victim of the crimes provided for in Article 60, paragraph (1) or in paragraph (2) of the same Article pertaining to Article 34, paragraph (1), item (ix) of the Child Welfare Act (Act No. 164, 1947), or Articles 4 to 8 of the Act on Punishing Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (Act No. 512, 1999);

(iii)　in addition to those prescribed in the preceding two items, a person who, taking into account the nature of the crime, said person's age, mental or physical condition, the relationship with the accused, or due to other circumstances, is likely to be under pressure and whose mental wellbeing would be negatively affected while testifying at the place where the judge and persons concerned in the case are present for examination of the witness.

(2)　In the examination of a witness using the measures prescribed in the preceding paragraph, the court may, when it is supposed that the witness will be requested to testify on the same facts again in another criminal procedure, after hearing the opinions of the public prosecutor and the accused or the defense counsel and with the consent of the witness, record the examination, the testimony and the circumstances surrounding the witness on a recording medium (limited to that which is able to record images and sound simultaneously).

(3)　The recording medium on which the examination, the testimony and the circumstances surrounding the witness are recorded in accordance with the preceding paragraph is attached to the case records as part of the written statements.

Article 158　(1)　The court may, after hearing the opinions of the public prosecutor and the accused or the defense counsel, and when the court deems it to be necessary, taking into account the importance of the witness, said witness's age, occupation, physical condition and other circumstances and the gravity of the factual background, summon a witness for examination to a place outside of the court or examine said person at said person's present location.

(2)　In the case prescribed in the preceding paragraph, the court must give the public prosecutor, the accused and the defense counsel an opportunity to know in advance of the particulars to be examined.

(3)　The public prosecutor and the accused or the defense counsel may request the court to examine other necessary particulars in addition to the particulars for examination prescribed in the preceding paragraph.

○Provisions for non-disclosure of particulars identifying victims in open courts (Article 290-2of the Penal Code)

Article 290-2　(1)　In handling the following cases, if a request is made by the victim or others of such case (meaning the victim or if the victim has died or suffers from a serious physical or mental disorder, said victim's spouse, a lineal relative, sibling; the same applies hereinafter), the legal representative for such victim or an attorney who has been entrusted by such persons, and when the court finds it appropriate after hearing the opinions of the accused or the defense counsel, it may render a ruling to such effect that particulars identifying the victim (meaning the name and address of the victim or other particulars which will identify the victim of such case; the same applies hereinafter) not be disclosed in an open court:

(i)　cases involving the crimes provided for under Articles 176 through 178-2 or Article 181 of the Penal Code, the crimes provided for under Article 225 or Article 226-2, paragraph (3) of the same Code (limited to cases with the purpose of indecency or marriage; the same applies in this item hereinafter) or the crimes provided for under Article 227, paragraph (1) (limited to cases with the purpose of accessory to the person who commits the offense provided for under Article 225 or Article 226-2, paragraph (3)) or paragraph (3) (limited to cases with the purpose of indecency), or Article 241 of the same Code or attempts of these crimes;

(ii)　cases involving the crimes provided for in Article 60, paragraph (1) of the Child Welfare Act or the crimes provided for in Article 60, paragraph (2) of the same Act as it relates to Article 34, paragraph (1), item (ix) of the same Act, or the crimes provided for in Articles 4 through 8 of the Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children;

(iii)　in addition to the cases given in the preceding two items, cases where it is deemed that there is the risk that the reputation or the peaceful social life of the victim or others will be seriously harmed through particulars identifying the victim being disclosed in an open court in the form of the mode of the crime, the state of the damage, and due to other circumstances.

(2)　The request set forth in the preceding paragraph must be made to the public prosecutor in advance. In this case, the public prosecutor is to notify this to the court together with the prosecutor's opinion.

(3)　In addition to the particulars prescribed in paragraph (1), in handling a case where the court finds a risk of physical or property harm, threat to or confusion of the victim or victim's relatives through disclosing in an open court the mode of the crime, the state of the damage, and due to other circumstances, when it finds it appropriate after hearing the opinions of the public prosecutor and the accused or the defense counsel, it may render a ruling to such effect that particulars identifying the victim not be disclosed in an open court.

(4)　Where the court comes to find that it is inappropriate for particulars identifying the victim not to be disclosed in an open court with regard to a case where the ruling set forth in paragraph (1) or the preceding paragraph was rendered, that the case no longer comes under the cases given in paragraph (1), item (i) or item (ii) owing to the applicable penal statute being withdrawn or altered pursuant to the provisions of Article 312 or that the case no longer comes under the cases given in item (iii) of the same paragraph or the cases provided for in the preceding paragraph, it must rule to rescind the ruling set forth in paragraph (1) or the preceding paragraph.

○Provisions for requesting concealment of victim identification items in the case of evidence disclosure (Article 299-3 to 299-7 of the Code of Criminal Procedure)

Article 299-3

When providing the opportunity to learn of the name and address of a witness, or the opportunity to inspect documentary or material evidence, pursuant to the provisions of Article 299, paragraph (1), if it is deemed that there is the risk that the reputation or the peaceful social life of the victim or others will be seriously harmed or the risk of physical or property harm, threat or confusion to the victim or victim's relatives through particulars identifying the victim being disclosed, the public prosecutor may notify the defense counsel to such effect and request that such particulars not be disclosed to the accused or other persons involved in the case, unless the particulars identifying the victim are necessary for the defense of the accused; provided however, that when requesting that the particulars not be disclosed to the accused, of the particulars identifying the victim, these particulars are limited to those other than the particulars given in the charging sheet.

○Article 299-4

Article on measures concerning disclosure of name or address of witness, etc

○Article 299-5

Article on ruling relating to the measures of Article 299-4

○Article 299-6

Article on limitation of inspection of documents, evidence and trial records

○Article 299-7

Article on measures for violation by defense counsel

○Provisions for the accused to leave the court (Code of Criminal Procedure Article 304-2)

Article 304-2　When examining a witness and finding that the witness is unable to testify sufficiently owing to the pressure of being in the presence of the accused (including cases where the measures prescribed in Article 157-3, paragraph (1) or the means prescribed in Article 157-4, paragraph (1) are taken), the court may have the accused leave the courtroom during the testimony of the witness after hearing the opinions of the public prosecutor and the defense counsel, only when defense counsel is present. After the witness has testified, the court must let the accused enter the courtroom, give the accused an outline of the testimony and give said person the opportunity to examine the witness.

**War and/or conflict　 War and/or conflict**

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

N/A

○The crimes referred to in our answer to question 1 are not categorized as “war crimes” or “crimes against humanity” in the Penal Code. However, the provisions relating to sexual offenses such as Forcible Sexual Intercourse apply regardless of whether they are committed during a war or a dispute.

○Japan has already ratified the Rome Statute of the International Criminal Court (ICC) .

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

Yes

**23. Is here explicit provision 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.**

We might have data which can be provided, if greater clarity can be provided on the meaning of this question.

Please provide a response to the following questions on the purpose of the statistics.

○Regarding “the number of cases of rape that were reported, prosecuted and sanctioned”, which do you need: each number of ‘reported’, ‘prosecuted’ and ‘sanctioned’ cases respectively; or, the total number of cases that were “reported, then prosecuted and finally sanctioned”?

○Regarding “the past two to five years”, which do you need: the number of cases in each year, or the total number for this period?

○Regarding “reported cases”, does it mean the number of cases reported to the investigation autority by victims (cases known to the police), or the number accepted by the prosecution authority (Public Prosecutors Office)?

**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.**

It is difficult to provide a general answer about specific circumstances which make it difficult to prosecute in cases of rape.