**Questionnaire on criminalization and prosecution of rape**

The Swedish Government appreciates the opportunity to contribute to the thematic report by the Special Rapporteur on violence against women, its causes and consequences, Ms. Dubravka Šimonović, and thanks the Special Rapporteur for the important work she performs under her mandate.

Initial remarks

The Swedish sexual offence legislation, which is found in [Chapter 6 of the Criminal Code](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700), was reformed in 2018. The changes entered into force on 1 July 2018. An unofficial translation of the Code is [published online](https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/) and kept up to date.

A key aspect of the 2018 reform is that a requirement of voluntary participation is now the basis of the legislation; to convict a perpetrator of rape it is no longer required to establish that violence or threats were used, or that the victim’s particularly vulnerable situation was exploited.

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 provision on *rape* in Chapter 6, Section 1 of the Criminal Code reads as follows.

A person who performs sexual intercourse, or some other sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a person who is not participating voluntarily is guilty of *rape* and is sentenced to imprisonment for at least two and at most six years. In assessing whether participation is voluntary or not, particular consideration is given to whether voluntariness was expressed by word or deed or in some other way. A person can never be considered to be participating voluntarily if:

1. their participation is a result of assault, other violence or a threat of a criminal act, a threat to prosecute or report another person for an offence, or a threat to give detrimental information about another person;

2. the perpetrator improperly exploits the fact that the person is in a particularly vulnerable situation due to unconsciousness, sleep, grave fear, the influence of alcohol or drugs, illness, bodily injury, mental disturbance or otherwise in view of the circumstances; or

3. the perpetrator induces the person to participate by seriously abusing the person’s position of dependence on the perpetrator.

If, in view of the circumstances associated with the offence, the offence is considered less serious, the person is guilty of rape and is sentenced to imprisonment for at most four years.

If the offence referred to in the first paragraph is considered gross, the person is guilty of *gross rape* and is sentenced to imprisonment for at least five and at most ten years. In assessing whether the offence is gross, particular consideration is given to whether the perpetrator used violence or a threat of a particularly serious nature, or whether more than one person assaulted the victim or took part in the assault in some other way, or whether, in view of the method used or the young age of the victim or otherwise, the perpetrator exhibited particular ruthlessness or brutality.

The provision on *negligent rape* in Chapter 6, Section 1a of the Criminal Code reads as follows.

A person who commits an act referred to in Section 1 and is grossly negligent regarding the circumstance that the other person is not participating voluntarily is guilty of *negligent rape* and is sentenced to imprisonment for at most four years.

If, in view of the circumstances, the act is less serious, the person is not held responsible.

The provision on *rape of a child* in Chapter 6, Section 4 of the Criminal Code reads as follows.

A person who performs sexual intercourse, or another sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a child under fifteen years of age is guilty of *rape of a child* and is sentenced to imprisonment for at least two and at most six years.

This also applies to a person who commits an act referred to in the first paragraph against a child who has attained fifteen but not eighteen years of age and who is the perpetrator’s descendant, or is being brought up by or has a comparable relationship with the perpetrator, or for whose care or supervision the perpetrator is responsible by decision of a public authority.

If an offence referred to in the first or second paragraph is considered gross, the person is guilty of *gross rape of a child* and is sentenced to imprisonment for at least five and at most ten years. When assessing whether the offence is gross, particular consideration is given to whether the perpetrator used violence or a threat of a criminal act, or whether more than one person assaulted the child or took part in the assault in some other way, or whether, in view of the method used or the child’s young age or otherwise, the perpetrator exhibited particular ruthlessness or brutality.

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

a) Gender specific, covering women only YES/NO

NO.

b) Gender neutral, covering all persons YES/NO

YES.

c) Based on the lack of consent of victim YES/ NO

YES.

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

NO.

e) Some combination of the above. YES / NO

NO.

f) Does it cover only vaginal rape? YES /NO

NO.

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

YES.

The provision on *rape* covers both sexual intercourse and other sexual acts that “in view of the seriousness of the violation [are] comparable to sexual intercourse”.

The term “sexual intercourse” is not defined in the legislation. However, the preparatory works state that it only refers to coitus. The term should not be understood as meaning that penetration must take place; it is enough if the male and female genitalia come in contact with each other.

The phrase “other sexual acts that in view of the seriousness of the violation [are] comparable to sexual intercourse” received its current wording in a reform of the Swedish sexual offence legislation undertaken in 2013. The aim of the changed wording was to emphasize that the central issue when it comes to defining whether a sexual act falls within the scope of the provision on *rape* is the seriousness of the violation of the victim, not the technical character of the sexual act itself. The preparatory works state that anal and oral sex fall under this term. The same applies for when objects or fingers are inserted in the female genitalia or in the female or male anus. Oral sexual activities are covered by the provision regardless of whether the participants are of the same or different sex. When a perpetrator touches a woman’s genitalia with their tongue, this can constitute a violation that is as serious as forced sexual intercourse, regardless of whether the act involves penetration. Situations where the perpetrator masturbates on the victim or gets the victim to masturbate on him or her are, in most cases, not comparable to sexual intercourse. However, the circumstances must be evaluated on a case by case basis in order to assess the seriousness of the violation.

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

NO.

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

YES.

j) Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly 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 relationship/had a sexual relationship? If so, please submit it.

NO.

4. What is the legal age for sexual consent?

15 years

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

A person who has committed an act under Chapter 6, Section 5 or Section 6, first paragraph against a child under fifteen years of age, or under Chapter 6, Section 8, first paragraph or Section 10, first paragraph is not held responsible if it is obvious that the act did not involve an assault on the child in view of the slight difference in age and development between the person who committed the act and the child, and the other circumstances (Chapter 6, Section 14, first paragraph).

This also applies to a person who has committed an act under Chapter 6, Section 10a, if it aimed at an act referred to in the first paragraph which, if it had been completed, would in accordance with what is stated in that paragraph obviously not have involved an assault on the child (Chapter 6 Section 14, second paragraph)**.**

The provision in Chapter 6, Section 5 of the Criminal Code reads as follows.

If, in view of the circumstances associated with the offence, an offence referred to in Section 4 first or second paragraph (*rape of a child*) is considered less serious, the person is guilty of *sexual exploitation of a child* and is sentenced to imprisonment for at most four years.

The provision in Chapter 6, Section 6, first paragraph of the Criminal Code reads as follows.

A person who performs a sexual act other than those referred to in Sections 4 (*rape of a child*) and 5 (*sexual exploitation of a child*) with a child under fifteen years of age, or with a child who has attained fifteen but not eighteen years of age and with whom the perpetrator has a relationship referred to in Section 4, second paragraph, is guilty of *sexual assault of a child* and is sentenced to imprisonment for at most two years.

The provision in Chapter 6, Section 8, first paragraph of the Criminal Code reads as follows.

A person who promotes or exploits the performance of or participation in sexual posing by a child under fifteen years of age is guilty of *exploitation of a child for sexual posing* and is sentenced to a fine or imprisonment for at most two years.

The provision in Chapter 6, Section 10, first paragraph of the Criminal Code reads as follows.

A person who, in cases other than those previously referred to in this Chapter, sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implications, is guilty of *sexual molestation* and is sentenced to a fine or imprisonment for at most two years.

The provision in Chapter 6, Section 10a of the Criminal Code reads as follows.

A person who, with the aim of committing an act against a child under fifteen years of age for which a penalty is provided in Section 4, 5, 6, 8 or 10, proposes or agrees to a meeting with the child, is guilty of *contact with a child for sexual purposes* and is sentenced to a fine or to imprisonment for at most two years.

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

* The penalty for *rape* is imprisonment for at least two and at most six years, or – if the offence is considered less serious – imprisonment for at most four years, and the penalty for *gross rape* is imprisonment for at least five and at most ten years (Chapter 6, Section 1).
* The penalty for *negligent rape* is imprisonment for at most four years (Chapter 6, Section 1a).
* The penalty for *rape of a child* is imprisonment for at least two and at most six years and the penalty for *gross* *rape of a child* is imprisonment for at least five and at most ten years (Chapter 6, Section 4).

Chapter 6 of the Criminal Code criminalizes other sexual offences as well (e.g. *sexual assault*, *gross* *sexual assault*, *sexual exploitation of a child*, *sexual assault of a child* and *gross* *sexual assault of a child*). However, those crimes and the penalties prescribed for them are not accounted for here.

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?

Victims of rape or sexual violence are entitled to compensation/damages from the perpetrator in accordance with the Swedish Tort Liability Act. Such damages may include compensation for personal injuries, damage to or loss of property, financial loss and violation of personal integrity. In cases where no perpetrator can be identified or where the perpetrator is not able to pay damages and there is no insurance to fully cover the injuries, victims of such crimes can apply for compensation from central government. Such compensation is known as criminal injuries compensation and is regulated by the Criminal Injuries Compensation Act. The Crime Victim Compensation and Support Authority is responsible for processing applications under the Criminal Injuries Compensation Act. Compensation is primarily payable for personal injury, which includes both physical and psychological injury, and for the violation of personal integrity suffered by the victim. In exceptional cases, compensation for financial loss or damage to and loss of property may also be paid out.

Social services in each municipality are responsible for providing help and support to the crime victim and those persons close to the crime victim. This responsibility has been set out in the Social Services Act. Social services must pay particular attention to the fact that women who are being or have been subjected to violence by a person close to them may be in need of support and assistance in order to change their situation. Social services must also prioritise children who have witnessed violence or other abuse by or towards persons close to them. These children are victims of crime, and the social services must ensure that they receive the support and assistance they need. This could mean various forms of psychological and social support and also financial and practical assistance. Some areas also provide other forms of support, such as conversational support for victims of crime, support centres for young victims of crime, and children’s houses (barnahus). A number of associations work on a voluntary basis to provide crime victims with help and support. The most well-established ones, located in many parts of the country, are women’s shelters and crime victim support centres. In addition, there is a number of more specialised crime victim support organisations.

Aggravating and mitigating circumstances

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

YES.

When assessing penalty value, consideration is given to the damage, violation or danger involved in the act, what the accused realised or ought to have realised in this respect, and their intentions or motives. Particular consideration is given to whether the act involved a serious attack on someone’s life or health or personal security (Chapter 29, Section 1 of the Criminal Code).

According to Chapter 29, Section 2 of the Criminal Code, as aggravating circumstances when assessing penalty value, in addition to what applies for each specific type of offence, particular consideration is given to:

1. whether the accused intended for the offence to have more serious consequences than it actually had;

2. whether the accused exhibited great ruthlessness;

3. whether the accused exploited another person’s defenceless position or difficulty defending themselves;

4. whether the accused exploited their position or otherwise abused some special trust;

5. whether the accused induced another person to be an accomplice to an offence through coercion, deceit or abuse of their youth, lack of understanding or position of dependence;

6. whether the offence was part of criminal activities conducted in an organised form or systematically, or whether the offence was preceded by particular planning;

7. whether a motive for the offence was to insult a person or a population group on grounds of race, colour, national or ethnic origin, religious belief, sexual orientation or transgender identity or expression, or another, similar circumstance;

8. whether the offence was liable to damage the security and trust of a child in their relationship with a family member; or

9. whether the offence was committed against a person on grounds of them or a family member having held office as an elected representative at central, municipal or regional level, in the Sami Parliament or in the European Parliament.

In assessing whether a *rape* is *gross*, particular consideration is given to whether the perpetrator used violence or a threat of a particularly serious nature, or whether more than one person assaulted the victim or took part in the assault in some other way, or whether, in view of the method used or the young age of the victim or otherwise, the perpetrator exhibited particular ruthlessness or brutality (Chapter 6, Section 1, second paragraph).

In assessing whether a *rape of a child* is *gross*, particular consideration is given to whether the perpetrator used violence or a threat of a criminal act, or whether more than one person assaulted the child or took part in the assault in some other way, or whether, in view of the method used or the child’s young age or otherwise, the perpetrator exhibited particular ruthlessness or brutality (Chapter 6, Section 4, third paragraph).

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

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/NO

YES. As mentioned above, as aggravating circumstances when assessing penalty value, particular consideration is given to *inter alia* whether the accused exploited another person’s defenceless position or difficulty defending themselves, whether the accused exploited their position or otherwise abused some special trust or whether the accused induced another person to be an accomplice to an offence through coercion, deceit or abuse of their youth, lack of understanding or position of dependence (Chapter 29, Section 2, points 3, 4 and 5).

c) Is rape by spouse or intimate partner an aggravating circumstance? Please refer to the answer to question 8 above.

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

YES. When assessing penalty value, consideration is given to the damage, violation or danger involved in the act, what the accused realised or ought to have realised in this respect, and their intentions or motives. Particular consideration is given to whether the act involved a serious attack on someone’s life or health or personal security (Chapter 29, Section 1 of the Criminal Code).

According to Chapter 29, Section 3 of the Criminal Code, as mitigating circumstances when assessing penalty value, in addition to what is provided for certain cases, particular consideration is given to:

1. whether the offence was occasioned by the manifestly insulting conduct of another person;

2. whether the accused, as a result of a serious mental disturbance, had a reduced capacity to realise the implications of the act or to adapt their conduct accordingly, or otherwise as a result of mental disturbance, emotion or for some other reason had a reduced capacity to control their conduct;

3. whether there was a connection between the conduct of the accused and their lack of development, experience or judgement;

4. whether the offence was occasioned by strong human sympathy; or

5. whether the offence, while still being subject to responsibility, is such as is referred to in Chapter 24 [i.e. the provisions on general grounds for freedom from responsibility].

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. In Sweden, reconciliation/mediation has been used since 2002. The effort can be used as a complement to the criminal justice response. The law does not exclude certain crime from mediation but points out that the intervention must appear appropriate. The participation must be voluntary and take place in the interests of both parties.

a) Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

YES.

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

NO.

All offences under Chapter 6 in the Criminal Code fall within the domain of public prosecution. Thus, the prosecution of these offences does not depend on an accusation or report by the victim.

When a conviction can be expected, i.e. when there is enough evidence, the prosecutor must prosecute offences falling within the domain of public prosecution (Chapter 20, Section 6 the Swedish Code of Judicial Procedure).

a) if the perpetrator marries the victim of rape? YES/NO

NO. Please refer to the answer to question 11 above

b) if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO

NO. Please refer to the answer to question 11 above

Prosecution

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

YES. Please refer to the answer to question 11 above. If a prosecutor decides not to bring a prosecution, e.g. because the prosecutor assesses that there will be no conviction because of the lack of evidence, the victim have a subsidiary right to bring a private prosecution (Chapter 47, Section 1 the Swedish Code of Judicial Procedure).

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

Please refer to the answer to question 12 above.

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

NO.

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

NO.

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

The rules about the statute of limitations are general and apply to all criminal provisions. According to Chapter 35, Section 1 no sanction may be imposed unless the suspect has been remanded in custody or served with notification of prosecution for the offence within ten years, if the most severe penalty is more severe than two years, but no more than eight years, and fifteen years, if the most severe penalty is imprisonment for a fixed term of more than eight years.

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

YES. According to Chapter 35, Section 2 of the Criminal Code, the provisions of Chapter 35 on lapse of sanctions (please refer to the answer to question 16 above) do not apply to *rape* or *gross rape* under Chapter 6, Section 1 first or third paragraph, if the offence was committed against a person who had not attained eighteen years of age. This also applies to *rape of a child* and *gross* *rape of a child* under Chapter 6, Section 4.

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. There are free production of evidence and free evaluation of evidence in all criminal cases.

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. However, questions that are not relevant are not allowed. The judge has a responsibility to prevent matters that are not relevant for the case.

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. During the preliminary investigation the police must consider if the victim is a victim in need of special protection. A child under 18 years is always considered to be a victim in need of special protection (the Decree on Preliminary Investigation, Section 13f). Provided that the course of the preliminary investigation will not be prejudiced, the victims have rights that include that their interviews should be held in premises especially suited for this purpose, the same police officer should consistently interview the victim if multiple interviews are necessary and the interview should be conducted by a person of the same sex as the victim, if the victim wishes this (the Decree on Preliminary Investigation, Section 5b).

The questions asked to a victim under the age of 18 years should not be too invasive and multiple interviews may not be held unless it is necessary and in the best interest of the child. The police officer interviewing the child should have undergone special training for interviewing children. An interview with a child should always be planned and conducted in a way that the child is not at risk to suffer harm. Special caution is necessary if the interview regards sexual crimes (the Decree on Preliminary Investigation, Sections 17 and 18).

Interviews with children under the age of 15 are usually recorded by video during the preliminary investigation. Children under the age of 15 are not normally heard before the court. Instead, the recorded interviews from the preliminary investigation are presented during the main hearing. Children who are over 15 years old should, as a main rule, be heard before the court.

The main hearings in the district court are recorded by video and if the judgment is appealed, the recorded interviews from the district court are presented in the court of appeal. Therefore, in the court of appeal the main rule is that the victim should not be heard again. Only if supplementary questions need to be asked shall renewed or supplementary questioning be held (Chapter 35, Section 13 The Swedish Code of Judicial Procedure). As a main rule, victims only need to attend a main hearing once.

War and/or conflict

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

YES as both a war crime and a crime against humanity (Section 2 and 4 §§ of the Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes).

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

The provisions of Chapter 35 on lapse of sanctions (please refer to the answer to question 16 above) do not apply to crimes against humanity or gross war crimes under Section 2 or 11 of the Act on Criminal Responsibility for Genocide, Crimes against Humanity and War Crimes.

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

Pplease refer to the answer to question 22 above.

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

YES

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

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | **2014** | **2015** | **2016** | **2017** | **2018** | **2019** |
| Reported cases\* | Rape including gross rape (1, 4 §) | 6697 | 5918 | 6715 | 7369 | 7958 | 8581 |
|  | Negligent rape (1 a §) | .. | .. | .. | .. | .. | 237 |
| Prosecuted cases\*\* | Rape including gross rape (1, 4 §) | 1464 | 868 | 775 | 811 | 1313 | 1306 |
|  | Negligent rape (1 a §) | .. | .. | .. | .. | .. | 3 |
| Sanctioned cases\*\*\* | Rape including gross rape (1, 4 §) | 320 | 291 | 286 | 288 | 378 | .. |
|  | Negligent rape (1 a §) | .. | .. | .. | .. | - | .. |

.. No data available. The number of conviction decisions 2019 will be published May 28.

\* All reported **offences**

\*\* Number of **prosecutions initiated**

\*\*\* All **conviction decisions** by principal offence

Please note that the number of reported offences and number of prosecutions initiated should not be compared with the number of conviction decisions, since the data are collected from different case management systems.

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.

Even though Sweden stands out internationally when it comes to the propensity to report sex crime, there are many indications that most acts that are criminalized by law remain unreported. The victim’s knowledge of which acts are criminalized and not, as well as society’s view on sex crimes may affect the propensity to report crimes. The victim’s relationship to the perpetrator and the extent to which the victim identifies him- or herself as a victim of sex crime may also affect the probability of the crime being reported. Fear of not being believed by the authorities and feelings of guilt and shame or of revenge may also prevent victims from reporting.

Barriers to the prosecution of rape include absence of witnesses other than the parties involved, absence of confession of the suspect, difficulties for the prosecutor to prove intent when the suspect admits to sexual acts but maintains that it was consensual, absence of documented injuries to support the statement of the criminal act charged, and time elapsed between the crime and the crime being reported to the police. A recent study also shows that lack of evidence is the most common reason for closing an investigation of rape, followed by necessary conditions/requirements of the crime not being met. Another relatively common reason for closing an investigation is that the injured party no longer wants to participate.

According to a study of the Swedish criminal justice system’s work in rape cases, police and public prosecutors generally expend extensive efforts to clear filed rape reports, and the work has improved during recent years (Brå, 2019. The Swedish National Council for Crime Prevention (Brottsförebyggande rådet or Brå for short) is a is an agency under the auspices of the Ministry of Justice and a knowledge centre for the criminal justice system). The review does not indicate that it is possible to achieve a dramatically higher percentage of clearances through better investigation. Even with better work on the part of the police and public prosecutor, most reports of rape will still be closed. However, in Brås’s view, there are possibilities to improve investigations of rape, and such improvements would be meaningful for both the complainant and the suspect.