***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.*

Criminal Code of Ukraine, **Article 152** «Rape»

1. Sexual activities involving vaginal, anal or oral penetration into the other person’s body with the use of genitals or any other items, committed without voluntary consent of the victim (rape) shall entail imprisonment for the period of three to five years.

2. Rape committed repeatedly or by an individual who earlier committed any of the crimes referred to in Articles 153 to 155 of this Code, or committing such acts against a spouse or any other person with whom the perpetrator is/was in family or intimate relations, or against any individual in connection with any work, professional or civil duties of such individual, or against a woman who was pregnant and the perpetrator was aware of this, shall entail punishment in form of imprisonment for five to ten years.

3. Rape committed by a group of individuals, or rape of a minor shall entail punishment in form of imprisonment for seven to twelve years.

4. Actions referred to in paragraph 1 of this Article, if committed against the individual who has not attained the age of 14, regardless of whether this individual consented to this, shall entail imprisonment for eight to fifteen years.

5. Actions referred to in paragraphs 1, 2, 3 of this Article, which caused grave consequences, shall entail imprisonment for ten to fifteen years.

6. Actions referred to in paragraph 4 of this Article if committed repeatedly or by a person who has previously committed any of the crimes provided for in parts 4 or 5 of Article 153, Article 155 or part 2 of Article 156 of this Code, shall entail imprisonment for a term of fifteen years or life imprisonment.

*Note: Consent is deemed voluntary, when it is a result of free declaration of the will of the individual concerned, with due regard to all relevant circumstances.*

Criminal Code of Ukraine, **Article 153** «Sexual violence»

1. Committing any sexual violence not involving the penetration of another person's body without the voluntary consent of the victim (sexual violence), shall entail punishment in form of imprisonment for a term up to five years.

2. Sexual violence committed repeatedly or by an individual who earlier committed any of the crimes referred to in Articles 152, 154 and 155 of this Code, or committing such acts against a spouse or any other person with whom the perpetrator is / was in family or intimate relations, or against any individual in connection with any work, professional or civil duties of such individual, or against a woman who was pregnant and the perpetrator was aware of this, shall entail punishment in form of imprisonment for the period of three to seven years.

3. Sexual violence committed by a group of individuals, or sexual violence against a minor shall entail punishment in form of imprisonment for five to seven years.

4. Actions referred to in paragraph 1 of this Article, if committed against the individual who has not attained the age of 14, regardless of whether this individual consented to this, shall entail punishment in form of imprisonment for five to ten years.

5.Actions provided for in parts one, two, three or four of this Article that have caused serious consequences shall entail punishment in form of imprisonment for a term of ten to fifteen years.

6. The acts provided for in part 4 of this Article that are committed repeatedly or by a person who has previously committed any of the crimes provided for in part 4 of Article 152, Article 155 or part 2 of Article 156 of this Code shall entail punishment in form of imprisonment for a term of fifteen years or life imprisonment.

Criminal Code of Ukraine, **Article 154** «Compulsion to engage in sexual intercourse»

1. Coercing an individual without his/her voluntary consent into a sexual activity with another person shall entail a fine of up to fifty minimum incomes before tax or arrest up to six mouth.

2. Coercing an individual without his/her voluntary consent into a sexual activity with other person on whom the victim is financially or professionally dependent shall entail a fine of up to one thousand minimum incomes before tax or limitation of freedom for up to two years.

3. Actions referred to in paragraph 1 or paragraph 2 of this Article, if combined with a threat to destroy, cause damage to or withdraw any property of the victim or his/her close relatives, or to disclose any information that is discrediting such individual or his/her close relatives shall entail punishment in form of custodial restraint for a term of up to three years, or imprisonment for the same period.

Criminal Code of Ukraine, **Article 155** «Sexual intercourse with a person who has not reached the age of sixteen»

1. Natural or unnatural sexual intercourse with a person under the age of sixteen, committed by an adult shall entail punishment in form of custodial restraint for a term up to five years or imprisonment for the same term.

2. The same acts committed by close relatives or family members, a person who is responsible for the upbringing or care of the victim, or if they have caused infertility or other serious consequences shall be punishable by imprisonment for a term of five to eight years with deprivation of the right to hold certain positions or engage in certain activities for up to three years or without such.

*Note: in Articles 155 and 156 of this Code, close relatives or family members should be understood as persons defined in paragraph 1 of the first part of Article 3 of the Criminal Procedure Code of Ukraine.*

Criminal Code of Ukraine, **Article 156** «Debauchery of minors»

1. Debauched actions committed in relation to a person under 16 years of age shall entail punishment in form of custodial restraint for a term of up to five years, or imprisonment for the same term.

2. The same actions committed in regard of a young child, or committed by family members or close relatives, or any person imposed by a duty of upbringing or taking care of a sexually immature person shall entail punishment in form of imprisonment for a term of five to eight years, with or without the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years.

1. *Based on the wording of those provisions, is the provided definition of rape:*
	1. Gender specific, covering women only YES/**NO**;
	2. Gender neutral, covering all persons   **YES**/NO;
	3. Based on the lack of consent of victim **YES**/ NO;
	4. Based on the use of force or threat YES/ **NO**;
	5. Some combination of the above.  **YES** /NO;
	6. Does it cover only vaginal rape?  YES /**NO**;
	7. Does it cover all forms of penetration? **YES**/NO. If yes, please specify. *Vaginal, anal or oral penetration*.
	8. Is marital rape in this provision explicitly included? **YES** /NO;
	9. Is the law silent on marital rape? YES/**NO**;
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**/NO;
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /**NO.**
2. *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.**
3. *What is the legal age for sexual consent?* 16 years (Criminal Code of Ukraine, Article

155 «Sexual intercourse with a person who has not reached the age of sixteen»).

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

*provide them*. **NO.**

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

Imprisonment for a term of three to fifteen years or life imprisonment (depending on circumstances and forms of rape).

1. *What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?*

The person to whom pecuniary and/or non-pecuniary damage has been caused by a criminal offence or another socially dangerous act shall have the right to file a civil lawsuit, in the course of criminal proceedings before the trial has commenced against the suspect, accused or to a natural or legal person civilly liable by law for the damage caused by the acts of the suspect, accused or insane person who has committed a socially dangerous act (Criminal Procedure Code of Ukraine, Article 128 «Civil action in criminal proceedings»).

**Aggravating and mitigating circumstances**

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

Criminal Code of Ukraine, **Article 67** «Circumstances aggravating punishment»

1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be aggravating:

1) repetition of an offense or recidivism;

2) the commission of an offense by a group of persons upon prior conspiracy (paragraph 2 or 3 of Article 28);

3) committing an offense based on racial, national or religious enmity and hostility or based on sexual belonging;

4) the commission of an offense in connection with the discharge of official or public

duty by the victim;

5) grave consequences caused by the offense;

6) committing an offense against a minor, an elderly or helpless person or a person suffering from a mental disorder, in particular dementia, mental retardation, as well as the commission of a crime against a minor child or in the presence of a child;

61) committing a crime against a spouse or ex-spouse or another person with whom the perpetrator is (was) in a family or close relationship;

7) the commission of an offense against a woman who, to the knowledge of the culprit, was pregnant;

8) the commission of an offense against a person who was in a financial, official or

other dependence on the culprit;

9) the commission of an offense through the use of a minor, a person of unsound

mind or mentally challenged person;

10) the commission of an especially violent offense;

11) the commission of an offense by taking advantage of a martial law or a state of

emergency or other extraordinary events;

12) the commission of an offense by a generally dangerous method;

13) the commission of an offense by a person in a state of intoxication resulting from the use of alcohol, narcotic, or any other intoxicating substances.

* 1. Is rape by more than one perpetrator an aggravating circumstance?  **YES**/NO.
	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.
	3. Is rape by spouse or intimate partner an aggravating circumstance? **YES.**
1. *Does the law foresee mitigating circumstances for the purposes of punishment?* ***YES****/NO. If yes, please specify.*

Criminal Code of Ukraine, **Article 66** «Circumstances mitigating punishment»

1. For the purposes of imposing a punishment, the following circumstances shall be deemed to be mitigating:

1) surrender, sincere repentance or active assistance in detecting the offense;

2) voluntary compensation of losses or repairing of damages;

2-1) providing medical aid or other aid to the injured person after committing the offense;

3) the commission of an offense by a minor;

4) the commission of an offense by a pregnant woman;

5) the commission of an offense in consequence of a train of adverse personal, family or other circumstances;

6) the commission of an offense under influence of threats, coercion or financial,

official or other dependence;

7) the commission of an offense under influence of strong excitement raised by improper or immoral actions of the victim;

8) the commission of an offense in excess of necessary defense;

9) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, combined with committing an offense in cases as provided for by this Code.

2. When imposing a punishment, a court may find circumstances, other than those specified in paragraph 1 of this Article, to be mitigating.

3. If any of the mitigating circumstances is specified in an article of the Special Part of this Code as an element of an offense, that affects its treatment, a court shall not take it into consideration again as a mitigating circumstance when imposing a punishment.

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

At all stages of criminal proceedings, the victim shall have the right to reconcile with the suspect, accused and to conclude a conciliation agreement. Conciliation constitutes the ground for closing criminal proceedings in cases specified in law of Ukraine on criminal responsibility and the present Code (Criminal Procedure Code of Ukraine, Article 56).

* 1. *Regardless of the law, is reconciliation permitted in practice?* ***YES****/NO and what is the practice in this regard?* Number of reconciliations between the victim of rape and the perpetrator (according to Judicial statistics): in 2018 – 3, in 2019 - 6.

*Links:* 2018 - <https://court.gov.ua/inshe/sudova_statystyka/rik_2018> (№ 1-к);

2019 - <https://court.gov.ua/inshe/sudova_statystyka/rik_2019> (№ 1-к)

1. *Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?* ***YES****/NO. If yes, please specify.*
	1. if the perpetrator marries the victim of rape? YES/**NO.**
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES**/NO (Criminal Code of Ukraine, Article 74 «Discharge from punishment and from serving it»).

**Prosecution**

1. *Is rape reported to the police prosecuted ex officio (public prosecution)?* ***YES****/NO.* Part 2 – 6 of Article 156 of Criminal Code of Ukraine.
2. *Is rape reported to the police prosecuted ex parte (private prosecution)?* ***YES****/NO.*

Part 1 of Article 156 of Criminal Code of Ukraine*.*

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

The reconciliation agreement may be concluded on the initiative of the victim, the suspect or the accused. Arrangements in respect of the reconciliation agreement may be made independently by the victim and the suspect or the accused, the defense counsel and a representative or with the assistance of another person as agreed between the parties to criminal proceedings (except for the investigator, public prosecutor or judge).

The reconciliation agreement between the victim and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanors and crimes of minor or medium gravity, and in criminal proceedings in the form of private prosecution (Criminal Procedure Code of Ukraine, **Article 469** «Initiation and Conclusion of Agreement», parts 1 and 3).

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

The plea agreement between the public prosecutor and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanors, as well as crimes of minor or medium gravity, grave crimes, and special grave criminal offenses perpetration of which caused damage only to state or public interests (Criminal Procedure Code of Ukraine, **Article 469** «Initiation and Conclusion of Agreement», part 4).

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

Five, ten or fifteen years (depending on circumstances and forms of rape).

1. *Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?* ***YES****/NO.*
2. *Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  YES/****NO.*** *If yes, please specify.*
3. *Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/****NO.***
4. *Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?* ***YES****/NO. If yes, please specify.*

Investigating judge, court may take a decision to conduct criminal proceedings in camera throughout the entire judicial proceedings or any part thereof in the following cases:

1) when an underage person is the defendant;

2) trial in respect of criminal offence against sexual freedom or security of person;

3) with a view to preventing disclosure of information on private and family life of an individual or circumstances which degrade human dignity.

(Criminal Procedure Code of Ukraine, **Article 27** «Publicity and openness of court proceedings and complete recording using technical means»).

Interrogation of persons, identification of persons or objects during pre-trial investigation may be conducted in the mode of video conference involving transmission from other premises (distant pre-trial investigation) in the event that:

1) certain persons are not able to participate directly in pre-trial proceedings for health or other valid reasons;

2) it is necessary to ensure safety of persons;

3) a minor or underage witness or victim is interviewed;

4) such measures are necessary to ensure speedy pre-trial investigation;

5) there are other grounds deemed sufficient by the investigator, public prosecutor, investigating judge.

(Criminal Procedure Code of Ukraine, **Article 232** «Conducting interrogation or identification in the mode of video conference during pre-trial investigation»).

**War and/or conflict**

1. *Is rape criminalized as a war crime or crime against humanity? YES/****NO.***
2. *Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/****NO.***
3. *Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/****NO.***
4. *Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/****NO.***

**Data**

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

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| --- | --- | --- |
| **Criminal Code of Ukraine,** **Article 152 «Rape»** | **2018 year** | **2019 year** |
| **reported** | 335 | 426\* |
| **prosecuted** | 143 | 164 |
| **sanctioned** | 98 | 108 |

*Links: 2018 -* [*https://court.gov.ua/inshe/sudova\_statystyka/rik\_2018*](https://court.gov.ua/inshe/sudova_statystyka/rik_2018) *(№ 1-к);*

*2019 -* [*https://court.gov.ua/inshe/sudova\_statystyka/rik\_2019*](https://court.gov.ua/inshe/sudova_statystyka/rik_2019) *(№ 1-к).*

*\** *The meaning of the term «rape» was changed by Law № 409-IX of 06.12.2017 (came into force 11.01.2019).*

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