



Questionnaire on criminalisation and prosecution of rape

A Submissions to the UN Special Rapporteur on Violence Against Women's Thematic Report on Rape as a Grave & Systematic Human Rights Violation & Gender-Based Violence Against Women

Country: Ukraine

Organisation: Non-Governmental organization Centre "Women's Perspectives" – Lviv, Ukraine

Contact Person: Halyna Fedkovych, email: women@women.lviv.ua, tel. +380679683220

Information provided by: Yulia Prystash, Lawyer of the organization and Halyna Fedkovych, Attorney at Law, Senior Lawyer of the organization

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 Criminal Code of Ukraine

Article 152. Rape

1. Acts of a sexual nature in a form of vaginal, anal or oral penetration of another person's body with genitals or any other object without the victim's voluntary consent. (rape)

shall be punishable by imprisonment for a term of three to five years.

2. Rape, where it was repeated, or committed by a person who had previously committed any of the offenses provided for by Articles 153 to 155 of this Code, or where such acts were committed against a spouse or ex-spouse or other person with whom the perpetrator is (or was) in family or intimate

relations, or against someone in relation to them performing their official, professional or social duty, or against a woman who was pregnant and the guilty party was aware of it -

shall be punishable by imprisonment for a term of five to ten years.

3. Rape, committed by a group of persons, or rape of a minor -

shall be punishable by imprisonment for a term of seven to twelve years.

4. The actions provided for in part one of this article committed against a person under the age of fourteen, irrespective of their voluntary consent -

shall be punishable by imprisonment for a term of ten to fifteen years.

5. Actions provided for in parts one, two or three of this article, which have caused grave consequences, -

shall be punishable by imprisonment for a term of ten to fifteen years.

6. Actions provided for in part four of this article, where they were repeated or committed by a person who had previously committed any of the offenses provided for by Article 153(4), Article 153(5), Article 155 or Article 156(2) of this Code -

shall be punishable by imprisonment for a term of fifteen years, or life imprisonment.

Note: The consent is considered voluntary if it is a result of a free expression of will in the light of the surrounding circumstances.

Article 153. Sexual Violence

1. Any violent acts of a sexual nature, not involving the penetration of another person's body, without the victim's voluntary consent (sexual violence) -

shall be punishable by imprisonment for a term up to five years.

2. Sexual violence, where it was repeated, or committed by a person who had previously committed any of the offenses provided for by Articles 152, 154, 155 of this Code, or where such acts were committed against a spouse or ex-spouse or other person with whom the perpetrator is (or was) in family or intimate relations, or against someone in relation to them performing their official, professional or social duty, or against a woman who was pregnant and the guilty party was aware of it -

shall be punishable by imprisonment for a term of three to seven years.

3. Sexual violence committed by a group of persons or sexual violence against a minor -

shall be punishable by imprisonment for a term of five to seven years.

4. The actions provided for in part one of this article committed against a person under the age of fourteen, irrespective of their voluntary consent -

shall be punishable by imprisonment for a term of five to ten years.

5. Actions provided for in parts one, two, three or four of this article, which have caused grave consequences, -

shall be punishable by imprisonment for a term of ten to fifteen years.

6. Actions provided for in part four of this article, where they were repeated or committed by a person who had previously committed any of the offenses provided for by Article 152(4), Article 155 or Article 156(2) of this Code -

shall be punishable by imprisonment for a term of fifteen years, or life imprisonment.

Article 154. Compulsion to sexual intercourse

1. Compulsion of a person without his/her voluntary consent to conducting an act of a sexual nature with another person, -

shall be punishable by a fine up to 50 tax-free minimum incomes, or arrest for a term up to six months.

2. Compulsion of a person without his/her voluntary consent to conducting an act of a sexual nature with another person on whom the victim is financially or officially dependent, -

shall be punishable by a fine up to 1000 tax-free minimum incomes, or restraint of liberty for a term up to two years.

3. Actions provided for in parts one or two of this article accompanied with threats to destroy, damage or seize property of the victim or his/her close relatives, or to disclose information defaming the victim or his/her close relatives, -

shall be punishable by restraint of liberty for a term up to three years or imprisonment for the same term.

Article 22. Age of criminal liability

1. Persons who have reached the age of 16 years before committing a criminal offense shall be criminally liable.

2. Persons who have committed criminal offenses at the **age of 14 to 16 years** shall be criminally liable only for [...] **rape** (Article 152), **sexual violence** (Article 153) [...]

Article 115. Murder

1. Murder, that is willful unlawful causing death of another person -

shall be punishable by imprisonment for a term of seven to fifteen years.

2. Murder:

[...]

10) coupled with **rape, or sexual violence**;

[...]

shall be punishable by imprisonment for a term of ten to fifteen years, or life imprisonment [...]

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

- a. Gender specific, covering women only - **NO**
- b. Gender neutral, covering all persons - **YES**
- c. Based on the lack of consent of victim - **YES**
- d. Based on the use of force or threat - **NO**
- e. Some combination of the above - **NO**
- f. Does it cover only vaginal rape? - **NO**
- g. Does it cover all forms of penetration? - **YES**. If yes, please specify.

The crime of rape covers vaginal, anal or oral penetration of another person's body with genitals or any other object. The crime of sexual violence covers any violent acts of a sexual nature, not involving the penetration of another person's body.

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

It is included in Article 152(2) as an act committed against a spouse. Acts committed against an ex-spouse or other person with whom the perpetrator is (or was) in family or intimate relations are also included.

- i. Is the law silent on marital rape? - **NO**
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? – It is explicitly included in specific provisions.
- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? - **NO**

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

There are no such provisions. On the contrary, acts committed against an ex-spouse or other person with whom the perpetrator is (or was) in family or intimate relations are punished more severely.

4. What is the legal age for sexual consent?

Sixteen years, according to Articles 155 and 156 of the Criminal Code.

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

Article 155 of the Criminal Code criminalises “natural or unnatural sexual conduct” with a person under the age of sixteen, committed by an adult.

The age of majority in Ukraine is eighteen. Thus, there are no sanctions for a minor (a person under eighteen) who engages in sexual conduct with someone who is under sixteen.

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

See answer to question 1.

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

There are no specific provisions regarding reparation to the victim of rape and/or sexual violence. However, any person who has suffered material and/or moral damage as a result of a socially dangerous act, can initiate civil action against the suspect or the accused during the pre-trial investigation or in court. Alternatively, such civil action may be initiated later in accordance with the Civil Code (Article 128 of the Criminal procedure code).

But in practice it is very problematic issue in majority of cases.

According to the [REPORT](#) on the analysis of court decisions, surveys and focus groups with judges and lawyers on obstacles faced by women in access to justice (NGO Centre “Women’s Perspectives” 2016):

“An important issue in the protection and restoration of the rights of the victim is compensation for moral and material damage, because rape causes significant damage to the psychological health of the person, as a result of which such a person needs long-term rehabilitation. In addition, it should be noted that in 40% of cases the victim was in a close relationship with the accused and in 21% of cases he was raped in her own home.

Of the analyzed court decisions, civil lawsuits in criminal proceedings were filed in 19% of cases, in 6% of cases it was stated that they will be filed under the Civil Procedural Code of Ukraine proceedings. In 70% of cases, no compensation for moral or material damage was mentioned at all.”

Aggravating and mitigating circumstances

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

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

There is an aggravating circumstance of committing rape by a group of persons.

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**

There are aggravating circumstances of committing rape against someone in relation to them performing their official, professional or social duty, against a woman who was pregnant and the guilty party was aware of it, as well as against minors under 18 and minors under 14 years old (harsher penalties in the latter case).

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

Committing rape against a spouse, ex-spouse or other person with whom the perpetrator is (or was) in family or intimate relations is an aggravating circumstance.

9. Does the law foresee mitigating circumstances for the purposes of punishment? **YES** – If yes, please specify.

There are no mitigating circumstances foreseen specially for those who commit rape. However, there is a list of circumstances mitigating punishment in general provisions of the Criminal Code, namely Article 66. According to it, 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 as a consequence of a concurrence 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 the influence of extreme emotional distress raised by cruel, inhuman or degrading treatment as well as when such conduct by a victim is systematic.

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

9) undertaking a special mission to prevent or uncover criminal activities of an organized group or criminal organization, where this has involved committing an offense in any such case as provided for by this Code.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response?
YES – If so, at what stage and what are the consequences?

According to the Criminal Procedure Code of Ukraine:

Article 469. Initiation and Conclusion of Agreement

3. The reconciliation agreement between the victim and the suspect or the accused may be concluded in proceedings in respect of criminal misdemeanours and crimes of minor gravity, and in criminal proceedings in the form of private prosecution.

5. Conclusion of a reconciliation agreement... may be initiated at any time between the moment of notifying the person of the suspicion and retirement of judges into the deliberation room to pass the sentence/judgment.

Article 473. Implications of Conclusion and Approval of an Agreement

1. Conclusion and approval of a reconciliation agreement shall have the following implications:

a) for the suspect or the accused – restriction of his/her right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the present Code, and waiver from the rights set forth in subparagraph 1 of paragraph 4 of Article 474 of the present Code;

6) for the victim – restriction of his/her right to appeal against a sentence in accordance with the provisions of Articles 394 and 424 of the present Code, and deprivation of the right to demand, at a later date, making the person criminally liable for the corresponding criminal offence and to change his claims for compensation for the inflicted damage.

Article 477. Concept of private criminal proceedings

1. Private criminal proceedings means proceedings which may be initiated by investigator, public prosecutor only based on the victim's application in respect of criminal offences established in:

1) ...paragraph 1 of Article 152 (rape without aggravating circumstances), paragraph 1 of Article 153 (sexual violence), Article 154 (compulsion to sexual intercourse)...

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

There are two aspects of existing practices of reconciliation the victim with the rapist

1. In order to avoid accusations of rape, rapists often take steps to close criminal proceedings before a declaration of suspicion and charges.

According to the Article 284 of the Criminal Procedural Code of Ukraine

1. Criminal proceedings shall be closed if:

1) the absence of an event of a criminal offense has been established;

2) the absence of a criminal offense in the act has been established;

3) insufficient evidence has been established to prove the guilt of a person in court and the possibilities to obtain them have been exhausted;

[...]

Participants in criminal proceedings have the right to request the prosecutor to close the criminal proceedings if there are grounds provided for in this paragraph;

[...]

7) the victim, and in the cases provided for by this Code, his representative has waived the charge of criminal proceedings in the form of private prosecution, **except for criminal proceedings for a criminal offense related to domestic violence;**

[...]

So, there are widespread practice of pressure on the victim by the rapist and / or investigator in order to "reconcile" and file a waiver of charges, which is the basis for closing the criminal proceedings.

In the case when the waiver of charges cannot be grounds for closing criminal proceedings (aggravating circumstances or marital rape), the victim is often "persuaded" to reconcile and not provide the investigation with the necessary explanations or evidence that will result in closing criminal proceedings on the ground of insufficient evidences or other ground mentioned above.

2. Approval of a reconciliation agreement do not always meet the interests of victims and restore victims' rights

According to the Article 471 of the Criminal Procedural Code of Ukraine

1. The reconciliation agreement shall specify its parties, the formulation of suspicion or accusation and its legal qualification, [...] the amount of damage caused by the criminal offense, actions not related to compensation for damage that the suspect or accused are obliged to commit in favor of the victim, the term of their commission [...] the consequences of non-performance of the agreement.

But in practice there are no provisions on compensation for moral and material damage caused by rape in reconciliation agreements of majority of cases. Thus, the rights of the victim are not restored. ([REPORT](#) on the analysis of court decisions, surveys and focus groups with judges and lawyers on obstacles faced by women in access to justice (NGO Centre "Women's Perspectives" 2016).

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **YES** If yes, please specify.

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

- b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? **YES** – if the perpetrator reconciles with the victim (see the answer to the question 10 above)

Prosecution

12. Is rape reported to the police prosecuted *ex officio* (public prosecution)? **YES** – but only if it is rape or sexual violence with aggravating circumstances.
13. Is rape reported to the police prosecuted *ex parte* (private prosecution)? **YES** – but only if it is rape or sexual violence without aggravating circumstances. Compulsion to sexual intercourse (with another person) is also prosecuted *ex parte*.
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? **YES** – see “reconciliation agreement” above.
15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? **NO** – rape of minors is an aggravated circumstance that rules out private criminal proceedings and, as the result, the possibility to conclude a reconciliation agreement.

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

According to Articles 12 and 152 of the Criminal Code, rape (without the aggravating circumstances) is a crime “of minor gravity”. Paragraph 1 of the Article 49 of the Criminal Code stipulates that a person shall be discharged from criminal liability if five years have elapsed from the date of the criminal offense to the effective date of the judgment, where a crime of minor gravity has been committed.

Rape, where it was repeated, or committed by a person who had previously committed any of the offenses provided for by Articles 153 to 155 of the Criminal Code, or where such acts were committed against a spouse or ex-spouse or other person with whom the perpetrator is (or was) in family or intimate relations, or against someone in relation to them performing their official, professional or social duty, or against a woman who was pregnant and the guilty party was aware of it – is a grave crime. The limitation period in this case is 10 years.

Rape committed with other aggravated circumstances (paragraphs 3, 4, 5, 6 of Article 125 of the Criminal Code) is a particularly grave crime. The limitation period in this case is 15 years.

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

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? If yes, please specify. **NO** , but in practice medical evidence is the most important evidence in rape cases.

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

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

War and/or conflict

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

There is, however a general provision on violence against population in an operational zone (Article 433 of the Criminal Code), found under the section on “Criminal offenses against the established procedure of military service (military offenses)”.

Article 433. Violence against population in an operational zone

1. Violence, unlawful destruction or taking of property under the pretext of military necessity, which were committed in respect of population in an operational zone, -

shall be punishable by imprisonment for a term of three to eight years.

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

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

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? **NO** – Ukraine has signed the Rome Statute on 20 January 2000, but has not yet ratified it.

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.

	Number of criminal offences registered (rape)	Number of criminal offences where a report of suspicion was issued to the suspect (rape)	Number of criminal offences where the charge was sent to the court (rape)	Number of persons convicted of rape by the court
Jan - Dec 2015	323	203	155	NA
Jan - Dec 2016	349	239	193	NA
Jan - Dec 2017	259	232	162	67
Jan - Dec 2018	203	178	145	46
Jan - Dec 2019	355	310	220	65
Jan - Oct 2020	344	303	208	NA

The above information was provided on the [website](#) of the Prosecutor General's Office of Ukraine as well as in the official [2018](#) and [2019](#) reports by the Supreme Court.

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.

There are serious barriers for victims in access to justice, that make it very difficult to report the rape, among them:

- widespread gender stereotypes about the "guilt" of the victim in rape; tolerance of sexual violence as a normative behavior of men and at the same time accusing women of false allegations of rape for mercantile interests; threats from the rapist and justified fear of victim for her life and health; high level of corruption among the police and risk of corruption influence of the rapist; condemnation of society, shame, etc.
- gender stereotypes, prejudice and discriminatory practices against the victim by the police, prosecutors and the court
- Re-victimization of the victim at the stage of pre-trial investigation – in many cases investigations conducted by male police officers that can be a reason for refusal to report the rape. For example, in one criminal case, a woman told the police only about the theft, but did not say about the rape, because, according to her words: *" I reported only the robbery, because there were only men among police officers when the explanations were taken, I could not overcome the feeling of shame."* ([REPORT](#) on the analysis of court decisions, surveys and focus groups with judges and lawyers on obstacles faced by women in access to justice (NGO Centre "Women's Perspectives" 2016).

- Despite the existence of new legislation on the qualification of rape without the consent of the victim, there is still no methodology for investigating these crimes and in practice the investigation and prosecutor's office further substantiate the accusations of using force, threats or vulnerability of the victim.
- Problems with access to the legal services – victims of crimes are not entitled for the free legal aid provided by state (except victims of domestic violence). Therefore, if the average monthly income of the victim exceeds two times the subsistence level, she is not entitled to the free legal aid according to the Law of Ukraine “On the free legal aid”, and the cost of the services of a qualified lawyer is unaffordable for most victims.