

The Coalition of Finnish Women’s Associations NYTKIS thanks the Special Rapporteur on violence against women, its causes and consequences, Ms Dubravka Simonovic for the opportunity to fill in the requested questionnaire to inform Your report on the incorporation of the international human righst framework’s standards on rape as a human rights violation and gender-based violence against women into legislation and practice at the national level. NYTKIS is an NGO and an umbrella organization for Finnish Women’s Associations.

The legislative reform regarding the Criminal code Chapter 20 (sexual violence and rape) is currently under a legislative reform process. However the process is in the early stages.

**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.

Please see the attachments of the Finnish Criminal Code (unofficial translation by Ministry of Justice) Chapter 20.

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.

Section 10 - Definitions (509/2014) (1) For the purposes of this Act, sexual intercourse refers to the sexual penetration of the body of another, by a sex organ or directed at a sex organ or anal passage, or to the insertion of the sex organ of another into the body of the offender. (2) For the purposes of this Act, a sexual act refers to an act which, with consideration to the offender, the person at whom the act was directed and the circumstances of commission, is sexually significant.

* 1. Is marital rape in this provision explicitly included? YES / **NO**
  2. Is the law silent on marital rape? **YES**/NO
  3. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**/NO
  4. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /**NO**

1. 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.

1. What is the legal age for sexual consent?

The legal age of consent is 16 years old.

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

Yes.

Section 7(a) – Restrictive provision (540/2011) An act that does not violate the sexual self-determination of the subject and where there is no great difference in the mental and physical maturity of the parties shall not be deemed sexual abuse of a child, or the aggravated sexual abuse of a child referred to in section 7, subsection 1, paragraph 1.

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

Section 1 - Rape (509/2014) (1) A person who forces another into sexual intercourse by the use or threat of violence directed against the person shall be sentenced for rape to imprisonment for at least one year and at most six years. (2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is . unable to defend himself or herself or to formulate or express his or her will, has sexual intercourse with him or her, shall be sentenced for rape. (3) If the rape, taking into consideration the pettiness of the threat or the other circumstances connected with the offence, is less serious when considered as a whole than the acts referred to in subsections 1 or 2, the offender shall be sentenced to imprisonment for at least four months and at most four years. A person who forces another into sexual intercourse through other than the threat referred to in subparagraph 1 shall be sentenced in a similar manner. What is provided above in this subparagraph does not apply if violence has been used in the rape. (4) An attempt is punishable.

Section 2 - Aggravated rape (509/2014) (1) If, in the rape, (1) grievous bodily injury, serious illness or a state of mortal danger is caused to another, (2) the offence is committed by several people, or especially marked mental or physical suffering is caused, (3) the victim is a child below the age of eighteen years, (4) the offence is committed in a particularly brutal, cruel or humiliating manner, or (4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made, and the rape is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated rape to imprisonment for at least two years and at most ten years. (2) An attempt is punishable.

Section 4 - Coercion into a sexual act (563/1998) (1) A person who by violence or threat coerces another into a sexual act other than that referred to in section 1 or into submission to such an act, thus essentially violating his or her right of sexual self-determination, shall be sentenced for coercion into a sexual act to a fine or to imprisonment for at most three years. (2) Also a person who, by taking advantage of the fact that another person, due to unconsciousness, illness, disability, state of fear or other state of helplessness, is unable to defend himself or herself or to formulate or express his or her will, causes him or her to engage in or submit to the sexual act referred to in subsection 1, essentially violating his or her right of sexual self-determination, shall be sentenced for coercion into a sexual act. (495/2011) (3) An attempt is punishable.

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?

There are no fixed levels of reparations. The Board for Bodily Injury (henkilövahinkoasiain neuvottelukunta) produces recommendations for the level of reparations, that are paid by the perpetrator.

https://oikeusministerio.fi/documents/1410853/5047355/HEVA\_suositukset\_2017.pdf/7fc57b69-133c-475b-9687-c323cd6e00c3/HEVA\_suositukset\_2017.pdf

https://www.valtiokonttori.fi/en/service/compensation-to-crime-victims/**Aggravating and mitigating circumstances**

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

Section 2 - Aggravated rape (509/2014) (1) If, in the rape, (1) grievous bodily injury, serious illness or a state of mortal danger is caused to another, (2) the offence is committed by several people, or especially marked mental or physical suffering is caused, (3) the victim is a child below the age of eighteen years, (4) the offence is committed in a particularly brutal, cruel or humiliating manner, or (4) a firearm, edged weapon or other lethal instrument is used or a threat of other serious violence is made, and the rape is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated rape to imprisonment for at least two years and at most ten years. (2) An attempt is punishable.

* 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**

Except in cases involving children.

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

No.

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

(3) If the rape, taking into consideration the pettiness of the threat or the other circumstances connected with the offence, is less serious when considered as a whole than the acts referred to in subsections 1 or 2, the offender shall be sentenced to imprisonment for at least four months and at most four years. A person who forces another into sexual intercourse through other than the threat referred to in subparagraph 1 shall be sentenced in a similar manner. What is provided above in this subparagraph does not apply if violence has been used in the rape.

Chapter 6, Section 6 – Grounds reducing the punishment. The following are grounds for reducing the punishment: (1) significant pressure, threat or a similar influence that has affected the commission of the offence, (2) strong empathy or an exceptional and sudden temptation that has led to the offence, the exceptionally great contribution of the injured party or a corresponding circumstance that has been conducive to decreasing the capability of the offender to conform to the law, (3) reconciliation between the offender and the injured person, other attempts of the offender to prevent or remove the effects of the offence or their attempt to further the solving of the offence, and (4) the grounds mentioned in section 8(1) and (3).

Chapter 6, Section 7 –Grounds mitigating the punishment. In addition to what is provided above in section 6, grounds mitigating the punishment that are also to be taken into consideration are (1) another consequence to the offender of the offence or of the sentence, (2) the advanced age, poor health or other personal circumstances of the offender, and (3) a considerably long period that has passed since the commission of the offence, if the punishment that accords with established practice would for these reason lead to an unreasonable or exceptionally detrimental result.

Chapter 6, Section 8 –Mitigation of the penal scale. (1) The sentence is determined in accordance with a mitigated penal scale if (1) the offender has committed the offence below the age of 18 years, (2) the offence has remained an attempt, (3) the offender is convicted as an abettor in an offence, through application of the provisions of Chapter 5, section 6, or their complicity in the offence is otherwise clearly less than that of other accomplices, (4) the offence has been committed in circumstances that closely resemble those that lead to the application of grounds for exemption from liability, or (5) there are special reasons for this pursuant to section 6 or 7 or on other exceptional grounds, mentioned in the sentence. (2) In determining the punishment pursuant to subsection 1, at most three fourths of the maximum sentence of imprisonment or fine and at least the minimum sentence provided for the offence may be imposed on the offender. If the offence is punishable by life imprisonment, the maximum punishment is instead twelve years of imprisonment and the minimum punishment is two years of imprisonment. (3) What is provided in subsection 2 also applies in determining the sentence for a person who committed an offence in a state of diminished responsibility. However, diminished responsibility does not affect the applicable maximum punishment. (4) If the maximum punishment for the offence is imprisonment for a fixed period, the court may in cases referred to in this section impose a fine as the punishment instead of imprisonment, if there are especially weighty reasons for this.

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?

Yes and reconciliation between the victim and perpetrator may often take place before the case is even brought before the prosecutor. Reconciliation may be grounds for the prosecutor to not press charges, however it does not prevent the prosecutor from doing so, even if a mutual agreement has been reached between the victim and perpetrator.

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

Yes, although rape cases have not been seen to be suitable to deal with in reconciliation, in practice this is not the case. A research conducted by Tiina Qvist at the University of Lapland in 2019 found that some rape cases had been dealt with in reconciliation.

Tiina Qvist, “Parisuhdeväkivallan sovittelu Suomessa.” [Reconciliation of intimate partner violence in Finland], 2019, Acta electronica Universitatis Lapponiensis 253. ISBN 978-952-337-138-5. ISSN 1796-6310.

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

Section 11 - Right to bring charges (509/2014) The public prosecutor may not bring charges for sexual harassment that has been directed at a person who has reached the age of eighteen years, unless the injured party reports the offence for the bringing of charges or unless a very important public interest requires that charges be brought.

* 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**

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**/NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/**NO**
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/**NO**
4. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/**NO**
5. Please provide information on the statute of limitations for prosecuting rape.

Criminal Code, Chapter 8, Section 1 –Time-barring of the right to bring charges. Subsection 2) The right to bring charges is time-barred if charges have not been brought (1) within twenty years, if the most severe penalty provided for the offence is fixed-term imprisonment for over eight years, [aggravated rape, aggravated sexual abuse of a child, aggravated rape of a child] (2) within ten years, if the most severe penalty is imprisonment for more than two years and at most eight years, [rape, sexual abuse of a child, sexual abuse] (3) within five years, if the most severe penalty is imprisonment for over a year and at most two years, and (4) within two years, if the most severe penalty is imprisonment for at most a year, or a fine or a summary penal fee.

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

Chapter 8, section 1, subsection (5) The right to bring charges for sexual abuse of a child and aggravated sexual abuse of a child becomes time-barred at the earliest [sic] when the complainant reaches the age of twenty-eight years. The same applies to rape, aggravated rape, coercion into sexual intercourse, coercion into a sexual act, sexual abuse, pandering, aggravated pandering, trafficking in persons and aggravated trafficking person, directed at a person below the age of eighteen years. In the case of enticement of a child for sexual purposes referred to in Chapter 20, section 8(b), the right to bring charges becomes time-barred when the person who was the object of the offence reaches the age of twenty-three years

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

The victim may request a separate waiting are at the court hearing, a screen to be placed between them and the perpetrator or that they may testify without the perpetrator being in the court room. Victims have a right to a support person and legal counsel free of charge. Additionally, members of the public or representatives of the media may be barred from the hearing and the identity of the victim and the details of the trial can be omitted from the judgement.

Children are heard via video.

**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.

**We are not able to provide this data since it is not fully available for NGOs**

1. 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.

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