**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

l . 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**

**Article 164**

**Rape**

1 - Whoever constrains another person to:

a) Practice with yourself or with another copulation, anal intercourse or oral intercourse; or

b) Practice acts of vaginal, anal or oral introduction of parts of the body or objects;

is punished with sentence of imprisonment from one to six years

2 - Whoever, by means of violence, serious threat or after having rendered, for such purposes, another person unconscious or incapable of resisting, constrains such person:

a) To suffer or to commit, with yourself or with another, copula, anal intercourse or oral intercourse; or

b) To suffer vaginal or anal introduction of parts of the body or objects;

is punished with sentence of imprisonment from three to ten years.

3 - For the purposes of paragraph 1, constraint is understood to be any means, not provided for in the preceding paragraph *[2]*, used to practice the acts referred to in the respective subparagraphs a) and b) against the knowable will of the victim.

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only

**NO**

* 1. Gender neutral, covering all persons

**YES**

* 1. Based on the lack of consent of victim

**YES**

* 1. Based on the use of force or threat

**YES**

* 1. Some combination of the above. YES / NO. If yes, please specify.

**NO**

* 1. Does it cover only vaginal rape?

**NO**

* 1. Does it cover all forms of penetration? If yes, please specify.

**YES**. Please see Article 164 (1) above.

* 1. Is marital rape in this provision explicitly included?

**NO**

l. Is the law silent on marital rape?

**NO**

 Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?

**YES.** Article 152 of the Criminal Code (domestic violence) cover sexual crimes, including marital rape.

k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?

**NO**. Rape in a marital context is also a crime, as set forth in Article 152 of the Criminal Code.

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 with corresponding translations.

**NO** provisions excluding criminalization of the perpetrator if the victim and the alleged perpetrator live together in a sexual relationship or have/had a sexual relationship are foreseen in the criminal law.

1. What is the legal age for sexual consent?

In the crimes of sexual abuse provided for in the Criminal Code, the aim is to protect the freedom of sexual self-determination, which is damaged whenever, according to Article 171 (1) and (2), the minor under 14 years of age is the victim of an important sexual act, which can typically consist of copulation, anal or oral intercourse, or vaginal or anal introduction of parts of the body or of objects

Between the ages of 14 and 16, it is a crime only if the adult abuses the child's inexperience (Article 173 of the Criminal Code). This means that if the minor is over the age of 16, the conduct of the adult should not be considered a crime.

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

In Portugal the age to stop being considered as a child is 18 years old.

Minors under 18 are not punished if they engage in sexual intercourse with minors between the ages of 14 and 16. However, adults over 18 will be punished if they engage in sexual intercourse with minors between 14 and 16, abusing from their inexperience, as foreseen in Article 173 of the Criminal Code:

**Article 173**

**Sexual acts with teenagers**

1 - Anyone who is an adult, practice a significant sexual act with a minor between the ages of 14 and 16, or leads to it being practiced by the minor with another person, abusing his/her inexperience, is punished with a prison sentence of up to 2 years.

2 - (…)

3 - (…)

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

Please see the answer provied to Question 1.

Article 164 (1) - sanction of imprisonment from 1 to 6 years.

Article 164 (2) - sanction of imprisonment from 3 to 10 years.

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 victim of a crime can claim compensation from offender for the damage he/she has suffered. The compensation is required through a civil compensation request, which is made in the respective criminal procedure.

In the event of a rape in a marital context and when the offender is convicted of the crime of domestic violence (Article 152 of the Criminal Code), in addtion to the criminal penalty he/she should pay a compensation to the victim, regardless of the fact that the victim formulated or not the request for compensation, as the court will always have to unofficially arbitrate a reparation for the losses suffered with the crime, pursuant to the combined application of Article 21 of Law no. 112/2009, of 16 September, and Article 82-A, of the Code of Criminal Criminal Procedure.

**Aggravating and mitigating circumstances**

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

As stipulated in Article 177 of the Criminal Code (applicable to Article 164), aggravating circumstances are foreseen if the victim is ascendant, descendant, adopter, adopted, relative or similar up to the second degree of the offender; or if in a family relationship, cohabitation, guardianship or custody, or hierarchical, economic or work dependence on the offender and the crime is committed taking advantage of this relationship.

The penalties provided for are increased by one third, in their minimum and maximum limits.

If the victim is a particularly vulnerable person, due to age, disability, illness or pregnancy, the penalties are increased by one third, in their minimum and maximum limits,

If the offender has a sexually transmitted disease the penalties are increased by one third, in their minimum and maximum limits,

If the crime is committed jointly by two or more persons, the penalties are increased by one third, in their minimum and maximum limits.

The penalties are increased by half, in their minimum and maximum limits, if the crime results in pregnancy, serious injury to physical integrity, transmission of a pathogen that creates a danger to the life, suicide or death of the victim.

The penalties are increased by one third, in their minimum and maximum limits, when the crimes are committed in the presence or against a victim under the age of 16 years of age;the penalties are increased by half, in their minimum and maximum limits, when crimes are committed in the presence or against a victim under 14 years of age.

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

**YES**

* 1. 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**

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

**NO**

As stated before, rape in a marital context is also a crime, as set forth in Article 152 of the Criminal Code. The aggravating circunstances foreseen in Article 152 (2) are applicable in this concrete situation.

1. Does the law foresee mitigating circumstances for the purposes of punishment?

If yes, please specify.

**YES.**

According to Article 72 of the Criminal Code the determination of the extent of the sentence, within the limits established by law, is made on the basis of the offender’s guilt and of the prevention requirements. For the determination of the concrete sentence, the court should take into consideration all circumstances that, although not taking part of the type of the crime, that are in favour or against the offender, namely:

a) The level of unlawfulness of the act, the way of its execution and the seriousness of its consequences as well as the level of breach of the duties imposed to the offender;

b) The intensity of the wilful conduct or of the negligence;

c) The feelings evidenced in the committing of the crime and the purposes or motives that have determined it;

d) The personal conditions of the offender and his economic situation;

e) The prior and subsequent conduct to the act, especially when it is aimed to repair the consequences of the crime;

f) The lack of preparation to maintain a lawful conduct, evidenced in the act, when such lack should be censured through the applicability of a sentence.

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

**NO**

* 1. Regardless of the law, is reconciliation permitted in practice? and what is the practice in this regard?

**NO**

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

**NO**

1. if the perpetrator marries the victim of rape?

**NO**

1. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? **NO**,even in the cases where the perpetrator is a she.

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)?

**YES**

It should be pointed out that rape is considered, in the Portuguese criminal law a “public crime” meaning that its investigation and prosecution does not depend of a compaint.

1. Is rape reported to the police prosecuted ex parte (private prosecution)?

**NO**

1. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?

**NO**

1. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?

**NO**

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

According to Article 118 (1) of the Criminal Code, the criminal procedure is extinguished, due to the statute of limitations, after ten years on the commission of the crime of rape.

1. Which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any?

In what regards crimes against freedom and sexual self-determination of minors, where rape is included, the criminal procedure is not extinguished before the 23-year of the victim, accordanding to Article 118 (5) of the Criminal Code.

1. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? If yes, please specify.

**NO**

1. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial?

**NO**

1. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.

**YES**

In order to avoid re-victimization, the Victim´s Statute, approved by Law no. 130/2015, of 4/September, expressly provides for the righ of the victim to be heard in an informal and reserved environment to avoid exposed him/her to pressures of any kind.

Furthermore, the questioning and eventual submission to medical examination must be carried out immediately after acknowledgement of the commission of the crime, by any means, and only if strictly necessary for the inquiry purposes. Likewise, and for the same purpose, it must be avoided the repetition of theses procedures. These measures enshrined in the Victim Statute, aim directly at preventing re-victimizations.

The victim can also request protection measures such as: tele-assistance; police monitoring in all procedural acts; videoconference or teleconference; monitoring by a technician specially qualified by the Public Prosecution or the Judge; the right to make statements for future memory; the right to be interviewed by a person of the same gender, unless the interview is done by the Public Prosecutor or Judge; the right to be able to wait for judicial proceedings in a different room from the offender and measures to protect their entry in and exit from the room; the right to a closed trial (without persons in the room); coercive measures applied to the offender (as preventive detention, prohibition of contacts and measures to kept him/her away from the victim), in accordance with Article 21 of the Victim Statute.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity?

**YES**

1. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?

**NO**

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?

**NO**

1. Has the Rome Statute of the International Criminal Court (ICC) been ratified?

**YES**

**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.

|  |  |  |  |
| --- | --- | --- | --- |
| Rape | | | |
| Years | Cases reported | Cases prosecuted | Cases sanctioned |
| 2014 | 374 | 110 | 76 |
| 2015 | 375 | 128 | 89 |
| 2016 | 335 | 141 | 107 |
| 2017 | 408 | 145 | 77 |
| 2018 | 421 | 121 | 76 |

Source: DGPJ, <https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Crimes_violentos.aspx>

**Other**

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.

As stated before, rape is a public crime and no particular or additional barriers to reporting and prosecution and to the accountability of perpetrators in the portuguese legal and social context have been found.

Furthermore, the Portuguese [Commission for Citizenship and Gender Equality](https://www.cig.gov.pt/) (CIG) led a project called Sexual Violence in Intimate Relationships, initiated in 2017 and funded by the European Commission, in collaboration with **civil society** through the Family Planning Association (APF) and with other public actors in different areas, namely **security forces** represented by General Secretariat of the Ministry of Internal Affairs (SGMAI), **justice** represented by the National Institute of Legal Medicine and Forensic Sciences (INMLCF, IP), **health** represented by the Directorate-General for Health (DGS), **social security** represented by the Social Security Institute (ISS. IP), and **education** represented by the General Directorate of Education (DGE).

One of the concluded project activities consists on a study about “Beliefs and Attitudes of Professionals regarding Sexual Violence in Intimate Relationships”. Its main objective was to characterize the beliefs and attitudes of security forces, justice, health, social security and education professionals regarding sexual violence in intimate relationships. This study main results are:

* Despite the fact that domestic violence has been a public crime in Portugal for almost two decades, professionals believe sexual violence in intimate relations, more specifically violence perpetrated in the context of marriage, is **not common**, some still consider it a **private matter**, and some refer to it as an **invisible problem** when compared with physical and psychological violence.
* Professionals still have persisting stereotypes and prejudices about victims and perpetrators’ *sexual conduct*. In the context of intimate relationships, more precisely marriage, these stereotypes tend to be more legitimated and lead to the idea that this is a private matter. It is referred that were domestic violence is already considered a private matter, **sexual violence**, **within marriage**, is considered even **more private and secret**.
* Professionals consider sexual violence in intimate relations to be a complex and hard to approach problem, for them (as professionals), which causes **intervention** (within the domestic violence crime[[1]](#footnote-1)) to be either **too general** or *overlooking* issues regarding this form of violence within domestic violence.
* Professionals agree that victims of sexual violence should report the crime to authorities. Nevertheless, these professionals state that they understand victims’ reluctance to report due to several reasons, such as lack of perception that they are experiencing a crime – self-awareness of the crime, lack of trust in the system, shame/embarrassment, higher degree of exposure (victims and professionals have to address the victim´s sexual intimacy). Consequently, these professionals mention that **sexual violence between partners is even less frequently reported than violence perpetrated by strangers**.
* There is a certain tendency to address sexual violence in **psychological or psychiatric terms**, with the characteristics of both victims and perpetrators being the most prominent reference in explanations of abusive behavior (**unaccountability for the perpetrator**). The **intergenerational transmission of violence** is also mentioned as a common reason for this crime being carried out (culture acceptance of the crime).
* Some professionals consider that sexual violence in intimate relationships takes place most frequently when perpetrators are under the **effects of alcohol**.
* There is an increasingly lower tendency to consider that victims of sexual violence *provoke* perpetrators (blaming the victim).
* Professionals feel there is a need for more **specific training and instruments/resources in this area** and a **stronger inter-sectorial and more humanized approach** to address this problem.

In the final section, the study presents a set of 20 recommendations about intervention with victims and perpetrators of sexual violence in intimate relationships. These recommendations range from information to prevention on gender-based violence, including qualified training of human resources and enhanced procedures, mechanisms and protection measures for victims.

In this context, it is also important to mention the *National Strategy for Equality and Non-Discrimination.*

Portugal has made significant efforts regarding awareness, prevention and protection on violence against women and domestic violence (VAWDV) over the last two decades. The *National Strategy for Equality and Non-Discrimination 2018-2030 (ENIND)* – [Portugal + Igual - Estratégia Nacional para a Igualdade e a Não Discriminação 2018-2030](https://dre.pt/web/guest/home/-/dre/115360036/details/maximized) which includes the new Action Plan for Preventing and Combating Violence against Women and Domestic Violence 2018-2021 (PAVMVD) - [Plano de Ação para a Prevenção e o Combate à Violência contra as Mulheres e à Violência Doméstica 2018-2021](https://dre.pt/application/conteudo/115360036) is the most recent sustainable national instrument to prevent and combat VAWDV. The elimination of gender stereotypes is a central concern of the ENIND, guiding all measures and actions. ENIND considers gender stereotypes the fuel on reinforcing and perpetuating historical and structural models of discrimination, the boost for gender-based violence and the reason why substantive equality between women and men is still far from achieved in our society.

The Action Plan for Preventing and Combating Violence against Women and Domestic Violence 2018-2021 (PAVMVD) has six major strategic goals:

1. Prevention - eradicate social tolerance towards all expressions of VAWDV, raise awareness of its impacts and promote a non-violence culture, human rights, equality and non-discrimination.
2. Support and protection – reinforcing support and protection measures and the domestic violence victims’ network.
3. Intervention with perpetrators, promoting a culture of accountability.
4. Training and qualification for professionals and services in VAWDV intervention.
5. Investigation, monitoring and evaluation of public policies.
6. Prevention and combating harmful traditional practices (PTN), namely female genital mutilation and child, early and forced marriages.

1. The object of this study was sexual violence within an intimate relationship. Consequently, sexual violence was discussed as one form of violence within the domestic violence crime itself (that contains several forms of violence – physical, psychological, economic and sexual). Nevertheless, sexual violence, as rape, is an autonomous crime, as explained in previous questions. [↑](#footnote-ref-1)