**Response to the Questionnaire**

**by the Turkish Ministry of Justice**

**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.

The [most relevant] articles 102, 103 and 104 of the Turkish Penal Code (TPC-No.5237) are respectively as follows:

**"Sexual Assault
Article 102** – (1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of five to ten years, upon the complaint of the victim. Where the sexual assault ceases at the level of molestation (importunity), the term of imprisonment shall be from two years to five years.

(2) Where the act is committed by means of inserting an organ, or another object, into the body, the offender shall be punished with a term of imprisonment not less than twelve years. In case the act is committed against the offender's spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.

(3) Where the offence is committed:

a) against a person who is physically or mentally incapable of defending themself;

b) by misusing the influence derived from a position in public office, guardianship or a private working relationship;

c) against a person with whom s/he has up to third degree blood relation or kinship, or by stepfather, stepmother, half-sibling, adopter or adopted child,

d) by using weapons or together with the cooperation of more than one person,

e) by taking the advantage of environment where people have to live together collectively,

the penalties imposed in accordance with paragraphs above shall be increased by half.

(4) Where the force resorted for the commission of the sexual assault results in serious (aggravated) consequences of intentional injury, provisions on intentional injury apply in addition.

(5) Where, as a result of the offence, the victim enters a vegetative state, or dies, a penalty of aggravated life imprisonment shall be imposed."

**"Sexual abuse of children**

**Article 103** – (1) Any person who abuses a child sexually is sentenced to an imprisonment from eight years to fifteen years. Where the sexual abuse ceases at the level of molestation (importunity), the term of imprisonment shall be from three years to eight years. If the victim has not completed the age of twelve, the sentence to be imposed cannot be less than ten years in case of abuse and five years in case of molestation (importunity). Where the offender of the later is also a child, initiating an investigation and prosecution depends on the complaint of the victim's parents or guardian. Sexual abuse means;

a) any act of a sexual nature against a child who has not completed fifteen years of age or, though having completed fifteen years, lacks the competence to understand the meaning and consequences of such acts,

b) sexual acts conducted against any other child with the use of force, threat, deception or any other method affecting the willpower.

(2) Where the act is committed by means of inserting an organ, or another object, into the body, the offender shall be punished with a term of imprisonment not less than sixteen years. If the victim has not completed the age of twelve, the sentence to be imposed cannot be less than eighteen years.

(3) If the offense is committed;

a) by participation of more than one person in the offense,

b) by taking the advantage of the environment where people have to live together collectively,

c) against a person with whom s/he has up to third degree blood relation or kinship, or by stepfather, stepmother, half-sibling or adopter,

d) by his/her guardian, tutor, instructor, caregiver, custodial parents or by those who provide him/her with health care or are under an obligation to protect, look after or supervise him/her,

e) by misusing the influence derived from a position in public office or a private working relationship,

the punishment to be imposed according to the above paragraphs is increased by half.

(4) In cases where the sexual abuse is conducted against the children identified under sub-paragraph (a) of the first paragraph by use of force or threat, or against the children identified under sub-paragraph (b) therein by use of arms, the punishment to be imposed according to the above paragraphs is increased by half.

(5) In case of use of force and violence during sexual assault in such a way to result in serious consequences of intentional injury, the offender is additionally punished for intentional injury.

(6) In case of vegetative state or death of a person as a result of the offense, the offender is sentenced to aggravated life imprisonment."

**"Sexual intercourse with those who have not achieved adulthood**

**Article 104** - (1) Any person who had a sexual intercourse with a child who completed the age of fifteen, without using force, threat and deceit, shall be sentenced to a term of imprisonment from two years to five years upon complaint.

(2)If the offence is committed by a person who is under a restraint of marriage with the victim, the offender shall be sentenced to a term of imprisonment from ten years to fifteen years without a complaint being sought.

(3)If the offence is committed by a person providing care for a child prior to adopting the child or by a person who is under an obligation to protect, look after or supervise the child under custodial relationship, the offender shall be sentenced to a punishment under the second paragraph without a complaint being sought."

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**

**Regarding the article 102** entitled "Sexual Assault", under which acts of sexual assault against adults are regulated, it is "**Yes**". "Consent" is among the reasons suspending criminal liability, as is clarified under the second paragraph of 26 of the TPC, when the act conducted as a result of the declared consent provided that the person concerned has full authority to give it. It should not be tainted, at the same time, by any factor such as deception.

**Regarding the article 103** entitled "Sexual abuse of children", where children who have not completed fifteen years of age or, though having completed fifteen years, lack the competence to understand the meaning and consequences of such acts, it is "**No**". Since those children are not legally eligible to give consent, it is deemed as what is called as "statutory rape" in some jurisdictions, even if the act/s have been performed on supposedly mutual consent.

**Regarding the article 104** entitled "Sexual intercourse with those who have not achieved adulthood", perpetrators having sexual intercourse with children between the ages 15 to 18 can be prosecuted upon complaint even though "consent" is a prerequisite. As for the second and third paragraphs of the article, acts of sexual intercourse defined under those, are prosecuted ex-officio regardless of the consent so the answer is "**No**".

* 1. Based on the use of force or threat  **YES**/ **NO**

**Regarding** **the article 102** entitled "Sexual Assault" it is "**Yes**". While use of force or threat is deemed inherently necessary, to a certain level to suppress the resistance of the victim, it should be noted that perpetrators may make use of any other factor affecting the willpower of the victim, during/for commission of the crime, as exemplified in the preamble of the article, such as deceiving the victim, putting him/her into a state of unconsciousness or taking advantage of sleepiness, etc.

**Regarding the article 103** entitled "Sexual abuse of children", where children who have not completed fifteen years of age or, though having completed fifteen years, lack the competence to understand the meaning and consequences of such acts, it is "**No**". Since those children are not legally eligible to give consent, it is deemed as what is called as "statutory rape" in some jurisdictions, even if the act/s have been performed on supposedly mutual consent.

* 1. Some combination of the above.  **YES** / ~~NO~~
	2. Does it cover only vaginal rape?  ~~YES~~ /**NO**
	3. Does it cover all forms of penetration? **YES**/~~NO~~. If yes, please specify.

The relevant provisions indicated above make mention of introduction of an organ (or an item/object) "into the body" so the legal formulation covers any form of penetration.

* 1. Is marital rape in this provision explicitly included? **YES** / ~~NO~~

Please refer to the second sentence of the second paragraph under the article 102 entitled "Sexual assault", the text of which is given above.

* 1. Is the law silent on marital rape? ~~YES~~/**NO**
	2. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO

It is included.

* 1. 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.

There is not such a provision.

1. What is the legal age for sexual consent?

The legal age for sexual consent is, by rule, fifteen. Any consent of children who have not completed fifteen years of age or, though having completed fifteen years, lack the competence to understand the meaning and consequences of such acts is considered to be null and void. However, perpetrators having sexual intercourse with those between 15 and 18 years old can still be prosecuted upon complaint, under the first paragraph of the article 104 of the TPC.

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

The only provision differentiating for sexual activity between peers is the fourth sentence of the first paragraph under the article 103, by which prosecution of sexual conduct, not transcending the level of molestation, is subject to complaint. There is no any other provision dedicated to the acts between peers.

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

The provisions on sexual assault and sexual abuse of children cover different types of unlawful sexual conduct -common feature of which is physical contact- including but not limited to what is described as "rape" by some jurisdictions. If the term of "rape" necessarily connotes any form of penetration, please refer to the second paragraphs under the articles both 102 and 103 where the lower limit of criminal sanctions, twelve and sixteen years, respectively, are set forth for the perpetrators, without taking into account any matter of aggravation. Otherwise please also refer to the other paragraphs.

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?

On the purpose of providing crime victims, particularly those in vulnerable situations such as women and children, with effective services of information, guidance and psycho-social support in the course of legal proceedings, Departments for Legal Assistance and Victim Services were established within the courthouses. These departments consist of different sections dedicated to provision of information, guidance, support and legal assistance in terms of both civil and criminal matters. Victims receive psycho-social support, after an individual assessment, if they would not be able to effectively pursue legal proceedings on their own, which aims at ensuring a better engagement by reducing their anxiety levels. In this process, victims are not only guided in accessing essential services rendered by different institutions but also represented, where needed, by the departments. In case victims are in need of a specialist's support, while struggling to cope with the situation, they may also be referred to psycho-social support services provided by the Ministry of Family, Labor and Social Services or psychiatry services provided by the Ministry of Health, on the way to their rehabilitation.

On the other side, with the aim of refraining from any undue confrontation between perpetrators and victims and reducing the anxiety level that may be experienced during ordinary hearings, there exist special physical arrangements in courthouses, namely "Judicial Interview Rooms" (AGOs) enabling the testimony to be taken through experts, such as psychologists, pedagogues or social workers. Taking vulnerabilities into consideration, all questions need to be posed are asked by the expert interviewing with the victim and the interview is transmitted to the courtroom, via technological means, where the hearing is being held. While defendant's cross-examination right continues to be respected in this setting, distant and indirect hearing of victims contributes eliminating the risk of secondary victimization emanating from undue confrontations.

Moreover, the following provisions of related laws include other forms of protective and supportive measures for women and children.

The articles 3 and 4 of the Law on Protection of Family and Prevention of Violence Against Women are respectively as follows:

"**The protective cautionary decisions to be taken by administrative authority**

**Article 3-** (1) One or several of the following measures, or similar measures deemed appropriate shall be decided by the civilian authority in regard to the persons who are protected within the scope of this Law:

a) To provide an appropriate shelter to the person, and if necessary to the accompanying children, where s/he is located or in some other location.

b) To provide temporary financial aid to the person, without prejudice to the aid provided within the scope of other laws.

c) To provide psychological, professional, legal and social guidance and counseling services.

ç) To provide temporary protection, upon request of the person concerned or ex officio, if there is a life threatening danger.

d) If deemed necessary; to provide four months of day care, maximum two months for those who have a job, to the children of individuals under protection to support their participation in the work life, provided that/on condition to be documented and not to exceed half of the net minimum wage paid to those older than 16 years of age, by covering the expenses from the Ministry's budget.

(2) In cases where delay is considered to be risky, the measures set out in the sub-paragraphs (a) and (ç) of the first paragraph can be decided by law enforcement chiefs as well. Law enforcement chief shall present the report to the administrative chief for approval not later than the first work day after the decision is taken. The measures which are not approved by the administrative chief within forty-eight hours shall be per se abolished."

"**The protective cautionary decision to be taken by the judge**

**ARTICLE 4**- (1) One or several of the following protective measures, or similar measures deemed appropriate shall be decided by the judge in regard to the persons who are protected within the scope of this Law:

a) To change the work place.

b) To decide a place of residence other than the family residence if the person is married.

c) To put an annotation to the title deed as a family residence if the conditions are applicable as prescribed within the Turkish Civil Code No.4721 dated 22/11/2001 and upon request of the protected person.

ç) To change the identification and other related information and documents based on the informed consent of the relevant person as per the provisions of the Witness Protection Law No. 5726 dated 27/12/2007 if it is determined that there is a life threatening danger for the protected person and the other measures to prevent this danger are inadequate."

The articles 5 and 9 of the Child Protection Law (No.5395) are respectively as follows:

**"Protective and Supportive Measures**

**Article 5-** (1) Protective and supportive measures are measures to be taken in terms of consulting, education, care, health and shelter, for the purpose of protecting the child within his/her own family environment before all else. These measures are as follows:

a) Consultancy measure, is a measure oriented to providing guidance on child rearing to those who are responsible for the care of the juvenile, and guidance to children on solving problems related to their education and development;

b) Education/training measure, is a measure oriented to ensure that the child attends an education institution as a day-student or boarding student, attends a vocational training course or arts & crafts course, or is deployed with a master of profession or at a workplace belonging to the public or private sector for the purpose of acquiring a job or a profession,

c) Care measure, is a measure to make governmental or private care centre services or foster family services available for the child or place the child under the care of such institutions, in the event that the person responsible for care of the child fails to fulfill his/her duties due to any reason,

d) Health measure, is a measure to ensure necessary temporary or continuous medical care and rehabilitation for treatment and protection of the child's physical and physiological health, and treatment and therapy for children who use addictive substances,

e) Shelter measure is a measure to provide a suitable shelter for those who have children but do not have a place to live, or to pregnant women whose lives are in danger.

(2) The identification and address information of those about whom a shelter measure as defined in paragraph 1 subparagraph (e) is being implemented shall be kept confidential if they demand so.

(3) If it is established that the child is not under any danger, or if it is understood that, although the child is in danger, such danger can be eliminated by supporting the parents or guardian or the person who is responsible for care, then the child shall be delivered to these persons. For the purposes of this paragraph, one of the measures specified in paragraph one can also be decided with regard to the child."

**"Urgent Protection Decisions**

**Article 9**- (1) In case of a situation which requires taking the child under immediate protection, the child shall be taken under care and supervision by the Social Services and Child protection Agency, and then the Agency shall apply to the juvenile judge within five days at the latest following the day the child was brought to the Agency, in order for an urgent protection decision. The judge shall decide with regard to the request within three days. The judge may decide for keeping the child’s location confidential and, when necessary, establishment of personal contact.

 (2) An urgent protection decision can only be rendered for a limited period of maximum thirty days. Within this period, the Agency shall carry out a social enquiry regarding the child. If, following the enquiry, the Agency concludes that there is no need to decide for a measure, it shall notify the judge of its opinion and the services it will provide. Whether the child is to be delivered to his/her family or whether any other measures are to be taken shall be decided by the judge.

(3) In case the Agency concludes that a measure is required for the child, it shall file a request to the judge demanding for a protective and supportive measure."

**Aggravating and mitigating circumstances**

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

The law foresees a wide range of aggravating circumstances for the crimes regulated under articles 102, 103 and 104 of the TPC. Please refer to the texts of the articles presented above.

* 1. Is rape by more than one perpetrator an aggravating circumstance?  **YES**/~~NO~~

Please refer to the sub-paragraph (d) of the third paragraph under article 102 and to the sub-paragraph (a) of the third paragraph under article 103.

* 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**/~~NO~~

Please refer to the third paragraphs of both articles 102 and 103.

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

Rape (sexual assault) by spouse or intimate partner has not been regulated as a matter of aggravation.

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

While it does not technically correspond to a matter of mitigation, it should yet be noted that prosecution of sexual assault against spouse, as is clarified by the second sentence of the second paragraph under the article 102, is subject to the complaint of the victim.

For the acts that have not attain the level of "rape" or attempt to a "rape" (as is the case for the first paragraph of the article 102 or for the fourth sentence of the first paragraph of article 103, where the acts of molestation [importunity] against adults and between peers were in question, respectively) the same applies.

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?

While Turkish Code of Criminal Procedure (CCP-No.5271) provides for reconciliation (penal mediation) as an alternative way of conflict resolution, the relevant provision (art. 253, par. 3) explicitly excludes the offences against sexual integrity from its scope, by stating that "penal mediation cannot be resorted for the offences against sexual integrity even if they are investigated and prosecuted on complaint."

* 1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?
1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

Apart from the general provisions / principles pertaining to the conditions for discontinuance of proceedings and setting aside the sentence, such as death of the offender or the lapse of limitation periods (statutory limitations), there is no such provision, specific to sexual offences, granting non-prosecution.

* 1. if the perpetrator marries the victim of rape? ~~YES~~/**NO**

Marriage between the victim and the perpetrator does not bar judicial authorities from initiating, or if already initiated, from pursuing the prosecution.

* 1. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? ~~YES~~/**NO**

The level of dangerousness can only be assessed at the stage of sentencing when the penalty to be imposed is determined between the lower and upper limits defined by the law. As for the second part of the question, please also refer to the answer given for the 10th question.

**Prosecution**

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

Unless otherwise provided by the law (that is, unless it is clearly indicated that initiating an investigation and prosecution depends on complaint) crimes committed are all prosecuted ex officio. Sexual assault as defined under the second paragraph of the article 102 (with the exception of when committed against spouse) and sexual abuse of children as defined under the second paragraph of the article 103, acts of which legally correspond to what is called as "rape", are among the crimes that have been prosecuted ex officio.

According to the article 160 of the CCP, public prosecutor is entrusted with the task of initiating investigation as soon as s/he is informed of a fact bearing an impression that a crime has been committed. Law enforcement officers, on the other side, are obliged to notify immediately the incidents they have handled to the public prosecutor, and responsible for taking steps as they are instructed.

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

Please refer to the answer given for the question no.12 above.

For the crimes prosecuted ex officio, legal proceedings are not dependent on the willingness, complaint, or even on the active participation of the victim. However, it should be noted that their positive engagement plays a crucial role in ascertaining the facts, as in many cases their testimony remains to be the sole source of evidence.

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

While a plea-bargain like procedure has recently been adopted and introduced within the CCP (art.250), offences against sexual integrity were clearly excluded from its scope, by not being cited among the offences to which the procedure is applicable.

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

While a plea-bargain like procedure has recently been adopted and introduced within the CCP (art.250), offences against sexual integrity were clearly excluded from its scope, by not being cited among the offences to which the procedure is applicable.

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

Depending on the length and severity of the penalties, the article 66 of the TPC provides for different thresholds, exceeding of which leads to the discontinuation of prosecution.

Accordingly, after the lapse of thirty years for offences requiring a penalty of aggravated life imprisonment, of twenty-five years for offences requiring a penalty of life imprisonment, of twenty years for offences requiring a penalty of imprisonment of not less than twenty years, of fifteen years for offences requiring a penalty of imprisonment of more than five years and less than twenty years, of eight years for offences requiring a penalty of imprisonment of not more than five years or a judicial fine, criminal proceedings shall be discontinued.

For the second paragraphs of the articles 102 and 103, most relevant provisions regarding the acts what is called as "rape", the limitation periods are at least 20 years. The limitation periods in relation to the fifth paragraph of the article 102 and to the sixth paragraph of the article 103, on the other side, are at least 30 years. The reason why it is indicated as "at least", there exist certain conditions resulting in suspension or extension (or exceptionally for minor offenders even in reduction) of those periods.

In determining the period of limitation, the highest penalty for the qualified version of the offence on the basis of the existing evidence is taken into account.

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

The victim of the crime of "sexual abuse of children" may report it after reaching adulthood, within the periods indicated by the article 66 of the TPC.

More specifically, the sixth paragraph of the article 66 underlines that the limitation period would begin, for the crimes committed against children by their direct-ascendant or persons who have influence upon them, on the day when they turn eighteen years of age.

1. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? ~~YES~~/**NO** If yes, please specify.

Adopted the principle of "free evidence", the CCP allows presentation of evidence in any kind, as long as it has been legally obtained. The article 217 of the CCP refers to the "personal conviction" of the judge in freely evaluating the evidence and lays down the sole condition as "lawful obtainment".

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

While the CCP lacks of such a specific provision, the request of presentation of any evidence irrelevant to the case and/or decision is denied, according to the sub-paragraph (b) of the second paragraph under the article 206 of the CCP.

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

Procedural safeguards, within the context of preventing secondary or repeating victimization, for those in vulnerable situations such as women and children are, inter alia, set out by the article 236 of the CCP. The article is mainly addressing the question of how to take testimonies / statements of crime victims in the course of legal proceedings.

The article stipulates that where the crime victim is heard as a witness, provisions related to the status of witnesses, except the obligation of taking oath, should apply. A child or the victim who has suffered psychological damages as a result of the offence committed, is heard, by rule, only one time during the proceedings, unless compelling reasons require otherwise for the sake of establishing the factual truth, according to the same article. In this case, an expert in the fields of psychology, psychiatry, medicine or education should necessarily be present and accompany the victim during hearing.

Ensuring the ways of creating victim friendly -rather than suppressing- physical environments, the article also constitutes the legal basis of Judicial Interview Rooms (AGOs) and Child Monitoring Centers (ÇİMs) by its fourth and fifth paragraphs.

Child Monitoring Centers serve for the purpose of both taking children's statements and conducting necessary (forensic) medical examinations outside the courthouse or hospital settings. In these centers, child's testimony is taken through experts such as psychologists and social workers and the interviews are recorded (and later transcribed into minutes). Thus, children's being summoned to the court for testimony, their undue confrontation with perpetrators and similar factors for traumatization are tried to be avoided.

Judicial Interview Rooms, as explained under the question 7 above, serve a similar purpose of taking statements of not only children but also other crime victims, including women, in vulnerable situations, whose statements are decided to be taken in a special setting.

The article further lays down the conditions of recording the interviews and retaining the records with special emphasis on confidentiality.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? **YES**/~~NO~~

Among the statutory list of acts, systematic performance of which constitute a crime against humanity, the offences of sexual assault and sexual abuse of children are also counted. Commission of such offences against a part of society, in accordance with a plan with a political, philosophical, racial or religious motive are amongst the legal elements of the crime against humanity.

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

In the context of crimes against humanity, as defined under the TPC, it is not subject to any statutory limitation.

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

In the context of crimes against humanity, as defined under the TPC, it is explicitly stipulated that no statutory limitation shall apply, as per the last paragraph of the article 77 of the TPC.

1. 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.

**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.