

CRIMINALIZATION AND PROSECUTION OF RAPE IN FINLAND

SUBMISSION TO THE UN SPECIAL RAPPOREUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES

Amnesty International presents the attached responses to the questionnaire on criminalization and prosecution of rape in Finland. This submission has been prepared in response to the call for contributions issued by the United Nations (UN) Special Rapporteur on violence against women, its causes and consequences ahead of her upcoming report on rape as a grave and systematic human rights violation and a form of gender-based violence against women.

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.

Finnish Criminal Code¹ (unofficial translation)

Chapter 20, Section 1 -Rape.

(1) A person who forces another into sexual intercourse by the use or threat of violence directed against a 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 themselves or to formulate or express their will, has sexual intercourse with them, shall be sentenced for rape.

(3) If the rape, taking into consideration the pettiness [sic] 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.

Chapter 20, Section 10 -Definitions.

¹ Finnish Criminal Code 1889, consolidated version including amendments until 2015: https://finlex.fi/en/laki/kaannokset/1889/en18890039_20150766.pdf. Amnesty International has included the translation of amendments made after 2015 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/1889/18890039001#L20>.

(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.

The Criminal Code also contains the crimes of “coercion into a sexual act” and “sexual abuse”, defined as follows:

Chapter 20, Section 4 - Coercion into a sexual act

(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 their 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 themselves or to formulate or express their will, causes them to engage in or submit to the sexual act referred to in subsection 1, essentially violating their right of sexual self-determination, shall be sentenced for coercion into a sexual act.

(3) An attempt is punishable.

Chapter 20, Section 5 - Sexual abuse.

(1) A person who abuses their position and entices one of the following into sexual intercourse, into another sexual act essentially violating their right of sexual self-determination, or into submission to such an act,

(1) a person below the age of eighteen years, who in a school or other institution is subject to the authority or supervision of the offender or in another comparable manner subordinate to the offender,

(2) a person below the age of eighteen years, whose capacity of independent sexual self-determination, owing to his or her immaturity and the age difference of the persons involved, is essentially inferior to that of the offender, where the offender blatantly takes advantage of this immaturity,

(3) a patient being treated in a hospital or other institution, whose capacity to defend themselves or to formulate or to express their will is essentially impaired owing to illness, disability or other infirmity, or

(4) a person who is especially dependent on the offender, where the offender blatantly takes advantage of this dependence,

shall be sentenced for sexual abuse to a fine or to imprisonment for at most four years.

[subsection 2 has been repealed]

(3) An attempt is punishable.

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. NO
- d) Based on the use of force or threat. YES

- e) Some combination of the above.

The rape definition consists of two paragraphs: one based on the use of force or threat, the second including the victim's so-called helpless state (which may mean unconsciousness due to sleep, also heavy intoxication without unconsciousness).

As set out in the *travaux préparatoires* and practice in the case law, the level of violence required to fulfil the elements of rape is very low, even including some physical acts that could be seen to accompany sexual intercourse under ordinary circumstances, like holding the other person down with one's weight. In such cases, courts will sometimes consider the victim's consent as well. Interpretation of the law is not uniform in this respect. The current definition and legal practice allow for differing interpretations of the law, which place varying importance on the victim's consent. Some legal professionals, such as former Appeals Court Judge Timo Ojala (now judge at the Supreme Court), have said that the most complicated cases already hinge on whether the victim consented or not. However, for others the current definition can give a pretext to not engage with those complicated cases. Thus, the victim's access to justice can be dependent on the personal inclinations of the legal professionals doing the interpretation in their case. For example, one of the decisions Amnesty International analysed for the 2019 report "Fighting the Lottery", involved a prosecutor who waived charges because, "According to Finnish legislation, having intercourse against the other person's refusal does not fulfil the material elements of rape, unless it is associated with ... [violence or a helpless state]." ²

In 2013, the Supreme Court ruled that a victim of rape or other violence should not be expected to undertake violent or other actions to resist the attacker. According to the Court, "freezing" or a lack of self-defence should not be taken to indicate that no crime has been committed. However, in six of the subsequent judgments analysed by Amnesty International, the judges insisted that resistance by the victim forms one of the criminal elements of rape. In one acquittal, the court stated that, "The fact that a sexual partner says 'no, I don't want to' before sexual intercourse or between intercourses, is not always a sufficient signal to the other person, that consent and willingness to continue sex is not present."³

In practice, the threshold for a "helpless state", when a person is considered to be unable to resist, is set very high. The definition is only applied in cases where the victim is fully unconscious (asleep) or extremely intoxicated. For example, if the victim is only half-asleep, the elements of rape are not considered to be fulfilled, even if it is clear that the victim did not consent. For example, in September 2018 the District Court of Helsinki convicted a man of sexual harassment who had had intercourse with a woman who was drunk, feeling sick and half-asleep. The perpetrator was a guest who entered the victim's bedroom unbidden when she had gone to sleep. The victim initially thought the man in her bed was her husband. The Court concluded that the definition of rape was not fulfilled and convicted the man of sexual harassment, for which the maximum sentence is six months' imprisonment.

In addition, although the law recognizes that fear can cause a person to be unable to resist, in practice the provision is very seldomly used and the threshold to convict is very high.⁴

Amnesty International's case analysis shows that in practice, situations that are not covered by the current legal definition of rape include:

- Where the rape victim was passive or semi-conscious, perhaps half-asleep, drunk or had frozen with fright and did not resist, and the perpetrator did not use violence. In such cases, the perpetrator did not need to resort to violence, but neither was the victim in a fully unconscious or otherwise "helpless state".
- Where the perpetrator ignored the fact the rape victim said no or asked them to leave, but where the victim did not resist physically and the perpetrator did not use violence.

² Amnesty International, 2019, "Fighting the Lottery: Overcoming barriers to justice for women rape survivors in Finland" available at: https://s3-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf

³ "Fighting the Lottery", pp 21-22.

⁴ "Fighting the Lottery", pp 23-24.

- Where penetration happened so suddenly that the victim did not have a chance to react.
- Where a rape victim withdrew consent during intercourse, but the perpetrator did not stop.
- Where the victim acquiesced to sex under duress by the perpetrator; for example when the perpetrator blackmailed the victim or used threats other than violence.⁵

f) Does it cover only vaginal rape? NO

g) Does it cover all forms of penetration? NO

The definition (section 10 subsection 1) covers penetration of the vagina or anus with any body part or an object and penetration into the mouth with a sexual organ, although the penetration must be “sexual”. In a 2017 case by the Turku Appeals Court, penetration of the anus with an object was deemed to be non-sexual. As the primary purpose of the perpetrators was to humiliate and cause pain, they were convicted of aggravated assault. In addition, in 2019 the Helsinki Appeals Court held that licking a woman’s clitoris or labia without penetration into the vagina did not constitute sexual intercourse. The perpetrator was convicted of the lesser crime of coercion into a sexual act.

h) Is marital rape in this provision explicitly included? NO

i) Is the law silent on marital rape? YES

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

k) Is marital rape excluded in the provisions, or is marital rape not considered as a crime? NO

3. To what extent legislation in your country excludes 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 relevant articles with corresponding translations. N/A

4. What is the legal age for sexual consent?

The legal age for sexual consent is 16.

Sexual intercourse with a child is usually criminalized as aggravated sexual abuse of a child, or in some cases (if the act is not considered aggravated as a whole) as sexual abuse of a child. The perpetrator can be convicted of rape/aggravated rape in addition to sexual abuse/aggravated sexual abuse of a child, if they used violence, a threat or if the child was in a ‘helpless state’. However, the threshold for considering someone, even a child, to be in a state of fear is very high, and thus not usually applicable. In a 2017 case from the Turku Appeals Court, a 10-year-old was not considered to be in a state of fear purely by virtue of her young age and the fact that the perpetrator was a stranger. The case was convicted as aggravated sexual abuse of a child only. When the case fulfils the elements of both aggravated sexual abuse of a child and of aggravated rape, it is punished as aggravated rape of a child (since 2019).

Chapter 20, Section 7, subsection 1, para 1 -Aggravated sexual abuse of a child. (1) If

1) a person has sexual intercourse with a child below the age of sixteen or in the cases referred to in section 6, subsection 2 with a child who has reached the age of sixteen but is below the age of eighteen years,

...

⁵ “Fighting the Lottery”, p 25.

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one year and at most ten years.

Chapter 20, Section 6 -Sexual abuse of a child.

(1) A person who by touching or otherwise performs a sexual act on a child below the age of sixteen years, said act being conducive to impairing their development, or induces him or her to perform such an act, shall be sentenced for sexual abuse of a child to imprisonment for at least four months and at most six years.

(2) Also a person who has sexual intercourse with a child below the age of sixteen years, if the offence when assessed as a whole is not aggravated in the manner referred to in section 7, subsection 1, shall be sentenced for sexual abuse of a child. In addition, a person who acts in the manner referred to in subsection 1 or in this subsection with a child who has reached the age of sixteen but is below the age of eighteen years, if the offender is the parent of the child or is in a position comparable to that of a parent and lives in the same household with the child, shall be sentenced for sexual abuse of a child.

(3) An attempt is punishable.

Chapter 20, Section 7 b -Aggravated rape of a child.

(1) A person who is guilty of the aggravated rape described in section 2, and at the same time guilty of the aggravated sexual abuse of a child described in section 7, subsection 1, subparagraph 1, shall be sentenced for aggravated rape of a child to imprisonment for at least four years and at most 12 years.

(2) What is provided for in subsection 1 shall not apply, if the act is punishable as an attempt of aggravated sexual abuse of a child or of aggravated rape.

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

YES

Chapter 20, Section 7(a) – Restrictive provision. An act that does not violate the sexual self-determination of the subject and where there is no great difference in the ages and 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 [intercourse with a child below the age of 16].

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

Prison sentences of less than two years are usually suspended, unless “the seriousness of the offence, the guilt of the offender as manifested in the offence, or the criminal history of the offender” requires that a custodial sentence be served (Chapter 6 Section 9 of the Criminal Code). If the offender commits further serious crimes while on probation –which lasts from one to three years –the sentence becomes custodial. A suspended sentence can be accompanied by a fine or community service. A custodial sentence can under some circumstances be served as community service instead. Below, the length in brackets is the typical sentence and its average length awarded for the crime in question in 2018.⁶

Rape: 1-6 years’ imprisonment (suspended sentence (61% of cases), 16 months).

“Less serious” rape (subsection 3): 4 months to 4 years’ imprisonment (suspended sentence, 18 months; only 1 case in 2018)

⁶ “Fighting the Lottery”, p 29; Statistics Finland’s PxWeb Databases > Justice > Prosecutions, sentences and punishments. <http://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/>.

Aggravated rape: 2-10 years' imprisonment (custodial sentence, 47.2 months)

Sexual abuse: fine or imprisonment up to 4 years (suspended sentence, 24 months; only 1 case in 2018). Higher sentences should be awarded if the act includes sexual penetration.

Sexual abuse of a child: 4 months to 6 years' imprisonment (suspended sentence, 9 months; usually cases of penetration are convicted as aggravated).

Aggravated sexual abuse of a child: 1-10 years' imprisonment (half were suspended sentences, 19.2 months; half were custodial sentences, 52 months).

Aggravated rape of a child: 4-12 years' imprisonment (no statistics available).

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 is no fixed level of reparations. The Board for Bodily Injury (*henkilövahinkoasiain neuvottelukunta*) produces recommendations for the level of reparations. The latest recommendations are from 2017.⁷ The recommendation for reparations for the "suffering" caused by rape ranges from 2,000 to 16,000 euros, depending on the circumstances (considered to be awarded for the violation of freedom inherent in rape). In addition, reparations can be awarded for physical and mental injury. Recommended reparations to a child victim for a crime involving sexual penetration range from 3,500 to 30,000 euros. Reparations are more likely to be awarded on the lower end of the scale.

The reparations (called compensations in law) are to be paid by the perpetrator. However, the victim can apply to have some compensation paid by the state without having to first try to obtain it from the perpetrator. Compensation can be paid for personal injury (including loss of income) and suffering. The level is fixed by law and can differ from the amount of compensation payable by the perpetrator according to the judgment.⁸

Aggravating and mitigating circumstances

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

General aggravating factors are listed in Chapter 6, Section 5 of the Criminal Code. The factors listed in the section on aggravated rape are also considered aggravating factors for rape, even if the conviction is not for aggravated rape. The same applies in relation to the aggravated sexual abuse of a child. The provisions are copied below. For Amnesty International's research on this issue, see the 2019 "Fighting the Lottery" report.⁹

Chapter 20, section 2 -Aggravated rape. (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

⁷ Henkilövahinkoasiain neuvottelukunta. Vahingonkorvauslain 5 luvun säännösten nojalla kivusta ja särystä sekä muusta tilapäisestä haitasta, pysyvästä haitasta sekä kärsimyksestä suoritettavien korvausten määrästä. [The Board for Bodily Injury. Reparations due to be paid for pain, ache, temporary harm, permanent harm and suffering subject to the provisions of Chapter 5 of the Tort Liability Act.] 4th edition https://oikeusministerio.fi/documents/1410853/5047355/HEVA_suositukset_2017.pdf/7fc57b69-133c-475b-9687-c323cd6e00c3/HEVA_suositukset_2017.pdf

⁸ Criminal Damages Act (rikosvahinkolaki) 2005: available in Finnish at <https://finlex.fi/fi/laki/ajantasa/2005/20051204>. Information in English is available from the State Treasury website: <https://www.valtiokonttori.fi/en/service/compensation-to-crime-victims/>

⁹ Amnesty International, "Fighting the Lottery", 2019, , pp 28-29 and 45: https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf.

(5) 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.

Section 7 - Aggravated sexual abuse of a child. (1) If

(1) a person has sexual intercourse with a child below the age of sixteen or in the cases referred to in section 6, subsection 2 with a child who has reached the age of sixteen but is below the age of eighteen years, or

(2) in sexual abuse of a child

(a) the victim is a child whose age or stage of development is such that the offence is conducive to causing special injury to him or her,

(b) the offence is committed in an especially humiliating manner, or

(c) the offence is conducive to causing special injury to the child due to the special trust they have placed in the offender or the special dependence of the child on the offender,

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated sexual abuse of a child to imprisonment for at least one year and at most ten years.

Chapter 6, section 5 -Grounds increasing the punishment. (1) The following are grounds for increasing the punishment:

(1) the methodical nature of the criminal activity,

(2) commission of the offence as part of the activity of an organised criminal group,

(3) commission of the offence for remuneration,

(4) commission of the offence for a motive based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds, and

(5) the criminal history of the offender, if the relation between it and the new offence, due to the similarity between the offences or otherwise, shows that the offender is apparently heedless of the prohibitions and commands of the law.

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

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)

NO (Except in certain cases involving children. Rather, this is treated as a mitigating circumstance, as such cases are criminalized as sexual abuse, for which the sentence is lower, ranging from a fine to up to four years' imprisonment.)

c. Is rape by spouse or intimate partner an aggravating circumstance? YES (Not according to the wording; but a precedent issued by the Supreme Court in 2012 stated that penalties in cases of domestic or intimate partner violence should be more severe. In Amnesty International's research, which analysed judgments on sexual violence in intimate relationships handed down in 2017, the impact of the intimate relationship of the parties on the sentencing was not explicitly considered in any of the five district court judgments, where the perpetrator was convicted of the rape of an

intimate partner. However, the research did not examine whether there was an unstated impact on the punishment.)¹⁰

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

There are several possibilities for mitigating circumstances. The first one concerns a special provision for “less serious” rape, Chapter 20, Section 1, subsection (3) of the section on rape:

“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.”

Amnesty International’s research revealed that application of the provision in jurisprudence is inconsistent, due to its vague wording and the lack of clear guidance on the circumstances in which a rape should be considered “less serious”.

The examples mentioned in the preparatory works of the law concern a “petty” threat to use violence and “exceptional circumstances” connected with the rape.¹¹ However, what these exceptional circumstances are is not explicitly stated. As a result, the interpretation is left to the discretion of the courts and varies considerably.

For example, in one judgment the court stated: “Considering the utter defencelessness of a strongly intoxicated and sleeping person, the rape as a whole is not considered less serious in a way that the accused should be sentenced on the basis of the lower scale.”

The “less serious” rape provision is not intended to be applied where violence has been used yet Amnesty International found it had been applied where a perpetrator threatened the victim with violence, grabbed hold of her head to try and force her into oral intercourse and later, when the victim had fallen asleep, raped her. The factors the court considered to make the rape “less serious” included that the intercourse did not involve the penetration of the victim’s sexual organ, that the threat and use of violence were not enough to break the victim’s will or make her leave the bedroom, and that the perpetrator had not attempted to continue the intercourse with violence after the victim woke up and pushed him off. However, the court does not explain how these factors would constitute “exceptional circumstances”. Moreover, the reasoning puts the blame on the victim for not leaving the bedroom, rather than holding the perpetrator fully accountable for the range of abuse he inflicted on her.¹²

There are also general grounds for reducing the punishment. These are in Chapter 6 of the Criminal Code. They are rarely used except where the offender is under the age of 18, the offense has remained an attempt or the offender is convicted as an abettor. In these latter cases, the penal scale is routinely reduced. In a high-profile case of gang rape the Supreme Court in 2017 mitigated the sentence under Chapter 6 section 7 due to the exceptionally high level of publicity the case received in the press (which had resulted in “serious consequences” for the offenders). The perpetrators were aged 15-18.¹³

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,

¹⁰ “Fighting the Lottery”, pp 28 – 29.

¹¹ Government bill 216/2013, 57, available in Finnish at: www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_216+2013.pdf.

¹² “Fighting the Lottery”, p 26.

¹³ Supreme Court judgment 2017:69:

<https://www.finlex.fi/fi/oikeus/kko/kko/2017/20170069?search%5Btype%5D=pika&search%5Bpika%5D=raiskaus>

(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 reasons 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.

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?

The police must inquire about a party's willingness to participate in reconciliation, and thus reconciliation is usually engaged in before the case even proceeds to the prosecutor. Reconciliation can be grounds for the prosecutor not to press charges, although this is not mandatory. Thus, even reconciliation where a mutual agreement has been reached does not prevent the prosecutor from pressing charges. According to research into reconciliation in cases of intimate

partner violence, charges are often dropped if reconciliation has been deemed 'successful'.¹⁴ In a report commissioned by the Finnish government, 71% of prosecutors who answered a questionnaire on mediation of intimate partner violence said that they assessed mediation referrals based on whether the mediation could have an impact on the consideration of charges.¹⁵

a. Regardless of the law, is reconciliation permitted in practice? YES

According to the Act on Conciliation in Criminal and Certain Civil Cases, "conciliation may deal with crimes that are assessed as eligible for conciliation, taking into account the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. The conciliation of a crime requires that the suspect confirms the main facts of the events and that conciliation is in the interest of the victim."¹⁶

It seems that rape is generally speaking deemed a crime that is unfit for reconciliation, but research by Tiina Qvist from the University of Lapland found some cases where a rape had been dealt with in reconciliation. The report commissioned by the Finnish government on intimate partner violence also mentions that four cases of sexual crimes were referred to conciliation, but does not specify what kind of sexual crimes these were.¹⁷

Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES

Criminal Procedure Act¹⁸ (unofficial translation)

Criminal Investigation Act¹⁹ (unofficial translation)

Criminal Procedure Act, Chapter 1, Section 6:

(1) The prosecutor shall bring a charge for a suspected offence if he or she deems that:

- (1) it is punishable according to law;
- (2) the right for its prosecution is not time-barred; and
- (3) probable grounds exist to support the guilt of the suspect.

(2) Even though there are probable grounds to support the guilt of the suspect and the other prerequisites provided in subsection 1 exist, the prosecutor may nevertheless waive prosecution on the basis of section 7 or 8 or another corresponding legal provision.

Criminal Procedure Act, Chapter 1, Section 6(a):

¹⁴ 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.

¹⁵ National Institute for Health and Welfare (THL), "Lähisuhdeväkivaltarikosten sovittelu - Nykytila ja kehittämissuhteet" [Mediation of domestic violence crimes – Current situation and development proposals]. Discussion Paper 2/2019, p. 6. Abstract in English. Available at http://www.julkari.fi/bitstream/handle/10024/137475/URN_ISBN_978-952-343-269-7.pdf?sequence=1&isAllowed=y.

¹⁶ Act on Conciliation in Criminal and Certain Civil Cases 2005, consolidated version including amendments until 2005: <https://www.finlex.fi/en/laki/kaannokset/2005/en20051015>. Amnesty International has included the translation of amendments made after 2005 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/2005/20051015>.

¹⁷ National Institute for Health and Welfare (THL), "Lähisuhdeväkivaltarikosten sovittelu - Nykytila ja kehittämissuhteet" [Mediation of domestic violence crimes – Current situation and development proposals]. Discussion Paper 2/2019, p. 26. Abstract in English. Available at http://www.julkari.fi/bitstream/handle/10024/137475/URN_ISBN_978-952-343-269-7.pdf?sequence=1&isAllowed=y

¹⁸ Criminal Procedure Act 1997, consolidated version including amendments until 2015: <https://www.finlex.fi/en/laki/kaannokset/1997/en19970689>. Amnesty International has included the translation of amendments made after 2015 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/1997/19970689>.

¹⁹ Criminal Investigation Act 2011, consolidated version including amendments until 2015: <https://www.finlex.fi/en/laki/kaannokset/2011/en20110805>. Amnesty International has included the translation of amendments made after 2015 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/2011/20110805>.

(1) The prosecutor shall decide to waive prosecution if:

(1) the prerequisites for the bringing of charges provided in section 6, subsection 1 are not met;

(2) the prosecutor waives prosecution on the basis of section 6, subsection 2;

(3) the injured party has not requested that charges be brought or another special prerequisite provided in law for the bringing of charges referred to in section 2, subsection 2 is not met and the nature of the case requires that a separate decision be made.

(2) Justification shall be given for the decision to waive charges. The justification shall indicate the circumstances and the evidence as well as the assessment of evidence and the legal conclusions on which the decision is based.

[Section 7, Chapter 1 and para 3, subsection 1, section 6(a) of the Criminal Procedure Act are not applicable to rape.]

According to data obtained by Amnesty International from the Office of the Prosecutor General, the most common reason for the non-prosecution of rapes is lack of evidence.²⁰ In a Supreme Court precedent from 2013 the Court stated that a conviction could not be based on only evaluating the testimony of the victim to be more believable than the testimony of the accused.²¹

In addition, there are rarely used provisions that provide discretion for the prosecutor to waive charges or decide on the discontinuation of the investigation. These are in the Criminal Procedure Act and in the Criminal Investigation Act:

Criminal Procedure Act. Chapter 1, Section 8.

(1) Unless an important public or private interest requires otherwise, the prosecutor may, in addition to what is provided in section 7 [not applicable to rape], waive prosecution:

(1) if criminal proceedings and punishment are to be deemed unreasonable or inappropriate in view of a settlement reached by the suspect in the offence and the injured party, the other action of the suspect in the offence to prevent or remove the effects of the offence, the personal circumstances of the suspect in the offence, the other consequences of the act to them, the social welfare and health care measures undertaken and other circumstances;

(2) under the provisions on joint punishment or on the consideration of previous punishments in sentencing, the suspected offence would not have an essential effect on the total punishment; or

(3) the expenses in continuing to consider the case would be in manifest disproportion to the nature of the case and to the sanction possibly to be expected in it.

(2) If charges are being considered for two or more offences for which the same person is suspected and if they have contributed to the solving of one or more of the suspected offences, the prosecutor may decide not to bring charges for all of the suspected offences. However, charges shall be brought if required by an important public or private interest.

Criminal Investigation Act. Chapter 3, Section 10 –Restriction of a criminal investigation. (1) The public prosecutor may, on the request of the head investigator, decide that no criminal investigation is to be conducted or that the criminal investigation shall be discontinued, if they, on the basis of Chapter 1, section 7 or 8 of the Code of Criminal Procedure or on the basis of another corresponding provision, should waive prosecution and if there is no important public or private interest that would require the bringing of charges.

²⁰ Statistics sent to Amnesty International by the Office of the Prosecutor General.

²¹ Supreme Court decision 2013:96, para 7: <https://www.finlex.fi/fi/oikeus/kko/kko/2013/20130096>.

(2) The public prosecutor may, on the request of the lead investigator, also decide that the criminal investigation shall be discontinued if the expenses of continuing the investigation would be clearly disproportionate to the nature of the matter under investigation and the possible sanction or if on the basis of the criminal investigation measures already performed it is very probable that the public prosecutor should waive prosecution on grounds other than those referred to in subsection 1. Discontinuation of the criminal investigation also requires that there is no important public or private interest that would require continuation of the investigation.

(3) In the cases referred to in subsections 1 and 2 the criminal investigation shall be recommenced if there is justified reason for this due to new factors which have become evident in the matter.

Criminal Investigation Act. Chapter 3, Section 10(a) –Restriction of a criminal investigation on the basis of a confession. (1) If the criminal investigation involves two or more offences for which the same person is suspected, and they have promoted the solving of one or more suspected offences by confessing to them, the prosecutor may, if they deem this justified taking into consideration the nature of the case and the claims to be presented, the apparent expenses and time of proceeding with the case as well as the other circumstances, order on the request of the head investigator that not all the offences be subjected to a criminal investigation or the criminal investigation of them be discontinued.

b. if the perpetrator marries the victim of rape? NO

c. if the perpetrator loses his “socially dangerous” character or reconciles with the victim?

Amnesty International's research has not to date covered this issue.

Prosecution

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

(Crimes are prosecuted ex officio unless there is a special provision to the contrary. All sexual crimes except the sexual harassment of an adult are prosecuted ex officio.)²²

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

(Although this possibility exists, if the public prosecutor decides not to press charges, it is almost never used due to the high risk of having to bear the other party's legal costs in case there is no conviction.²³ See.)

13. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? NO

(although reconciliation between the offender and the injured person may be taken into account as grounds for reducing the sentence; see section on mitigating the punishment)

14. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO

15. 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]

²² See, “Fighting the Lottery” report.

²³ Criminal Procedure Act, Chapter 1, sections 14-17

(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.

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

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.

17. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? NO

18. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial?

There are none. Judgments analysed by Amnesty International indicate that defence lawyers sometimes do refer to the victim's prior experiences of sexual encounters or sexual violence to undermine their credibility. Public Prosecutor Nina Keskinen confirmed this in an interview with Amnesty International in 2018: "They say that [the victim] has already earlier told a story like this, or they highlight that who will believe that a person who was raped last year again ends up in the same situation."²⁴

Code of Judicial Procedure, Chapter 17, section 8: The court shall reject evidence that:

(1) concerns a circumstance that is not relevant in the case;

(2) is otherwise unnecessary;

(3) can be replaced by evidence that is available with essentially less cost or difficulty;

(4) can be replaced by evidence that is essentially more credible; or

(5) despite appropriate measures could not be obtained, and the decision in the case can no longer be delayed.

19. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.²⁵

Practical measures to ensure that the victim does not have to meet the accused, such as a separate waiting area, a screen in court shielding the accused's view of the victim or testifying without the accused being present in the room, are usually taken care of in court on request from the victim or her legal counsel. However, there is room for improvement. For example, one survivor interviewed for Amnesty International's research said that the separate waiting area she was directed to had a glass wall which allowed the perpetrator to see her. At the request of the

²⁴ "Fighting the Lottery", p 44.

²⁵ Code of Judicial Procedure 1734, consolidated version including amendments until 2015 (unofficial translation): <https://www.finlex.fi/en/laki/kaannokset/1734/en17340004>. Amnesty International has included the translation of amendments made after 2015 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/1734/17340004000>.

victim or her legal counsel, the trial can be held without members of the public being present and the identity of the victim (and other people being heard in the proceedings whose identity would reveal the identity of the victim) can be redacted from the public version of the judgment and other court materials for 60 years.

Victims have the right to a support person and a legal counsel free of charge. However, a high level of agency is required of victims to find themselves this support and legal aid, and thus many victims do not make use of this right, or the support person or legal counsel only join the process at a late stage in the proceedings.

A victim of rape has the right to not appear in court under certain circumstances. Children are routinely interviewed on video. Adult victims of rape and certain other sexual crimes do not need to appear in court if hearing the victim in court would “compromise their health or cause other similar significant harm” (Code of Judicial Procedure, Chapter 17, Section 24.). In these cases, a video or other recording can be used if the accused has had an appropriate opportunity to ask the victim questions.²⁶

Code of Judicial Procedure, Chapter 17, Section 24, subsection (3) Notwithstanding the above, hearings of the following persons in a video recording or in a comparable video and audio recording may be used as evidence if the defendant has been reserved an appropriate opportunity to ask questions of the person being heard:

- (1) a person who has not reached the age of 15 years or who is mentally impaired;
- (2) a party between the ages of 15 and 17 years who is in need of special protection, taking into consideration their personal circumstances and the nature of the offence;
- (3) an injured party in a sexual offence referred to in Chapter 20, section 1, 2, 4, 5, 6 or 7 of the Criminal Code, between the ages of 15 and 17 years who does not want to be heard in the court proceedings;
- (4) an injured party in a sexual offence referred to in Chapter 20, section 1, 2, 4, 5, 6 or 7 of the Criminal Code, who has reached the age of 18 years, if the hearing in the court proceedings could endanger their health or cause other corresponding significant harm.

Code of Judicial Procedure. Chapter 17, Section 51: (1) A party being heard as a witness [a victim when giving testimony], a witness or as an expert witness may give testimony in the main hearing behind a screen or without the presence of a party or other person, if the court deems that this is appropriate and that such a procedure is necessary:

- (1) in order to protect the person being heard or a person related to them in the manner referred to in section 17, subsection 1 from a threat against life or health;
- (2) if the person being heard would otherwise not reveal what they know about the matter; or
- (3) if a person disturbs or attempts to mislead the person being heard while the latter is speaking.

(2) The parties shall be reserved an opportunity to present questions to the person being heard.

(3) The Act on the Publicity of Court Proceedings in General Courts contains provisions on the hearing of a person without the presence of the public.²⁷

²⁶ “Fighting the Lottery”, p 41.

²⁷ Code of Judicial Procedure 1734, consolidated version including amendments until 2015 (unofficial translation): <https://www.finlex.fi/en/laki/kaannokset/1734/en17340004>. Amnesty International has included the translation of amendments made after 2015 in this submission where relevant. Translations provided here may differ slightly in wording. The up-to-date Finnish version can be accessed at: <https://www.finlex.fi/fi/laki/ajantasa/1734/17340004000>.

War and/or conflict

20. Is rape criminalized as a war crime or crime against humanity? YES (Criminal Code, Chapter 11, sections 3 and 5)
21. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? NO
22. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES (Criminal Code, Chapter 8, section 1)
23. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES

Data

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

Numbers include rape (including “less serious” rape) and aggravated rape (Criminal Code, Chapter 20, sections 1 and 2). Data combined from Statistics Finland.²⁸

	Reported	Prosecuted	Convicted*
2019	1477	Not yet available	Not yet available
2018	1393	235	170 (207)
2017	1245	244	167 (190)
2016	1160	241	176 (220)
2015	1043	166	125 (173)

*The first number is the number of cases, the number in brackets is the number of individual charges (one case may include several charges of rape, concerning the same or a different victim).

Other

25. 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.

Additional information can be found in Amnesty International’s “Fighting the Lottery” report from March 2019, available at: https://s3-eu-west-1.amazonaws.com/frantic/amnesty-fi/2019/03/19144800/Fighting-the-lottery_final.pdf.

²⁸ Statistics Finland’s PxWeb Databases > Justice > Statistics on offences and coercive measures and PxWeb Databases > Justice > Prosecutions, sentences and punishments: <http://pxnet2.stat.fi/PXWeb/pxweb/en/StatFin/>.