

Rape as a Grave and Systematic Human Rights Violation and Gender-Based Violence Against Women

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CHOICE FOR YOUTH AND SEXUALITY



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CHOICE FOR YOUTH & SEXUALITY

In collaboration with



**SUBMISSION: INPUT FOR THE REPORT OF THE SPECIAL RAPPORTEUR
ON VIOLENCE AGAINST WOMEN ON RAPE AS A GRAVE AND
SYSTEMATIC HUMAN RIGHTS VIOLATION AND GENDER-BASED
VIOLENCE AGAINST WOMEN**

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1. Contributing Organisations

CHOICE for Youth and Sexuality is a professional youth-led and youth-serving organization based in the Netherlands. For over 20 years, CHOICE has been working with and for young people to fulfil their Sexual and Reproductive Health and Rights (SRHR) and rights¹ to meaningfully participate in decision-making about issues that concern their lives. Through various programs, CHOICE works with young people across several countries in Africa, Asia, Latin America and the Caribbean sub-region. Engaging with both New York and Geneva-based processes, CHOICE is an advocacy expert on meaningful youth participation, particularly in the context of SRHR for young people in practice and in policy.

This submission was developed in collaboration with the Network of Adolescents and Youth of Africa (NAYA) in Kenya, Si Jeunesse Savait in the DRC, Education as a Vaccine, EVA and INCREASE in Nigeria.

NAYA is a youth-led regional advocacy network, which aims at enhancing the capacity of youth advocates, young people, youth-led organizations and policy-makers to undertake SRHR advocacy at international, regional, national and counties in Kenya to improve the quality, affordability and accessibility of health relating to SRHR information and services.

Si Jeunesse Savait is a feminist youth-led organisation in the DRC, that works to promote and protect human rights of youth, conducts studies and research on youth SRHR, provides health services, and builds capacity of young activists. It aims to financially empower all adolescents and young people, in particular girls and sexual minorities, and promote and strengthen their strong leadership so that they can speak for themselves, on their behalf, in their own environment.

Education as a Vaccine (EVA) is a youth-led and youth-serving organisation based in Nigeria, that aims to improve the health and development of children, adolescents, and young people. Using child and youth-friendly approaches, the organization strengthens the capacities of children, young people, and other stakeholders to facilitate and sustain social change in the area of health, protection, and education through integrated programming.

INCREASE is a youth-led organisation based in Naija state, Nigeria, and works to advance the SRHR of young people, with a specific focus on young women and youth that face multiple and intersecting forms of discrimination.

2. Introduction

This report sets out to contribute specific youth contributions as youth are often minimally discussed in traditional UN spaces. In 2019, only 43% of Special Procedures reports addressing youth in more than one sentence in 2019². While this is a positive increase in comparison to 2018, where only 34% of Special Procedures did so³, there is still more to be done to recognize age as an intersecting form of discrimination throughout the UN Special Procedures mechanism. This specifically needs to be addressed in regards to youth populations, as the unique challenges that youth face are often overlooked or not adequately addressed in UN processes. Therefore, the objective of this report is to submit information pertaining to your call specifically from a youth perspective, to ensure that no one is left behind.

Sexual and gender-based violence (SGBV) is a global issue that affects one in three women in their lifetime. The World Health Organisation (WHO) estimates that 35% of women worldwide have

¹ Convention of the Rights of the Child Art 14 and General Comment 12 on the right to be heard, The ICCPR Art 25 and General Comment 25 on equal participation in political affairs

² Data collected from internal research

³ CHOICE for Youth & Sexuality, 'Factsheet YouthUpUN' <https://www.choiceforyouth.org/assets/YouthUpUN-Factsheet.-HRC-.pdf>

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experienced, or will experience, physical and/or sexual violence from an intimate partner, or non-partner sexual violence⁴. People from the LGBTI community are also at a high risk of violence; the Trans Murder Monitoring project found that between January 2008 and September 2019, a total of 3,314 transgender and gender-diverse people were reportedly killed (the vast majority of them trans women) in 74 countries worldwide⁵. Moreover, a study conducted in the United States in 2015 found that 47% of transgender people are sexually assaulted at some point in their lifetime, with a higher rate among people of colour⁶. These topics are incredibly important to address, particularly in light of the current global pandemic of COVID-19, where cases of gender-based and domestic violence - including sexual abuse and rape - are expected to rise. This report will also highlight the lack of research and evidence focusing on sexual and gender-based violence against the LGBTI+ community; a gap that has become more evident during the current pandemic.

This report will present and analyse the legislative context of rape and sexual violence laws in the Netherlands, Kenya, the DRC and Nigeria.

3. Questionnaire on criminalization and prosecution of rape - Kenyan Context

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 Kenya Sexual Offences Act 2006 definitions

Rape: *"he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs; (b) the other person does not consent to the penetration; or (c) the consent is obtained by force or by means of threats or intimidation of any kind.*

(2) In this section the term "intentionally and unlawfully" has the meaning assigned to it in section 43 of this Act. (3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life."

Attempted rape: Any person who attempts to unlawfully and intentionally commit an act which causes penetration with his or her genital organs is guilty of the offence of attempted rape and is liable upon conviction for imprisonment for a term which shall not be less than five years but which may be enhanced to imprisonment for life.

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?	No
c) Based on the lack of consent of the victim?	Yes

⁴ World Health Organization, 'Violence against women', 2017.

<https://www.who.int/en/news-room/fact-sheets/detail/violence-against-women>

⁵ Boglarka Fedorko, Sanjar Kurmanov, Lukas Berredo. 'A brief guide to monitoring anti-trans violence'. Transgender Europe 2020

https://transrespect.org/wp-content/uploads/2020/04/TvT-PS-Vol21-2020_EN.pdf

⁶ Human Rights Campaign, 'Sexual Assault and the LGBTQ Community'.

<https://www.hrc.org/resources/sexual-assault-and-the-lgbt-community>

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d) Based on the use of force or threat?	Yes
e) Some combination of above?	Yes
f) Does it cover only vaginal rape?	No
g) Does it cover all forms of penetration?	Law only covers genital penetration
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) 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?	No
4) What is the legal age for sexual consent?	18 years
5) Are there provisions that differentiate for sexual activity between peers? If so, please provide them.	No
6) Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.	Between 10 years and life imprisonment
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?	This is not covered by legislation but a presidential directive. President Uhuru Kenyatta announced in March 2015 a fund of 10 billion Kenyan Shillings (approximately US \$9,800,000) "over the next three years to be used for restorative justice. However, currently the fund has not been operationalized and CSOs are in court over the same." ⁷⁸

⁷ Agnes Odhiambo et al, 'Reparations for survivors of Kenya's 2007-2008 Post-Election Sexual Violence', Human Rights Watch: 2015.
<https://www.hrw.org/report/2016/02/15/i-just-sit-and-wait-die/reparations-survivors-kenyas-2007-2008-post-election>

⁸ Jeremiah Wakaya, 'Restorative Justice Fund not Created 3 Years After Directive', Capital News: 2018.
<https://www.capitalfm.co.ke/news/2018/03/restorative-justice-fund-not-created-3-years-directive/>

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Aggravating and mitigating circumstances

8) Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?	
a) Is rape by more than one perpetrator an aggravating circumstance?	Yes
b) Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)	Yes
c) Is rape by spouse or intimate partner an aggravating circumstance?	The law does not address intimate partner violence
9) Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.	N/A
10) 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?	
a) Regardless of the law, is reconciliation permitted in practice? What is the practice in this regard?	<p>Some communities and CSOs use Alternative Disputes Resolution mechanisms to address GBV due to the length and inaccessibility of court processes. The constitution of Kenya provides for Alternative Disputes Resolution in certain instances so long as the rights of anyone are not violated.</p> <p>Communities also have traditional systems of justice where community officials determine grievances and award reparations to victims. There is fear that this may be abused due to patriarchal systems. Further, victims may fear to come forward in the future because the environment hasn't changed.</p>
11) Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator?	
a) If the perpetrator marries the victim of rape?	No
b) If the perpetrator loses his "socially dangerous" character or reconciles with the victim?	No

Prosecution

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12) Is rape reported to the police prosecuted ex officio (public prosecution)?	Yes
13) Is rape reported to the police prosecuted ex parte (private prosecution)?	No
14) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?	No
15) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?	No
16) Please provide information on the statute of limitations for prosecuting rape.	N/A
17) Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?	N/A
18) Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses?	Yes - blood, urine or other tissue or substance as may be determined by the medical practitioner or designated person concerned ⁹
19) Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial?	N/A
20) Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?	N/A

**4. Questionnaire on criminalization and prosecution of rape - DRC
Context**

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.

**Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of
January 30, 1940 relating to the Congolese penal code**

Assault:

Article 167 *"Any act contrary to morals intentionally and directly carried out on a person without the valid consent of that person constitutes assault.*

"Any indecent assault committed without violence, cunning, or threats to the person, or with the help of the person, of a child aged under the age of eighteen will be punished by penal servitude of

⁹ Article 36, of Sexual Offences Act, 2006

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six" months to five years. The child's age may be determined by "medical examination, failing civil status.

Article 168: The indecent assault committed with violence, cunning, or threats" on persons of either sex will be punished with a penal servitude "from six months to five years.

"The indecent assault committed with violence, trickery, or threats" on the person or with the help of the person of a child under the age of 18 years will be punished by penal servitude from five to fifteen years. If "the attack was committed on or with the help of persons" under the age of ten, the penalty will be five to twenty years.

Rape

Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code

Article 170

"Will have committed a rape, either with the help of violence or threats" serious or by coercion against a person, directly "or through a third party, or by surprise, by pressure" psychological, either on the occasion of a coercive environment, or "by abusing a person who, by the fact of an illness, by" impairment of his faculties or by any other accidental cause "would have lost the use of his senses or would have been deprived of them by some "artifices:

"(A) any man, whatever his age, who has introduced his" sexual organ, even superficially into that of a woman or "any woman, whatever his age, who has forced a man to" even introduce his superficially sexual organ in hers;

"(B) any man who has penetrated, even superficially" the anus, the mouth or any other opening of the body of a woman or "of a man by a sexual organ, by any other part of the body" or by an object any;

"(C) any person who has introduced, even superficially," any other part of the body or any object into the vagina;

"(D) any person who has compelled a man or a woman to" penetrate, even superficially his anus, his mouth or any "orifice of his body by a sexual organ, for any other part of the" body or by any object.

Article 170-5: " Anyone found guilty of rape will be punished with a penal servitude of five to twenty years and a fine which may not be less than one hundred thousand constant Congolese francs.

Article 171: "If the rape or the indecent assault caused the death of the" person on whom it was committed, the culprit will be punished with "penal servitude for life.

"Article 171a: "The minimum penalties imposed by articles 167 paragraph 2," 168 and 170 paragraph 2 of this Code will be doubled:

1. If the culprits are the ascendants or descendants of the" person on whom or with the aid of which the attack was committed;
2. if they are of the category of those who have authority over it;
3. if they are his teachers or his servants for hire or the" servants of the persons indicated above;
4. if the attack was committed either by public officials or by" ministers of religion who have abused their position to "commit it, either by medical, paramedical or social workers, or by tradi- practitioners, towards those entrusted with "their care;
5. if the culprit was assisted in the execution of the offense by" one or more persons;
6. if it is committed on captive persons by their" guards;
7. if it is committed in public;

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8. if he caused the victim a serious deterioration in his health and / or" left serious physical and / or psychological consequences;
9. if it is committed against a person living with a disability;
10. if the rape was committed with the use or threat of a weapon.

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 the victim?	Yes
d) Based on the use of force or threat?	Yes
e) Some combination of above?	Yes
f) Does it cover only vaginal rape?	No
g) Does it cover all forms of penetration?	Yes
<p>Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code</p> <p>Article 170</p> <p><i>"Will have committed a rape, either with the help of violence or threats" serious or by coercion against a person, directly "or through a third party, or by surprise, by pressure" psychological, either on the occasion of a coercive environment, or "by abusing a person who, by the fact of an illness, by" impairment of his faculties or by any other accidental cause "would have lost the use of his senses or would have been deprived of them by some "artifices:</i></p> <p><i>"(A) any man, whatever his age, who has introduced his" sexual organ, even superficially into that of a woman or "any woman, whatever his age, who has forced a man to" even introduce his superficially sexual organ in hers;</i></p> <p><i>"(B) any man who has penetrated, even superficially" the anus, the mouth or any other opening of the body of a woman or "of a man by a sexual organ, by any other part of the body" or by an object any;</i></p> <p><i>"(C) any person who has introduced, even superficially," any other part of the body or any object into the vagina;</i></p> <p><i>"(D) any person who has compelled a man or a woman to" penetrate, even superficially his anus, his mouth or any "orifice of his body by a sexual organ, for any other part of the" body or by any object.</i></p>	
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

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3) Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?	No
4) What is the legal age for sexual consent?	18 years
5) Are there provisions that differentiate for sexual activity between peers? If so, please provide them.	Yes, Article 172 Anyone who has attacked manners by exciting, facilitating or "promoting to satisfy the passions of others, debauchery or" corruption of persons of either sex, aged under "eighteen years, will be punished by a penal servitude of three months to five "years and a fine of fifty thousand to one hundred thousand francs" Congolese constant. Article 174 c "Whoever caused one or more persons to perform" an act or several acts of a sexual nature, by force, by "threat of force or coercion or by taking advantage of" the incapacity of said persons to freely giving their "consent to obtain a pecuniary or other advantage," will be punished by three to five years of penal servitude.
6) Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.	Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code "Anyone found guilty of rape will be punished with a penal servitude of five to twenty years and a fine which may not be less than one hundred thousand constant Congolese francs.
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?	The victim will be compensated or receiving material, financial, medical, psycho-social compensation or to be economically reintegrated, compensated determined by the judge

Aggravating and mitigating circumstances

<p>8) Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?</p> <p>Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code</p> <p>Article 171</p>

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"If the rape or the indecent assault caused the death of the" person on whom it was committed, the culprit will be punished with "penal servitude for life.

"Article 171a

"The minimum penalties imposed by articles 167 paragraph 2," 168 and 170 paragraph 2 of this Code will be doubled:

- 1) if the culprits are the ascendants or descendants of the" person on whom or with the aid of which the attack was committed;
- 2) if they are of the category of those who have authority over it;
- 3) if they are his teachers or his servants for hire or the" servants of the persons indicated above;
- 4) if the attack was committed either by public officials or by" ministers of religion who have abused their position to "commit it, either by medical, paramedical or social workers, or by tradi- practitioners, towards those entrusted with "their care;
- 5) if the culprit was assisted in the execution of the offense by" one or more persons;
- 6) if it is committed on captive persons by their" guards;
- 7) if it is committed in public;
- 8) if he caused the victim a serious deterioration in his health and / or" left serious physical and / or psychological consequences;
- 9) if it is committed against a person living with a disability;
- 10) if the rape was committed with the use or threat of a weapon.

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)	Yes
c) Is rape by spouse or intimate partner an aggravating circumstance?	This aspect is not clearly defined in the penal code
9) Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.	No
10) Is reconciliation between the victim and the perpetrator allowed as part of a legal response? NO If so, at what stage and what are the consequences?	
a) Regardless of the law, is reconciliation permitted in practice? What is the practice in this regard?	In practice, amicable negotiation is advised by families and friends
11) Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator?	
a) If the perpetrator marries the victim of rape?	No
b) If the perpetrator loses his "socially dangerous" character or reconciles with the victim?	No

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12) Is rape reported to the police prosecuted ex officio (public prosecution)?	Yes
13) Is rape reported to the police prosecuted ex parte (private prosecution)?	Yes
14) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?	No But if the rapist is a minor we can opt for mediation
15) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?	No
16) Please provide information on the statute of limitations for prosecuting rape.	<p>Law n ° 06/018 of July 20, 2006 modifying and supplementing the Decree of January 30, 1940 relating to the Congolese penal code</p> <p><i>"Will have committed a rape, either with the help of violence or threats" serious or by coercion against a person, directly "or through a third party, or by surprise, by pressure" psychological, either on the occasion of a coercive environment, or "by abusing a person who, by the fact of an illness, by" impairment of his faculties or by any other accidental cause "would have lost the use of his senses or would have been deprived of them by some "artifices:</i></p> <p><i>"(A) any man, whatever his age, who has introduced his" sexual organ, even superficially into that of a woman or "any woman, whatever his age, who has forced a man to" even introduce his superficially sexual organ in hers;</i></p> <p><i>"(B) any man who has penetrated, even superficially" the anus, the mouth or any other opening of the body of a woman or "of a man by a sexual organ, by any other part of the body" or by an object any;</i></p> <p><i>"(C) any person who has introduced, even superficially," any other part of the body or any object into the vagina;</i></p> <p><i>"(D) any person who has compelled a man or a woman to" penetrate, even superficially his anus, his mouth or any "orifice of his body by a sexual organ, for any other part of the" body or by any object.</i></p> <p><i>"Anyone found guilty of rape will be punished with a penal servitude of five to twenty years and a fine which may not be less than one hundred thousand constant Congolese francs.</i></p> <p><i>"Rape with the aid of violence is deemed to be the sole fact of" carnal bringing together of the sexes</i></p>

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	<i>committed on the persons "designated in article 167, paragraph 2.</i>
17) Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?	Yes
18) Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?	Article 14 (bis) <i>"In accordance with articles 48 and 49 below, the" Public Prosecutor's Office or the judge automatically requires a doctor and a "psychologist, in order to assess the state of the victim of sexual violence" and to determine the appropriate care as well as to assess "the extent of the damage suffered by the latter and its subsequent aggravation".</i>
19) Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial?	No
20) Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?	Yes Law No. 15/023 of December 31, 2015, amending Law No. 024-2002 of November 18, 2002, on the Military Criminal Code Reason The ratification by the Democratic Republic of Congo of the Treaty of Rome establishing the Statute of the International Criminal Court and the entry into force of it justified, in its time, the modification of Law No. 024-2002 of November 18, 2002 establishing the Military Penal Code by provisions defining and punishing the crime of genocide, crimes against humanity and war crimes. In addition, Organic Law No. 13/011-B of April 11, 2013 on the organization, functioning and powers of the courts, recognizes that ordinary courts have jurisdiction over crimes affecting peace and security of mankind. Having lost the character of an exclusively military offense, these international crimes are now counted among ordinary crimes.
25) Please provide data on the number of cases of rape that have been reported, prosecuted and punished, in the past two to five years.	It is difficult to give with certainty the exact number of cases of rape reported in the country for the last two years due to the inefficiency or non-existence of the data collection system at the national level or by civil society organizations. However, a study

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	from 2011 reports 1152 rapes per day, which is roughly 48 per hour, in the DRC ¹⁰¹¹
26) Please explain any particular and additional obstacles to reporting and prosecuting rape and making perpetrators accountable in your legal and social context not covered by the above.	Missed materials techniques to produce a medical report demonstrating that there was rape The fear of certain victims of denouncing the rape of which they are victims; Amicable arrangements to silence the rape; The ineffectiveness of the Congolese justice on the issue of rape (sometimes neglected as in the east of the country, also corrupt

5. Questionnaire on criminalization and prosecution of rape - Nigerian Context

Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

The Criminal Code (applicable in all the Southern States)

In Chapter 30 - the section is labelled "Assault on Females"

Provision 357 "Any person who has unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by personating her husband, is guilty of an offence which is called rape."

- This provision is included under unnatural offences

Article 216: "Indecent treatment of boys under fourteen. Any person who unlawfully and indecently deals with a boy under the age of fourteen years, is guilty of a felony and is liable to imprisonment for seven years." The term "deal with" includes doing any act which, if done without consent, would constitute an assault as hereinafter defined.

The Criminal code defined defilement in provision 218; "Defilement of girls under thirteen. Any person who has unlawful carnal knowledge of a girl under the age of thirteen years is guilty of a felony and is liable to imprisonment for life, with or without caning."

The Penal Code (applicable in all the Northern States)

Penal Code of Nigeria (Section 282), "A man is said to commit rape who has sexual intercourse with a woman in any of the following circumstance: against her will; without her consent; with her consent, when the consent is obtained by putting her in fear of death or of hurt."

- The law further established that sex with a girl below 14 or with unsound mind is rape.
- It also explicitly states that sexual intercourse by a man with his wife cannot pass under the law as rape.

¹⁰ CBS News, '48 women raped every hour in Congo, study finds', 2011.

<https://www.cbsnews.com/news/48-women-raped-every-hour-in-congo-study-finds/>

¹¹ Amber Peterman, Tia Palermo, Caryn Bredenkamp, 'Estimates and Determinants of Sexual Violence Against Women in Democratic Republic of Congo', American Journal of Public Health, 2010. <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2010.300070?hits=10&andorexactfulltext=and&FIRSTINDEX=0&searchid=1&author1=Bredenkamp&resourcetype=HWCIT&RESULTFORMAT=&sortspec=relevance&maxtoshow=&>

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*The Criminal Laws of Lagos (applicable only in Lagos State)*¹² has similar content as the penal code but does contain some provisions that are gender neutral. The law was reviewed in 2011.

"259. Any person who penetrates sexually the anus, vagina, mouth or any other opening in the body of another person with a part of his body or anything else, without the consent of the person is guilty of a felony and liable to imprisonment for life."

*The Violence Against Persons Prohibition Act*¹³ (applicable in only the states mentioned). It was in FCT and has been domesticated in Benue¹⁴, Kaduna, Enugu, Oyo, Anambra, Ebonyi, Edo¹⁵, Ekiti, and Osun¹⁶.

The VAPP Act defines rape as when an individual intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else without consent, or incorrectly obtained consent. Consent can be incorrectly obtained where it is obtained (force/threat/intimidation, false and fraudulent representation, impersonating a married woman's husband).

The Child Rights Act (applicable only in the States that it's been domesticated). It has been domesticated in 26 states. Only 11 states in Northern Nigeria have refused to domesticate it so far¹⁷. This law prohibits all forms of sexual intercourse with a minor by intentionally penetrating the vagina, anus or mouth of a minor with any other part of his/her body or anything else.

2) Based on the wording of those provisions, is the provided definition of rape:	
a) Gender specific, covering women only?	Yes, under Criminal and Penal Codes
b) Gender neutral, covering all persons?	Yes, under the criminal code of Lagos, there is a provision related to persons not just women and the VAPP Act.
c) Based on the lack of consent of the victim?	Yes
d) Based on the use of force or threat?	Yes
e) Some combination of above?	Yes
f) Does it cover only vaginal rape?	No
g) Does it cover all forms of penetration?	By the use of an object or any part of the body to penetrate through the anus, vagina and mouth.
h) Is marital rape in this provision explicitly included?	No

¹²The Criminal Law of Lagos State, 2011.

<https://www.dsvrtlagos.org/pdfs/Criminal%20Conduct%20Regulate%20Public%20Law%202011%20Fashola%201.pdf>

¹³ Inside Oyo, 'VAAP Act: Oyo, 2 Others Have Domesticated Violence Prohibition Act - Adewole'.

<https://www.insideoyo.com/vaap-act-oyo-2-others-domesticated-violence-prohibition-act-adewole/>

¹⁴ Punch, 'Ortom sings state anthem bill, three others into law', 2019.

<https://punchng.com/ortom-signs-state-anthem-bill-three-others-into-law/>

¹⁵ This Day, 'UN, Italian Govt Rate Edo Govt High on Fight Against Human Trafficking', 2019. <https://www.thisdaylive.com/index.php/2019/11/23/un-italian-govt-rate-edo-govt-high-on-fight-against-human-trafficking/>

¹⁶ Partners West Africa Nigeria, 'Violence Against Person's Prohibition Act'.

<https://www.partnersnigeria.org/vapp-tracker/>

¹⁷ Premium Times Ng, 'Why every Nigerian state must domesticate, implement Child Rights Act', 2019. <https://www.premiumtimesng.com/health/features/336790-why-every-nigerian-state-must-domesticate-implement-child-rights-act.html>

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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?	No
k) Is marital rape excluded in the provisions, or is marital rape not considered as a crime?	Yes ¹⁸
3) Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?	Marital rape is not considered as a crime under the Nigeria law. And it is explicitly stated that it is not a crime ¹⁹²⁰ .
4) What is the legal age for sexual consent?	18 years, Section 31 of the Childs Rights Act, Cap C50, LFN 2004 (the 'CRA'). Important to note though that "according to Nigeria's two dominant religions, sexual intercourse is permissible below the country's legal Age of Consent and the country". Girls can be consent to marriage and sex below the age of 18 with permission from their parents.
5) Are there provisions that differentiate for sexual activity between peers? If so, please provide them.	In Nigeria, there is no criminal liability for consensual sex between consenting minors, although it is morally reprehensible ²¹ .
6) Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.	In the penal and criminal code, the judge has discretion for maximum sentence but under the VAPP Act, there is a minimum penalty of 12 years. In the Criminal Code, these are the punishments: 358. <i>Punishment of rape: Any person who commits the offence of rape is liable to imprisonment for life, with or without caning.</i> 359. <i>Attempt to commit rape: Any person who attempts to commit the offence of rape is guilty of a felony, and is liable to imprisonment for fourteen years, with or without caning²².</i>
7) What does the legislation in your country provide in terms of reparation to the victim of rape	Under the VAPP, there is a right to financial compensation and also the perpetrator is to be listed in the sexual offender register.

¹⁸ UN Women, 'Section 357 of the Criminal Code and Section 282 of the Penal Code'. <https://evaw-global-database.unwomen.org/en/countries/africa/nigeria/1990/section-357-of-the-criminal-code-and-section-282-of-the-penal-code>

¹⁹ Ibid

²⁰ Punch Newspapers, 'Marital rape under Nigerian law', 2017. <https://punchng.com/marital-rape-under-nigerian-law/>

²¹ ResearchGate, 'Should consensual sexual intercourse between juvenile coevals be a criminal offence?', 2014. www.researchgate.net/post/Should_consensual_sexual_intercourse_between_juvenile_coevals_be_a_criminal_offence2

²² ILO, 'Violence against persons (prohibitions) Act', 2015.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104156/126946/F-1224509384/NGA104156.pdf>

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<p>and/or sexual violence after conviction of the perpetrator?</p>	<p><i>"In ordering a prohibition under subsection 1 (c) of this section, the court may impose on the respondent Obligations as to the discharge of rent or mortgage payments having regard to the financial need and resources of the compliant and the respondent."²³</i></p> <p><i>"The court may order the respondent to pay emergency monetary relief having regard to the financial need and resources of the compliant and the respondent."</i></p> <p>(This information suggests that under the other bodies of law there are no reparations, leaving some states without reparations as the VAPP does not apply throughout all states in Nigeria.)</p>
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Aggravating and mitigating circumstances

<p>8) Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?</p>	
<p>a) Is rape by more than one perpetrator an aggravating circumstance?</p>	<p>No, there are no fines for gang rape. If the judge sentences the perpetrators to 24 years imprisonment, there is zero space for negotiation.</p>
<p>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)</p>	<p>No</p>
<p>c) Is rape by spouse or intimate partner an aggravating circumstance?</p>	<p>No</p>
<p>9) Does the law foresee mitigating circumstances for the purposes of punishment?</p>	<p>No</p>
<p>10) Is reconciliation between the victim and the perpetrator allowed as part of a legal response?</p>	<p>No</p>
<p>a) Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?</p>	<p>Yes, it is permitted because often families plead, cajole or threaten the victim. Police officers accept bribes to help settle cases rather than report. There are currently three cases where the survivors have reported that the police were trying to settle the cases, because the</p>

²³Ibid

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	perpetrator and their families were pleading for the case to be dropped ²⁴²⁵²⁶ .
11) Is there any provision in the criminal code that allows for the non-prosecution of the perpetrator?	No
a) If the perpetrator marries the victim of rape?	No
b) If the perpetrator loses his "socially dangerous" character or reconciles with the victim?	No

Prosecution

12) Is rape reported to the police prosecuted ex officio (public prosecution)?	Yes
13) Is rape reported to the police prosecuted ex parte (private prosecution)?	No
14) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?	No
15) Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?	No
16) Please provide information on the statute of limitations for prosecuting rape.	<p>There is a time limit in which the prosecutor must file charges. These depend on the jurisdictions; sometimes limit statutes begin from the date of the offense or after the victim reports the crime to authorities. This is because it might be difficult to prosecute a case after a certain period of time passes and evidence may be lost or degraded.</p> <p>Also, the alleged offense must fall under the definition of rape. Although the Penal code, Criminal code, the VAPP Act and the Child Rights Act defined rape as forcible, unlawful sexual intercourse without the person's consent. Most states still operate under the criminal or penal code. Only states that have passed the VAPP act have more comprehensive legislation on rape and sexual violence.</p>

²⁴ VOA News, 'Epidemic of Rape Assailed in Nigeria', 2019.

<https://www.voanews.com/africa/epidemic-rape-assailed-nigeria>

²⁵ Premium Times, 'Nigeria's new anti-rape laws still can't help victims much', 2019.

<https://www.premiumtimesng.com/news/headlines/362308-nigerias-new-anti-rape-law-still-cant-help-victims-much.html>

²⁶ Human Rights Watch, 'Nigeria: Lawyer Says Police Assaulted Her', 2020.

<https://www.hrw.org/news/2020/02/06/nigeria-lawyer-says-police-assaulted-her>

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17) Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?	No
18) Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?	Yes (medical reports, witness or any virtual or audio evidence)
19) Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial?	No
20) Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?	No

War and/or conflict

21) Is rape criminalized as a war crime or crime against humanity?	Yes, National Action Plan Resolution 1325 ²⁷
22) Is there a statute of limitations for prosecuting rape in war or in conflict contexts?	Not sure
23) Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?	No
24) Has the Rome Statute of the International Criminal Court (ICC) been ratified?	Yes

Data

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

There is a lack of a coordinated data collection system for SGBV in Nigeria at the national and state level. This was made clear during the COVID-19 response because data as evidence for advocacy led to a weak response to gender-based violence. As seen below, these are data that are being reported by various entities. The national data available is either from NBS - which is outdated - or percentages according to the National Demographic and Household Survey, which does not provide information on prosecution and sanctions, and it focused on women of reproductive age from 15 to 49. What is important to note that in terms of reports, is that the survey found that "More than half of women (55%) who have experienced physical or sexual violence have never sought help to stop the violence; only 32% have sought help, approximately the same percentage as in 2013. And women's own families are the most common source of help." - NDHS 2018.

²⁷ Federal Ministry of Women Affairs and Social Development, 'National Action Plan for the Implementation of UNSCR 1325 and related resolutions on women, peace and security in Nigeria', Peace Women 2017-2020. <http://peacewomen.org/sites/default/files/NAPNigeria.pdf>

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In 2015, Nigeria recorded 1,827 rape cases with only 18 convicted rape cases. "Since the establishment of the Lagos State Domestic and Sexual Violence Response Team (DSVRT), 1274 children between the ages of 2-9 have been raped while ages 18-45 ranks as the second highest with 1224. They also recorded 306 raped cases of women and 33 for men between the months of January to March 16. Founder of Mirabel Centre and Managing Partner of Partnership for Justice Ito Eze-Anaba states that an average of 90 cases a month are reported"²⁸.

In 2017, the NBS went a step further by providing statistics for specific crimes. According to the statistical agency, that year, 2,279 cases of "rape and indecent assault" were recorded by police across the country²⁹³⁰.

There have been 108 reported cases of sexual assault between January and February 2020, says the Salama Sexual Assault Referral Centre in Kafanchan, Jema'a Local Government area of Kaduna state, Northern Nigeria³¹.

Other

- 26) Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

Rape cases like other violation of women's rights in Nigeria are under-reported and the rationale behind not reporting cases of violation includes fear of victim-blaming, fear of divorce in cases of marital or spousal rape, the lack of police action and the evidence requirements necessary for conviction as well as the social stigma. Also the believing that rape and other forms of violence are family or household issues that should be forgiven or swept under the rug.

Nigeria law doesn't recognize spousal rape and this is based largely on its patriarchal society. Women lose their rights after marriage in practices where bride price is paid and thousands of requirements were made by the bride's family before giving their daughter's hand in marriage, it is common for the husband to believe that by paying the bride price, he has full ownership of his wife and have sexual intercourse with her as he wishes, with or without her consent.

Sadly, when few cases make it to court, they are usually stagnant or dismissed depending on the political and societal status of the offender and that of the victim. Access to services and justice are limited. However, there are now sexual assault referral centres in about 11 states. It is hoped that the implementation of the Spotlight Initiative among other donor efforts and more commitment from the government at all levels will lead to a strengthened response to SGBV in Nigeria.

The statement below by the Special Rapporteur provides an understanding of the context in Nigeria. There is so much work to be done. Many civil society organizations and private citizens are filling the gap and addressing the challenges but without coordination and investment by the government at all levels, violence against women and girls especially will continue to increase and remain underreported. And justice will only happen in a few cases.

In September 2019, the Special Rapporteur on extrajudicial, summary or arbitrary executions said on her visit to Nigeria, "I welcome the adoption of the Violence against Persons (Prohibition) Act of 2015, dealing among other things with gender-based violence, but regrets that it applies only in the Federal Capital Territory and in those few states that have adopted the law. Several states do not have specific laws prohibiting sexual and gender-based violence. Yet, domestic violence and

²⁸ The Guardian, 'Countering Rape Culture in Nigeria', 2018.

<https://guardian.ng/life/countering-rape-culture-in-nigeria/>

²⁹ International Centre for Investigate Reporting, 'FACT Check: Are 2 million Nigerians raped every year?', 2019.

<https://www.icirnigeria.org/fact-check-are-2-million-nigerians-raped-every-year/>

³⁰ NOIPolls, 'NOIPOLLS Rape Report', 2019.

<https://noi-polls.com/noipolls-rape-poll-report/>

³¹ VON, 'Centre documents 108 sexual assault cases in 2020', 2020.

<https://www.von.gov.ng/centre-records-108-sexual-assault-cases-in-2020/>

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femicide are prevalent in Nigeria but largely under reported, making it difficult to determine the extent of the problem.”³²

6. Questionnaire on criminalization and prosecution of rape - Netherlands Context

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.

Sexual violence

Dutch law defines sexual violence as sexual harassment and rape, that is to say: penetration or other sexual acts that were performed using violence, the threat of violence, or in a situation where a person was not able to consent or refuse³³. When a sex crime is not carried out with provable force, violence or threats of violence, Dutch criminal law cannot prosecute the crime as rape or sexual violence. This poses a serious reporting barrier to victims and is an obstacle to progressive jurisprudence. Article 242 of the Dutch criminal code states: ‘using violence or threat to force someone into sexual behaviour is seen as rape’. Before 1991 intermarital sexual violence was not seen as a crime; however, after social and political pressure, the law was expanded to include any type of sexual violence regardless of the relationship between perpetrator and victim, as well as gender.

Articles 239 until 250 of the Dutch Criminal Code

Rape: “sexual penetration of the body (with genital organ, finger or object³⁴) with the use of force, or when someone is unconscious or has a mental/physical disability or disorder. Rape is not only defined as rape within sexual intercourse, but also when there is oral or anal forced sex.”³⁵

Confronting someone unwillingly, or a person under the age of 16, with pornographic imagery is also defined as a sexual offense.

Sex with someone under 16 years old is illegal³⁶, even when this is agreed from both parties. Between 12 and 16-year-old hearing duty is important, which means that the judge has to hear both parties in the case of a charge.

Until 2013 tongue kissing was seen as a form of rape. Forcing someone to kiss is still seen as illegal, but not as rape anymore.

Sexual abuse

Sexual abuse is every form of abuse that happens between an adult and a child because it is based on inequality, manifested through a power or age difference. Other sexual abuse that is based on a similar unequal relation is also seen as sexual abuse³⁷.

³² Agnes Callamard, ‘End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions on her visit to Nigeria’, United Nations Special Rapporteur for Extrajudicial, 2019. <https://reliefweb.int/sites/reliefweb.int/files/resources/Nigeria%20End%20of%20Mission%20Statement%2009%2002.pdf>

³³ Rutgers, Kenniscentrum Seksualiteit, 2019. <https://www.rutgers.nl/sites/rutgersnl/files/PDF/whitepaper-seksuele-grensoverschrijding-en-seksueel-geweld15042020.pdf>

³⁴ Article 242, Zedenadvocaat. <https://www.zedenadvocaat.nl/verkrachting-art-242-sr/>

³⁵ Rutgers, ‘Seksuele grensoverschrijding en seksueel geweld: feiten en cijfers’, 2019.

³⁶ Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen Kinderen, ‘Dadermonitor seksueel geweld tegen kinderen’, 2013-2017. https://www.nationaalrapporteur.nl/binaries/Dadermonitor%20seksueel%20geweld%20tegen%20kinderen%202013-2017%20Nationaal%20Rapporteur_tcm23-363928.pdf

³⁷ Rutgers, Kenniscentrum Seksualiteit, 2019. <https://www.rutgers.nl/sites/rutgersnl/files/PDF/whitepaper-seksuele-grensoverschrijding-en-seksueel-geweld15042020.pdf>

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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 the victim?	Yes
d) Based on the use of force or threat?	Yes
e) Some combination of above?	Yes
f) Does it cover only vaginal rape?	No
g) Does it cover all forms of penetration?	Yes- an object "Entering the body sexually"
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?	Unclear. The law didn't include intimate partner violence up until 1991, after which political and societal pressure made sure the definition was expanded to also include rape within the marriage. However, there is no explicit mention of marital rape, the law simply refers to any act where the body is entered sexually without consent by using force or violence.
k) Is marital rape excluded in the provisions, or is marital rape not considered as a crime?	Marital rape is considered a crime.
3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?	There are no <i>de jure</i> exclusions for perpetrators if they are or were in a sexual relationship or live together in a sexual relationship with the victim. However, <i>de facto</i> , intimate partner violence is very hard to prosecute and enforce, and justice is not easily obtained.
4. What is the legal age for sexual consent?	The age of consent in NL is 16, but people below this age can engage in sex if both consent and their age is both below 16 and difference is within certain ranges, but unsure which. Dutch Criminal Law pays special attention to sexual crimes committed against minors and acknowledges their inferior or vulnerable position in power relations. Extramarital consent age is 16. This means that when a person is below 16 but over 12 and is married, the consent age is lower ³⁸ .

³⁸ See Analysis section below, section 'Sexual violence against young women and girls'.

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5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.	Yes, if both are between 12 and 16.
6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.	See Annex 1.
7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?	<ul style="list-style-type: none"> • Slachtofferhulp • Municipalities are responsible for treatment and support after sexual violence. <p>In 2018, the last Centrum Seksueel Geweld (Centre for Sexual Violence) was set up after a six-year trajectory of national “rollout”. Through this network, acute victims of sexual violence (meaning victimized in the previous 7 days) have access to 16 centres that offer 24/7 psychological and integral medical care, as well as forensic-medical research. It explicitly mentions its care for adults and children who have been sexually assaulted (“aanranding”) or raped within 7 days of reporting. The Centre brings together police, medical professionals, nurses and psychologists to help the victim to the highest extent possible. The Centre names the lack of adequate interventions for prevention its main <i>raison d’être</i>. The Centre reports that in 2018, 30.8% of its total, national number of acute victims were under the age of 18 at the time of the crime. Furthermore, it reports that 87.8% of the total were women and girls.</p>
8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?	
a) Is rape by more than one perpetrator an aggravating circumstance?	Yes
b) Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)	Yes
c) Is rape by spouse or intimate partner an aggravating circumstance?	No, as within the law there is no explicit mention of marital rape, the law simply refers to any act where the body is entered sexually without consent by using force or violence.

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9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.	N/A
10. 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?	N/A
11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.	N/A

Prosecution³⁹

12. Is rape reported to the police prosecuted ex officio (public prosecution)?	Yes
13. Is rape reported to the police prosecuted ex parte (private prosecution)?	Yes
14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?	No
15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?	No
16. Please provide information on the statute of limitations for prosecuting rape.	Most cases of rape are not prosecuted due to a lack of evidence of rape (it is estimated at 62% of cases ⁴⁰).
17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?	Not mentioned in the code
18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?	Forensic medical examination (physical and mental examination) of the victim. It is not obligatory, but highly important in the case. Possible the victim can also ask for an examination of the perpetrator
19. Are there rape shield provisions aimed at preventing judges and	No (not mentioned)

³⁹ Overheid Wettenbank, 'Aanwijzing zeden'.
<https://wetten.overheid.nl/BWBR0037821/2016-05-01>

⁴⁰ NOS, 'Verkrachting wordt vaak niet vervolgd: 'Politie liet mij twijfelen over aangifte'', 2020.
<https://nos.nl/artikel/2322541-verkrachting-vaak-niet-vervolgd-politie-liet-mij-twijfelen-over-aangifte.html>

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defence lawyers from exposing a woman's sexual history during trial?	
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?	N/A
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified?	Yes

7. Analysis

Prevalence

If we look at the global context⁴¹, the availability of data on violence against women, including sexual violence, has increased significantly in the past years. Moreover, recently, there has also been an increased global effort into reporting the prevalence of sexual violence against men and boys, since male sexual violence has been relatively invisible or disregarded within research, policy, legislation and interventions. WHO⁴² estimates that one in three women worldwide have experienced physical and/or sexual violence in their lifetime, and the perpetrator of such violence is commonly their intimate partner or someone in their close social circles. While there is accessible research on violence against women, the same cannot be said for finding data on violence against transgender and gender non-conforming people. This is a vast knowledge gap that leaves these marginalised groups under-represented and unprotected.

Within Europe, since the start of 2014, the European Agency for Fundamental Rights has been researching the results of sexual violence from a study conducted with 42,000 women in 28 European countries⁴³. They have found that in the Netherlands, the rate of sexual violence against women is higher compared to the other European countries⁴⁴. One of their explanations is that Dutch women recognize and define sexual violence as abuse sooner, and do not accept such behaviour earlier on; therefore, the rate seems to increase. The agency theorizes that sexual violence is recognized earlier because the Netherlands has a more open culture about sexuality and also pays close attention to the risk of sexual abuse in schools, which consequentially makes it recognizable earlier that this behaviour is unacceptable and must be reported.

In the Netherlands, one third of women and one in twenty people have experienced sexual assault⁴⁵. Moreover, there are groups who are at an incredibly high risk of abuse; 78% of sex workers in the Netherlands experience sexual violence⁴⁶. The prevalence of rape in the Netherlands reaches as high as one in eight women and one in twenty-five men. While the number of estimated cases of rape per year reach 15,000, this figure may even be a low estimation. There are on average 1,800 reports of rape and 400 prosecutions of rape per year⁴⁷. Of these figures, 80% of the crimes were caused by ex-partners, family or friends, of which 6% were women. Only 1 out of 6 women press charges on sexual crime or rape and only 1 out of 16 men. Additionally, 7% of rapes end in pregnancies.

⁴¹ Rutgers, Kenniscentrum Seksualiteit, 'Sexual Violence: knowledge file', 2018. 2019 https://rutgers.nl/sites/rutgersnl/files/PDF/Kennisdossiers_pdf/knowledge_file_Sexual_violence.pdf

⁴² <https://www.who.int/en/news-room/fact-sheets/detail/violence-against-women>

⁴³ European Agency for Fundamental Rights, 2014, 'Violence Against Women: an EU-Wide Survey', Luxembourg: Publications Office of the European Union.

⁴⁴ https://www.rutgers.nl/sites/rutgersnl/files/Whitepaper_Seksuele_grensoverschrijding_en_seksueel_geweld_Rutgers_Movisie.pdf

⁴⁵ Tijdschrift voor Seksuologie, 'Seksuele Gezondheid in Nederland', 2011.

https://www.rutgers.nl/sites/rutgersnl/files/PDF-Onderzoek/Seksuele_gezondheid_in_Nederland_2011.pdf

⁴⁶ Centrum voor Seksueel Geweld, 'Factsheet Seksueel Geweld; 2016.

⁴⁷ Bakker et al, 'Seksuele gezondheid in Nederland 2009', Rutgers Nisso groep, 2009.

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Young people are especially at risk of rape or sexual gender-based violence in the Netherlands, as the chance of rape is four times higher among 12 - 24 year olds than other age groups⁴⁸.

Debate has been sparked in the Netherlands about expansion of criminal law on sexual violence. Minister Grapperhaus for Justice and Security expressed in May 2019⁴⁹ the intention to implement a new law that would prosecute the performance of a sexual act with the knowledge, or grounds for the knowledge, that it is against another person's will ("Seks tegen de wil"). This is a positive development, because it takes away the requirement that the crime be carried out in combination with violence in order to be prosecuted. The law would make it easier for victims to report the crime and obtain justice. The Minister also acknowledged that many victims freeze in the event of the crime, leading to an absence of evidence that shows a struggle, which in turn makes it impossible to prosecute the crime as rape. However, while it does form an easier way for victims to address a crime, this new law does not prosecute the crime as rape, but rather as a sex crime. Dutch law still requires that a sex crime involve violence for it to be recognized as rape. The most recent debate on this new law happened in Dutch Parliament on December 18, 2019, though at the time of writing this new law had not yet been implemented⁵⁰.

Sexual violence against members of the LGBTI+ community

In the Netherlands, bisexual women have the highest numbers of experiencing sexual violence, compared to heterosexual persons, lesbian women, homosexual and bisexual men⁵¹. More than half of bisexual women who are mainly attracted to women experienced sexual violence, and a third of bisexual women mainly attracted to men⁵². Their first experience with sexual violence is mostly between the age of 10 and 14. The report also found that 25% of men who have sex with men (MSM) experience sexual violence, compared to 5% of heterosexual men. This is experienced mostly between the ages of 15 to 19, outside of a relationship and around the event of 'coming-out'.

Trans persons in the Netherlands face four to seven times more sexual violence than cisgender women. The intention of violence towards a person is also more often of a sexual nature than for the general population (1 in 3 versus 1 in 200)⁵³. What is striking about this report is how it showed that for (young) trans people, the perpetrator is most often the (step)father or male guardian. Sexual violence rates are higher for trans women. Trans men report most sexual violence from when society reads them as 'female'.

The same research found that 21% of heterosexual women have experienced sexual violence in their lifetime, compared to 27% of lesbian women. Most often, the perpetrator is a heterosexual man and not the current partner, as is often the case for heterosexual women who experience sexual violence⁵⁴.

Dutch law is inclusive of sexual violence within the LGBTI+ community as rape is defined as 'sexual penetration of the body (with genital organ, finger, tongue or object) with the use of force, or when someone is unconscious or has a mental/physical disability or disorder', and not just as sexual violence between a man and a woman.

With regards to sexual violence against the LGBTI+ community on a global scale, a 2018 report from the UN Independent Expert on sexual orientation and gender identity (SOGI) drew attention to

⁴⁸ Centrum voor Seksueel Geweld, Utrecht, Nationaal Kompas, Rutgers, 2011.

⁴⁹ Rijksoverheid, 'Seks tegen de wil en seksuele intimidatie worden strafbaar', 2019. <https://www.rijksoverheid.nl/actueel/nieuws/2019/05/22/seksuele-intimidatie-en-seks-tegen-de-wil-worden-strafbaar>

⁵⁰ Tweede Kamer der Staten-Generaal, 'Seks tegen de wil, intimidatie en seksueel geweld', 2019. https://www.tweedekamer.nl/debat_en_vergadering/uitgelicht/seks-tegen-de-wil-intimidatie-en-seksueel-misbruik

⁵¹ Rutgers, 'Seksuele gezondheid van lesbische, homoseksuele en biseksuele personen in Nederland', 2017. https://www.rutgers.nl/sites/rutgersnl/files/PDF-Onderzoek/2017_LHB_Rapportage_incl_summary.pdf

⁵² Ibid

⁵³ TNN, 2018: <https://www.transgendernetwerk.nl/wp-content/uploads/Overall-op-je-hoede-Geweld-tegen-transgender-personen-in-Nederland-TNN2018.pdf>

⁵⁴ Rutgers, 'Seksuele grensoverschrijding en seksueel geweld: Feiten en cijfers', 2019. <https://www.rutgers.nl/sites/rutgersnl/files/PDF/whitepaper-seksuele-grensoverschrijding-en-seksueel-geweld15042020.pdf>

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research that revealed bisexual people are more likely to experience intimate partner violence than lesbian or gay people, with shocking rates of rape, sexual assault, intimate partner violence, and domestic violence. A survey conducted on this topic found that 37% of bisexual men and 61% of bisexual women experienced rape, physical violence and/or stalking by an intimate partner, and that 46% of bisexual women had been raped⁵⁵.

There is a substantive data gap on sexual and gender-based violence against members of the LGBTI+ community. This is largely due to the underreporting of crimes against LGBTI+ people. In the same report mentioned above, the UN Independent Expert on SOGI highlighted that in states where same-sex sexual conduct is criminalized, or where discrimination and stigma are widespread, victims are extremely unlikely from daring to report abuses, due to fear of hostile reactions, prosecution, lack of trust or fear of being 'outed', and even in more progressive communities, the distress of backlash can lead to underreporting⁵⁶. Therefore, data and evidence on sexual violence against these communities is sorely lacking.

Sexual violence against young women and girls

In the Netherlands, 62,000 children per year are made a victim of sexual violence⁵⁷. Of Dutch children under the age of 18, 41% of girls and 23% of boys have experienced sexual violence in their lifetime (in accordance with the National Rapporteur's definition of sexual violence)⁵⁸. Sexual violence happens in physical forms (sexual assault and rape), but also by inappropriate conduct through webcams and phones or the possession of child pornography.

According to the report, one out of ten girls are raped by being unwillingly fingered, and one out of twenty girls are raped through oral or genital sex. Adolescents around the ages of sixteen to seventeen years old are more at risk than younger children. Other at risk groups include; children with disabilities, children who come from families with addiction or criminality, combined families (divorced/step-family), or one-parent families.

In the Netherlands, performing sexual acts with someone under the age of 16 but over the age 12 outside of a marital bond, including sexually entering the body, is punishable with up to 12 years of prison or a fine of the fifth category (Article 245). Up until February 2020, this law was interpreted to mean that a child or adolescent coming from a country where child marriage is legal, will have their marital bond recognised in the Netherlands. The Dutch government has recently banned this, and child marriages from other countries are no longer recognised in the Netherlands⁵⁹. This law was extremely worrying, because it meant that sexual acts with someone under the legal age of consent was not punishable under Dutch law under certain circumstances.

8. COVID-19 and Sexual Violence

With the current coronavirus causing a global pandemic, many nations have made the decisions to enforce lockdowns in their countries. These lockdowns particularly (but not exclusively) put women and young people at risk of gender-based violence in the home, as many are being forced to quarantine with their abusers, or those who would turn to abuse during this time. Moreover, quarantine measures have also cut off victims and at risk young people (including and especially LGBTI+ youth) from essential protection services and networks⁶⁰. It is not only the situation of being

⁵⁵ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 2018.

https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/38/43

⁵⁶ Ibid

⁵⁷ NRC, 'Eén op de drie Nederlandse kinderen maakt seksueel geweld mee', 2014.

<https://www.nrc.nl/nieuws/2014/05/27/een-op-drie-nederlandse-kinderen-maakt-seksueel-geweld-mee-a1424730>

⁵⁸ Corinne Dettmeijer, Nationaal Rapporteur Mensenhandel en Seksueel Geweld tegen kinderen, Annual Report 2017. https://www.nationaalrapporteur.nl/binaries/BNRM_jaarverslag%202017_interactief_tcm23-321932.pdf

⁵⁹ RTL Nieuws, 'Kindhuwelijk wordt niet langer in Nederland erkend', 2020.

<https://www.rtlnieuws.nl/nieuws/politiek/artikel/5026666/kindhuwelijk-wordt-niet-langer-erkend-een-kind-moet-kind-kunnen>

⁶⁰ Plan International, 'How will COVID-19 affect girls and young women?', 2020.

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forced to stay at home that becomes an issue, but also the economic stress that is imposed upon communities and families due to rising unemployment rates because of COVID-19. Financial challenges can put youth and adolescents at risk of sexual violence as they may be forced into sexual exploitation in order to provide money or goods for their family⁶¹.

When countries go on lockdown, the bodily autonomy of youth and adolescent girls is hindered. This can come from a lack of comprehensive sexual education, as they cannot attend school, and consequently they are at risk of lacking the knowledge they need to recognize sexual abuse or exploitation, and how to get the aftercare needed in such situations.

With the lockdown, health services and care may also be scaled back, and young women (who in some places already struggled to receive adequate SRHR services) are increasingly at risk of not getting the healthcare necessary to protect themselves (such as using a contraceptive method) in the case of sexual gender-based violence, which may result in an unwanted pregnancy. This in itself is an issue, as abortion care is even more difficult to attain in lockdowns⁶².

LGBTI+ people are disproportionately represented amongst those at the margins of socio-economic status, homeless people, and those without healthcare, leaving them increasingly at risk as a result of the pandemic. In many countries, revealing their sexual orientation may leave bisexual or lesbian women at risk of sexual or gender-based violence, and even leaving the home may be risking the lives of transgender women. By staying at home, LGBTI+ youth are forced to either cover up their sexual identity or face (sometimes dangerous) consequences of unaccepting family members, which increases the rates of domestic and gender-based violence, including physical, emotional and mental abuse. COVID-19, and the measures that Governments are taking to tackle it, amplify inequalities, discrimination and violence⁶³. In countries with laws criminalizing homosexuality, LGBTI+ people are at a heightened risk of police abuse, arbitrary arrest and detention with regards to COVID-19 restrictions and curfews⁶⁴.

9. Annexes

Annex 1.

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

- Dutch law has a special section on sexual crimes or “zedendelicten”. Articles 239 up to and including 249 address these crimes⁶⁵.
- As per Article 242 of Dutch Criminal Law, “using violence or threatening to use violence to force someone to take part in sexual acts, including sexually entering the body, is punishable with up to 12 years of prison or a fine of the fifth category.”
- As per Article 243 of Dutch Criminal Law, “knowingly performing acts with someone who is in a state of sub-consciousness, decreased consciousness, or bodily impotency, or who has a mental or psychogeriatric disorder or suffers from a mental disability, or he who is unable or not completely able to make his consent known or to resist, including sexually entering the body, is punishable with up to eight years of prison or a fine of the fifth category.”

<https://plan-international.org/emergencies/covid-19-faqs-girls-women>

⁶¹ Plan International, ‘Violence against girls and women risks being COVID-19’s invisible catastrophe’, 2020.

<https://plan-international.org/blog/2020/04/girls-and-women-risk-being-covid-19s-invisible-catastrophe>

⁶² Taylor Riley et al, ‘Estimates of the Potential Impact of the COVID-19 Pandemic on Sexual and Reproductive Health in Low- and Middle-Income countries’, Guttmacher Institute, 2020.

<https://www.guttmacher.org/journals/ipsrh/2020/04/estimates-potential-impact-covid-19-pandemic-sexual-and-reproductive-health>

⁶³ United Nations Human Rights, ‘COVID-19: The suffering and resilience of LGBT persons must be visible and inform the actions of States’, 2020.

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25884&LangID=E>

⁶⁴ Ibid

⁶⁵ Dutch Criminal Law, consulted at wetten.overheid.nl.

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- Performing sexual acts with someone under the age of 12, including sexually entering the body, is punishable with up to 12 years of prison or a fine of the fifth category (Article 244).
- Performing sexual acts with someone under the age of 16 but over 12 outside of a marital bond, including sexually entering the body, is punishable with up to 12 years of prison or a fine of the fifth category (Article 245).
- All above punishments may be higher if:
 - The acts are committed by two or more people;
 - The acts are committed by a parent, teacher or guardian;
 - There was use of force before, during or after the crime;
 - The victim is below 18 and in a vulnerable position;
 - The victim is below 18 and there was use of force before, during or after the crime;
 - The crime results in serious bodily injuries for the victim; or
 - The crime results in the death of the victim.

Having sexual contact with a sex worker between the ages of 16 and 18 is punishable (Article 248b). Making a person below 16 witness sexual acts is punishable (Article 248d). Convincing or forcing someone under 18 to engage in sexual acts is punishable (Article 248f).

- Sexual assault: 8 years or 76.000 euro
Sexual assault by multiple persons: 10 years
Sexual assault of a minor or child under guardian: 10 years
Sexual assault with heavy injuries or life treating danger: 15 years
Sexual assault with death: 18 years
- Rape: 12 years or 76.000 euro
Rape by multiple persons: 16 years
Rape of a minor: 16 years
Rape with heavy injuries or life treating dangers: 15 years
Rape with death: 18 years