

**Questionnaire on criminalization and prosecution of rape**

Joint Submission for the thematic report of the Special Rapporteur on Violence against Women to the United Nations General Assembly 2020

16 December 2020

Defence for Children International and ECPAT International would like to take this opportunity to thank Ms. Dubravka Šimonovic, Special Rapporteur on Violence Against Women, for her continued work to enhance the protection and ensure the respect of the rights of women in the most vulnerable situations. In this regard, we commend her efforts to give special attention to *Rape as a grave and systematic human rights violation and gender-based violence against women* in her upcoming UN General Assembly report (September 2020). Furthermore, we highly appreciate the opportunity given to civil society organisations to contribute their first-hand knowledge and expertise from the ground. The following submission has been developed with the contributions of DCI-Sierra Leone, DCI-Burkina Faso, DCI-Ghana, DCI-Tunisia, DCI-Colombia, COALICO-Colombia, DCI-Czech Republic, Czech Helsinki Committee, DCI-ECPAT Netherlands, ECPAT-Albania, ECPAT-Mali, ECPAT-DR Congo, ECPAT- Rwanda, CUI-Rwanda, ECPAT-Canada, ECPAT-South Korea, ECPAT-Kazakhstan, ECPAT-Samoa, ECPAT-Belgium, ECPAT-Czech Republic, ECPAT-Spain, ECPAT-Portugal and ECPAT-Tanzania.

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1. **Defence for Children International (DCI)**

[Defence for Children International](https://defenceforchildren.org/) is a leading child rights-focused and membership-based grassroots movement founded in 1979 in Geneva. Our mandate is to ensure effective implementation of the United Nations Convention on the Rights of the Child (UNCRC) at the local, national and international level. This movement has become global in scope and is now present on 5 continents. DCI obtained consultative status with the United Nations in 1983, then became the coordinator of the group of NGOs co-drafting the Convention on the Rights of the Child, until the adoption of the treaty in 1989.

1. **ECPAT International**

ECPAT International is a global network of civil society organizations working together in solidarity to eliminate all forms of the sexual exploitation of children (SEC). This includes the sexual exploitation of children in prostitution, sale and trafficking of children for sexual purposes, SEC in the context of humanitarian situations and conflict including forced and early marriage, online child sexual exploitation and the sexual exploitation of children in travel and tourism.

With 30 years of experience in working and managing multi-stakeholder processes and alliances across national, regional and global levels; ECPAT is considered to be at the helm of all issues and manifestations pertaining to SEC. ECPAT has Consultative Status to the United Nations Economic and Social Council (ECOSOC) and many years of experience in successfully contributing to the UN’s global discourse on child protection.

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# Definition and scope of criminal law provisions

# Criminal law provisions on rape

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.**

## Africa

*DR Congo:* The Congolese penal code provides for rape as an offense against family order, and provides in article 170 that: "Anyone who commits rape is punished with penal sentence from 5 to 20 years of violence or serious threats (…)".Article 167 gives a major clarification on the child victim of rape and stipulates that: "a penal sentence of 5 to 15 years. The age can be determined in particular by medical examination, in the absence of civil status."

*Ghana:* Rape is the sexual penetration of a female of sixteen years or above without her consent. Whoever commits rape shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty five years.

*Sierra Leone:* Cap 31 of the 1991 constitution and the sexual offence Act 2012 made provision for the criminalization of form of serious sexual violence in Sierra Leone. However the sexual Offence Act 2012 has repealed the provision made in cap31 of the 1991 constitution.

*Rwanda:* The Article 134 of the law Nº68/2018 of 30/08/2018 determining offences and penalties in general defines Rape in this way: A person who causes another person to perform any of the following acts without consent by use of force, threats, trickery or by use of authority over that person or who does so on grounds of vulnerability of the victim, commits an offence.

*Tunisia:* Chapter III of the Tunisian penal code (articles 226 to 245 bis) is devoted to sexual crimes.

## Americas

*Canada:* Article271 “Everyone who commits a sexual assault is guilty of

* (a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or
* (b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.”

*Colombia:* Penal Code: Law 599 of 2000. Title IV Crimes against Sexual Freedom, Integrity.

Chapter I: Rape: Arts. 205 to 207

Chapter II: Abusive Sexual Acts: Arts. 208 to 210 A

Chapter III: Provisions common to the previous chapters: Arts. 211 to 212 A

Chapter IV: Sexual Exploitation: Arts. 213 to 219 C.

## Asia and Pacific

*South Korea:* See criminal Act in Annex 2 on punishment of sexual crimes, and the Act on sexual violence prevention and victims protection.

*Kazakhstan:* The Criminal Code of the Republic of Kazakhstan is the main and only source of criminal law in Kazakhstan, which established criminality and punishability of acts on the territory of Kazakhstan.In Kazakhstan, rape (Article 120 of the Criminal Code) and violent acts of a sexual nature (Article 121 of the Criminal Code) were transferred from medium to heavy category with imprisonment of 5 to 8 years.In addition, for committing rape or violent acts of a sexual nature (part 4 of article 120, 121 of the Criminal Code), a 20-year liability or life imprisonment is provided for a young child. A similar punishment is provided for the killing of young children.

The Law of the Republic of Kazakhstan “On Amendments and Additions to Some Legislative Acts of the Republic of Kazakhstan on the Improvement of Criminal, Criminal Procedure Laws and Enhancing the Protection of Personal Rights”. In particular, responsibility for all formulations of rape and violent acts of a sexual nature is strengthened, for falsification of evidence on the facts of sexual violence against children, as well as for harboring and failure to report about them.

*Samoa:* Criminal Act 2013: Part VII Sexual Crimes

48. “Sexual intercourse” defined

49. “Sexual violation” defined

50. “Sexual connection” defined

51. Circumstances which do not in themselves amount to consent

52. Penalty for sexual violation

53. Attempted sexual violation and assault with intent to commit sexual violation

54. Sexual conduct with consent induced by threats

55. Incest

56. Sexual conduct with a family member

57. “Dependent family member” defined

58. Sexual conduct with child under 12

59. Sexual conduct with young person under 16

60. Indecent assault

61. Defence to charge under section 59

62. Using threats of intimidation for the purpose of sexual conduct

63. Sexual conduct with severely intellectually disabled person

64. Voyeurism

65. Adultery by married persons

66. Adultery with married person

67. Sodomy

68. Attempts to commit sodomy

## Europe

*Albania:* Section VI of the Criminal Code of the Republic of Albania provides for criminal offenses against sexual integrity, as follows: SECTION VI SEXUAL CRIMES[[1]](#footnote-1).

Article 100: Sexual or homosexual relations with minors (Amended by law no 8733, dated 24.1.2001, Article 15; amended the words in the second and third paragraph by the law no 144, dated 2.5.2013, Article 20)

Having sexual or homosexual relations with minor children, or with a female minor, who is not sexually matured, shall be punished from seven to fifteen years imprisonment. When the sexual or homosexual intercourse was committed in complicity, more than once or by violence, or when the child victim had serious health consequences shall be punished to not less than twenty five years of imprisonment. When that offence brought as a consequence the minor’s death or suicide, it shall be punished to not less than thirty years or life imprisonment.

Article 101: Violent sexual or homosexual intercourse with a minor who is fourteen to eighteen years old (Amended by law no 8733, dated 24/01/2001, Article 16)

Having sexual or homosexual relations by violence with children that are fourteen to eighteen years old, who is sexually matured, shall be punished from five to fifteen years imprisonment. When the sexual or homosexual intercourse by violence was done in complicity, more than once, or when the child victim had serious health consequences; this shall be punished from ten to twenty years imprisonment. When that offence brought as a consequence the minor’s death or suicide, this is sentenced to not less than twenty years imprisonment.

Article 107/a: Sexual violence Exercising sexual violence by performing actions of a sexual nature on the body of another person through the use of objects shall constitute a criminal offence and is punishable by imprisonment of from three to seven years. When this action is committed with accomplices, against several persons, more than once or against children fourteen to eighteen years of age, it is punishable by imprisonment of from five to fifteen years. When this action is committed against a child under fourteen years of age or a child who is not sexually matured, regardless of whether it is committed by use of violence or not, it shall be punishable with no less than twenty years of imprisonment. When this action as a consequence has brought the death or suicide of the victim, it shall be punishable by not less than twenty five years of imprisonment.

*Belgium:* Rape is defined and prosecuted in the Belgian Criminal Code in the following article. The parts specifically concerning minors are underlined.

“Art. 375 - Any act of sexual penetration, of any nature and by any means committed on a person who does not consent to it, constitutes the crime of rape.
Consent does not exist, when the act was imposed by violence, coercion, threat, surprise, or by subterfuge, or was made possible due to a physical or mental infirmity or disability of the victim.
Whoever commits the crime of rape shall be punished with imprisonment from five to ten years.
If the crime has been committed on the person of a minor over the age of sixteen, the perpetrator shall be punished with imprisonment from ten to fifteen years.
If the crime has been committed in the person of a child over fourteen years of age and under sixteen years of age, the perpetrator shall be punished by imprisonment from fifteen years to twenty.
Rape is defined as any act of sexual penetration, of any nature and by any means whatsoever, committed in the person of a child who has not attained the age of fourteen years. In this case, the penalty shall be imprisonment from fifteen to twenty years.
It will be from twenty to thirty years imprisonment if the child was under ten years of age.”

“Art. 376 - If the rape or indecent assault caused the death of the person on whom it was committed, the guilty party shall be punished from 20 to 30 years' imprisonment.
If the rape or indecent assault was preceded or accompanied by the acts referred to in Article 417ter, first paragraph, or by sequestration, the guilty party shall be punished by imprisonment from fifteen to twenty years.
If the rape or indecent assault was committed either against a person whose situation of vulnerability by reason of age, pregnancy, illness, infirmity or physical or mental disability was apparent or known to the perpetrator or at the threat of a weapon or an object resembling a weapon, the perpetrator shall be punished (by imprisonment) for ten to fifteen years.”

*Czech Republic:* In the Czech Republic, violent sexual crimes are regulated by the Criminal Code (Act No. 40/2009 Coll.), the Criminal Procedure Code (Act No. 141/1961 Coll.) and the Act No. 45/2013 Coll. on Victims of Crime, which regulates the rights of victims among which it distinguishes particularly vulnerable victims. In the Criminal Code (Act No. 40/2009 Coll.), Title III deals with crimes against human dignity in the sexual area:“Article 185 - Rape Czech Criminal Code, § 185 : Rape

(1) Whoever forces another person to have sexual intercourse by violence or by a threat of violence, or a threat of other serious detriment, or whoever exploits the person’s vulnerability for such an act, shall be sentenced to imprisonment for six months to five years.

(2) An offender shall be sentenced to imprisonment for two to ten years, if he/she commits the act referred to in Sub-section (1)

a) by coitus or other sexual contact performed in a manner comparable with coitus,

b) on a child, or

c) with a weapon.

(3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she a) commits the act referred to in Sub-section (1) on a child under the age of fifteen, b) commits such an act on a person in detention, serving a prison sentence, in protective treatment, in security detention, in protective or institutional therapy or in another place where personal freedom is restricted, or c) causes grievous bodily harm by such an act.

(4) An offender shall be sentenced to imprisonment for ten to eighteen years, if he/she causes death by the act referred to in Sub-section (1).

(5) Preparation is criminal.

*Spain:* Organic Law 10/1995[[2]](#footnote-2), of November 23, of the Criminal Code (CC) and its latest revision through Organic Law 1/2015[[3]](#footnote-3), establishes in its title VIII crimes codified under “crimes against sexual freedom and sexual indemnity”. Chapter I includes crimes classified as sexual assaults as well as the way in which they are committed; in this way:

Art. 178. Anyone who violates the sexual freedom of another person, using violence or intimidation, will be punished as responsible for sexual assault with a prison sentence of one to five years.

Art. 179. When the sexual assault consists of sexual penetration by vaginal, anal or oral route, or introduction of bodily limbs or objects by any of the first two routes, the person responsible will be punished with the prison sentence of six to 12 years.

*Portugal:* Article 164: Rape

1 - Whoever, by means of violence, threatens seriously, or after, for that purpose, has rendered unconscious or made it impossible to resist, embarrass another person:

a) Suffering or practicing, with yourself or with others, copulation, anal intercourse or oral intercourse; or

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

It is punished with a prison sentence from three to ten years.

2 - Whoever, by means of not understood in the previous number, embarrasses another person:

a) Suffering or practicing, with or with others, copulation, anal intercourse or oral

intercourse; or

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

It is punished with a prison sentence from 1 to 6 years.

*Netherlands:* Section 242 of the Criminal code:

He who by force or other fact or threat of violence or other fact compels someone to undergo acts that consist or partly consist of the sexual penetration of the body is punished as guilty of rape with imprisonment of up to twelve years or a fine of the fifth category.

Section 243 of the Criminal code:

A person who, with someone he knows is in a state of unconsciousness, loss of consciousness or physical impotence, or who suffers from such a mental disorder, psychogeriatric disorder or intellectual disability that he is unable or insufficiently able to determine his will or to make known or to oppose it, commits acts that consist or consist partly of the sexual penetration of the body, is punishable by imprisonment of up to eight years or a fine of the fifth category

Section 244 of the Criminal code:

Anyone who commits acts of or partly constitutes sexual penetration of the body with anyone under the age of twelve is punishable by up to twelve years’ imprisonment or a fifth category fine.

Section 245 of the Criminal code:

Anyone who commits acts of sexual offenses, including or consisting of sexual penetration of the body, with someone who has reached the age of twelve but not yet that of sixteen is punishable by up to eight years' imprisonment or a fine of the fifth category.

# Definition of rape

1. Based on the wording of those provisions, is the provided definition of rape:

|  |  |  |
| --- | --- | --- |
|  |  YES |  NO |
| 1. Gender specific, covering women only
 | Ghana, Colombia, Kazakhstan, Tanzania | Albania, DR Congo, Burkina Faso, Mali, Canada, South Korea, Samoa, Belgium, Czech Republic, Spain, Portugal, Sierra Leone, Rwanda, Netherlands, Tunisia |
| 1. Gender neutral, covering  all persons
 | Albania, DR Congo, Burkina Faso, Mali, Canada, Colombia, South Korea, Kazakhstan, Samoa, Belgium, Spain, Portugal, Sierra Leone, Czech Republic, Netherlands, Tunisia | Ghana, Rwanda, Tanzania |
| 1. Based on the lack of consent of victim
 | Albania, DR Congo, Burkina Faso, Ghana, Mali, Canada, Colombia, Kazakhstan, Samoa, Belgium, Spain, Sierra Leone (for adults), Rwanda, Tunisia | South Korea, Czech Republic, Sierra Leone (for children) |
| 1. Based on the use of force or threat
 | Albania, DR Congo, Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Kazakhstan, Samoa, Czech Republic, Spain, Portugal, Sierra Leone (for adults), Rwanda, Tunisia | Belgium, Sierra Leone (for children) |
| 1. Some combination of the above.
 | Albania, DR Congo, Burkina Faso, Ghana, Mali, Canada, Kazakhstan, Belgium, Spain, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania | South Korea, Samoa, Czech Republic |
| 1. Does it cover only vaginal rape?
 | DR Congo, Ghana, South Korea, Portugal | Albania, Burkina Faso, Mali, Canada, Colombia, Kazakhstan, Samoa, Belgium, Czech Republic, Spain, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania |
| 1. Does it cover all forms of penetration?
 | Albania, Burkina Faso, Ghana, Mali, Canada, Colombia, Kazakhstan, Samoa, Belgium, Czech Republic, Spain, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania | DR Congo, South Korea |
| 1. Is marital rape in this provision explicitly included?
 | Albania, Burkina Faso, Mali, Colombia, Somoa, Rwanda, Tanzania | DR Congo, Ghana, South Korea, Kazakhstan, Belgium, Czech Republic, Spain, Sierra Leone, Netherlands, Tunisia |
| 1. Is the law silent on marital rape?
 | Albania, Ghana, Mali, Kazakhstan, Czech Republic, Spain, Netherlands | DR Congo, Burkina Faso, South Korea, Samoa, Belgium, Sierra Leone, Rwanda, Tunisia, Tanzania |
| 1. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?
 | DR Congo, Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Samoa, Belgium, Czech Republic, Spain, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania | Mali, Kazakhstan, Albania |
| 1. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?
 | Ghana, Canada, Kazakhstan | Albania, DR Congo, Burkina Faso, Colombia, South Korea, Somoa, Belgium, Czech Republic, Spain, Sierra Leone, Netherlands, Tunisia, Tanzania |

**Comments on question c and d:**

## Europe

***Netherlands:***

Question c. Based on the lack of consent of victim
For victims > 16 yo: YES (242 of the code)
For vulnerable victims: NO (243 of the code)
For victims < 16 yo: NO (244 and 245 of the code)

Question d. Based on the use of force or threat
For victims > 16 yo: YES (242 of the code)
For vulnerable victims: NO (243 of the code)
For victims < 16 yo: NO (244 and 245 of the code)

**Regarding question g, here are the following comments:**

## Africa

*Tunisia:* The new art 227 of the penal code provides: is considered rape, any act of sexual penetration, whatever its nature, and the means used committed on a female or male person without her/his consent.

*Burkina Faso*: Any act of penetration of any kind whatsoever.

*Ghana* : Whenever, upon the trial of any person for an offence punishable under this Code, it is necessary to prove sexual penetration. Without penetration it will be treated as sexual abuse which the punishment wouldn’t be as severe as rape.

*Sierra Leone*: It covers penetration of the vagina, mouth and anus.

*Mali:* Art. 226 penal code of Mali. “Any act of sexual penetration, of whatever nature, committed on another person by violence, coercion, threat or surprise is rape.”

## Americas

*Canada:* Penetration is not required.

*Colombia*: The Penal Code: Law 599 of 2000 in its Special Part Title IV Crimes against Sexual Freedom, Integrity Third Chapter. Art. 212 establishes that “For the effects of the behaviors described in the previous chapters, sexual penetration shall be understood the penetration of a person by anal, vaginal, or oral route, as well as the vaginal or anal penetration of any other part of the human body or other object ”.

## Asia and Pacific

*South Korea*: for rape, it only covers ‘sexual intercourse’. For other penetration, imitative rape is applied.

*Kazakhstan*: it encompasses oral and anal rape.

*Samoa*: 50. Sexual penetration means:

(a) penetration occasioned by the penetration of the genitalia or the anus of any person by—

(i) any part of the body of any other person; or

(ii) any object held or manipulated by any other person; or

(b) penetration between the mouth or tongue or any part of the body of any person and any part of the genitalia or anus of any other person; or

(c) the continuation of sexual penetration, as described in either paragraph(a) or (b).

## Europe

*Albania:* it covers vaginal and anus penetration.

*Belgium*: See Art. 375 – “Any act of sexual penetration, of any nature and by any means”.

*Czech Republic*: "Intercourse or have other intercourse performed in a manner comparable to intercourse" (Criminal Code, Article 185, (2) a)).According to case law, sexual penetration means any way of sexual satisfaction on another person´s body (including touching of genitals, breasts etc.). Sexual contact performed in a manner comparable with coitus includes e.g. oral or anal intercourse, inserting fingers or another subjects into vagina.

*Spain*: Art. 179 of the Criminal Code, includes: (…) the introduction of body parts or objects (…)”, including both the cases in which the active subject introduces the objects against the will to the passive subject, as well as the cases in which the author forces the victim, without his/her consent, to introduce objects in his/her own body.

*Netherlands :* Anal penetration. A while ago the Supreme Court decided that an unwanted “French kiss” (kiss with tongue) could also be rape. This judgment is now revised. The Supreme Court finds grounds to revert to its earlier Art. 242 Sr given interpretation by now deciding that the requirements of legal certainty do not preclude the fact that, although a French kiss in itself produces the penetration of the body with a sexual tendency, it cannot reasonably be equated with sexual intercourse or a similar behavior in terms of the seriousness of the violation of sexual integrity, so that an enforced French kiss will no longer be regarded as "rape" within the meaning of art. 242 Sr. More info: http://deeplink.rechtspraak.nl/uitspraak?id=ECLI:NL:HR:2013:1431

**Comments on question h:**

## Africa

*Sierra Leone:* According to the Sexual Offences subject to subsection (4) of section 9, the marriage for a defendant and the victim shall not be a defence to an offence under this Act.

## Europe

*Belgium:* Marital rape is not explicitly included, but marital violence is considered as aggravating circumstances in Art. 410 of the Criminal Code- “The same shall apply if the perpetrator has committed the crime or offence against his or her spouse or the person with whom he or she cohabits or has cohabited and maintains or has maintained a lasting emotional and sexual relationship”.

*Spain:* Criminal Code does not explicitly mention marital rape, although Organic Law 1/2004 of December 28, on Comprehensive Protection Measures against Gender Violence, does include the above in "attacks on sexual freedom".

**Comments on question j:**

## Africa

*Sierra Leone:*It is covered in the general provision.

## Americas

*Canada:* It does not matter, there needs to be consent whether partner or not.

*Colombia* : Law 294 of 1996 Established in its Art. 25 “Anyone who, through violence, carries out sexual penetration or any sexual act with their spouse, or with whom they cohabit or have cohabited, or with the person who has procreated a child, shall incur in prison of six (6 ) months to two (2) years. Law 360 of 1997 contemplates imprisonment of four (4) to eight (8) years for sexual violence between spouses. The status of husband or partner does not grant a privilege for a person to sexually abuse the couple and receive a benign sanction .”

**Comments on question k:**

## Americas

*Canada:* Spouse may be charged. Article 278 “A husband or wife may be charged with an offence under [section 271](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec271_smooth), [272](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth) or [273](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth) in respect of his or her spouse, whether or not the spouses were living together at the time the activity that forms the subject-matter of the charge occurred.”

*Colombia:* it is excluded, it is part of the aggravating factors in criminal behavior.

## Asia and Pacific

*South Korea*: in Korean law, forced sexual intercourse was rarely defined as ‘marital rape’. It was usually called a ‘sexual abuse’ in the domestic violence context and was handled in the Family court instead of Criminal court. However, in 2009, the court considered a rape between husband and wife as a Quasi-rape for the first time. And in 2013, the Supreme court made an agreement on ‘marital rape’ and admitted that a forced sexual intercourse between spouses should be considered as marital rape. But it is not formally stated in the law, and it depends on each case and court to decide whether the case can be sentenced as martial rape or not. (Many factors to be satisfied) So many victims still go to the Family court as a sexual abuse in domestic violence.

## Europe

*Belgium:* Marital rape is not explicitly mentioned in the law, but may be included in assault and battery, which are considered as a crime and are severely punished by Article 410 of the Criminal Code.

# Provisions excluding criminalisation of the perpetrator

1. **Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

## Africa

*Sierra Leone:* No, the Law does not make any specific provision excluding criminalisation of the perpetrator for the above reasons. In fact the law criminalises sexual activity between close family members as incest, especially parents, siblings, nieces and nephews to be incest.

*DR Congo:* There are no provisions excluding the criminalisation of the perpetrator even if the victim and the alleged perpetrator live together, since the provisions of the above-mentioned articles target and punish any person who committed the rape regardless of the location or the context in which the rape was committed.

*Mali:* No there are provisions excluding the criminalisation of the author on the contrary

Art. 226 Criminal Code of Mali says “If the culprits are the ancestors of the person over whom the rape has been committed, if they are those who have authority over him, or if they are responsible for his education, supervision or if they are employed by the above-mentioned persons, the sentence may not be suspended.”

*Rwanda:* No, if for instance such situation happens in case of child defilement, the new Rwandan law determining offences and punishments in general states that :” *If child defilement is followed by cohabitation as husband and wife, the penalty is life imprisonment that cannot be mitigated by any circumstances.” ( see Art 133, Par.5.)*

*Burkina Faso, Tunisia and Ghana:* No.

## Americas

*Canada and Colombia*: No.

## Asia and Pacific

*South Korea:* No, there is no provisions excluding criminalisation of such act. Because there was no wording in the definition of « rape » that excludes intimate partners (it just says ‘other ‘ or ‘person’), the Supreme court made an agreement in 2013 regarding the « rape » between an intimate partner (married/de facto marriage). The court stated that « because there is no definition or provision that exclude wife from a victim in the legal content, it is reasonable to consider that even though he/she agreed to marry he/she, it does not mean that he/she consented to the forced sex. Thus, crime such as marital rape can be applied. »

*Kazakhstan*: According to the legislation of the Republic of Kazakhstan, this category was transferred from medium to serious crimes, where there is no provision for reconciliation of the parties by mutual agreement.

*Samoa*: No.

## Europe

*Belgium, Portugal, Spain, Netherlands:* No.

*Albania:* No. There is no legal provision in the criminal legislation of the Republic of Albania which immunizes or excludes from criminal responsibility the person who commits one of the sexual crimes (Section VI) in terms of marriage, cohabitation, partnership, etc.

On the contrary, Article 102 of the Criminal Code provides that, "... Engagement in sexual activity by the use of force with adult females or between spouses or cohabitants, without the consent of either of them, shall be punishable by three to ten years imprisonment. .. ".

In these cases, the object of the crime is the legal relationship established to ensure the freedom and sexual inviolability of spouses or cohabitants from criminal acts that violate their sexual sphere.

In violent sexual relations between spouses or cohabitants, each of the spouses or cohabitants can be an active subject. What stands out is the fact that in this case the legislator acknowledges that in this relationship the active subject can be both female and passive male. In this crime figure, the purpose of the detention goes beyond protecting the sexual freedom of the spouses or cohabitants, wanting the legislature to protect marriage and through it the family as well as cohabitation, the latter often conceived as a link before marriage.

Sexual activity is closely related to the person and should be protected as a particularly delicate aspect of individual autonomy, which can lead to an effective remodeling of the most effectively guaranteed right to sexual self-determination, such as who demonstrates personal will against committing an act. sexuality has the right to defend itself against it regardless of personal behavior towards the initiatives of the active subject.

Sexual intercourse between spouses without their consent or through violence constitutes a form of domestic violence. Law no. 9669, dated 12.12.2006 "On measures against domestic violence" defines domestic violence as "any act of violence (ie any action or inaction of one person against another that results in the violation of his physical, moral integrity, psychological, sexual, social, and economic) exercised between persons who are, or have been, in a family relationship”.

*Czech Republic:* There is no provision 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. Criminal proceedings for the crime of rape pursuant to Section 185 (1) and (2) of the Criminal Code against who is or at the time the crime was committed was a spouse or partner in relation to the injured party, may be initiated or continued only with the consent of the injured party.

# Legal age for sexual consent

1. **What is the legal age for sexual consent?**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 13 years old | 14 years old | 15 years old | 16 years old | 18 years old |
| South Korea\* | Colombia\*\* | Czech Republic | Ghana | DR Congo |
| Tanzania | Portugal\*\*\*\* |  | Canada | Burkina Faso |
|  |  |  | Samoa | Kazakhstan  |
|  |  |  | Belgium\*\*\* | Sierra Leone |
|  |  |  | Spain | Rwanda |
|  |  |  | Tunisia |  |
|  |  |  | Netherlands |  |

**Comments:**

*Mali:* Malian law is silent on this, however the equal age of marriage for the girl is 16, including 15 with the consent of the girl's parents and 18 for the boy.

*\*South Korea:* It’s currently 13 years old, but after the Nth room case, the government announced that the age will be increased to 16.

*Tanzania:* it’s currently 13 years old under the 1971 marriage act.

*\*\*Colombia:* The Criminal Code of Colombia (Act 599 of 2000), as modified by Art. 4 and 5 of law 1236 of 2008, sets the age of consent at 14, regardless of gender or sexual orientation. Sexual intercourse with a person under 14 years of age is punishable by imprisonment of 12–20 years (Art. 208). Engaging in sexual acts other than intercourse, or inducing the engagement of sexual practices, with a person under 14 is punishable by imprisonment of 9–13 years.

*\*\*\**Belgium: Sexual intercourse with a minor under the age of 14 years is ‘statutory’ rape, there exist an irrefutable presumption of lack of consent (see article 375-5 of the Criminal Code). Sexual intercourse with a minor between 14 and 16 is considered as an indecent assault even if the minor has consented (see article 372 and 373 of the Criminal Code). To sum up: 1. Before the age of 14, any act of sexual penetration is considered as a violent rape, even it the victim has consented. 2. Between the ages of 14 and 16, sexual intercourse is not permitted by law even if the person has consented. The provisions on violent rape will no longer be applied but indecent assault. 3. From the age of 16, minors can choose their sexual partners. However, parents are still able to exercise their parental authority and watch their children until they reach their majority. Art.372 of the Belgian Civil Code: “The child remains under the authority of his or her father and mother until his or her majority or emancipation.”

*\*\*\*\*Portugal:* In Portugal, the age that young people can start a consenting sex life is 14 years old. They cannot drive, they cannot vote, they cannot answer for their actions before the courts, but they can make decisions about their own sexuality - albeit with restrictions up to 16 years, if the partner is not a minor.

*Albania:* According to Albanian legislation, there are different stages of age protection

Children up to 14 years of age

In Albania, it is forbidden for adults or adolescents to have sex with children up to the age of 14. If adults or adolescents still do this, it is punishable. If two children have sex with each other, they are not punished. Because children up to the age of 14 are not criminally liable.

Adolescents between the ages of 14 and 18

Adolescents over the age of 14 are seen with a kind of sexual maturity and self-responsibility. For this reason, teenagers between the ages of 14 and 15 have the right to have sex with each other. Of course, this only applies if both people want it. However, it is forbidden when adults or adolescents over the age of 18 have sex with adolescents under the age of 18, in case this adolescent under the age of 18 is entrusted to an adult for education, training and care. This means, for example, that teachers and educators, trainers and educators, educators and educators or foster parents should never have sex with adolescents under the age of 18. Adults over the age of 18 should not take advantage of the fact that a teenager or adolescent under the age of 18 cannot judge accurately if she or he or she really wants to have sex. They should not convince teenagers of this.

# Provisions differentiating for sexual activity between peers

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

## Africa

*Sierra Leone:* The sexual offences Act differentiates treatment for children involved in sexual activities, which has been elaborated by the new sentencing guidelines issued by the Chief of Justice pursuant of section 7B of the Sexual Offences Act (amended). Based on the Sentencing guidelines, a child sexual offender is one between the ages of 12 and 17 years and a young person offender as one between the age of 18-23 years. In terms of penalty, the minimum for child offenders is 5 years and maximum is 15 years, for young persons, the minimum penalty is 15 years and maximum is life imprisonment. For adults above 23 years, the minimum penalty is 15 years and maximum is life imprisonment.

*DR Congo, Burkina Faso, Tunisia and Ghana*: No.

*Mali:* Art.228 - Case of paedophilia in Mali. “If the culprits are the ancestors of the person over whom the crime was committed, if they are those who have authority over him, or if they are responsible for his education, supervision or if they are employed by persons above designated, or if the crime was committed with the help of several people, the penalty will be life imprisonment and a fine of twenty thousand to one million francs. However, the above crime is not established if the age difference between the perpetrator and the victim does not exceed five years.”

## Americas

*Canada:* Yes there are exemptions for minors (See annex 6).

## Asia and Pacific

*South Korea*: No, it mentions about sexual activity with minors, but does not specifically mention about sexual activity between peers.

*Kazakhstan*: there is no provision on sexual activity between peers.

*Samoa*: 56. Sexual conduct with a family member, 57. “Dependent family member” defined, 58. Sexual conduct with child under 12, 59.Sexual conduct with young person under 16.

## Europe

*Belgium:* There are no close-in-age exception in the Belgian law. However, the Belgian judicial system being a prosecutorial opportunity system, it is rare that a judge decides to pursue judicial proceedings for consented sexual intercourse between minors above 14.

*Spain*: Article 183quater of CC, establishes: “The free consent of the minor under the age of sixteen will exclude criminal liability for the crimes set forth in this Chapter, when the author is a person close to the minor by age and degree of development or maturity.”

*Czech Republic*: There is no provision that differentiates for sexual activity between peers.

*Netherlands:* No. Since 2002, the legislator has envisaged that this provision concerns acts of a sexual nature that violate the social-ethical standard. Sexual behavior between peers that is considered normal in the current age is beyond the scope of criminal law (according to the Response Memorandum, Senate, 27745). Normal sexual intercourse between young people is not fornication. Sexual fornication can only occur between a child and a considerably older person (according to the Minister, House of Representatives, 27745, no. 14). The following passage is taken from the Explanatory Memorandum to the Act of Approval to the Treaty of Lanzarote (House of Representatives, 2008, 31808): “The term 'lewd acts' means: acts with a sexual tendency in violation of the social-ethical norm. Normal consensual sexual contacts between young peers cannot be regarded as such and therefore fall outside criminal law. ”

According to the Supreme Court, sexual acts with a person between the ages of twelve and sixteen may lack lewdness under certain circumstances. This may be the case, for example, if those acts took place voluntarily between persons who differ only slightly in age. Generally speaking, a sharp demarcation of such conditions cannot be given. The citerion is whether the sexual act in question is generally accepted as socio-ethical. In assessing whether there are circumstances that imply that sexual acts cannot be regarded as lewd, the Supreme Court continues, to an important extent, to assess the facts and circumstances of the case.

*Albania:* In fact, in the Albanian legislation we do not find legal provisions that directly regulate the issue of age for sexual maturity and freedom of sexual activity, but from the interpretation of criminal legislation that provides for prohibitions and criminal offenses against sexual freedom, as well as civil/family legislation which provides the legal capacity and capacity to act, we can make a categorization of age groups regarding sexual freedom and age of sexual maturity.

# Criminal sanctions

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

## Africa

*Sierra Leone:* According to the sentencing guidelines for sexual penetration cases here are the sanctions provided. ‘WHEREAS by the Sexual Offences (Amendment) Act No 8 of 2019 the Sexual Offences Act No 12 of 2012 was amended to make provision for the increase of the maximum penalty for Rape and Sexual Penetration of a child from 15years imprisonment to a sentence of life imprisonment and to make provision for not only the introduction of the new offence of aggravated sexual assault but also the alternative conviction of aggravated sexual assault.’ Based on the Sentencing guidelines, a child sexual offender is one between the ages of 12 and 17 years and a young person offender is one between the age of 18-23 years. In terms of penalty, the minimum for child offenders is 5 years and maximum is 15 years, for young persons, the minimum penalty is 15 years and maximum is life imprisonment. For adults above 23 years, the minimum penalty is 15 years and maximum is life imprisonment.

*Tunisia:* according to the new art 227 of the penal code the perpetrator of rape is punished by twenty years of imprisonment if the act of rape is not associated with an aggravating circumstance.

*DR Congo:*

* + Rape committed with violence or threats is punishable by a penal sentence ranging from 5 to 20 years (article 170 Congolese penal code);
	+ Rape committed with the aid of violence against a child aged under 14 is punished with a penal sentence penalty ranging from 5 to 15 years (article 167 Congolese penal code);
	+ Rape causing the death of the victim is punished by penal servitude for life (article 171).

*Burkina Faso*: Article 533-11: Rape is punished with a prison sentence of 11 to 20 years and a fine 1,000,000 to 3,000,000 francs.

* + When it has resulted in dismemberment or permanent infirmity;
	+ When committed against a minor 13 to 15 years of age and over;
	+ When committed against a person whose particular vulnerability, due to age, illness, infirmity, physical or mental impairment or in a state of pregnancy, is apparent or known to the author;
	+ When committed by an ascendant or by any other person having on the victim an authority by law or de facto;
	+ When committed by a person who abuses the authority conferred via his functions;
	+ When committed by more than one person acting as author or partner in crime ;
	+ When committed with the use or threat of a weapon;
	+ When the victim has been put in contact with the perpetrator through the use, for the dissemination of messages intended for an audience not determined, from an electronic communication network;
	+ When committed in competition with one or more other rapes committed on other victims;
	+ When committed by the victim's spouse or partner or linked to the victim by a civil solidarity pact;
	+ When committed by a person acting in a state of drunkenness or under the clear influence of narcotic drugs.

*Ghana:* Between 3-7 years. Whoever commits rape shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty five years.

*Mali*: Art.226.Rape will be punished with five to twenty years 'imprisonment and optionally one to five years' ban on residence. If the rape was committed with the help of several people or on the person of a child under the age of fifteen, the culprit will be sentenced to twenty years' imprisonment, a ban on stay of five to twenty years, and judges may not, by declaring the existence of extenuating circumstances, reduce the sentence below five years' imprisonment. If the rape was committed with the two aggravating circumstances provided for in the preceding paragraph, the penalty will be that of life imprisonment.

*Tanzania:* 30 years imprisonment when convicted.

## Asia and Pacific

*South Korea:* All the laws included in the Criminal Act (attached below) states specific sanctions(punishments). And “Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes”(attached file) states criminal sanctions for each specific crimes.

*Kazakhstan*: According to the law article for a rape allows arrest, without applying for a recognizance not to leave. The sanction is valid until sentencing.

*Samoa*: 61. Defence to charge under section 59 – (1) It is a defence to a charge under section 59 if the person charged proves on the balance of probabilities that:

(a) the person charged was under the age of 21 years at the time of the commission of the act; and

(b) before the time of the act concerned, person charged had taken reasonable steps to find out whether the young person concerned was of or over the age of 16 years; and

(c) at the time of the act concerned, person charged believed on reasonable grounds that the young person was of or over the age of 16 years; and

(d) the young person consented.

(2) Except to the extent provided in subsection (1):

(a) it is not a defence to a charge under section 59 that the young person concerned consented; and

(b) it is not a defence to a charge under section 59 that the person charged believed that the young person concerned was of or over the age of 16 years.

## Europe

*Albania:* This information regarding criminal sanctions and the duration of imprisonment for criminal offenses against freedom and sexual integrity committed by force, are provided in Article 100, paragraph 2& 3, Article 102 paragraph 2 & 3, Article 102 / a paragraph 2&3 and Article 107 / a paragraph 2, 3 & 4 of the Criminal Code of the Republic of Albania.

*Belgium*: (Also see Annex 4) Rape is defined and prosecuted in the Belgian Criminal Code in the following article. The parts specifically concerning minors are underlined.

“Art. 375 - Any act of sexual penetration, of any nature and by any means committed on a person who does not consent to it, constitutes the crime of rape. Consent does not exist, when the act was imposed by violence, coercion, threat, surprise, or by subterfuge, or was made possible due to a physical or mental infirmity or disability of the victim.

*Czech Republic*: In Article 185 of the Criminal Code, the duration of the criminal sanction for rape (“imprisonment for six months to five years”) does not correspond to the seriousness of the crime. Because of the duration of the sanction, rape is classified as a misdemeanor – which is less serious than crimes – and therefore can be heard before a single judge and special methods of proceedings can be used, such as conditional cessation of criminal prosecution or settlement. The average length of an unconditional sentence is around 5 years, with a maximum of 3 years for a suspended sentence[[4]](#footnote-4) and “more than half (57.14%) of the sentences of imprisonment (conditional and unconditional) imposed for sexually motivated crime consisted of sentences of 1 to 5 years"[[5]](#footnote-5). In Article 186 of the Criminal Code, the duration of the criminal sanction for sexual coercion is “imprisonment for six months to four years or a ban on activity” and it does not correspond to the seriousness of the crime. Between 2016 and 2018, 11 persons were convicted, 8 were sentenced to "suspended sentence" (“podmíněný trest odnětí svobody”), one to “unconditional imprisonment” (“nepodmíněný trest odnětí svobody”), one had his punishment waived (“upuštění od potrestání”) and one was sentenced to "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem”)[[6]](#footnote-6). In Article 187 of the Criminal Code, the duration of the criminal sanction for sexual abuse is “imprisonment for one to eight years”. Between 2016 and 2018, 747 persons were convicted. The main punishment was "suspended sentence" (“podmíněný trest odnětí svobody” 82%), then “waive of punishment” (“upuštění od potrestání” 9%) and "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 5%).

*Netherlands:* These are sentencing guidelines[[7]](#footnote-7) for the courts, determined by the courts themselves. They are free to use them, but not bound to it.

*Spain*: Criminal Code stipulates, in its article 130, when criminal responsibility is extinguished because it has prescribed. Article 131 of the Penal Code establishes that, as a general rule, crimes will prescribe:

* 30 years, those in prison for more than 20 years.
* 25 years, those of prison of 15 years or more without exceeding 20.
* 20 years, when the maximum penalty indicated for the crime is imprisonment of 15 without exceeding 20.
* 15, when the maximum penalty indicated by law is disqualification for more than 10 years, or imprisonment for more than 10 and less than 15 years.
* 10, when the maximum penalty indicated by law is imprisonment or disqualification for more than five years and does not exceed 10.
* 5 years, in case of other crimes, except those of libel and slander and minor crimes, which prescribe in one year.

In the case of minors, crimes against sexual freedom prescribe at 10 or 15 years, from the time the minor has reached the age of majority, as established in article 132.1. “In crimes (…) against sexual freedom and indemnity, (…) when the victim is a minor, the terms will be computed from the day the victim reaches the age of majority, and if he/she dies before reaching it, from the date of the death”.

*Portugal:* a) Suffering or practicing copulation, anal intercourse or oral intercourse; or b) To suffer vaginal or anal introduction of body parts or objects;It is punished with a prison sentence from three to ten years.

# Reparation to the victims of rape and/or sexual violence

1. **What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

## Africa

*Sierra Leone:* According to the sexual offences act in the section on compensation to the victims; When a person is been convicted, in addition to any other punishment been given by the court, the convicted person is to pay the victim such sum as determined by the court to be reasonable compensation. An order under subsection (1) shall compensate the victim for :

* Cost of medical and psychological treatment
* Cost of physical and occupational therapy and rehabilitation
* Cost of necessary transportation
* Temporary housing and: child care
* Lost income
* Legal practitioners fees and other legal cost
* Compensation for emotional distress pain and suffering; and
* Any other losses suffered by the victim.

*Rwanda:* The Rwandan legal framework under the same spirit of general principles of laws, it provides that after the condemnation of the perpetrator, the victim from that judgement, she/he has right to claim for reparation.

*Tunisia*: Lack of a specific system of reparation, the question is governed by the general system of compensation in civil matters

*Burkina Faso:* Depends on the appreciation of the judge.

*Ghana:* No reparation unless the victim files civil suit for reparation. What is covered in the law is support for the victim’s rescue, rehabilitation, and reintegration.

*Mali*: compensation, payment of damages by the accused to the victim.

## Americas

*Canada*: It is under a separate piece of legislation. And not very effective.

*Colombia:* The Colombian Criminal Law grants victims, among others, the right to prompt reparation for damages suffered due to criminal conduct by the author of the same or the third party who is civilly responsible. At this stage of the criminal process, the victim must demonstrate the damages suffered.

• Law 599 of the 2000 Penal Code in its General Part Title IV of the Legal Consequences of Punishable Conduct, Chapter Six, sets forth the Repair to Victims in its arts. 94 to 100

• Law 906 of 2004 Code of Criminal Procedure in Book I General Provisions Title II Penal Action Chapter Four, contemplates the Exercise of the Incident of Comprehensive Reparation in its arts. 102 to 108.

## Asia and Pacific

*South Korea:* No statement mentioning the reparation (money) to the victim.

*Kazakhstan:* During criminal proceedings, the victim may file a civil claim for compensation for moral and material damage. The state does not provide for automatic compensation for any damage.

*Samoa*: there is no reparation to the victim.

## Europe

*Albania:* Whenever possible, child victims should be reimbursed so that they can receive full compensation, reintegration and rehabilitation. Procedures for conducting and conducting compensation should be accessible and sensitive to the age of the children. Compensation may include compensation from the perpetrator of the crime imposed by the criminal court, assistance from the state's compensation program for victims and compensation, which must be compensated for in civil proceedings. Where possible, access to social and educational reintegration spending, medical treatment, mental health care and legal services is needed. Procedures should be initiated to carry out the mandates (orders) for compensation and payment of compensation before the imposition of sentences.

*Belgium*: The victim may file a civil action to seek financial compensation for the damage suffered.

*Czech Republic:* In general, the victim of a sexual crime has, as an injured party, procedural rights under the Criminal Procedure Code (Article 43 and following) as well as rights under the Act on Victims of Crime. These rights are the right to information in criminal proceedings (right to be notified of the measures taken, right to a copy of the initiation of criminal proceedings, right to instruction, right to inspect the file, service of document), the right to actively participate in criminal proceedings, the right to be represented by an agent (including a lawyer, the right to free assistance or for a reduced remuneration), the right to compensation for damage, non-pecuniary damage or the issue of unjust enrichment, rights and obligations of the victim in role of witness[[8]](#footnote-8). After convicting the offender, the victim can claim the following rights under the Act on Victims of Crime: Right to information about the offender's stay at large (Article 11), right to protection against danger in connection with the offender's stay at large (Article 14), right to financial assistance (if the damage or damage caused by the crime has not been fully compensated; financial assistance to the victim referred to in Article 24 paragraph 1 d) consists in reimbursement of costs associated with the provision of professional psychotherapy and physiotherapy or other professional services aimed at remedying non-pecuniary damage).

*Netherlands:* During the criminal trial the victim can make a verbal statement and can claim damages. An attorney is free of charge (subsidized by the government).[[9]](#footnote-9)

*Spain: (See also Annex 7)* Law 4/2015 on the statute of the victim of crime regulates the rights to information and protection for the victim, before and during the process, and, regarding reparation itself, references are made in article related to restorative justice and those affected by the Criminal Procedure Law. Thus art. 15 states that:

1. Victims may access restorative justice services, in the terms that are determined by regulation, in order to obtain adequate material and moral reparation for the damages derived from the crime, when the following requirements are met:

a) the offender has recognized the essential facts from which his responsibility derives;

b) the victim has given his/her consent, after having received exhaustive and impartial information about its content, possible results and the existing procedures to enforce it;

c) the offender has given his/her consent;

d) the mediation procedure does not entail a risk for the safety of the victim, nor is there a danger that its development may cause further material or non-material damage to the victim; and

e) is not prohibited by law for the crime committed.

*Portugal:* The victim of a crime can claim compensation from the aggressor for the damage he/she has suffered. Such compensation is required through the formulation of a civil compensation claim, made in the respective criminal proceedings. It is the duty of the Public Prosecutor and Criminal Police bodies to inform any victim of the possibility of claiming that compensation, of the formalities to be observed, of the deadline to be met and of the evidence to be presented. The victim must express an interest in filing the claim for civil damages until the end of the investigation, being then notified of the order of prosecution, to deduct the claim within 20 days.

# Aggravating and mitigating circumstances

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

## Africa

*Burkina Faso:* Yes, Article 533-12.

## Americas

*Colombia:* Yes, Article 22 of the criminal code.

## Europe

*Albania: Article 50 on Aggravating circumstances[[10]](#footnote-10)*

The following circumstances aggravate the punishment:

a) When the offence committed is based upon futile motives;

b) When the offence is committed for rendering criminally liable or hiding the criminal liability of a third person, or for avoiding the conviction for another criminal offence, or for gaining or providing wealth benefits for oneself or for third parties, or any other material benefit;

c) When the criminal offence is committed savagely and ruthlessly;

ç) When a crime is committed after a conviction was decided for a previously committed crime;

ç/1) commission of a criminal offence after subjecting the person under electronic monitoring; d) When actions that aggravate or increase the consequences of a criminal offence are committed;

dh) The commission of the criminal offence by abusing the public office or the religious service.

e) When the offence is committed against children, pregnant women, or other people who, due to different reasons, cannot protect themselves;

e/1 commission of a criminal offence during or after the issuing of a court order of protection against domestic violence;

f) When the offence is directed against representatives of other states;

g) When an offence is committed through profiting from family, cohabitation, friendship, hospitality relations;

gj) When the offence is committed in complicity;

h) Committing the criminal offence more than once;

i) When the offence is committed using weapons, military ammunitions, explosives, flammable, poisonous, and radioactive substances;

j) The commission of the offence due to motives related to gender, race, colour, ethnicity, language, gender identity, sexual orientation, political, religious, or philosophical convictions, health status, genetic predispositions or disability.

*Belgium*: Yes, The age of the victim:

* + - the sentence is 20 to 30 years of prison if the crime was committed on a child under 10 years of age
		- the sentence is 15 to 20 if the minor is between 10 and 16 years of age.
		- the sentence is 10 to 15 years if the minor is between 14 and 16 years of age.
	+ If the crime caused the death of the victim,
	+ If the rape or indecent assault was committed against a person in a situation of vulnerability (age, pregnancy, illness, infirmity or physical or mental disability)
	+ If the crime was committed by a person who is a relative, a descendant, a sibling of the victim, or who occupies a similar position in the family, or who usually or occasionally cohabits with the victim and has authority on the latter.
	+ If the rape or indecent assault was committed by a person having authority on the minor

*Spain:* Yes, Article 180 of Criminal Code collects the aggravating circumstances of crimes under art. 178 and 179, aggravating the penalties of rape from twelve to fifteen years (…).

|  |  |  |
| --- | --- | --- |
|  | YES | NO |
| **a. Is rape by more than one perpetrator an aggravating circumstance?**  | Albania, Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Khazakstán, Spain , Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania | Samoa, Belgium, Czech Republic |
| **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)** | Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Belgium, Czech Republic, Spain, Portugal, Sierra Leone, Rwanda, Tunisia, Tanzania | Samoa, Netherlands, Albania |
| **c. Is rape by spouse or intimate partner an aggravating circumstance?** | Canada, Colombia, Belgium, Spain | Albania, Burkina Faso, Ghana, Mali, South Korea, Khazakstán, Samoa, Czech Republic, Portugal, Sierra Leone, Rwanda, Netherlands, Tunisia |

**Comments on question 8. a:**

*Colombia:* Yes. The Penal Code: Law 599 of 2000 in its Special Part Title II Crimes against persons and goods protected by International Humanitarian Law. Sole Chapter: Art. 140. “The penalty provided in the previous articles will be aggravated in the same cases and in the same proportion indicated in article 211 of this Code”.

*Spain:* Yes. Art. 180.1. 2nd. of CC.

**Comments on question 8.b:**

## Africa

*Sierra Leone:* Additionally both the Sexual Offences act (amended including its sentencing guidelines 2019 and the Trafficking in Persons act 2005 make provision for aggravating circumstances that would influence maximum sentence and they include:

a) The defendant committed the offence in the company of another person or persons;

b) At the time of or immediately before or after the commission of the offence, the defendant used or threatened to use a weapon;

c) At the time of or immediately before or after the commission of the offence, the defendant caused bodily harm to the victim;

d) The defendant confined or restrained the victim before or after the commission of the offence;

e) The defendant in committing the offence abused a position of trust, authority or dependency;

f) The defendant is a member of the same family as the victim;

g) The victim is a child; or

h) The victim has a physical or mental disability;

i) The victim is impregnated;

j) The victim is found to have contracted a sexually transmitted disease.

## Americas

*Colombia:* Yes. The Penal Code: Law 599 of 2000 in its Special Part Title IV Crimes against Sexual Freedom, Integrity and Training Chapter Three Provisions common to the previous chapters Aggravating Circumstances in its Article 211 establishes that “… the penalties for the crimes described in the previous articles will be increased from a third to a half, when:

1.The person responsible has any character or position that gives him or her authority over the victim or prompts her/him to place her/his trust in him ...

2. It will be carried out on a person under fourteen (14) years of age.

## Europe

*Spain*: Yes. Art. 180. 1. 3rd and 4th

**Comments on question 8.c):**

## Europe

*Czech Republic:* The rape by spouse or intimate partner is not an aggravating circumstance in the Czech criminal law. In the Criminal Code, neither Article 186 on rape nor Article 42 on “aggravating circumstances” stipulating that “the court will take into account, as an aggravating circumstance, in particular that the offender (…) d) has committed a criminal offense using someone's need, distress, helplessness, dependence or subordination” mention spouse or intimate partner as an aggravating circumstance.

*Netherlands:* Not by law, however if you have a look at the sentencing guidelines you will find out that judges could weigh this as aggravating.

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

|  |  |  |
| --- | --- | --- |
|  | YES | NO |
| 9. Does the law foresee mitigating circumstances for the purposes of punishment? | Mali, Czech Republic, Tanzania, Albania | Burkina Faso, Ghana, Canada, Colombia, Khazakstán, Samoa, Belgium, Spain, Sierra Leone, Rwanda, Netherlands, Tunisia |

**Comments on question 9:**

## Africa

*Mali:* Art.228: in the context of paedophilia on children under 13: if the age difference between the perpetrator and the victim does not exceed five years.

## Americas

*Canada:* We have general mitigation factors. They are NOT codified. Aggravating factors are.

*Colombia*: The mitigating factors are the circumstances that modify the criminal responsibility that moderate the penalty indicated for a crime. The circumstances that modify the responsibility that is contracted when committing a crime, contribute to adequately measure the penalty that will extinguish this responsibility. Although the Penal Code is right: Law 599 of 2000 in its General Part Title IV on the Legal Consequences of Punishable Conduct. Second Chapter of the Criteria and Rules for the determination of punishability contemplates in its Article 55 the Circumstances of Less Punishment. These DO NOT apply to crimes against Freedom, Integrity, and sexual formation.

## Europe

Albania: Yes. The Criminal Code of the Republic of Albania provides for serious circumstances for sexual crimes (Section 6), which are as follows:

1. when the criminal offense is committed in collaboration;

2. when the criminal offense is committed more than once;

3. when the criminal offense is committed accompanied by violence;

4. when the criminal offense has brought serious consequences for the health of the victim,

5. when the criminal offense has resulted in the death of the victim;

6. when the criminal offense has brought the victim's suicide;

In these cases, the perpetrator is more severely punished for the sexual crime he has committed.

*Czech Republic*: According to Article 41 of the Criminal Code concerning “mitigating circumstances”: “The court will take into account, as an attenuating circumstance, in particular that the offender

a) committed the criminal offense for the first time and under the influence of circumstances independent of it,

b) has committed a criminal offense with great agitation, compassion or lack of life experience,

c) has committed a criminal offense under the pressure of dependence or subordination,

d) has committed a criminal offense under the influence of threat or coercion,

e) has committed a criminal offense under the influence of difficult personal or family circumstances which he has not caused himself,

f) committed a criminal offense close to the age of juveniles,

g) has committed a criminal offense averting an attack or other danger without the conditions of necessary defense or extreme emergency being fully met, or has exceeded the limits of permissible risk or the limits of other circumstances precluding illegality,

h) committed a criminal offense with a lawful error which could have been avoided,

i) caused less damage or another less harmful consequence by a criminal offense,

j) caused the elimination of the harmful consequences of the criminal offense or voluntarily compensated the damage caused,

k) he himself reported his crime to the authorities,

l) assisted in the clarification of his / her criminal activity or significantly contributed to the clarification of a criminal offense committed by another,

m) contributed, in particular, as a cooperating accused, to the clarification of criminal activity committed by members of an organized group, in connection with an organized group or for the benefit of an organized criminal group,

n) sincerely regretted the offense; or

o) led a proper life before committing the crime.”

*Netherlands:* No, the law does not. The Sentencing guidelines however, mention: Previous voluntary sexual relationship of perpetrator / victim; Relevant victim's own behavior; Particularly negative consequences for offender.

1. **Is reconciliation between the victim and the perpetrator allowed as part of a legal response?** YES/NO  If so, at what stage and what are the consequences?
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

|  |  |  |
| --- | --- | --- |
|  | YES  | NO |
| 10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? | Canada, Czech Republic, Netherlands | Albania, Burkina Faso, Ghana, Mali, South Korea, Kazakhstan, Samoa, Belgium, Spain, Sierra Leone, Rwanda, Tunisia, Tanzania |
| a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard? | Canada, Belgium, Portugal, Sierra Leone, Czech Republic, Netherlands, Tunisia, Tanzania | Ghana, Mali, Kazakhstan, Samoa, Albania |

**Comments on question 10**

## Africa

*Tunisia:* Generally conciliation is considered a mitigating factor in court.

*Czech Republic :*  In the case of criminal offenses of a less serious nature, which are described by the Criminal Code as misdemeanors (i.e. criminal offenses committed through negligence and those intentional criminal offenses for which a maximum sentence of imprisonment with a maximum penalty of up to five years can be imposed), it is possible that there is a conditional cessation of criminal prosecution of the offender, or to reach a settlement. The condition for the use of both of these procedures is, among others, the fact that the accused compensates the damage he caused to the injured party by his act. In the event of a settlement, the injured party must also consent to such a procedure.

In Act No. 257/2000 Coll., Act on Probation and Mediation Service and the Amendment to Act No. 2/1969 Coll., On the Establishment of Ministries and Other Central Bodies of the State Administration of the Czech Republic, as amended, Act No. 65/1965 Coll., the Labor Code, as amended, and Act No. 359/1999 Coll., on the social and legal protection of children (the Probation and Mediation Service Act) , Article 2, paragraph (2) stipulates that “For the purposes of this Act, mediation means out-of-court mediation for the purpose of resolving a dispute between the accused and the injured party and activities aimed at resolving a conflict situation carried out in connection with criminal proceedings. Mediation can only be carried out with the express consent of the accused and the injured party."

According to Article 4 of the Act on Victims of Crime, mediation can be carried out from the beginning of the criminal prosecution or instead. According to the Act on Victims of Crime, Article 17, it is also possible for the victim to ask not to come into direct contact with the offender during the whole process.

## Asia and Pacific

*South Korea:* It can be a mitigating factor, but not a legal response. Sexual crime was excluded from the “offense subject to complaint (for prosecution, victim’s complaint is required)” so the court can prosecute the offender even though reconciliation has been made. However, because reconciliation is considered to be a mitigating factor, it is often misused/abused (offender’s family or sometimes offender himself visit/call/email the victim or victim’s family repeatedly to earn the reconciliation and the letter of forgiveness. To end the solicitation, victims/victims’ family give away the letter or make reconciliation. Even if the victim refuses to reconcile, still the victim is harmed and face secondary victimization.).

## Europe

*Netherlands:* Mediation is an option at every stage of the criminal procedure. The result of the mediation can be a factor in the ultimate decision of the prosecutor (to pursue prosecution) or the judge. For question 10, a): The prosecution office still has the authority to pursue prosecution.

*Albania:* On10, a), the Albanian criminal legislation stipulates that in the case of offenses prosecuted at the request of the accused victim, the court summons the victim and the person against whom the request for trial has been made and proposes a settlement of the case amicably. If the victim withdraws the claim and the accused pleads guilty, the court decides to dismiss the case. Otherwise, she sets the date of the hearing and lets them know that they can be helped by counsel. In this respect, all criminal offenses provided for in Section VI "Sexual Crimes" of the Criminal Code are criminal offenses which are mainly prosecuted by the prosecution, therefore they are not subject to reconciliation.

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

|  |  |  |
| --- | --- | --- |
|  | YES | NO |
| 11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? | Ghana, Mali, Colombia, Khazakstán, Samoa, Czech Republic, Netherlands | Albania, Burkina Faso, Canada, South Korea, Khazakstán, Samoa, Belgium, , Sierra Leone, Tunisia, Tanzania  |
| a. if the perpetrator marries the victim of rape? | Samoa | Albania, Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Kazakstán, Samoa, Belgium, Sierra Leone, Czech Republic, Netherlands, Tunisia, Tanzania |
| b. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? | Czech Republic | Albania, Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Khazakstán, Samoa, Belgium, Portugal, Sierra Leone, Netherlands, Tunisia, Tanzania |

**Comments on question 11:**

## Africa

*Sierra Leone:* The traditional justice uses restorative approach for all matters including rape. However, the formal justice system takes precedence over the traditional justice system, but the traditional justice system has wider coverage and more accessible and used by majority of the citizens particularly in the rural areas. Most often the traditional justice system engages in practices that are inconsistent with the provisions of the formal justice system because their own focus is restorative.

*Ghana*: By filing of non-prosecution by the Attorney General.

*Mali:* Art.8. Mali Criminal Procedure Code; Public action for the enforcement of the sentence ends with the death of the accused, the accused or the accused, prescription, amnesty, abrogation of the criminal law and res judicata.

## Americas

*Colombia:* Yes. The Penal Code: Law 599 of 2000 in its General Part Title IV on the Legal consequences of Punishable Conduct.

## Asia and Pacific

*South Korea*: reconciliation may be a mitigating factor, but not a reason for non-prosecution. For sexual crimes, certain punishment must be sentenced – it’s just a matter of amount and weight. And for a note, there is a provision in the entire Criminal Act that any perpetrators younger than 13 (juvenile adjudication is available from 10 to 14) is not punishable in criminal court.

## Europe

*Czech Republic:* According to the Criminal Code, the prescription of the offense allows the non-prosecution of the perpetrator. The relevant articles are: Article 34 – Limitation period, Article 35 - Exclusion from the statute of limitations, Article 11 – Inadmissibility of criminal prosecution, Article 163a of the Criminal Procedure Code, Article 307 and 309 of the Criminal Procedure Code (See details in Annex).

*Netherlands:* In every case it is the decision of the prosecutor to pursue the criminal case or not. The prosecution office has developed some codes for non-prosecution (this is not however, the law)[[11]](#footnote-11): Code 02 and 20 (in case of domestic violence), could be applicable in a case.

# Prosecution

|  |  |  |
| --- | --- | --- |
|  | YES | NO |
| 12. **Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO** | Albania, Burkina Faso, Ghana, Mali, Canada, South Korea, Kazakhstan, Samoa, Belgium, Czech Republic, Portugal, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania |  |
| **13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO** | Albania, Mali, Samoa, Portugal, Sierra Leone (one provision), Czech Republic, Tunisia | Burkina Faso, Ghana, Canada, South Korea, Kazakhstan, Belgium, Rwanda, Netherlands, Tanzania |
| **14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO** | Canada, Colombia, South Korea, Czech Republic | Burkina Faso, Ghana, Mali, Kazakhstan, Samoa, Belgium, Sierra Leone, Rwanda, Netherlands, Tunisia, Albania |
| **15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO** | Canada, Czech Republic | Burkina Faso, Mali, Colombia, Kazakhstan, Samoa, Belgium, Portugal, Sierra Leone, Rwanda, Netherlands, Tunisia, Tanzania, Albania |
| **17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO** | Mali, Canada, Colombia, South Korea, Kazakhstan, Samoa, Belgium, Czech Republic, Rwanda, Netherlands, Tunisia, Albania | Burkina Faso, Sierra Leone, Tanzania |
| **18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.** | Burkina Faso, Ghana, Mali, Belgium, Sierra Leone, Rwanda, Netherlands, Tanzania, Albania | Canada, Colombia, South Korea, Kazakhstan, Samoa, Czech Republic, Spain |
| **19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NO** | Ghana, Canada, Colombia, South Korea, Samoa, Spain, Tanzania, Albania | Burkina Faso, Kazakhstan, Belgium, Sierra Leone, Netherlands, Tunisia |
| **20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.** | Ghana, Canada, South Korea, Samoa, Czech Republic, Spain, Sierra Leone (limited), Netherlands, Tanzania, Albania | Burkina Faso, Kazakhstan, Belgium, Tunisia |

**Comments on question 13:**

*Sierra Leone:* Rape or sexual offences maters are reported to the police and the police will ensure that all the necessary investigation is done and then the Director of public prosecution will advice for the case to be charged to court and then prosecuted by public prosecutors. However not all prosecutors have professional legal backgrounds. Some of the prosecutors particularly at the magistrate court during preliminary investigation are police officers with no professional law background. This is the reason why NGOs who provide legal aid usually hire lawyers to support police prosecutors

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

## Africa

*Tunisia:*The general limitation period for prosecuting rape according to art 5 of the penal code and 10 years.

*Ghana:* Proof by medical evidence. Reluctance of victims to testify as prosecution witness due to the burden of cost of prosecution for the victim (expenses on medical examination, report and transportation to the court are bone by the victim). Proof of age since some children lack birth registration and certificate as proof of age.

*Mali:* Art.9. Mali Criminal Procedure Code - Public action is prescribed by law for ten completed years from the day on which the crime was committed if, within this interval, no investigative action has been taken or of pursuit.

*Rwanda:* According to a new law determining offences and penalties in general, there is no limitations of prosecuting rape as far as reached to the level of prosecution unless the prosecutor found that the victim hasn’t serious evidence of continuing the case before the court.

## Americas

*Canada:* There is no statute of limitations.

*South Korea:* Offenders often try to make a settlement with the victim (women) to lessen their punishment, but it cannot be more than just a mitigating factor. And plea bargain is usually not made in rape cases.

*Samoa:* 51. Circumstances which do not in themselves amount to consent. It is a defence for the offence of rape that the accused honestly and reasonably believed that the consent was given.

## Europe

*Czech Republic:* Minimum limitations are 10 years (§ 185 (1) - sexual intercourse other than coitus or comparable practise). 15 years for the rest.

*Spain:* The Criminal Code establishes the statute of limitations for crimes in correspondence with the penalty provided for each crime, depending on its severity (art. 131). In accordance with this criterion, crimes against sexual freedom with minor victims prescribe at the age of 10 or 15, after the victim has reached the age of majority (art. 132.1).

*Belgium:* please see information[[12]](#footnote-12).

*Netherlands:* None[[13]](#footnote-13).

**Comments on question 18:**

## Africa

*Sierra Leone:* There must be a medical evidence corroborated by other evidences including witness testimonies. The burden of proof for rape is huge particularly now that the maximum sentence is life imprisonment for adult perpetrators.

*Tunisia*: There is no specific evidence which is required, proof of rape is free, all means are acceptable.

*Burkina Faso:* yes, medical proof.

*Mali:* The medical report, testimony and others.

*Rwanda:* Yes, in accordance to judiciary systmen functioning, normarly the court are the one to decide if the rape has took place or not, so in case of Rwanda, if the court has been seized for this case, most of the time medical evidence are being used to testify that rape has really happened.

## Asia and Pacific

*South Korea*: Victim’s report is only requirement to proceed police report. And throughout the prosecution, victim’s statement is recorded and sent to the judge/prosecutor to prevent secondary victimization.(but if judge wants to meet the victim, victim must cooperate – and usually judges ask for direct statement from the victim). However, usually rape victims go to SunFlower center (One-stop support center for victims of sexual crimes) where they can get emergency medical treatment(with medical kit – collecting medical evidences such as semen, physical trace, offender’s DNA from victim’s clothes, etc.). And victim submit such evidence to the court to strengthen her/his statement and increase the level of punishment.

## Europe

*Albania:* Evaluation of typical evidence of sexual crimes.

Practice has shown that the investigation and indictment of sexual crimes has not been easy due to the nature of the criminal offenses, which in many cases is accompanied by a lack of evidence. The situation is more complicated when there is a single piece of evidence, such as only the statements of the injured party, missing the signs of violence, biological materials, etc. In such cases the standard of proof is "low".

The term standard of proof, or as it is otherwise known, "standard of proof", refers to the extent or degree of fulfillment of the burden of proof. It is the system of measurement of the degree of security or probability that the evidence provides to the court to accept as truth certain facts, the standard by which the court must be persuaded through the evidence provided by the party bearing the burden of proof in the process.

In determining a criminal charge, the court must apply the standards of a due process of law. This obligation derives from Article 42 of the Constitution of the Republic of Albania and Article 6 of the ECHR. The ECtHR has also developed the standard of proving a criminal charge against a person beyond any reasonable doubt. A person cannot be found guilty if all the elements of the criminal offense have not been proven beyond any reasonable doubt.

*Portugal:* The medico-legal examinations are one of the evidences that can be collected during the investigation of the crime.

*Netherlands:* Section 338 Criminal procedure code :

*Evidence that the accused committed the offense can only be accepted by the court if he has been convinced by the content of legal evidence during the investigation at the court hearing.*

Section 359 Criminal procedure code :

1. Legal evidence is only recognized:

1 °. Own observation of the judge;

2 ° statements by the suspect;

3 ° statements by a witness;

4 °. Statements by an expert;

1. °. Written documents.

 2) Facts or circumstances of public knowledge need no evidence.

\*For conviction a minimum of 2 is required. Statement of the victim counts as a statement of a witness. A medical investigation could be a written document. An eye witness could be relevant or an ‘out cry’ witness: a witness the victims goes to immediately after the rape. Furthermore : videoclips or text messages could be evidence.

**Comments on question 19:**

## Africa

*Sierra Leone:* No, the law is silent on this but magistrates and judges usually prevent defence lawyers from exposing a woman’s sexual history during trial. In any case the act of exposing a woman’s sexual history is redundant because you cannot use it as defence.

## Europe

*Albania:* Law No. 9887, dated 10.3.2008 "On the Protection of Personal Data".

*Spain:* Art. 161 of LCrim, stablishes: “2. Likewise, it may agree to adopt the following measures for the protection of the privacy of the victim:

a) Prohibit the disclosure or publication of information related to the identity of the victim, of data that may facilitate their identification directly or indirectly, or of those personal circumstances that would have been assessed to resolve their protection needs.

b) Prohibit the obtaining, disclosure or publication of images of the victim.

3. The disclosure or publication of information regarding the identity of underage victims or victims with disabilities in need of special protection, data that may facilitate their identification directly or indirectly, or of those circumstances, is prohibited in any case.”

**Comments on question 20:**

## Africa

*Sierra Leone:* Yes but quite limited. Some of the procedures including a) Investigation done by a special arm of the police called the Family Support Unit, who wear plain clothes and carry out their investigation in special rooms at the police station and court trials are supposed to be done behind closed door. However, these provisions are limited and not necessarily effectively applied across the country. Victims usually continue to stay with perpetrator’s family in the same community whilst trial is going on and for the fact that maximum sentence is now life imprisonment, victims require stronger protection. DCI-Sierra Leone had situations where a victim and parent(s) have been evicted from a community because they decided to pursue legal justice instead of using the community justice system that would settle the matter peacefully though perpetrators may pay some fines.

*Mali:* Private hearings for minors.

## Europe

*Czech Republic*: In the Criminal Procedure Code, the law provisions aimed to avoid re-victimizations during the prosecution and court hearings are: “ Providing information on criminal proceedings and persons involved in it

Article 8a

(1) When providing information on their activities to the public, law enforcement authorities shall ensure that they do not jeopardize the clarification of facts relevant to criminal proceedings, do not disclose data on persons directly involved in criminal proceedings that are not directly related to crime, and do not violate the principle that until guilt is pronounced by a final conviction, the person against whom criminal proceedings are being conducted cannot be regarded as guilty (Article 2 para. 2). In the pre-trial proceedings, they may not disclose information enabling the identity of the person prosecuted, the injured party, the person concerned and a witness to be identified.

(2) When providing information pursuant to paragraph 1, bodies active in criminal proceedings shall pay special attention to the protection of personal data and the privacy of persons under the age of 18. ”

See other relevant articles in Annex.*Belgium:* For minors, specific measures, resulting from Directive 2011/2/EU, have been put in place. To quote a few examples:

* Article 94 of the Belgian Code of Criminal Procedure states that interviews with minors need to take place in premises specially adapted for this purpose.
* Article 91bis of the Belgian Code of Criminal Procedure grants the minor victim of the relevant crimes the right (but not the obligation) to be assisted by an adult of its choice during the interviews
* The Criminal Investigation Code provides the possibility of videotaped hearings for minors and vulnerable persons who are victims of sexual offences, sexual exploitation/prostitution, genital mutilation or trafficking in human beings.
* According to article 95 of the Code of Criminal Investigation, the minor may request the interruption of the recording at any time during the recorded hearing.
* According to article 190 of the Belgian Code of Criminal Procedure, victims of rape and indecent assault may request a hearing behind closed doors for reasons of privacy.
* According to article 190bis of the Belgian Code of Criminal Procedure, when the presence of a minor at court is deemed necessary to the “manifestation of truth”, the attendance is organized through video-conference in which the minor is heard in a separate room together with person designated at article 91bis, a lawyer and a psychiatrist/psychologist. The court can limit or exclude any visual contact between the minor and the suspect.
* Article 378bis of the Belgian Criminal Code prohibits any type of publication or dissemination of information that could lead to the identification of child victims of the relevant offences.

# War and/or conflict

|  |  |  |
| --- | --- | --- |
| 21. Is rape criminalized as a war crime or crime against humanity? | Burkina Faso, Ghana, Mali, Colombia, Belgium, Czech Republic, Tunisia, Tanzania | Canada, South Korea, Kazakhstan, Samoa, Spain, Sierra Leone, Rwanda, Albania |
| 22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO | Tanzania | Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Kazakhstan, Samoa, Belgium, Czech Republic, Spain, Sierra Leone, Rwanda, Tunisia, Albania |
| 23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO | Burkina Faso, Colombia, Czech Republic, Tanzania | Albania, Ghana, Mali, South Korea, Canada, Kazakhstan, Samoa, Belgium, Spain, Sierra Leone, Rwanda, Tunisia |
| 24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO | Burkina Faso, Ghana, Mali, Canada, Colombia, South Korea, Belgium, Czech Republic, Spain, Portugal, Sierra Leone, Netherlands, Tunisia, Tanzania, Albania | Kazakhstan, Samoa, Rwanda |

**Comments on question 21 :**

## Africa

*Sierra Leone :* It was only considered a war crime by the then Special Court of Sierra Leone. This was a special tribunal that was set up to try those bearing the greatest responsibility for war crimes in Sierra Leone. It was expected that Sierra Leone can adopt this as one of the legacies of the Special Court of Sierra Leone, but it hasn’t happened.

*Burkina Faso*: Article 411-1.

**Comments on question 23:**

## Americas

*Colombia*: Yes. In terms of sexual violence, as it is a crime against humanity (mainly), a war crime (when it has been used as a war strategy, for example), there must always be prosecution, so the peace agreement in Colombia should include sexual violence as a crime against humanity and its commission excludes the perpetrators to access transitional justice and orders. Perpetrators respond to ordinary justice. That is why the 1719 of 2014 stipulated sexual violence as a crime against humanity inside and outside the armed conflict.

## Europe

*Czech Republic:* According to the Criminal Code, the prescription of the offense allows the non-prosecution of the perpetrator. The relevant articles are: Article 35 - Exclusion from the statute of limitations - “The expiration of the limitation period does not terminate criminal liability

a) for the criminal offenses listed in Chapter Thirteen of the Special Part of this Act”.

Therefore there is no limitation for Article 401 concerning crimes against humnaity, they are imprescriptible.

# Data

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

## Africa:

*Burkina Faso*: In 2018: 844 cases listed (Source: Directorate-General for sectoral Studies and Statistics).

*Tunisia:* Justice in Tunisia handles approximately 8 rape cases per month. The number of rape cases decided by the justice during the 2015/2016 judicial year reached the number of 101 cases with an average of 8.4 cases per month. According to the forensic service of Charles Nicole of Tunis the number of rape cases examined by the service exceeded 800 cases between April 2016 and April 2017 of which 65 percent of the victims are children.

*Mali:* According to the president of the Association for the Promotion of Women's Rights in Mali*,* from 2017-2018, its structure recorded 298 cases of gender-based violence, all categories combined, sexual and physical assault*.* According to the Malian association for the rights of women, its president estimates in 2018 the number of women victims of sexual violence at 80. However, many more may have never been reported.

*Rwanda:* In the case of Rwanda, please refer to website of Rwanda Investigation Bureau and National Public Prosecution Authority for details.

## Americas

*Colombia:* On May 12, 2020, a document from the Prosecutor General's Office was disclosed to the International Criminal Court, there are certain concerns about the investigations for sexual crimes perpetrated in the midst of the armed conflict and that are still in process. The document dated March 10, 2019 from the Colombian Prosecutor's Office was sent to the Foreign Ministry -for its shipment to the ICC as an answer to several of the concerns that the Court raised. Specifically, the Prosecutor's Office refers to processes against cases prioritized by the Constitutional Court in orders 092 of 2008, 009 of 2015 and 098 of 2013, the first two for sexual violence and the third for displacement. In these cases, more than 5,000 victims of sexual violence are documented between 1985 and 2013. According to the accusing body's document, there are 623 processes in cases 092 of 2008 and 009 of 2015, of which only 11 are in execution of sentences for a conviction. In appeal of judgments there are 4 processes, while there are charges in 18 cases, and 5 cases are in trial.

In this report, the Prosecutor's Office also responded to the ICC's request why 206 cases, involved 234 members of the Army, Navy, Air Force, and Police. The State of Colombia says there are no patterns attributable to military or police units.

## Asia and Pacific

*South Korea*: See table in Annex 3.

*Kazakhstan*: This information is not available in the public domain.

## Europe

*Albania:* Sexual crimes registered in the Republic of Albania, by years[[14]](#footnote-14):

2015: 149 Sexual Crimes

2016: 120 Sexual Crimes

2017: 113 Sexual Crimes

2018: 110 Sexual Crimes

2019: 155 Sexual Crimes

*Belgium*: According to official statistics, 2900 complaints were filed for rape in 2015. The same year, the hotline “Ecoute violences conjugales” received a total of 2711 calls. In 2017, the police recorded a total of 3440 complaints for serious sexual violence. It is however important to keep in mind that according to field organisations, only 1/10th a victims of sexual violence file a complaint. According to official statistics from the Ministry of Justice, 53% per cent of rape cases are dismissed, mainly for lack of evidence (63%), unknown perpetrator (16%) and lack of infraction (8.5%).[[15]](#footnote-15)

*Spain:* According to Ministry of Interior between 2013 and 2018, recorded known facts (sexual assault with penetration) included 8.102 cases. Recorded clarified facts: 6.618. Persons arrested and investigated: 5.321. Victimizations: 7.862.

*Czech Republic:* Between 2016 and 2018, the main penalty for rape was "suspended sentence" (“podmíněný trest odnětí svobody” 51%), then "unconditional imprisonment" was second (“nepodmíněný trest odnětí svobody” 35%), and the third most common punishment was "suspended sentence with supervision" (“podmíněný trest odnětí svobody s dohledem” 11%)[[16]](#footnote-16). During this period the total number of convicts was 259 people.

Netherlands: “More rapes and assaults recorded[[17]](#footnote-17). In 2014, people reported rape to the police 1.2 thousand times. Subsequently, reports increased each year, to 1.9 thousand in 2018. The number of registrations of sexual assaults increased after 2015, from 1.7 thousand in that year to 2.4 thousand in 2018. In this period, the number of reports also increased. of crimes like sexting and grooming, from 1.2 thousand to 1.6 thousand.”

# Other

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

## Africa

*Sierra Leone:* Other key challenges include weak investigation and prosecution capacity of the responsible law enforcement bodies. Their coverage is limited thereby making themselves less accessible particularly for rural communities, which increase the burden of victims to pursue legal justice.

*Burkina Faso*: lack of information, the victims' refusal to give information because of shame, the geographic inaccessibility of justice.

*Mali:* In the social context, friendly settlements; also some people do not wish to stay in court for fear of the stigmatization of their social and family environment.

*Tanzania:* the parents and perpetrators are often pushed to reconcile. Proof of evidence of a rape is sometimes erased at the hospital when they ‘wash’ the victims.

*Tunisia:* In general, the number of complaints filed by victims, especially girls, is low. The filing procedure should be reviewed. Rape victims rarely report to the police station. Lack of reliable statistics, but indicators show that complaints are rare, for several reasons: stigma, fear, lack of trust in institutions.The need to work on changes in behavior and social attitudes towards victims (in reality we observe a kind of solidarity at first then stigmatization and exclusion in the second time) this reality seriously affects the will of reporting and filing a complaint

In several cases the punishment inflicted to the perpetrator is not at the level of the gravity of the crime and the aggressors often benefit from amnesty and from release before they serve all or a large part of their conviction.

The problem of slowness of procedures, it is necessary to ensure the speed of procedures: the start and end of the investigation and trial, transfer of the file to the judge according to a rapid and streamlined procedure at the level of the Public Prosecutor's Office , examining magistrate and of the Indictment Chamber and throughout the trial while ensuring fair justice

The problem of preserving evidence: the need to ensure optimal conditions for preserving evidence. It is recommended to create the ‘’ SET of sexual assault ’’. Reporting and complaint procedures need to be revised. In practice there is also a problem of specialization at the level of interveners and specialized structures.

## Asia and Pacific

*Kazakhstan*: The main obstacle is the threat, blackmailing, corruption and cultural beliefs.

*Samoa:* The culture of silence is perpetuated by a traditionally conservative Samoa society, which basically is the barrier to reporting rape on the island.

*South Korea:* Korea had many changes on treating sexual crimes in past many years. Legal system is well built for both protecting victims and prosecuting offenders; however, there are still some social norms and bias on victims and sexual crimes. Victims still hesitate to report. Due to lack of trust among prosecution, court, and police, they often request victim to testify again. It is written in law that victims must be protected, and her/his statement must be recorded and shared so he/she doesn’t have to repeatedly recall and mention the victimization. However, at each state of court proceeding, judge and prosecutor want to hear it directly from the victim for the clarification. This situation causes a bit discomfort of the victim. But we have another law requiring the court to provide separate room and entrance for the victim – to make sure she/he can testify in comfortable circumstances.

## Europe

*Belgium:* The context of “victim blaming” in which we live often represents a barrier to the reporting of rape and therefore to legal proceedings. We live in a patriarchal society that keeps hypersexualising women, making it hard sometimes for victims to consider themselves as such. In addition to that, our police and judicial system aren’t always helpful. The procedure is long, and emotionally draining. Many victims have felt let down, or even brutalised by the system when reporting an assault. Not to mention that many victims end up being blamed for what happened. Also, it is important to mention that the majority of rapes are committed by someone known by the victim, making it even harder for the latter to see her/himself as a victim or to report the rape.

*Portugal:* The biggest barrier that exists to denounce it is the need of the victim to overcome the silence and seek help.

*Czech Republic :* There has been positive progress in the related legislation during the past decade. However, the Czech Republic is one of the few remaining countries that have not yet signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (so called Istanbul Convention).

Despite the positive steps, some concerns remain in practice as some activities are still insufficient and have to be improved such as:

* Special trainings for police and people in direct contact with gender based violence victims (including judges). A good practice would also be through quality management by the introduction of another criteria of the evaluated work and for each authority a person should be responsible for the treatment victims[[18]](#footnote-18).
* “Local accessibility of specialist services for victims of violence, including working with violent individuals”[[19]](#footnote-19).
* Funding for civil society organizations supporting victims of gender based violence is insufficient[[20]](#footnote-20). In the case of co-funding from the state budget, the situation is no better (subsidies are provided only for one calendar year and with a delay of several months).

In addition, the estimated number of reported rape is only eight percent. The reasons for this low percentage are the victims’ fear of trauma during the criminal proceedings, the fact that perpetrators are often close relatives (spouses, neighbours, colleagues, etc.), and the negative impacts on their economic and social situation by making this accusation[[21]](#footnote-21).

*Albania*: In scientific studies related to Sexual Crimes in Albania, problems arise, as follows:

1. There is a very significant and unexplained discrepancy between the registration of the case in the police, its criminal prosecution by the prosecution and the sentencing.

2. During the ten years taken for study (2008-2018), it turns out that only 44% of the accused perpetrators of criminal offenses have been convicted, while 56% of them are in a free state and may pose a constant risk to produce new victims.

3. Keeping data in unregistered registers is a problem for the analysis of sexual crimes. Police and the Prosecution report on the basis of the victim, but not on the cases - while the Court reports only on the basis of the cases, but much less on the data of the victim.

4. There is no state policy to protect victims of sexual violence today and to compensate them for the harm caused to them. Moreover, there is a serious lack of social services for the protection, treatment and rehabilitation of victims of sexual crimes;

5. Despite the constant changes, the Criminal Code still does not contain some criminal offenses of a sexual nature, which have become the main risk for violence and sexual exploitation of children in Albania;

6. There is an urgent need to establish a special unit in the State Police and well-coordinated with the Prosecution, for the criminal prosecution of sexual crimes;

7. The establishment of the National Register of Sexual Crimes is a necessity that should be addressed as soon as possible by the Assembly.

# **List of appendices**

## Annex n°1 : Canada - Articles of the Criminal Code and the Criminal Procedure Code

*Sexual assault*

*271 Everyone who commits a sexual assault is guilty of*

* *(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or*
* *(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.*
* *R.S., 1985, c. C-46, s. 271*
* *R.S., 1985, c. 19 (3rd Supp.),* [*s. 10*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec10_smooth)
* *1994, c. 44, s. 19*
* [*2012, c. 1, s. 25*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)
* [*2015, c. 23, s. 14*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-23/latest/sc-2015-c-23.html)

*Sexual assault with a weapon, threats to a third party or causing bodily harm*

* *272 (1) Every person commits an offence who, in committing a sexual assault,*
	+ *(a) carries, uses or threatens to use a weapon or an imitation of a weapon;*
	+ *(b) threatens to cause bodily harm to a person other than the complainant;*
	+ *(c) causes bodily harm to the complainant;*
	+ *(c.1) chokes, suffocates or strangles the complainant; or*
	+ *(d) is a party to the offence with any other person.*
* *Punishment*

*(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable*

* + *(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of*
		- *(i) in the case of a first offence, five years, and*
		- *(ii) in the case of a second or subsequent offence, seven years;*
	+ *(*[*a.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)*) in any other case where a firearm is used in the commission of the offence, to imprisonment for a term not exceeding 14 years and to a minimum punishment of imprisonment for a term of four years; and*
	+ *(*[*a.2*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec2_smooth)*) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and*
	+ *(b) in any other case, to imprisonment for a term not exceeding fourteen years.*
* *Subsequent offences*

*(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:*

* + *(a) an offence under this section;*
	+ *(b) an offence under* [*subsection 85(1)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec85subsec1_smooth) *or* [*(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec85subsec2_smooth) *or* [*section 244*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec244_smooth) *or* [*244.2*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec244.2_smooth)*; or*
	+ *(c) an offence under* [*section 220*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec220_smooth)*,* [*236*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec236_smooth)*,* [*239*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec239_smooth) *or* [*273*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth)*,* [*subsection 279(1)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec279subsec1_smooth) *or* [*section 279.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec279.1_smooth)*,* [*344*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec344_smooth) *or* [*346*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec346_smooth) *if a firearm was used in the commission of the offence.*

*However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.*

* *Sequence of convictions only*

*(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.*

* *R.S., 1985, c. C-46, s. 272*
* *1995, c. 39, s. 145*
* [*2008, c. 6, s. 28*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2009, c. 22, s. 10*](https://www.canlii.org/en/ca/laws/astat/sc-2009-c-22/latest/sc-2009-c-22.html)
* [*2012, c. 1, s. 26*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)
* [*2015, c. 23, s. 15*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-23/latest/sc-2015-c-23.html)
* [*2019, c. 25, s. 97*](https://www.canlii.org/en/ca/laws/astat/sc-2019-c-25/latest/sc-2019-c-25.html)

*Aggravated sexual assault*

* *273 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims, disfigures or endangers the life of the complainant.*
* *Aggravated sexual assault*

*(2) Every person who commits an aggravated sexual assault is guilty of an indictable offence and liable*

* + *(a) if a restricted firearm or prohibited firearm is used in the commission of the offence or if any firearm is used in the commission of the offence and the offence is committed for the benefit of, at the direction of, or in association with, a criminal organization, to imprisonment for life and to a minimum punishment of imprisonment for a term of*
		- *(i) in the case of a first offence, five years, and*
		- *(ii) in the case of a second or subsequent offence, seven years;*
	+ *(*[*a.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)*) in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and*
	+ *(*[*a.2*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec2_smooth)*) if the complainant is under the age of 16 years, to imprisonment for life and to a minimum punishment of imprisonment for a term of five years; and*
	+ *(b) in any other case, to imprisonment for life.*
* *Subsequent offences*

*(3) In determining, for the purpose of paragraph (2)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:*

* + *(a) an offence under this section;*
	+ *(b) an offence under* [*subsection 85(1)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec85subsec1_smooth) *or* [*(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec85subsec2_smooth) *or* [*section 244*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec244_smooth) *or* [*244.2*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec244.2_smooth)*; or*
	+ *(c) an offence under* [*section 220*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec220_smooth)*,* [*236*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec236_smooth)*,* [*239*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec239_smooth) *or* [*272*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth)*,* [*subsection 279(1)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec279subsec1_smooth) *or* [*section 279.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec279.1_smooth)*,* [*344*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec344_smooth) *or* [*346*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec346_smooth) *if a firearm was used in the commission of the offence.*

*However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.*

* *Sequence of convictions only*

*(4) For the purposes of subsection (3), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.*

* *R.S., 1985, c. C-46, s. 273*
* *1995, c. 39, s. 146*
* [*2008, c. 6, s. 29*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2009, c. 22, s. 11*](https://www.canlii.org/en/ca/laws/astat/sc-2009-c-22/latest/sc-2009-c-22.html)
* [*2012, c. 1, s. 27*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)

*Meaning of* consent

* *273.1 (1) Subject to subsection (2) and* [*subsection 265(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec265subsec3_smooth)*,* consent *means, for the purposes of* [*sections 271*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec271_smooth)*,* [*272*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth) *and* [*273*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth)*, the voluntary agreement of the complainant to engage in the sexual activity in question.*
* *Consent*

*(1.1) Consent must be present at the time the sexual activity in question takes place.*

* *Question of law*

*(1.2) The question of whether no consent is obtained under* [*subsection 265(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec265subsec3_smooth) *or subsection (2) or (3) is a question of law.*

* *No consent obtained*

*(2) For the purpose of subsection (1), no consent is obtained if*

* + *(a) the agreement is expressed by the words or conduct of a person other than the complainant;*
	+ *(*[*a.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)*) the complainant is unconscious;*
	+ *(b) the complainant is incapable of consenting to the activity for any reason other than the one referred to in paragraph (*[*a.1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)*);*
	+ *(c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority;*
	+ *(d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or*
	+ *(e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.*
* *Subsection (2) not limiting*

*(3) Nothing in subsection (2) shall be construed as limiting the circumstances in which no consent is obtained.*

* *1992, c. 38, s. 1*
* [*2018, c. 29, s. 19*](https://www.canlii.org/en/ca/laws/astat/sc-2018-c-29/latest/sc-2018-c-29.html)

*Where belief in consent not a defence*

*273.2 It is not a defence to a charge under* [*section 271*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec271_smooth)*,* [*272*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth) *or* [*273*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth) *that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where*

* *(a) the accused’s belief arose from*
	+ *(i) the accused’s self-induced intoxication,*
	+ *(ii) the accused’s recklessness or wilful blindness, or*
	+ *(iii) any circumstance referred to in* [*subsection 265(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec265subsec3_smooth) *or* [*273.1(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273.1subsec2_smooth) *or* [*(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273.1subsec3_smooth) *in which no consent is obtained;*
* *(b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting; or*
* *(c) there is no evidence that the complainant’s voluntary agreement to the activity was affirmatively expressed by words or actively expressed by conduct.*
* *1992, c. 38, s. 1*
* [*2018, c. 29, s. 20*](https://www.canlii.org/en/ca/laws/astat/sc-2018-c-29/latest/sc-2018-c-29.html)

## Annex n°2: South Korea – Act on the Prevention of Sexual Assault and Protection of Victim [Enforcement Date 19. Jun, 2013.] [Act No.11690, 23. Mar, 2013., Amendment by Other Act]

\*\*CRIMINAL ACT\*\*

CHAPTER XXXII CRIMES CONCERNING RAPE AND INFAMOUS CONDUCT

Article 297 (Rape) A person who, by means of violence or intimidation, has sexual intercourse with another shall be punished by imprisonment for a limited term of at least three years. <Amended by Act No. 11574, Dec. 18, 2012>

Article 297-2 (Imitative Rape) A person who, by means of violence or intimidation, inserts his/her sexual organ into another's bodily part (excluding a genital organ), such as mouth or anus, or inserts his/her finger or other bodily part (excluding a genital organ) or any instrument into another's genital organ or anus shall be punished by imprisonment for a limited term of at least two years.

[This Article Newly Inserted by Act No. 11574, Dec. 18, 2012]

Article 298 (Indecent Act by Compulsion) A person who, through violence or intimidation, commits an indecent act on another shall be punished by imprisonment for not more than ten years or by a fine not exceeding 15 million won. <Amended by Act No. 5057, Dec. 29, 1995>

Article 299 (Quasi-Rape, Quasi-Indecent Act by Compulsion) A person who has sexual intercourse with another or commits an indecent act on another by taking advantage of the other's condition of unconsciousness or inability to resist shall be punished in accordance with Article 297, 297-2, or 298. <Amended by Act No. 11574, Dec. 18, 2012>

Article 300 (Attempts) Attempts to commit any of the crimes of Articles 297, 297-2, 298 and 299 shall be punished. <Amended by Act No. 11574, Dec. 18, 2012>

Article 301 (Inflicting or Causing Another's Bodily Injury by Rape, etc.) A person who commits any of the crimes of Articles 297, 297-2, and 298 through 300, thereby inflicting or causing the injury of a victim of such crime, shall be punished by imprisonment for life or for at least five years. <Amended by Act No. 11574, Dec. 18, 2012>

[This Article Newly Inserted by Act No. 5057, Dec. 29, 1995]

Article 301-2 (Killing Another or Causing Death of Another by Rape, etc.) A person who commits any of the crimes of Articles 297, 297-2, and 298 through 300 and kills a victim of such crime shall be punished by death or imprisonment for life. If the commission of such crime results in the death of the victim, the perpetrator shall be punished by imprisonment for life or for at least ten years. <Amended by Act No. 11574, Dec. 18, 2012>

[This Article Newly Inserted by Act No. 5057, Dec. 29, 1995]

Article 302 (Sexual Intercourse with Minor, etc.) A person who, through fraudulent means or by the threat of force, has sexual intercourse or commits an indecent act on a minor or feeble-minded person, shall be punished by imprisonment for not more than five years.

Article 303 (Sexual Intercourse by Abuse of Occupational Authority, etc.) (1) A person who, by means of fraud or by the threat of authority, has sexual intercourse with another who is under his/her protection or supervision for his/her business, employment or other relationship, shall be punished by imprisonment for not more than five years, or by a fine not exceeding 15 million won. <Amended by Act No. 5057, Dec. 29, 1995; Act No. 11574, Dec. 18, 2012>

(2) A person who has sexual intercourse with another held in his/her custody according to an Act shall be punished by imprisonment for not more than seven years. <Amended by Act No. 11574, Dec. 18, 2012>

Article 304 Deleted. <by Act No. 11574, Dec. 18, 2012> <This Article deleted by Act No. 11574 on Dec. 18, 2012, following the decision on unconstitutionality made by the Constitutional Court on December 26, 2009>

Article 305 (Sexual Intercourse or Indecent Acts with Minor) A person who has sexual intercourse with another who is under 13 years of age or commits an indecent act on such person shall be punished under Article 297, 297-2, 298, 301, or 301-2. <Amended by Act No. 5057, Dec. 29, 1995; Act No. 11574, Dec. 18, 2012>

Article 305-2 (Habitual Offenders) A person who habitually commits any of the crimes of Articles 297, 297-2, 298 through 300, 302, 303, and 305 shall be punished by aggravating the penalty by up to one half of the penalty specified for the crime committed. <Amended by Act No. 11574, Dec. 18, 2012>

[This Article Newly Inserted by Act No. 10259, Apr. 15, 2010]

Article 306 Deleted. <by Act No. 11574, Dec. 18, 2012>

## Annex 3: Czech Republic - Articles of the Criminal code and criminal procedures:

In the Czech Republic, violent sexual crimes are regulated by the Criminal Code (Act No. 40/2009 Coll.), the Criminal Procedure Code (Act No. 141/1961 Coll.) and the Act No. 45/2013 Coll. on Victims of Crime, which regulates the rights of crime victims among which it distinguishes particularly vulnerable victims.

* Criminal Code

In the Criminal Code (Act No. 40/2009 Coll.) [[22]](#footnote-22), Title III deals with crimes against human dignity in the sexual area:

“Article 185 - Rape

(1) Whoever forces another person to engage in sexual intercourse by violence or threat of violence or threat of other serious harm, or

who abuses his helplessness for such an act,

will be punished by imprisonment for six months to five years.

(2) The offender shall be punished by imprisonment for two to ten years if he commits the act referred to in paragraph 1

a) intercourse or have other intercourse performed in a manner comparable to intercourse,

b) on a child, or

c) with a weapon.

(3) The offender shall be punished by imprisonment for five to twelve years,

a) if he commits the act referred to in paragraph 1 on a child under the age of fifteen,

b) if he commits such an act against a person in custody, imprisonment, protective treatment, pre-trial detention, protective or institutional upbringing or in another place where personal liberty is restricted, or

c) if he causes serious damage to health by doing so.

(4) The offender shall be punished by imprisonment for ten to eighteen years if he causes death by the act referred to in paragraph 1.

(5) Preparation is a criminal offense.

Article 186 – Sexual coercion

(1) Who, by force, threat of violence or threat of other serious harm, compels another to engage in sexual self-denial, exposure or other comparable conduct, or

who induces such behavior by abusing his helplessness,

will be punished by imprisonment for six months to four years or a ban on activity.

(2) An offender who induces another to have sexual intercourse, sexual self-denial, stripping or other comparable behavior by abusing his addiction or his position and the resulting credibility or influence shall also be punished.

(3) The offender shall be punished by imprisonment for one to five years if he commits the act referred to in paragraph 1 or 2

a) on a child, or

b) with at least two persons.

(4) The offender shall be punished by imprisonment for two to eight years,

a) if he commits the act referred to in paragraph 1 with a weapon,

b) he/she commits the offense referred to in paragraph 1 or 2 on a person in custody, imprisonment, protective treatment, pre-trial detention, protective or institutional care or in another place where personal liberty is restricted; or

c) if he commits such an act as a member of an organized group.

(5) The offender shall be punished by imprisonment for five to twelve years,

a) if he commits the act referred to in paragraph 1 against a child under the age of fifteen years, or

b) if he causes serious damage to health by doing so.

(6) An offender shall be punished by imprisonment for ten to sixteen years if he causes death by an act referred to in paragraph 1 or 2.

(7) Preparation is a criminal offense.

Article 187 – Sexual abuse

(1) Whoever engages in intercourse with a child under the age of fifteen or who otherwise sexually abuses them shall be punished by imprisonment for one to eight years.

(2) An offender shall be punished by imprisonment for two to ten years if he commits the act referred to in paragraph 1 on a child under fifteen years of age entrusted to his supervision, abusing his dependence or his position and the resulting credibility or influence.

(3) An offender shall be punished by imprisonment for five to twelve years if he causes serious damage to health by an act referred to in paragraph 1.

(4) The offender shall be punished by imprisonment for ten to eighteen years if he causes death by the act referred to in paragraph 1.

(5) Preparation is a criminal offense.”

In Title XIII concerning crimes against humanity peace and war criminal offenses, Part I related to crimes against humanity, there is Article 401 mentioning rape:

“Article 401 – Crime against humanity

(1) Who commits a large-scale or systematic attack against the civilian population

a) extermination of people,

b) enslavement,

c) deportation or forced relocation of a population group,

d) rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or other similar forms of sexual violence,

e) persecution of a population on a political, racial, national, ethnic, cultural or religious basis, on grounds of sex or any other similar reason,

f) apartheid or other similar segregation or discrimination,

g) deprivation of personal liberty, introduction into an unknown place or any other restriction of personal liberty with subsequent involuntary disappearance of persons,

h) torture,

i) murder, or

j) another inhuman act of a similar nature,

will be punishable by a term of imprisonment of twelve to twenty years or an exceptional sentence.

(2) Preparation is a criminal offense.”

* Criminal Procedure Code

In the Criminal Procedure code (Act No. 141/1961 Coll.)[[23]](#footnote-23), the relevant regulations concerning rape and analogous forms of serious sexual violenceare:

“Article 8b:

(…) (2) No one may, in connection with a crime committed against the injured party, disclose in any way information enabling the identification of the injured party who is a person under the age of 18 or against whom he was committed (…) one of the crimes against human dignity in sexual matters (…).

(3) The publication of video images, video and audio recordings or other information on the course of the main trial or public meeting, which would enable the identification of the injured party referred to in paragraph 2, is prohibited.

(4) The final judgment may not be published in the public media with the name, or names, surname and residence of the injured party referred to in paragraph 2. The President of the Chamber may, taking into account the person of the injured party and the nature and character of the offense committed, decide on further restrictions on the publication of a final conviction in order to adequately protect the interests of such injured party.”

“Chapter 5 - Proof

Section three - Some special ways of proving

Article 104a – Confrontation

(1) If the statement of the accused in serious circumstances does not agree with the statement of the witness or co-accused, the accused may be confronted by the witness or co-accused.

(2) If the testimony of a witness does not agree in serious circumstances with the testimony of the accused or another witness, the witness may be confronted with the accused or another witness. (…)

(5) (...) A victim under the age of eighteen may also be confronted with the accused in the case of crimes against human dignity in the sexual field.”

“Title X: Initiation of criminal proceedings, further procedure in them and abbreviated preparatory proceedings

Section two - Investigation

Article 163 - Prosecution with the consent of the injured party

(1) Criminal prosecution for criminal offenses (...) of sexual coercion pursuant to Article 186 para. 1, 2 of the Criminal Code, (...) against who is in relation to the injured party a person against whom the injured party would have the right to refuse to testify (Article 100 para. 2), and criminal prosecution for the crime of rape pursuant to Article 185 para. 1, 2 of the Criminal Code against who is or at the time the offense was committed in relation to the injured spouse, partner or species, (...) may be initiated and prosecution to continue only with the consent of the injured party. If there are several victims by one act, the consent of even one of them will suffice.”

* Act on Victims of Crime

In the Act on Victims of Crime (Act No. 45/2013 Coll. Act on Victims of Crime and on Amendments to Certain Acts)[[24]](#footnote-24), the relevant provisions concerning rape and analogous forms of serious sexual violence are:

“Title I – General provisions

Article 1 – Subject of adjustment

This Act incorporates the relevant regulations of the European Union[[25]](#footnote-25) and regulates

a) the rights of victims of crime,

b) the provision of financial assistance to victims of crime by the State; and

c) relations between the State and entities that provide services to victims of crime.

Article 2 – Definitions

(1) For the purposes of this Act, an otherwise criminal offense shall also be considered a criminal offense.

(2) Victim means a natural person who has been or should have been injured by a criminal offense, caused property or non-property damage or at whose expense the perpetrator became enriched by the crime.

(3) If the victim's death was caused by a criminal offense, if the victim has also suffered harm as a result of the victim's death, the victim is also his or her relative in the direct generation, sibling, adoptee, adopter, spouse or registered partner, species or person on the day of her death she provided or was obliged to provide maintenance. If there are several of these persons, each of them is considered a victim.

(4) For the purposes of this Act, a particularly vulnerable victim shall be deemed to fulfil the conditions specified in paragraph 2 or 3 understood as

a) a child,

b) a person who is of old age or who suffers from physical, mental or psychological handicap or sensory impairment, if these facts may, due to the circumstances of the case and the circumstances of this person, prevent his full and effective employment in society in comparison with its other members,

c) a victim of the crime of trafficking in human beings (Article 168 of the Criminal Code) or the crime of terrorist attack (Article 311 of the Criminal Code),

d) a victim of a crime against human dignity in sexual matters, a crime which involved coercion, violence or threats of violence, a crime committed for membership of a nation, race, ethnic group, religion, class or other group of persons, or a victim of a crime committed in favor of an organized criminal group if, in a particular case, there is an increased risk of causing secondary harm, in particular with regard to its age, sex, race, nationality, sexual orientation, religion, state of health, intellectual maturity, ability to express oneself, life situation, or with respect to a relationship with or dependence on a suspected suspect.

(5) For the purposes of this Act, secondary damage means damage that was not caused to the victim by a crime, but arose as a result of access by the Police of the Czech Republic, law enforcement agencies and other public authorities, health care providers, entities registered in the register of assistance to crime victims, experts, interpreters, lawyers and the media to her.

(6) Accredited entity means a legal entity that has been granted accreditation by a decision of the Ministry of Justice (hereinafter referred to as the “Ministry”) pursuant to Article 42.”

## Annex 4: Czech Republic - Provisions that allow for the non-prosecution of the perpetrator

According to the Criminal Code, the prescription of the offense allows the non-prosecution of the perpetrator. The relevant articles are:

Article 34 – Limitation period

“(1) Criminal liability for a criminal offense shall cease upon the expiry of the limitation period which it makes

a) twenty years, in the case of a criminal offense for which it allows the imposition of an exceptional sentence, and a criminal offense committed during the preparation or approval of a privatization project pursuant to another legal regulation,

b) fifteen years if the upper limit of the penalty of imprisonment is at least ten years,

c) ten years if the upper limit of the penalty of imprisonment is at least five years,

d) five years if the upper limit of the custodial sentence is at least three years,

(e) three years for other offenses.”

Article 35 - Exclusion from the statute of limitations

“The expiration of the limitation period does not terminate criminal liability

a) for the criminal offenses listed in Chapter Thirteen of the Special Part of this Act”

Therefore there is no limitation for Article 401 concerning crimes against humnaity, they are imprescriptible.

According to the Criminal Procedure Code, the relevant article concerning the inadmissibility of criminal prosecution is the following:

Article 11 – Inadmissibility of criminal prosecution

“(1) Prosecution cannot be initiated, and if it has already been initiated, it cannot be continued and must be stopped.

a) if ordered by the President of the Republic, exercise his right to grant pardon or amnesty,

b) if the criminal prosecution is time-barred,

c) in the case of a person who is excluded from the competence of bodies active in criminal proceedings (Article 10), or a person whose prosecution requires consent according to the law, if such consent has not been given by an authorized body, unless it is a temporary exclusion or if the prosecution of a person for lack of consent of the competent authority is not only temporarily inadmissible,

d) in the case of a person who is not criminally liable for lack of age,

e) against someone who has died or been declared dead,

f) against a person whose serious illness permanently precludes him from being brought to justice,

g) against a person whose mental illness, which occurred only after the commission of the act, permanently makes it impossible to understand the meaning of criminal prosecution,

h) against which the previous prosecution for the same act ended with a final court judgment or was finally terminated by a decision of a court or other competent authority, if the decision was not annulled in the prescribed proceedings,

i) against whom the previous prosecution for the same act ended in a final decision approving the settlement, if the decision was not annulled in the prescribed proceedings,

j) against whom the previous prosecution for the same act ended with a final decision to transfer the case on suspicion that the act is a misdemeanor or disciplinary offense, if the decision was not annulled in the prescribed proceedings,

k) if the previous proceedings for the same act against the same person ended with a final decision on the offense and if the time limit for initiating review proceedings under another legal regulation in which the decision on the offense may be revoked has expired,

l) if the criminal prosecution is conditioned by the consent of the injured party and the consent has not been given or has been withdrawn,

m) if so provided by a promulgated international agreement by which the Czech Republic is bound, or

n) against whom criminal proceedings for the same act have been transferred to a foreign State, if he has been the subject of a final judgment by a foreign court for that act or of a protective measure which he or she is or has not enforced or cannot enforce under the law of that State; a foreign court has legally waived the imposition of a sentence or has a final decision on acquittal.”

Concerning paragraph l) of this article, even if the rape victims consents to the prosecution of the offender, the consent can be withdrawn any time until the court of appeal has taken it to the final hearing. Throughout the criminal proceedings, it is highly likely that the victim will be under great pressure not only from the rapist, who can live in the same household, but also from the family and friends.

Article 163a of the Criminal Procedure Code seeks to address this problem in part, stipulating that “The consent of the injured party with criminal prosecution for any of the criminal offenses referred to in Section 163 (1) is not required if (…) (d) it is clear from the circumstances that the consent was not given or was withdrawn in distress as a result of threats, coercion, dependence or subordination”. However, this paragraph does not change the fact that the victim may be subjected to environmental pressure throughout the criminal proceedings, which certainly does not help protecting the victim from secondary victimization.

In addition, Article 307 and 309 of the Criminal Procedure Code stipulate that:

“Section 3 - Conditional suspension of criminal prosecution

Article 307

 (1) In the proceedings on the offense, the court may, with the consent of the accused and in the preparatory proceedings, conditionally suspend the criminal prosecution, if

a) the accused confessed to the act,

b) compensated the damage, if it was caused by an act, or concluded an agreement with the injured party on its compensation, or took other necessary measures to compensate it,

c) issued unjust enrichment by an act acquired, or concluded an agreement with the injured party on its extradition, or took other appropriate measures for its extradition,

and with regard to the person of the accused, taking into account his or her life to date and the circumstances of the case, such a decision can reasonably be considered sufficient.”

“Section 4 – Settlement (Narovnání)

Article 309

(1) In proceedings for offense, the court may, with the consent of the accused and injured party and in preparatory proceedings, decide on the approval of a settlement and suspend criminal prosecution if the accused

(a) declares that he has committed the act for which he is being prosecuted and that there is no reasonable doubt that his statement was made freely, seriously and certainly;

b) compensates the injured party for the damage caused by the misdemeanor or takes the necessary actions to compensate for it, or otherwise redresses the damage caused by the misdemeanor,

c) issues unjust enrichment obtained through an offense or takes other appropriate measures for its extradition; and

d) deposits to the account of the court or in the preparatory proceedings to the account of the Public Prosecutor's Office a monetary amount intended for the state for financial assistance to victims of crime pursuant to a special legal regulation, and this amount is not apparently disproportionate to the seriousness of the offense,

and if he considers such a way of settling the case to be sufficient in view of the nature and gravity of the act committed, the extent to which the public interest was affected by the offense, the person accused and his personal and property relations.

(2) The accused, the injured party and, in proceedings before the court and the public prosecutor, may lodge a complaint against the decision pursuant to paragraph 1, which shall have suspensive effect.”

**“ Providing information on criminal proceedings and persons involved in it**

Article 8a

(1) When providing information on their activities to the public, law enforcement authorities shall ensure that they do not jeopardize the clarification of facts relevant to criminal proceedings, do not disclose data on persons directly involved in criminal proceedings that are not directly related to crime, and do not violate the principle that until guilt is pronounced by a final conviction, the person against whom criminal proceedings are being conducted cannot be regarded as guilty (Article 2 para. 2). In the pre-trial proceedings, they may not disclose information enabling the identity of the person prosecuted, the injured party, the person concerned and a witness to be identified.

(2) When providing information pursuant to paragraph 1, bodies active in criminal proceedings shall pay special attention to the protection of personal data and the privacy of persons under the age of 18. ”

“Article 88d – Prohibition of contact with certain persons

(1) The prohibition of contact with certain persons consists in the inadmissibility of any contact or search for the injured party, persons close to him or other persons, in particular witnesses, including through an electronic communications network or other similar means.

(2) For important reasons, a meeting of the accused with the injured party, a person close to him or another person shall be permitted. The meeting shall always take place in the presence of a law enforcement authority conducting the proceedings at the time of the meeting or, on the basis of its authority, in the presence of a probation officer. The meeting shall be terminated immediately if circumstances arise during it that prevent its continuation, in particular if the accused raises a reasonable concern in the injured party, a person close to him or another person about carrying out the conduct referred to in § 88b paragraph 2 or tries to influence their termination.

Article 88e - No entry into the dwelling

(1) The prohibition on entering a dwelling consists in the inadmissibility of the accused's entry into a common dwelling inhabited with the injured party and his immediate surroundings, and in the inadmissibility of staying in such a dwelling.”

“Article 183a

(1) In court proceedings, the President of the Chamber or another authorized member of the Chamber may exceptionally, for important reasons, hear the accused, a witness, an expert or provide other evidence outside the main trial or public hearing. The public prosecutor and the defendant's lawyer to whom such an act relates are entitled to participate in such an act and to be notified of its act in good time, unless the execution of the act cannot be postponed and their notification cannot be ensured. The participation of the accused in such an interrogation may be admitted in particular in cases where he does not have a lawyer, and in the case of the interrogation of a witness who has the right to refuse to testify. Notification of the examination of a witness or of another act with such a witness, whose identity is to be kept secret for the reasons stated in Article 55 para. 2 shall not contain information which would make it possible to establish the true identity of the witness” .

“Taking additional evidence

Article 209

(1) The President of the Chamber shall ensure that a witness who has not yet been heard is not present during the examination of the accused and other witnesses. If there is a fear that a witness in the presence of the accused will not tell the truth, or if he is a witness who or a person close to him from the testimony is in danger of injury, death or other serious danger, the President of the Chamber shall take appropriate measures to ensure security or confidentiality. witness, or expel the accused during the hearing of such a witness from the courtroom. However, after returning to the Chamber, the accused must be acquainted with the content of the witness's statement, may comment on it and, without meeting the witness, may ask him questions through the President of the Chamber. In the case of a witness whose identity is to remain secret (Section 55 (2)), the President of the Chamber shall take measures which make it impossible to establish the true identity of the witness.

(...)

Article 211

(1) Instead of questioning a witness, the minutes of his testimony may be read in the main trial, if the court does not consider personal questioning necessary and the public prosecutor and the defendant agree to this. If the accused, who has been duly summoned to the main trial, does not appear without an apology or withdraws from the courtroom without a serious reason, the defendant's consent to read such a report on the examination of a witness is not required and the public prosecutor's consent is sufficient. The accused must be informed of these facts in the summons. ”

“Article 263 - Proceedings before the Court of Appeal

(...) (5) After the opening of a public session, the chairman of the senate or a member of the senate appointed by him shall deliver the contested judgment and report on the state of affairs. The appellant shall then lodge his appeal and state the reasons therefor; if the appellant is not present, the appeal, including the reasons, shall be read by the President of the Chamber or a member of the Chamber designated by him. The public prosecutor and the persons who may be directly affected by the decision of the Court of Appeal, if they are not appellants, shall present their observations and proposals for the taking of evidence; if any of these persons is not present and if the statement is contained in the file, or if he / she so requests, the content of their submission shall be presented by the chairman of the senate or a member of the senate appointed by him.”

In the Act on Victims of Crime, the law provisions aimed to avoid re-victimizations during the prosecution and court hearings are:

“Part 5 – Right to protection against secondary damage

Article 17 – Prevention of contact between the victim and a person close to him or her with the person whom the victim has identified as the perpetrator, with a suspect or with a person against whom criminal proceedings are being conducted

(1) The victim and a person close to him/her have the right to request at any stage of the criminal proceedings, or even before its commencement, that the necessary measures be taken during the acts in which they participate to prevent contact with the person identified by the victim as the perpetrator. suspected of having committed a criminal offense or being prosecuted.

(2) Requests pursuant to paragraph 1 shall be complied with by the competent authorities if the victim is particularly vulnerable and the nature of the act performed does not preclude it. If this request cannot be complied with because it precludes the nature of the act being performed, the competent authorities are obliged to take appropriate measures to prevent the victim from coming into contact with a person whom he or she has identified as having been or suspected of having committed a criminal offense. leads, before and after the action.

Article 18 – Giving an explanation and questioning the victim

(1) Questions directed to the intimate area of the interrogated victim may be asked only if this is necessary to clarify the facts relevant to the criminal proceedings. These questions should be asked particularly carefully and in a comprehensive manner so that the interrogation does not have to be repeated; their wording must be adapted to the age, personal experience and mental state of the victim, while maintaining the necessary consideration.

(2) The victim has the right to object at any time to the focus of the issue. The objection shall be recorded in the minutes. The hearing shall decide on the merits of the objection.

Article 19 - Giving an explanation and questioning by a person of the same or opposite sex

(1) The victim may request to be heard in the preparatory proceedings by a person of the same or opposite sex. Requests from particularly vulnerable victims must be complied with unless there are important reasons to the contrary. The reasons which led to the rejection of the application shall be recorded in the record of the action.

(2) A particularly vulnerable victim may also request that an interpreter of the same or opposite sex be recruited in the event that his/her statement needs to be interpreted. The law enforcement authority shall comply with the request, unless the execution of the act can be postponed or an interpreter of the requested sex can be provided.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the submission of explanations pursuant to another legal regulation.

Article 20 - Explanation and interrogation of particularly vulnerable victims

(1) A particularly vulnerable victim must be interrogated in criminal proceedings particularly sensitively and in view of the specific circumstances which make him or her particularly vulnerable.

(2) If possible, the interrogation of particularly vulnerable victims in the preparatory proceedings shall be carried out by a person trained in the premises adapted or adapted for this purpose. If the victim is a child, the pre-trial hearing is always carried out by a trained person, except in cases where the act is urgent and the trained person cannot be detained.

(3) The questioning of a particularly vulnerable victim shall be carried out in such a way that it does not have to be repeated later. In the case of a further hearing before the same authority, the interrogator shall normally be the same person, unless there are important reasons to the contrary.

(4) If a particularly vulnerable victim does not wish to have direct visual contact with a person suspected of having committed a criminal offense or with a person being prosecuted, the necessary measures shall be taken to prevent such visual contact, unless there are serious grounds for doing so, in particular: uses audiovisual techniques where technically possible. In doing so, it must be ensured that the rights of the defense are not infringed.

(5) Paragraphs 1 to 4 shall apply mutatis mutandis to the submission of explanations pursuant to another legal regulation.

Article 21 - The right to be accompanied by a confidant

(1) The victim has the right to be accompanied to the acts of criminal proceedings and to provide explanations by a confidant.

(2) A trustee may be a natural person qualified for legal acts, which the victim chooses. The trustee provides the victim with the necessary, especially psychological, help. The trustee may also be the victim's agent. A confidant cannot be a person who has the status of an accused, a lawyer, a witness, an expert or an interpreter in criminal proceedings.

(3) The trustee may not interfere in the course of the act.

(4) A trustee may be excluded from participation in an act only exceptionally if the trustee's participation would disrupt the course of the act or endanger the achievement of the purpose of the act. If the trustee has been excluded, the victim must be allowed to choose another trustee, unless the act cannot be postponed or the postponement would involve disproportionate difficulties or costs.

Article 22 - Declaration of the victim on the impact of the crime on her life

The victim has the right at any stage of the criminal proceedings to make a statement as to the impact of the crime committed on his or her life to date. The victim may also make a statement in writing.”

## Annex 5: Tunisia - Articles related to rape in the criminal code

Le Chapitre III du code pénal tunisien (articles 226 à 245 bis-) est consacré aux crimes

sexuels:

1. **Crime d’atteinte aux bonnes mœurs**:

L’article 226 bis prévoit une peine de 6 mois d’emprisonnement et une amende de 1000 dt pour toute personne ayant attenté aux bonnes mœurs et à la morale publique par ses gestes, dires….. Les mêmes peines sont appliquées pour ceux qui incitent ‘’publiquement’’ à la débauche par leurs écrits ou enregistrements ou messages audio visuels…

1. **Crime de harcèlement sexuel**

Article e 226 ter (nouveau) - Est puni de deux (2)ans d’emprisonnement et d’une amende de cinq (5)mille dinars celui qui commet le harcèlement sexuel .Est considéré comme harcèlement sexuel toute agression d’autrui par actes ou gestes ou paroles comportant des connotations sexuelles qui portent atteinte à sa dignité ou affectent sa pudeur, et ce, dans le but de l'amener à se soumettre aux désirs sexuels de l’agresseur ou ceux d'autrui, ou en exerçant sur lui une pression dangereuse susceptible d’affaiblir sa capacité à y résister.

La peine est portée au double, si :

- la victime est un enfant,

- l’auteur est un ascendant ou descendant de la victime, quel qu’en soit le degré,

- l’auteur a une autorité sur la victime ou abuse de l’autorité que lui confèrent ses fonctions,

- l’infraction commise est facilitée par la situation de vulnérabilité apparente de la victime, ou connue par l’auteur,

Le délai de prescription de l’action publique concernant l’infraction de harcèlement sexuel commise contre un enfant court à compter de sa majorité.

**c-Subir volontairement l’acte sexuel à un enfant**

Article 227 bis (Nouveau) - Est puni de cinq (5)ans d’emprisonnement, celui qui fait subir volontairement l’acte sexuel à un enfant qu’il soit de sexe féminin ou masculin dont l’âge est supérieur à seize (16) ans accomplis, et inférieur à dix-huit (18)ans accomplis, et ce, avec son consentement.

La peine est portée au double dans les cas suivants, si :

- l’auteur est l’instituteur de la victime, ou de ses serviteurs ou de ses médecins,

- l’auteur a une autorité sur la victime ou abuse de l’autorité que lui confèrent ses fonctions,

- l’infraction est commise par un groupe de personnes agissant en qualité d’auteurs principaux ou complices,

- la victime est en situation de fragilité liée à l’âge avancé, la maladie grave, la grossesse, ou la carence mentale ou physique affectant sa capacité de résister à

L’auteur des faits.

La tentative est punissable.

Lorsque l’infraction est commise par un enfant, le tribunal applique les dispositions de l’article 59 du code de la protection de l'enfance.

Le délai de prescription de l’action publique concernant l’infraction d’acte sexuel commis sur un enfant avec son consentement court à compter de sa majorité.

**d-l’attentat à la pudeur**

Article 228 (paragraphe 2 nouveau) - La peine est portée au double :

- si la victime est un enfant

- si l’auteur est :

\* un ascendant ou un descendant quel qu’en soit le degré

\* un frère ou une sœur,

\*le neveu ou l’un de leurs descendants,

\* le gendre ou la belle-fille ou l’un de leurs descendants

\* le père de l’un des conjoints, le conjoint de la mère, l’épouse du père ou les descendants de l’autre conjoint,

\* des personnes dont l’une est épouse du frère ou conjoint de la sœur,

- si l’auteur est une personne ayant autorité sur la victime ou abuse de l’autorité que lui confèrent ses fonctions,

- si l’infraction commise est facilitée par la situation de vulnérabilité apparente de la victime, ou connue par l’auteur

- si l’infraction est commise par un groupe de personnes agissant en qualité d’auteurs principaux ou complices .Le délai de prescription de l’action publique

concernant l’infraction d’attentat à la pudeur commise sur un enfant court à compter de sa majorité.

**e - Crime de viol**

Selon les dispositions de loi organique n° 2017-58 du 11 août 2017, relative à l’élimination de la violence à l’égard des femmes

Article 227 (nouveau) - Est considéré viol, tout acte de pénétration sexuelle, quelle que soit sa nature, et le moyen utilisé commis sur une personne de sexe féminin ou masculin sans son consentement l’auteur du viol est puni de vingt ans d’emprisonnement.

 Le consentement est considéré comme inexistant lorsque l’âge de la victime est au-dessous de seize(16) ans accompli.

\* **La peine capitale à l’encontre de l’auteur de viol consacré par l’ancienne loi a été abolie par les dispositions de loi organique n° 2017-58 du 11 août 2017, relative à l’élimination de la violence à l’égard des femmes en consacrant la prison à perpétuité comme peine maximale pour l’auteur de viol.**

## Annex 6: Belgium - Penalties for rape

“**Art. 377** - Penalties shall be set as provided for in paragraphs 2 to 6:

 - if the perpetrator is the ascendant or adoptive parent of the victim, a descendant in the direct line of the victim or a descendant in the direct line of a brother or sister of the victim
 - if the offender is either the sibling of the minor victim or any person who occupies a similar position within the family, or any person who usually or occasionally cohabits with the victim and has authority over him or her;
 - if the perpetrator is one of those who have authority over the victim; if he or she has abused the authority or facilities conferred on him or her by virtue of his or her position; if he or she is a doctor, surgeon, midwife or health officer and the child or any other vulnerable person referred to in article 376, paragraph 3, has been entrusted toIf in the case of articles, 373, 375 and 376, the offender, whoever he may be, was assisted in the execution of the crime or misdemeanour by one or more persons]
(In the cases provided for in paragraph 1 of Article 372, and paragraph 2 of Article 373], the penalty shall be imprisonment for a term of ten to fifteen years.
- In the cases provided for in Article 373/1, paragraph 1]2, the minimum term of imprisonment shall be doubled.
(In the cases provided for in para. 3 of Article 373, para. 4 of Article 375 and para. 3 of Article 376, the sentence of imprisonment shall be at least twelve years;)
- In the case provided for in paragraph 3 of Article 375, the sentence of imprisonment shall be at least seven years.
(In the cases provided for by paragraphs 5 and 6 of Article 375 and paragraph 2 of Article 376, the penalty for imprisonment shall be at least seventeen years).).

“**Art. 372** - Any **indecent assault committed without violence or threats** against the person or with the assistance of a child of either sex under the age of sixteen years shall be punishable by imprisonment (from five to ten years).
An indecent assault committed without violence or threats by any ascendant or adopter on the person or with the help of the person of a minor, even if the minor is sixteen years of age or older, shall be punishable by imprisonment for ten to fifteen years (The same penalty shall be applied if the perpetrator is either the brother or sister of the minor victim or any person occupying a similar position within the family, or any person habitually or occasionally cohabiting with him or her and having authority over him or her).”

“**Art. 373** - An **indecent assault** committed against persons or with the help of persons of either sex, **with violence, coercion, threat, surprise or by subterfuge, or which was made possible by the physical or mental infirmity or disability of the victim**, shall be punishable by imprisonment from six months to five years.
If the attack was committed against or with the assistance of a minor over the age of sixteen, the perpetrator shall be sentenced to imprisonment (from five to ten years).
The penalty shall be (of imprisonment) from ten to fifteen years, if the minor was under sixteen years of age.”

## Annex 7: Canada - Criminal code (regarding question 5 on exemptions)

*Consent no defence*

* *150.1 (1) Subject to subsections (2) to (2.2), when an accused is charged with an offence under* [*section 151*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec151_smooth) *or* [*152*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec152_smooth) *or* [*subsection 153(1)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec153subsec1_smooth)*,* [*160(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec160subsec3_smooth) *or* [*173(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec173subsec2_smooth) *or is charged with an offence under* [*section 271*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec271_smooth)*,* [*272*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth) *or* [*273*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth) *in respect of a complainant under the age of 16 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.*
* *Exception — complainant aged 12 or 13*

*(2) When an accused is charged with an offence under* [*section 151*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec151_smooth) *or 152, subsection 173(2) or section 271 in respect of a complainant who is 12 years of age or more but under the age of 14 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused*

* + *(a) is less than two years older than the complainant; and*
	+ *(b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.*
* *Exception — complainant aged 14 or 15*

*(2.1) If an accused is charged with an offence under* [*section 151*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec151_smooth) *or 152, subsection 173(2) or section 271 in respect of a complainant who is 14 years of age or more but under the age of 16 years, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if the accused*

* + *(a) is less than five years older than the complainant; and*
	+ *(b) is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.*
* *Exception for transitional purposes*

*(2.2) When the accused referred to in subsection (2.1) is five or more years older than the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge if, on the day on which this subsection comes into force,*

* + *(a) the accused is the common-law partner of the complainant, or has been cohabiting with the complainant in a conjugal relationship for a period of less than one year and they have had or are expecting to have a child as a result of the relationship; and*
	+ *(b) the accused is not in a position of trust or authority towards the complainant, is not a person with whom the complainant is in a relationship of dependency and is not in a relationship with the complainant that is exploitative of the complainant.*
* *Exception for transitional purposes*

*(2.3) If, immediately before the day on which this subsection comes into force, the accused referred to in subsection (2.1) is married to the complainant, it is a defence that the complainant consented to the activity that forms the subject-matter of the charge.*

* *Exemption for accused aged twelve or thirteen*

*(3) No person aged twelve or thirteen years shall be tried for an offence under* [*section 151*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec151_smooth) *or* [*152*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec152_smooth) *or* [*subsection 173(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec173subsec2_smooth) *unless the person is in a position of trust or authority towards the complainant, is a person with whom the complainant is in a relationship of dependency or is in a relationship with the complainant that is exploitative of the complainant.*

* *Mistake of age*

*(4) It is not a defence to a charge under* [*section 151*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec151_smooth) *or* [*152*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec152_smooth)*,* [*subsection 160(3)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec160subsec3_smooth) *or* [*173(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec173subsec2_smooth)*, or* [*section 271*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec271_smooth)*,* [*272*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec272_smooth) *or* [*273*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec273_smooth) *that the accused believed that the complainant was 16 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.*

* *Idem*

*(5) It is not a defence to a charge under* [*section 153*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec153_smooth)*,* [*170*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec170_smooth)*,* [*171*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec171_smooth) *or* [*172*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec172_smooth) *or* [*subsection 286.1(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec286.1subsec2_smooth)*,* [*286.2(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec286.2subsec2_smooth) *or* [*286.3(2)*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec286.3subsec2_smooth) *that the accused believed that the complainant was 18 years of age or more at the time the offence is alleged to have been committed unless the accused took all reasonable steps to ascertain the age of the complainant.*

* *Mistake of age*

*(6) An accused cannot raise a mistaken belief in the age of the complainant in order to invoke a defence under subsection (2) or (2.1) unless the accused took all reasonable steps to ascertain the age of the complainant.*

* *R.S., 1985, c. 19 (3rd Supp.),* [*s. 1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)
* [*2005, c. 32, s. 2*](https://www.canlii.org/en/ca/laws/astat/sc-2005-c-32/latest/sc-2005-c-32.html)
* [*2008, c. 6, ss. 13, 54*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2014, c. 25, s. 4*](https://www.canlii.org/en/ca/laws/astat/sc-2014-c-25/latest/sc-2014-c-25.html)
* [*2015, c. 29, s. 6*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-29/latest/sc-2015-c-29.html)
* [*2019, c. 25, s. 51*](https://www.canlii.org/en/ca/laws/astat/sc-2019-c-25/latest/sc-2019-c-25.html)

*Sexual interference*

*151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years*

* *(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or*
* *(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.*
* *R.S., 1985, c. C-46, s. 151*
* *R.S., 1985, c. 19 (3rd Supp.),* [*s. 1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)
* [*2005, c. 32, s. 3*](https://www.canlii.org/en/ca/laws/astat/sc-2005-c-32/latest/sc-2005-c-32.html)
* [*2008, c. 6, s. 54*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2012, c. 1, s. 11*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)
* [*2015, c. 23, s. 2*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-23/latest/sc-2015-c-23.html)

*Invitation to sexual touching*

*152 Every person who, for a sexual purpose, invites, counsels or incites a person under the age of 16 years to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the person under the age of 16 years,*

* *(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or*
* *(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.*
* *R.S., 1985, c. C-46, s. 152*
* *R.S., 1985, c. 19 (3rd Supp.),* [*s. 1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)
* [*2005, c. 32, s. 3*](https://www.canlii.org/en/ca/laws/astat/sc-2005-c-32/latest/sc-2005-c-32.html)
* [*2008, c. 6, s. 54*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2012, c. 1, s. 12*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)
* [*2015, c. 23, s. 3*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-23/latest/sc-2015-c-23.html)

*Sexual exploitation*

* *153 (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitative of the young person, and who*
	+ *(a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or*
	+ *(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person.*
* *Punishment*

*(1.1) Every person who commits an offence under subsection (1)*

* + *(a) is guilty of an indictable offence and is liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or*
	+ *(b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days.*
* *Inference of sexual exploitation*

*(1.2) A judge may infer that a person is in a relationship with a young person that is exploitative of the young person from the nature and circumstances of the relationship, including*

* + *(a) the age of the young person;*
	+ *(b) the age difference between the person and the young person;*
	+ *(c) the evolution of the relationship; and*
	+ *(d) the degree of control or influence by the person over the young person.*
* *Definition of* young person

*(2) In this section,* young person *means a person 16 years of age or more but under the age of eighteen years.*

* *R.S., 1985, c. C-46, s. 153*
* *R.S., 1985, c. 19 (3rd Supp.),* [*s. 1*](https://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-46/latest/rsc-1985-c-c-46.html#sec1_smooth)
* [*2005, c. 32, s. 4*](https://www.canlii.org/en/ca/laws/astat/sc-2005-c-32/latest/sc-2005-c-32.html)
* [*2008, c. 6, s. 54*](https://www.canlii.org/en/ca/laws/astat/sc-2008-c-6/latest/sc-2008-c-6.html)
* [*2012, c. 1, s. 13*](https://www.canlii.org/en/ca/laws/astat/sc-2012-c-1/latest/sc-2012-c-1.html)
* [*2015, c. 23, s. 4*](https://www.canlii.org/en/ca/laws/astat/sc-2015-c-23/latest/sc-2015-c-23.html)

## Annex 8: Spain – Reparation to the victim in the legislation

Law 4/2015 on the statute of the victim of crime[[26]](#footnote-26) regulates the rights to information and protection for the victim, before and during the process, and, regarding reparation itself, references are made in article related to restorative justice and those affected by the Criminal Procedure Law (LCrim)[[27]](#footnote-27).

Thus art. 15 states that:

1. Victims may access restorative justice services, in the terms that are determined by regulation, in order to obtain adequate material and moral reparation for the damages derived from the crime, when the following requirements are met:

a) the offender has recognized the essential facts from which his responsibility derives;

b) the victim has given his/her consent, after having received exhaustive and impartial information about its content, possible results and the existing procedures to enforce it;

c) the offender has given his/her consent;

d) the mediation procedure does not entail a risk for the safety of the victim, nor is there a danger that its development may cause further material or non-material damage to the victim; and

e) is not prohibited by law for the crime committed.

On the other hand, LCrim establishes in title IV “Of the persons to whom it corresponds the exercise of the actions that arise from crimes and misdemeanours” stablishes that “From every crime or misdemeanour criminal action arises a punishment of the guilty, and civil action may also arise for the restitution of the thing, the repair of the damage and the compensation of damages caused by the punishable act” (art. 100).

In addition to reparation to the victim for the cause of the damage, a system is established in which the State would be the indemnifier, functioning as a correction mechanism, which in the Spanish case would be classified as “aid”.

 In 2018, the law of 35/1995 on aid and assistance to victims of violent crimes and against sexual freedom[[28]](#footnote-28) was carried out in the framework of the state pact against gender violence in accordance with law 6/2018 of the general budgets of the State[[29]](#footnote-29).

This law regulates financial aid to victims of violent crime and the assistance to victims of all types of crime.

Chapter I “public aid” establishes:

1. A public aid system is established for the benefit of direct and indirect victims of intentional and violent crimes, committed in Spain, resulting in death, serious bodily injury, or serious damage to physical or mental health (Serious injuries being understood as those that impair bodily integrity or physical or mental health and that temporarily or permanently incapacitate the person who suffered them (art. 4.1.).

2. Victims of crimes against sexual freedom will also benefit from the aid provided by this Law, even when they are perpetrated without violence.

As beneficiaries, art. 2 states:

1. These grants may be accessed by those who, at the time of the crime, are Spanish or nationals of any other Member State of the European Union or who, although not, usually reside in Spain or are nationals of another State that recognizes similar grants to the Spanish in their territory.

Likewise, nationals of any other State who are in Spain, regardless of their administrative situation, may access the aid when the victim is a victim of gender violence in the terms provided in Organic Law 1/2004, of 28 December, comprehensive protection measures against Gender Violence, provided that they are crimes as a result of an act of violence against women.

On the other hand, art. 10 with respect to the granting of aid, it establishes in section 1. that “provisional aid may be granted prior to the receipt of a final court decision to end the criminal process, provided that the precarious economic situation in which the victim or his beneficiaries”.

In any case, it should be pointed out according to different studies that in 2015 only nine grants were awarded for therapeutic expenses for a total of 8,305 euros. That year there were 2,515 convictions for crimes against sexual freedom. In other words, only 0.36% of the victims accessed public financial support[[30]](#footnote-30).

## Annex 9: South Korea - data of criminal disposal result

|  |  |
| --- | --- |
|   | **Criminal Disposal Result (# of people)** |
| **2014** | **2015** | **2016** | **2017** | **2018** |
| **Rape** | **Total** | 4858 | 4911 | 5227 | 5491 | 5590 |
| Rape | Prosecuted | 2066 | 2117 | 2080 | 2415 | 2307 |
| Rape | Formal trial\_imprisonment | 1012 | 1013 | 926 | 937 | 743 |
| Rape | Formal trial\_no detention | 933 | 1012 | 1053 | 1360 | 1424 |
| Rape | Informal trial | 121 | 92 | 101 | 118 | 140 |
| Rape | Sent to Juvenile court (send juveniles to family/juvenile court for juvenile protective dispositions) | 224 | 188 | 185 | 178 | 209 |
| Rape | Sent to Family court (domestic violence) | 10 | 16 | 11 | 24 | 21 |
| Rape | Prostitution protection | 1 | - | - |   | - |
| Rape | Sent to child protection (sent to juvenile/family court asking for offender's juvenile protective disposition) |   |   | - | 6 | 1 |
| Rape | Non-prosecuted | 2231 | 2327 | 2599 | 2721 | 2860 |
| Rape | Suspension of indictment | 309 | 284 | 233 | 185 | 147 |
| Rape | Not guilty | 1824 | 1974 | 2298 | 2455 | 2626 |
| Rape | Not punishable | 2 | - | 3 | 4 | 4 |
| Rape | No right to appeal | 96 | 69 | 65 | 77 | 83 |
| Rape | Stay of prosecution | 281 | 227 | 319 | 122 | 176 |
| Rape | Suspension decision due to missing person(cannot locate accused/witness/etc) | 45 | 36 | 33 | 25 | 16 |

## Annex 10: Sierra Leone - Data on rapes (reported, not prosecuted) according to the Family support unit of the police.

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|   |   | 2017 |   |   |   |   |   |   |   |   | 2017 Total |
|   |   | **Kenema Police Station** | **Kenema Police Station Total** | **Port Loko Police Station** | **Port Loko Police Station Total** | **Rokel Police Post** | **Rokel Police Post Total** |  |
| Category of Offence | Offence Reported | Adult | Juvenile |   | Adult | Juvenile |   | Adult | Juvenile |   |   |
| **Domestic Violence Total** |   | 395 | 87 | 482 | 270 | 43 | 313 | 95 | 24 | 119 | 914 |
| **Offence Against Children** |  |   | 11 | 11 |   | 40 | 40 |   | 9 | 9 | 60 |
| **Sexual Offences Total** |  |  |  |  |  |  |  |  |  |  |  |
|  | **Rape** | **9** |  | **9** | **15** |  | **15** | **1** |  | **1** | **25** |
|  | **Sexual Penetration** |  | **122** | **122** |  | **81** | **81** |  | **25** | **25** | **228** |
| Grand Total |   | 11 | 129 | 140 | 17 | 83 | 100 | 1 | 32 | 33 | 273 |

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|   |   | 2018 |   |   |   |   |   |   |   |   | 2018 Total |
|   |  | **Kenema Police Station** | **Kenema Police Station Total** | **Port Loko Police Station** | **Port Loko Police Station Total** | **Rokel Police Post** | **Rokel Police Post Total** |   |
| Category of Offence | Offence Reported | Adult | Juvenile |   | Adult | Juvenile |   | Adult | Juvenile |   |   |
| **Domestic Violence Total** |   | 251 | 54 | 305 | 118 | 29 | 147 | 45 | 7 | 52 | 504 |
| **Offence Against Children** |  |   | 7 | 7 |   | 10 | 10 |   | 3 | 3 | 20 |
| **Sexual Offences Total** |   | 10 | 108 | 118 | 5 | 47 | 52 | 2 | 18 | 20 | 190 |
|  | Rape | 9 |  | 9 | 4 |  | 4 | 2 |  | 2 | 15 |
|  | Sexual Penetration |   | 108 | 108 |   | 47 | 47 |   | 16 | 16 | 171 |
| Grand Total |   | 261 | 169 | 430 | 123 | 86 | 209 | 47 | 28 | 75 | 714 |

|  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|   |   | 2019 |   |   |   |   |   |   |   |   | 2019 Total |
|   |   | **Kenema Police Station** | **Kenema Police Station Total** | **Port Loko Police Station** | **Port Loko Police Station Total** | **Rokel Police Post** | **Rokel Police Post Total** |   |
| Offence Category | Offence Reported | **Adult** | **Juvenile** |  | **Adult** | **Juvenile** |  | **Adult** | **Juvenile** |  |   |
| **Offence Against Children** |  |  | **15** | **15** |  | **8** | **8** |  | **4** | **4** | **27** |
| **Domestic Violence Total** |  | **413** | **77** | **490** | **110** | **25** | **135** | **51** | **13** | **64** | **689** |
| **Sexual Offence Total** |  | **11** | **237** | **248** | **4** | **55** | **59** | **1** | **14** | **15** | **322** |
|  | Rape | 11 |  | 11 | 3 |  | 3 | 1 |  | 1 | 15 |
|  | Sexual Penetration |   | 228 | 228 |   | 52 | 52 |   | 14 | 14 | 294 |
| Grand Total |   | 424 | 329 | 753 | 114 | 88 | 202 | 52 | 31 | 83 | 1038 |

1. You can find the criminal code of the Republic of Albania & the code of the Penal procedure, in English version can be found at this link:

<http://rai-see.org/wp-content/uploads/2015/08/Criminal-Code-11-06-2015-EN.pdf>

<https://www.legislationline.org/download/id/8236/file/Albania_CPC_1995_am2017_en.pdf> [↑](#footnote-ref-1)
2. <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444> [↑](#footnote-ref-2)
3. <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-3439> [↑](#footnote-ref-3)
4. Ibidem. [↑](#footnote-ref-4)
5. ProFem, o. p. s.: *Jen ano je ano. Trestný čin znásilnění ve světle Istanbulské smlouvy.* 2017. Available at: [www.profem.cz/shared/clanky/550/A5-JenAnoJeAno\_WEB.pdf](http://www.profem.cz/shared/clanky/550/A5-JenAnoJeAno_WEB.pdf). [↑](#footnote-ref-5)
6. Interactive application of Charles University and Czech Radio on the issue of punishment in the Czech Republic, available at: <https://jaktrestame.cz/aplikace/#appka_here>. Source of the data of the application: Ministerstvo spravedlnosti České republiky. [↑](#footnote-ref-6)
7. https://www.rechtspraak.nl/SiteCollectionDocuments/Orientatiepunten-en-afspraken-LOVS.pdf [↑](#footnote-ref-7)
8. For more information about these rights, see the website of the Czech Police: <https://www.policie.cz/clanek/prava-obeti-trestnych-cinu-a-poskozenych.aspx>. [↑](#footnote-ref-8)
9. https://kenniswijzer.rvr.org/werkinstructies-toevoegen/strafzakennietverdachten/z110-vordering-benadeelde-partij-in-strafproces.html

https://kenniswijzer.rvr.org/werkinstructies-toevoegen/verbintenissenrecht/o013-gewelds--en-zedenmisdrijven-met-ernstig-letsel.html [↑](#footnote-ref-9)
10. (Amended letter “b”, added up letter “h” and “i” by law no 8733, dated 24.1.2001, Article 5; amended letter “dh” by law no 9275, dated 16.9.2004, Article 8; added up letter “j” by law no 9686, dated 26.2.2007, Article 6; added up letter “ç/1” and “e/1” and amended letter “g” and “j” by law no 144, dated 2.5.2013, Article 6) [↑](#footnote-ref-10)
11. https://politie-verhoor.nl/sepot-strafzaak/ [↑](#footnote-ref-11)
12. https://www.sosviol.be/aide/demarches-juridiques.php [↑](#footnote-ref-12)
13. https://www.rijksoverheid.nl/onderwerpen/straffen-en-maatregelen/verjaringstermijn-misdrijven [↑](#footnote-ref-13)
14. Source of information, Republic of Albania Institute of Statistics (Institute of Statistics - Tirana Rr. Vllazë Huta, Building 35, Entrance 1, Tirana, Postal Code 1017 Email info@instat.gov.al Phone +355 (4) 2233356/2233358) Other. [↑](#footnote-ref-14)
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