

## UN Consultation

TERRE DES FEMMES - Human Rights for Women e.V. (TDF) is a non-profit women's rights organization that has been supporting girls and women affected by violence since 1981 through public relations, lobbying, networking, promotion of projects abroad and education. Our main topics are domestic and sexualised violence, female genital mutilation, violence in the name of honor, trafficking in women and prostitution and Equal rights and integration. The association currently employs 35 full-time and part-time staff. The federal office is located in Berlin.

### Definition and scope of criminal law provisions

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

In Germany, there are a range of criminal law provisions on rape depending on the situational context, perpetrated acts and age of the victims. In what follows we are listing the relevant criminal law provisions in the order they appear in the German Strafgesetzbuch (StGB). We have included provisions on sexual exploitation of women in prostitution since they involve non-consensual sexual contact exploiting vulnerable women.

#### §174 StGB<sup>1</sup>

##### Sexual abuse of persons in one's charge

###### (1) Whoever performs sexual acts

1. on a person under 16 years of age who is entrusted to them for upbringing, education or care,
2. on a person under 18 years of age who is entrusted to them for upbringing, education or care, or who is their subordinate within a service or employment relationship, by abusing the dependence associated with the educational, care, service or employment relationship or
3. on a person under 18 years of age who is their biological or adopted descendant or the biological or adopted descendant of their spouse, life partner or a person with whom they live in a quasi-marital relationship or quasi-life partnership or has the person in their charge perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever is entrusted with the upbringing, education or care of persons under 18 years of age in an institution specified for this purpose and who

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<sup>1</sup> Englische Übersetzung: [https://www.gesetze-im-internet.de/englisch\\_stgb/englisch\\_stgb.html#p1605](https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p1605)

1. performs sexual acts on a person under 16 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them or
2. exploits their position in order to perform sexual acts on a person under 18 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them

incurs a penalty of imprisonment for a term of between three months and five years.

(3) Whoever, under the conditions of subsection (1) or (2),

1. performs sexual acts in the presence of the person in their charge or
2. causes the person in their charge to perform sexual acts in their presence

for the purpose of their own sexual arousal or that of the person in their charge incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (1) no. 1, subsection (2) no. 1 or subsection (3) in conjunction with subsection (1) no. 1 or with subsection (2) no. 1, the court may dispense with imposing a penalty pursuant to this provision if the wrongfulness of the act is minor.

#### **§174a**

#### **Sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalised persons**

(1) Whoever abuses their position to perform sexual acts on a prisoner or a person detained by official order, a person who is entrusted to them for upbringing, education, supervision or care, or has the prisoner or person detained perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever abuses a person who has been admitted to an institution for sick or vulnerable persons and is entrusted to them for supervision or care and performs sexual acts on that person, thereby exploiting said person's illness or vulnerability, or whoever has that person perform sexual acts on them incurs the same penalty.

(3) The attempt is punishable.

#### **§174b**

#### **Sexual abuse exploiting official position**

(1) Whoever, in the capacity as a public official charged with participating in criminal proceedings or proceedings whose aim is to impose a measure of reform and prevention involving deprivation of liberty or detention imposed by official order, exploits the dependency caused by the proceedings to perform sexual acts on the person against whom the proceedings have been instituted or has said person perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years.

(2) The attempt is punishable.

### **§174c**

#### **Sexual abuse exploiting counselling, treatment or support relationship**

(1) Whoever performs sexual acts on a person entrusted to them for counselling, treatment or support due to a mental illness or disability, including an addiction, or due to a physical illness or disability, and exploits the counselling, treatment or support relationship or has said person perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever performs sexual acts on a person entrusted to them for psychotherapeutic treatment, thereby exploiting the treatment relationship, or has said person perform sexual acts on them incurs the same penalty.

(3) The attempt is punishable.

### **§176**

#### **Sexual abuse of children**

(1) Whoever performs sexual acts on a person under 14 years of age (child) or has the child perform sexual acts on them incurs a penalty of imprisonment for a term of between six months and 10 years.

(2) Whoever causes a child to perform sexual acts on a third person or has a third person perform sexual acts on the child incurs the same penalty.

(3) In especially serious cases, the penalty is imprisonment for a term of at least one year.

(4) Whoever

1. performs sexual acts in the presence of a child,
2. causes the child to perform sexual acts, unless the act is subject to a penalty under subsection (1) or subsection (2),
3. influences a child by way of material (section 11 (3)) or information and communication technologies
  - a) in order to cause the child to perform sexual acts on or in the presence of the offender or a third person or to have the offender or a third person perform sexual acts on the child or
  - b) in order to commit an offence under section 184b (1) no. 3 or under section 184b (3) or

4. influences a child by showing pornographic images or depictions, by playing pornographic audio recordings, making pornographic content available by way of information and communication technologies or pornographic speech

incurs a penalty of imprisonment for a term of between three months and five years.

(5) Whoever offers or promises to supply a child for an offence under subsections (1) to (4) or who arranges with another to commit such an offence incurs a penalty of imprisonment for a term of between three months and five years.

(6) The attempt is punishable; this does not apply to offences under subsection (4) nos. 3 and 4 and subsection (5).

### **§176a**

#### **Aggravated sexual abuse of children**

(1) The sexual abuse of children in the cases under section 176 (1) and (2) incurs a penalty of imprisonment for a term of at least one year if the offender has been convicted of such an offence by final judgment within the previous five years.

(2) The sexual abuse of children in the cases under section 176 (1) and (2) incurs a penalty of imprisonment for a term of at least two years if

1. a person over 18 years of age has sexual intercourse with the child, or performs similar sexual acts on the child or has similar sexual acts performed on them by the child which involve penetration of the body,
2. the offence is committed jointly by more than one person or
3. the offender, by committing the offence, places the child at risk of serious damage to health or substantial impairment of his or her physical or emotional development.

(3) Whoever, in the cases under section 176 (1) to (3), (4) no. 1 or 2 or section 176 (6), acts as an offender or another party to an offence with the intention of making the act the subject of pornographic material (section 11 (3)) which is to be disseminated as per section 184b (1) or (2) incurs a penalty of imprisonment for a term of at least two years.

(4) In less serious cases under subsection (1), the penalty is imprisonment for a term of between three months and five years, in less serious cases under subsection (2) imprisonment for a term of between one year and 10 years.

(5) Whoever, in the cases under section 176 (1) to (3), seriously physically abuses the child or places the child in danger of death incurs a penalty of imprisonment for a term of at least five years.

(6) Any period during which the offender was detained in an institution by official order is not taken into account when calculating the time indicated in subsection (1). An offence resulting

in a conviction abroad is equivalent, in the cases under subsection (1), to an offence resulting in a domestic conviction if under German criminal law it would have been an offence under section 176 (1) or (2).

## **§176b**

### **Sexual abuse of children resulting in death**

If, by committing sexual abuse (sections 176 and 176a), the offender causes the child's death at least recklessly, the penalty is imprisonment for life or imprisonment for a term of at least 10 years.

## **§177**

### **Sexual assault; sexual coercion; rape**

(1) Whoever, against a person's discernible will, performs sexual acts on that person or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs a penalty of imprisonment for a term of between six months and five years.

(2) Whoever performs sexual acts on another person or has that person perform sexual acts, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs the same penalty if

1. the offender exploits the fact that the person is not able to form or express a contrary will,
2. the offender exploits the fact that the person is significantly impaired in respect of the ability to form or express a will due to said person's physical or mental condition, unless the offender has obtained the consent of that person,
3. the offender exploits an element of surprise,
4. the offender exploits a situation in which the victim is threatened with serious harm in case of offering resistance or
5. the offender has coerced the person to perform or acquiesce to the sexual acts by threatening serious harm.

(3) The attempt is punishable.

(4) The penalty is imprisonment for a term of at least one year if the inability to form or express a will is due to the victim's illness or disability.

(5) The penalty is imprisonment for a term of at least one year if the offender

1. uses force against the victim,
2. threatens the victim with a present danger to life or limb or
3. exploits a situation in which the victim is unprotected and at the mercy of the offender's influence.

(6) In especially serious cases, the penalty is imprisonment for a term of at least two years. An especially serious case typically occurs where

1. the offender has sexual intercourse with the victim or has the victim have sexual intercourse or commits such similar sexual acts on the victim or has the victim commit them on them which are particularly degrading for the victim, especially if they involve penetration of the body (rape), or
2. the offence is committed jointly by more than one person.

(7) The penalty is imprisonment for a term of at least three years if the offender

1. carries a weapon or other dangerous implement,
2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person by force or threat of force or
3. places the victim at risk of serious damage to health.

(8) The penalty is imprisonment for a term of at least five years if

1. the offender uses a weapon or other dangerous implement during the commission of the offence or
2. the offender
  - a) seriously physically abuses the victim during the offence or
  - b) by committing the offence places the victim in danger of death.

(9) In less serious cases under subsections (1) and (2), the penalty is imprisonment for a term of between three months and three years, in less serious cases under subsections (4) and (5) imprisonment for a term of between six months and 10 years, and in less serious cases under subsections (7) and (8) imprisonment for a term of between one year and 10 years.

## **§178**

### **Sexual assault, sexual coercion and rape resulting in death**

If, by committing sexual assault, sexual coercion or rape (section 177), the offender causes the victim's death at least recklessly, the penalty is imprisonment for life or imprisonment for a term of at least 10 years.

## **§182**

### **Sexual abuse of juveniles**

(1) Whoever abuses a person under 18 years of age by taking advantage of a predicament by

1. performing sexual acts on that person or having said person perform sexual acts on them or
2. causing the person to perform sexual acts on a third person or to have sexual acts performed on them by a third person

incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(2) A person over 18 years of age who abuses a person under 18 years of age by performing sexual acts on that person or having that person perform sexual acts on them for a consideration incurs the same penalty.

(3) A person over 21 years of age who abuses a person under 16 years of age by

1. performing sexual acts on that person or having that person perform sexual acts on them or
2. causing that person to perform sexual acts on a third person or to have a third person perform sexual acts on that person,

and thereby exploits the victim's lack of capacity for sexual self-determination, incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (3), the offence is prosecuted only upon request, unless the prosecuting authority deems there to be a special public interest in prosecution which calls for ex officio intervention.

(6) In the cases under subsections (1) to (3), the court may dispense with imposing a penalty pursuant to these provisions if, having regard to the conduct of the person against whom the offence was committed, the wrongfulness of the act is minor.

## **§ 232a**

### **Forced prostitution**

(1) Whoever, by taking advantage of another person's personal or financial predicament or helplessness on account of being in a foreign country, causes that person or causes another person under 21 years of age

1. to engage in or continue to engage in prostitution or
2. to perform sexual acts, by way of which they are exploited, on or in the presence of the offender or a third person, or to allow sexual acts to be performed on them by the offender or a third person

incurs a penalty of imprisonment for a term of between six months and 10 years.

(2) The attempt is punishable.

(3) Whoever by force, by threat of serious harm or by deception causes another person to engage or continue to engage in prostitution or to perform the sexual acts indicated in subsection (1) no. 2 incurs a penalty of imprisonment for a term of between one year and 10 years.

(4) In the cases under subsection (1), the penalty is imprisonment for a term of between one year and 10 years, in the cases under subsection (3) imprisonment for a term of at least one year if the offence was committed under one of the circumstances indicated in section 232 (3) sentence 1 nos. 1 to 3.

(5) In less serious cases under subsection (1), the penalty is imprisonment for a term of between three months and five years, in less serious cases under subsections (3) and (4) imprisonment for a term of between six months and 10 years.

(6) Whoever performs sexual acts on or allows sexual acts to be performed on them for a consideration by a person engaging in prostitution who has been the victim of

1. human trafficking under section 232 (1) sentence 1 no. 1 (a), also in conjunction with section 232 (2), or
2. an offence under subsections (1) to (5),

and in doing so takes advantage of that person's personal or financial predicament or helplessness on account of being in a foreign country, incurs a penalty of imprisonment for a term of between three months and five years. Whoever voluntarily reports an offence under sentence 1 no. 1 or 2 committed against a person engaging in prostitution within the meaning of sentence 1 to the competent authority or voluntarily occasions such a report to be made incurs no penalty under sentence 1, unless the act had already been discovered, in whole or in part, at the time and the offender knew this or, based on a reasonable assessment of the circumstances, should have expected this.

## **§240**

### **Coercion**

(1) Anyone who unlawfully forces a person to commit an act, tolerate or refrain from committing an act, toleration or refrain from committing a serious offence shall be punished with imprisonment for up to three years or with a fine.

(2) The act is unlawful if the use of force or the threat of the evil for the intended purpose is to be regarded as reprehensible.

(3) The attempt is punishable.

(4) In particularly serious cases the penalty is imprisonment from six months to five years. As a rule, a particularly serious case is deemed to exist if the offender

1. forces a pregnant woman to terminate the pregnancy or

2. abuses his powers or his position as a public official.

Here are two additional provisions on penalties and suspension of sentences:

## **§56**

### **Suspension of sentence**

(1) In the case of a sentence of imprisonment of not more than one year, the court shall suspend enforcement of the sentence on probation if it is to be expected that the sentenced person will already allow the sentence to serve as a warning and will not commit any further offences in the future even without the influence of the sentence. In doing so, the personality of the convicted person, his past life, the circumstances of his deed, his behavior after the deed, his living conditions, and the effects that suspension is expected to have on him must be taken into account.

(2) Under the conditions of subsection 1, the court may also suspend enforcement of a higher custodial sentence not exceeding two years for probation if, after an overall assessment of the offence and personality of the convicted person, special circumstances exist. The decision shall also take into account, in particular, the efforts of the sentenced person to make good the damage caused by the offence.

(3) If a sentence of imprisonment of at least six months is imposed, enforcement shall not be suspended if the defence of the legal system so requires.

(4) Suspension of sentence cannot be limited to part of the sentence. It shall not be excluded by offsetting pre-trial detention or other deprivation of liberty.

## **§38**

### **Duration of imprisonment**

(1) Imprisonment shall be fixed term if the law does not threaten life imprisonment.

(2) The maximum term of imprisonment is fifteen years, the minimum one month.

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

- a. Gender specific, covering women only YES/NO  
NO
- b. Gender neutral, covering all persons YES/NO  
YES
- c. Based on the lack of consent of victim YES/ NO  
NO

(Since the 10<sup>th</sup> November 2016 Germany has the law called “No means no”. For the criminal liability of an assault, it no longer matters whether violence was threatened or used. The decisive factor is: the victim did not want the sexual act. BUT it is not based on the consent of the victim meaning “Yes means yes”- like the law they have in Sweden.)

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

(With the new law, a sexual assault is already punishable if it is carried out against the recognizable will of a person.)

- e. Some combination of the above. YES / NO  
YES
- f. Does it cover only vaginal rape? YES /NO  
NO
- g. Does it cover all forms of penetration? YES/NO. If yes, please specify.  
YES

(§ 177 6 1, Penetration vaginal, oral, anal,  
Jurisdiction more often also by the penetration with the finger)

- h. Is marital rape in this provision explicitly included? YES / NO  
NO

(Rape in marriage has been a criminal offence since July 1997. With the 33rd Amendment to the Criminal Code, the characteristic of extramarital rape was removed from the offence of rape, § 177 StGB, so that since then marital rape has also been punished as a crime.)<sup>2</sup>

- i. Is the law silent on marital rape? YES/NO  
YES
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO  
YES

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<sup>2</sup> <https://www.bundestag.de/resource/blob/407124/6893b73fe226537fa85e9ccce444dc95/wd-7-307-07-pdf-data.pdf>

- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO  
NO

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

NO

4. What is the legal age for sexual consent?

Regulations for the protection of children and adolescents can be found in the Youth Protection Act [JuSchG]. However, to answer the question as to when and at what age children and adolescents in Germany are legally allowed to have sexual intercourse, one should take a look at the German Penal Code [StGB].

The legal age is at least 14 years. Sexual acts of adults, who are over 21 years old, with 14- and 15-year-old adolescents can be punished according to § 182 paragraph 3 StGB. Sexual acts with adolescents aged 16 and 17 are punished according to § 174 StGB, if the perpetrator is entrusted with the adolescent for upbringing, training or care in the conduct of life or is subordinated in the context of a service or employment relationship and the associated relationship of dependence has been abused.

According to § 182 paragraph 2 StGB an adult, even if he may have sexual intercourse with the young person, may not pay money for it. Otherwise he will be punished in the same way with imprisonment for up to five years or with a fine.

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

Teenagers from 14 years on may legally have sex. Adolescents between 14 and 15 years of age, however, only as long as the sexual partner is not too different in age or, in the case of the latter, does not take advantage of the adolescent's lack of sexual self-determination.<sup>3</sup>

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<sup>3</sup> <https://www.juraforum.de/ratgeber/strafrecht/ab-wann-bzw-mit-welchem-alter-duerfen-jugendliche-sex-haben>

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

The range of penalties for sexual assault (§ 177, paragraphs 1 and 2 StGB) includes imprisonment of at least six months or, in the case of a qualification for illness and disability and for sexual coercion (§ 177, paragraphs 4 and 5), from one year to a maximum of 15 years. The minimum penalty for rape is (regularly) at least two years; in the case of the qualification of § 177, paragraph 7, StGB (minimum penalty three years), the tenor of the sentence is severe rape (or sexual coercion or sexual assault) [22]; in the case of paragraph 8, it is particularly severe rape (or sexual coercion or sexual assault) (minimum penalty five years). In addition, § 178 StGB provides for a prison sentence of ten to fifteen years or life imprisonment in the case of the success-qualified offence of rape with death penalty.<sup>4</sup> §232a StGB on sexual exploitation provides for a penalty of at least six months, or one year if threats and violence are involved.

As far as no conviction for a minor case of rape according to § 177 para. 5 StGB no prison sentence of less than 2 years will be decided, the penalty is between 2 and 15 years. Usually the penalty for a first offense of rape is between 2.5 and 4 years, if no qualifications or other offences such as bodily injury are added. A discontinuation of the preliminary proceedings according to § 170 paragraph 2 StPO is usually preferred by accused persons.

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

According to the Opferentschädigungsgesetz (OEG), persons who have suffered a health impairment as a result of a violent crime can receive medical treatment, pension and welfare benefits upon application. Entitled to benefits are injured persons and surviving dependants. A claim presupposes that a person has suffered damage to his or her health as a result of an unlawful attack committed intentionally or in the course of its lawful defense. A conviction is not necessary.<sup>5</sup>

In December 2019, the German Bundestag and Bundesrat passed the law regulating social compensation law (BGBl. I p.2652 No. 50). This clears the way for the new Social Code XIV, which regulates the claims of victims of violence and terrorism, but also of vaccination victims. For victims of war, extensive rules for the protection of the status quo will apply. Through the bundling in the new SGB XIV the social and state co-responsibility for damaging events becomes clearer - affected persons can more easily recognize and assert their claims.

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<sup>4</sup> [https://de.wikipedia.org/wiki/Vergewaltigung#Strafrahmen\\_und\\_Verj%C3%A4hrung](https://de.wikipedia.org/wiki/Vergewaltigung#Strafrahmen_und_Verj%C3%A4hrung)

<sup>5</sup> <https://www.caritas-nrw.de/rechtinformationsdienst/entschaedigungs-und-ersatzleistungen-weg>

The new SGB XIV extends the circle of entitled victims of violence. In the future, victims of psychological violence can also receive benefits under the Social

Compensation Act. The same applies to victims of crimes against sexual self-determination, regardless of the age of the victims. They can all be entitled to SGB-XIV benefits.<sup>6</sup>

Offender-victim mediation is a possibility for cooperation between the offender and the victim in order to settle a conflict out of court or at least to obtain a reduction of the offender's sentence in the criminal proceedings through the offender's efforts.

Victim-offender mediation is laid down in § 155a, § 155b StPO and § 46a StGB. It is considered an element of the transformation of criminal law in order to include the victim's perspective more strongly in the court proceedings.<sup>7</sup>

### **Aggravating and mitigating circumstances**

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

YES. Intimate relationship, repeated commission of the crime, particularly vulnerable person as a victim, child is a victim or the crime was committed in his or her presence, commission of the crime by two or more persons, commission of the crime after or with extreme violence, use of weapons, serious physical or psychological consequences for the victim, relevant criminal record.<sup>8</sup>

- a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO

YES

- b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO

YES

- c. Is rape by spouse or intimate partner an aggravating circumstance?

NO

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<sup>6</sup> <https://www.sovd-hh.de/news-service/sozial-infos/soziales-entschaedigungsrecht/032020-opferentschaedigung/>

<sup>7</sup> <https://de.wikipedia.org/wiki/T%C3%A4ter-Opfer-Ausgleich>

<sup>8</sup> GREVIO. Erster Staatenbericht der Bundesrepublik Deutschland 2020: 52ff.

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

YES

§ 21, § 49 StGB

case law showed in the past mitigation of sentences, e.g. due to previous intimate relationships between the victim and perpetrator<sup>9</sup>

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

YES

See question 7, last paragraph: Victim-offender mediation

- a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

YES

The VOM (victim-offender-mediation) itself is not part of the criminal proceedings, but represents a type of out-of-court conflict resolution, which can take many forms. It can nevertheless enable the public prosecutor's office to drop the case and the court to reduce the sentence or refrain from imposing a penalty. The VOM is not a solution primarily for minor cases, where the not inconsiderable effort required for its implementation will often not be warranted. Rather, awareness of its importance, especially in the area of medium-level crime, and its suitability, which cannot be ruled out, even in the area of serious crimes, must be raised.

There are no legal provisions on the actual implementation of victim-offender mediation. The implementation and execution of victim-offender mediation is the responsibility of the individual Länder, which also have to decide on their own establishment and maintenance of the agencies carrying out victim-offender mediation, i.e. not only by independent agencies.<sup>10</sup>

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<sup>9</sup> <https://www.strafrechtsblogger.de/strafmilderung-im-rahmen-der-vergewaltigung-bei-vorangegangener-intimer-beziehung-eine-langst-uberholte-praxis/2013/02/>

<sup>10</sup>

[https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/TaeterOpferAusgleich/TaeterOpferAusgleich\\_node.html](https://www.bmjbv.de/DE/Themen/OpferschutzUndGewaltpraevention/TaeterOpferAusgleich/TaeterOpferAusgleich_node.html)

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

a. if the perpetrator marries the victim of rape? YES/NO

NO

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

NO

### **Prosecution**

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

YES<sup>11</sup>

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

YES

(irrespective of the criminal prosecution, a person can make civil claims)

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

YES<sup>12</sup>

§ 257c StPO

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

YES

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

In the case of rape (or serious sexual abuse of children) the statute of limitations is 20 years.

This statute of limitations begins at the earliest at the end of the 30th year of life.<sup>13</sup>

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<sup>11</sup> GREVIO. Erster Staatenbericht der Bundesrepublik Deutschland 2020: 63.

<sup>12</sup> [https://www.haufe.de/recht/weitere-rechtsgebiete/strafrecht-oeffentl-recht/vergewaltigungsoffer-erhaelt-opferrente-nach-milder-deal-strafe\\_204\\_440218.html](https://www.haufe.de/recht/weitere-rechtsgebiete/strafrecht-oeffentl-recht/vergewaltigungsoffer-erhaelt-opferrente-nach-milder-deal-strafe_204_440218.html)

<sup>13</sup> <https://verteidigung-strafrecht.de/2018/01/25/verjaehrung-bei-vergewaltigung-und-schwerem-sexuellen-missbrauch-von-kindern/>

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

YES

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

NO<sup>14</sup>

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

NO

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

YES

Under certain conditions, the interrogation can be conducted separately from the accused are made, § 168e and § 247a StPO. During the main trial, the requirements of §§ 171b, 172 GVG the public is excluded. According to § 68a StPO the following can be applied to non-essential questions concerning the personal lives of witnesses can be waived. According to §§ 58a paragraph 1, 161a paragraph 1 sentence 2, 163 paragraph 3 sentence 1 StPO is the recording of the interrogation of witnesses in need of special protection is permitted in order to if possible, to avoid a multiple statement that would be incriminating. According to § 68 StPO a witness has Possibility, for his protection, to provide only limited information about his personal circumstances do. § Section 68b StPO stipulates that witnesses are required to present themselves in every situation of the proceedings of a assistance to protect their rights. Physical examination of witnesses for the purpose of preservation of evidence are only permissible if they are used for the investigation of the truth are necessary (§ 81c StPO). This does not apply, however, if they are necessary for the witness concerned in the case of The reason for this is that the assessment of all circumstances is unreasonable. If a physical examination is to take place this, as far as it is suitable to hurt the sense of shame, from a person of the same sex or to a doctor. If there is a justified interest, the wish the person to be examined, the examination of a person or a doctor of a certain sex must be complied with (§ 81d StPO).<sup>15</sup>

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<sup>14</sup> <https://www.frauennotruf-muenster.de/sexualisierte-gewalt/anzeige-erstatten-ja-oder-nein/> und [https://www.anwalt.de/rechtstipps/falsche-verdaechtigung-und-falschbeschuldigung-bei-vergewaltigung-und-sexuellem-missbrauch\\_059664.html](https://www.anwalt.de/rechtstipps/falsche-verdaechtigung-und-falschbeschuldigung-bei-vergewaltigung-und-sexuellem-missbrauch_059664.html)

<sup>15</sup> GREVIO. Erster Staatenbericht der Bundesrepublik Deutschland 2020: 56f.

## War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

YES

§ 7 VStGB Abs. 1 Nr. 6

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

NO

§ 5 VStGB

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

NO

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

YES

## Data

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

Year <sup>16</sup>	Number of Cases	
	Reported	Solved
2015	7.022	5.679
2016	7.919	6.223
2017	11.282	9.318
2018	9.234	7.757
2019	9.426	7.969

2016: Only 10% of rapes are reported. Of the reported rapes, only 8% have been convicted.<sup>17</sup>

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<sup>16</sup> PKS 2019 – Vergewaltigung, sexuelle Nötigung und sexuelle Übergriffe. Deutschland: [file:///Users/tdfmitarbeiterin/Downloads/04\\_VergewaltigungSexNoetigungBundesrepublik.pdf](file:///Users/tdfmitarbeiterin/Downloads/04_VergewaltigungSexNoetigungBundesrepublik.pdf): 1

<sup>17</sup> Quelle: Heiko Maas, ehemaliger Justizminister 2016 bei einer Pressekonferenz

## Other

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

Migrant women who have come to Germany as family members must live with their husband or registered partner in a married community for three years before they are granted independent residence.<sup>18</sup>

According to § 31 paragraph 2 sentence 2 AufenthG, the spouse who is a victim of domestic violence is to be granted an independent residence permit if further requirements are met, irrespective of the otherwise required minimum three-year period of marriage. The spouse is then not threatened with deportation together with the holder of the right of residence during the validity of the residence title.<sup>19</sup>

However, § 31 is only applicable to a few cases; in most cases, migrants are not entitled to their own residence permit.<sup>20</sup> Germany is holding a reservation against Art. 59 (2) and (3) Istanbul-Convention, which restricts the protection of migrants who experienced (intimate) violence in Germany and make it difficult to receive an independent resident permit.

This paper was written by Vanessa Bell the Section Manager of the Department of domestic and sexualised violence. It was edited as best as possible but without legal expertise. Information is without guarantee.

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<sup>18</sup> <http://www.frauenzimmer-ev.de/Gewalt-gegen-Frauen/Rechtliche-Hinweise>

<sup>19</sup> GREVIO. Erster Staatenbericht der Bundesrepublik Deutschland 2020: 67.

<sup>20</sup> [https://www.damigra.de/wp-content/uploads/Schattenbericht\\_DaMigra\\_Istanbul-Konvention\\_Migrantinnen\\_25.11.2020.pdf](https://www.damigra.de/wp-content/uploads/Schattenbericht_DaMigra_Istanbul-Konvention_Migrantinnen_25.11.2020.pdf)