**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

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

As part of its jurisdictional activity, the Mexican Supreme Court of Justice[[1]](#footnote-1) has issued interpretative criteria on the local and federal legal provisions that foresee a sanction for the crime of rape and other similar forms of sexual violence. Since criminal prosecution is a faculty of both the States and the Federal Government within their field of competence, each of the Supreme Court's criteria is based on the analysis of a particular legislation. Therefore, because there are currently 33 criminal codes in the country, and each of them provides a particular definition and sanction for those crimes, while answering the questions regarding the different criminal offenses of rape (1 to 11), the legislation on which the Supreme Court has pronounced its decisions will be indicated.

Regarding the questions related to Prosecution, War and Conflict, Data, and Others (12 to 26), diverse Supreme Court precedents are cited which analyze constitutional matters and which are, therefore, of common application —both for the States and the Federal Government.

About the constitutive elements of the crime of rape, the Supreme Court analyzed the Criminal Legislation of the States of Chihuahua and Mexico City. The Chamber ruled that, regarding this specific crime, the verb *copulate* is only relevant when it is carried out using certain means (physical or moral violence), or taking advantage of the particular situation of the passive subject (under the age of twelve or fourteen, according to the applicable legislation), or other circumstances that prevent voluntary behavior or resistance to such conduct.

The First Chamber pointed out that physical violence is configured when the active subject performs an act or a series of actions that —either through the use of its physical force or any other physical means—, applied to the passive subject, cause as a consequence to annul or neutralize its possible resistance, allowing the active subject to commit the reproached conduct.

In this respect, the Chamber determined that the status of active subject is acquired by the person who imposes the copulation on another, either by bending the will of the victim, by exercising physical or moral violence, or by merely taking advantage of the particular situation or circumstance of the passive subject, regardless of the mechanics of the case, namely: a) the active subject introduces its penis into the body of the passive subject, through the vagina, anus or mouth, provision in which the active subject can only be a person with a male organ, or b) the active subject forces the male organ of the passive subject to penetrate any of its mentioned cavities, provision where the passive subject has to be a person with a male organ mandatorily.

Regarding the protected legal asset, the First Chamber ruled on the norms about the crime of rape provided by the Criminal Legislation of the States of Puebla and Durango. In this regard, the Chamber held that the crime of rape protects sexual freedom and sexual safety. The first of these is understood to be the right of each person to decide freely with whom, when, and how to carry out their sexual activity. While the second refers to the proper safeguard of those persons that —due to their special status as minors— cannot make that decision, with the purpose of avoiding copulation.

In addition to the aforementioned criteria for the crime of rape, the Chamber has noted the existence of legal provisions that, even when they do not refer to certain behaviors as "rape," describe a conduct that has the constitutive elements of that crime, as in the case of the crime of "sexual abuse" described in Article 27, Section I, related to Article 26 of the Criminal Legislation for the State of Aguascalientes.

1. *Based on the wording of those provisions, is the provided definition of rape:*
	1. *Gender specific, covering women only.* No

No. Article 265 of the Federal Penal Code (FPC) establishes that the crime of rape is committed by: “… whoever, through physical or moral violence, copulates with a person of either sex”. Therefore, it follows that it does not cover only women. In this context, it is important to note that article 266 BIS of the FPC, relating to marital rape and between concubines, covers only women by establishing: "[i] f the victim of the rape was the wife or concubine ...". Even though article 265 BIS, due to the principle of legality in its strictness aspect, would not be applicable to the victim, husband or common-law partner, it could be considered that they are covered by article 266 of the CPF.

* 1. *Gender neutral, covering  all persons*

Yes*.* In the ***Contradicción de Tesis 211/2016***[[2]](#footnote-2),the First Chamber stated that, regarding this kind of sexual crimes, the status of active subject is not restrictive to the male gender, since the expressions "that who" (*al que*) or "to whom" (*a quien*) are understood as neutral relative pronouns, because their sole function is to identify the hypothetical person who materializes the conduct. Thus, the crime can be executed by any person and is referred to as *delicta comuni.*

In addition, Article 265 of the FPC establishes that the crime of rape is committed by: “… whoever, through physical or moral violence, copulates with a person of either sex”. So it follows that it covers all people.

* 1. *Based on the lack of consent of victim*

Yes*.* In the ***Amparo Directo en Revisión 1260/2016****[[3]](#footnote-3)*, the First Chamber studied Article 175 of the Criminal Code for the Distrito Federal. The Chamber sustained that the full and valid consent of those who participate in sexual activity is a fundamental element for respecting, protecting, and guaranteeing sexual freedom and sexual safety. Therefore, the State assumes the obligation to protect this as a rule in sexual activity, even enforcing its coercive power. This obligation exists because the respect, protection, and guarantee of dignity, prevent people from being used as instruments at the service of the aspirations, wills, desires, conditions, and violence imposed by others. Furthermore, as the expression and enclosure of one's identity, the body constitutes the most significant sphere of immunity for people, since what happens to it affects them most profoundly.

* 1. *Based on the use of force or threat*

Yes*.* the First Chamber determined that, to consider that physical violence occurred as a specific means of committing the crimes of rape, the active subject must carry out an act or a series of actions that —either through the use of its physical force or any other physical means—, applied to the passive subject, cause as a consequence to annul or neutralize its possible resistance, allowing the active subject to commit the reproached conduct.

The Chamber also specified that there are two possibilities for the physical violence to be considered as executed: 1) the active subject makes use of his own body, or 2) uses a different physical means; in both cases, aiming to accomplish the punishable conduct by defeating the resistance or opposition of the passive subject. Examples of the first possibility are hitting, shoving, and other physical acts; and of the second possibility, the use of a blunt object, a mechanism that imprints an electric discharge, a biological or chemical agent, etc. As for moral violence as a specific means of committing the crime of rape, it consists of the threat or deception made against the passive subject, with a present or immediate harm sufficient to overcome its resistance.

* 1. *Some combination of the above.*

Yes. The First Chamber advertised that the analyzed legislations contemplated diverse conducts as crimes of rape. One of those conducts consists of imposing copulation on a person of any sex, using physical or moral violence as a specific commissioning means. A second type does not necessarily imply the use of physical or moral violence, but rather is carried out on a person under a certain age —usually twelve or fourteen years—, on a person unable to understand the meaning of the sexual act, or who, for any reason, cannot resist it.

In this regard, the Chamber pointed out that each of these modalities constitutes an independent crime, with its own constitutive elements. Therefore, it is not legally possible to argue that the same conduct can indistinctly constitute any of the modalities, but rather that proven execution of one crime necessarily excludes the prevalence of the others.

The First Chamber held similar considerations about consent and the use of force when the Court studied Article 175 of the Criminal Code for the Distrito Federal, as well as Chihuahua's Criminal Legislation.

* 1. *Does it cover only vaginal rape?*

No. The second paragraph of article 265 of the FPC defines copulation as: “… the introduction of the virile member into the body of the victim vaginally, anally or orally, regardless of their sex”. Additionally, the third paragraph of the same numeral establishes that: "[s] e will also consider as rape ... whoever introduces vaginally or anally any element or instrument other than the male member ...". So the type does not exclusively cover vaginal rape.

* 1. *Does it cover all forms of penetration?*

Yes. In 2003, the First Chamber studied the criminal offense cataloged as rape in the Distrito Federal Criminal Legislation[[4]](#footnote-4). The Chamber resolved that such a crime is committed at the moment the active subject forces copulation on another person using physical or moral violence, whether by vaginal, anal, or oral route; or introduces an element or instrument other than the male organ by the vaginal or anal route of its victim, either as one or several intertwined acts.

Similarly, in 2007, the First Chamber held that the second paragraph of Article 273 of the Criminal Code of the Estado de México does not violate the principle of legality in criminal law. The aforementioned paragraph provided that the crime of rape is committed by anyone who introduces, via vaginal or anal route, any part of the body or any object or instrument other than the male organ, through physical or moral violence, regardless of the sex of the victim. The Chamber explained that the second paragraph does not stipulate a different conduct than the one foreseen in the first paragraph; it only provides a variation in the means of its execution. Hence, the legislation does not have to refer twice to the penalty for the same crime.

Subsequently, in 2016, the First Chamber determined that the definition of the normative element "copulation" does not limit the condition of the active subject to a determined sex, since the action describing the introduction of the penis into the human body via vaginal, anal or oral route does not constitute the nucleus of the criminal offense. The latter, given that the nucleus of the criminal conduct is not the mere introduction of the male organ into one of the cavities of the perpetrator or the victim as described in the norm, but rather the specific means employed by the active subject, or the particular circumstances that concur in the passive subject that imprint an anti-juridical relief and constitute the criminal significance of the conduct.

Likewise, in that ruling, the First Chamber held that it does not make a difference if the active subject introduces its penis into the body of the victim or forces the passive subject to penetrate it, because both conducts equally violate the protected legal assets: sexual freedom, since by bending its will, the victim is deprived of the right to decide freely with whom, when, and how to carry out its sexual activity; and also, sexual safety, by copulating with a person who, being under a certain age, does not have the capacity to decide to carry out the sexual act of copulating.

Also, as mentioned in the previous question, the second paragraph of article 265 of the FPC defines copulation as: “… the introduction of the virile member into the body of the victim vaginally, anally or orally, regardless of their sex”. Additionally, the third paragraph of the same numeral establishes that: "[s] e will also consider as rape ... whoever introduces vaginally or anally any element or instrument other than the male member ...". So the type includes the penetration of the penis or any other element or instrument by vaginal, anal or oral route.

* 1. *Is marital rape in this provision explicitly included?*

Yes. Article 265 bis of the FPC establishes: "[i] f the victim of the rape is the wife or concubine, the penalty provided for in the previous article will be imposed."

* 1. *Is the law silent on marital rape?*

Yes. The law pronounces on marital rape through article 265 bis of the FPC.

* 1. *Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?*

Yes. It is explicitly provided, as can be seen from the transcription of article 265 bis of the FPC.

* 1. *Is marital rape excluded in the provisions, or is marital rape not considered as a crime?* No.

*Joint answer for h, i, j, k*

In the ***Modificación de Jurisprudencia 9/2005***[[5]](#footnote-5)*,* the First Chamber, when analyzing Article 267 of the Criminal Legislation for the State of Puebla, indicated that the active and passive subjects of the crime do not need to possess particular characteristics to consider that rape occurred. The Chamber also stated that aggravated offenses or similar-to-rape offenses do not include the marital relationship as a modality of the crime. Based on this criterion, the Supreme Court has declared that the sole achievement of copula between spouses through violent means is enough to constitute the criminal offense of rape.

In this sense, it is enough that the active subject has a sexual relationship with a person of any sex, employing physical violence or moral intimidation to appropriately constitute the elements of the basic figure of rape. Thus, the Chamber held that the marital bond between the active and passive subject of the illicit in question does not entail an exception that impedes the integration of the criminal offense of rape.

In this regard, the Chamber pointed out that, although in the past it was considered —even by the most renowned doctrine— that the legal asset protected by the crime of rape was personal decency (Carrara), or the honesty of women (Beling), it is clear that there is currently a consensus that the vital legal asset protected by the aforementioned criminal offense is sexual freedom. An asset that recognizes the right to sexual self-determination in every person, by the mere fact of being a human being. The reason behind this is because the crime of rape presumes the absence of the victim's consent, who is forced into an undesired sexual intercourse, nullifying its resistance employing physical violence against its person or utilizing threats and intimidation of serious harm. Both types of violence —physical and moral— end up overcoming its resistance, preventing the victim from self-determining its conduct.

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.*

No. There is no provision that excludes criminalization of the perpetrator if the victim and the victim have or had a sexual relationship. On the other hand, article 265 bis of the FPC contemplates both the victim of marital rape and the rape committed by a common-law partner.

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

Mexican law does not provide as such a legal age for sexual consent. However, from the analysis of the current legislation, it can be deduced that the legal age for sexual consent is given from 18 years of age, considered as the age of majority in accordance with article 646 and 647 of the Federal Civil Code.

The foregoing, by virtue of the fact that Article 209 Bis, for example, provides for a penalty for pedophilia, “who takes advantage of the trust, subordination or superiority that they have over a minor under eighteen years of age, derived from their relationship to any degree, guardianship, curatorship, guardianship or custody, educational, religious, labor, medical, cultural, domestic relationship or of any kind and executes compels, induces or convinces to execute any sexual act, with or without their consent. "

This premise can be sustained, based on the transcription of the following articles of the Federal Criminal Code:

"Article 262. Whoever has intercourse with a person over fifteen and under eighteen, obtaining her consent by means of deception, will be imprisoned from three months to four years."

“Article 272. The crime of incest will be punished with a penalty of one to six years in prison when the ascendants have sexual relations with their descendants, as long as the latter are of legal age.

When the victim is a minor, the conduct will always be understood as typical of rape.

In the ***Contradicción de Tesis 211/2016***[[6]](#footnote-6), the First Chamber established that the crime of rape could be constituted when copulation is imposed on a person under the age of twelve or fourteen, according to the applicable legislation.

In such cases, the First Chamber pointed out, the criminal law provision that describes this special-form of rape does not require the victim to be physically subjected or neutralized with threats, as required by the basic-form of rape provision. Instead, the norm reproaches the active subject for taking advantage of certain circumstances that prevent the passive subject from voluntarily deciding on its participation in copulation, either because it is unenforceable to oppose it or because the victim does not have the ability or capacity to understand what is happening.

In such precedent, the Court emphasized that the full and valid consent of those who participate in a particular sexual activity is a fundamental element for respecting, protecting, and guaranteeing sexual freedom and sexual safety. In this regard, the Court stated that consent means deciding what one wants or accepts based on options, circumstances, and assessments; when one is aware of the consequences or, at least, it is reasonable to assume that one has the necessary cognitive skills to understand them, because of what is decided and when it is decided. For this reason, the Chamber held that the aforementioned special-form of rape does not require the lack of consent of the victim to be constituted, given that persons under a certain age may "want" or "accept" the sexual conduct, but not consent to it.

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

The law pronounces on marital rape through article 265 bis of the FPC, already mentioned. For its part, it establishes the following as sexual harassment:

“Article 259 Bis. Anyone who repeatedly besieges a person of either sex for lewd purposes, using their hierarchical position derived from their labor, teaching, domestic relations or any other that implies subordination, will be fined up to eight hundred days. If the harasser is a public servant and uses the means or circumstances provided by the order, in addition to the penalties indicated, he will be removed from office and may be disqualified from holding any other public office for up to one year "

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

In the2014, the First Chamber analyzed the proportionality of the penalty prescribed for the crime of pedophilia, provided in Article 209 bis of the Federal Criminal Code[[7]](#footnote-7). In this regard, the Chamber pointed out that this crime is an illegal act of considerable magnitude, since it aims to protect children and adolescents by providing effective supremacy to their best interests, particularly in those cases in which their physical, psycho-emotional, and psychosexual development is affected by the conduct or omission of both individuals and legal entities that take care of them. Hence, the penalty provided by the law (nine to eighteen years of imprisonment) does not violate the principle of proportionality of punishment, because the legislator opted for a high penalty to punish an extremely severe crime, since the development of sexuality must be an informed process in accordance with the age of the child or adolescent.

Therefore, if the sexual integrity of the victim is affected maliciously and advantageously, it will generate feelings of guilt, anxiety, and probable sexual disorders that will be permanently and immutably present during its adult life, causing severe psycho-emotional damage.

|  |  |  |
| --- | --- | --- |
| **Criminalized forms of rape** | **FPC Basis** | **Criminal sanction** |
| Rape | Article 265 | eight to twenty years |
| Marital rape and committed against the concubine | Article 265 BIS | eight to twenty years |
| Equated rape | Article 266 | eight to thirty years |
| Aggravated rape | Article 266 BIS | eight to thirty years |

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?*

The Supreme Court's Plenary established that a fundamental part of the gender perspective judging method is the determination of reparations and considering the victim is the central axis for that purpose. In this regard, the Court emphasized that the reparation measures must not only contemplate the comprehensive reparation of damage —that is, the re-establishment of the previous situation and the elimination of the effects that the violation produced, as well as compensation for the damage provoked— but must also have a transformative vocation of the situation, in such a way that the measures have not only a restitutive but also a corrective effect. In this sense, restitution to the same structural condition of violence and discrimination is not admissible.

On this point, the Plenary took up the position of the Inter-American Court of Human Rights stating that the nature and amount of the reparations ordered shall depend on the damage caused at both the material and immaterial levels; that the reparations cannot entail neither enrichment nor impoverishment for the victim or its family members; and that the reparations must be directly related with the declared violations. It was also noted that the referred international court has determined that in order to assess the reparation measures, the following criterion must be observed: "I) [the measures] must directly relate to the violations declared by the court; II) must proportionally repair material and nonmaterial damages; III) must not entail enrichment or impoverishment; IV) must restore the victims in the greatest extent possible to the situation before the violation (as long as it does not interfere with the duty not to discriminate); V) should aim to identify and eliminate all causal sources of discrimination; VI) should be adopted from a gender perspective, considering the differentiated impacts that violence causes on men and women; and VII) should consider all legal acts and actions alleged by the State that intends to repair the damage caused".

Therefore, the Plenary determined that all national judges, within the scope of their competencies, must observe the principles and guidelines mentioned above, to ensure the human right of access to justice, according to the provision of justice with a gender perspective and taking into account the particular situation of vulnerability of indigenous people.

On the other hand, when ruling on ***Amparo Directo 50/2015***[[8]](#footnote-8), the First Chamber of the Supreme Court heard a case derived from acts of physical and sexual violence against a woman, which motivated her and her two children (boy and girl) to seek refuge in a temporary shelter belonging to the Mexico City Government. There, the daughter of the assaulted woman contracted a disease that, due to complications and lack of proper medical personnel care, caused the loss of her life. In this context, the First Chamber emphasized the existence of jurisprudential doctrine regarding the obligation to judge with a gender perspective, which, when transferred to the context of reparations, requires starting from the idea that gender exclusion preexists human rights violations and, unfortunately, is exacerbated during and after such violations. Therefore, the First Chamber pointed out that gender perspective requires asking some basic questions that will impact on how the truth behind a case is constructed: (i) what was the damage?; (ii) who committed it?; (iii) against whom was it committed?; (iv) what was its specific and differentiated impact?; and (v) what its primary and secondary impact was? The purpose of the above is to generate the necessary remedies to deal with a victimizing event whose occurrence may be gender-based or which may have had aggravated repercussions due to the sex, gender, or sexual orientation of the victim.

**Aggravating and mitigating circumstances**

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

In the 2017, the First Chamber ruled about a similar-to-rape crime and the constitutionality of its aggravated modality, as prescribed and sanctioned in Article 175 of the Criminal Code for the Distrito Federal.

In this respect, the Chamber pointed out that the similar-to-rape criminal offense is committed when the active subject copulates with a person who does not have the capacity to understand the meaning of the act or cannot resist it for any reason, that is, when the active subject takes advantage of the particular defenselessness or specific vulnerability situation of the victim. The crime also comprehends those circumstances that make inextinguishable a manifest and forceful opposition to copulate, due to the presence of relationships or environments that function as sufficiently and reasonably coercive or intimidating.

Thus, this criterion provides for situations when violence, whether physical or moral, is not the necessary instrument (commissive means) to subjugate the victim and impose copulation, since the victim is in a state of defenselessness derived from permanent or circumstantial conditions. Therefore, the Chamber declared that including the use of violence, whether physical or moral, as a qualifying circumstance for the similar-to-rape criminal offense, is constitutionally valid and does not imply a breach of the constitutional principles of legality in criminal law and that no person shall be prosecuted twice for the same crime or the same conduct. That is because the behavior described in the similar-to-rape crime must be treated, in itself, as rape, even in the absence of moral or physical violence as a commissive means, since it violates the legally protected right of sexual freedom.

Also, the First Chamber analyzed whether Articles 273 and 274 of the Criminal Code of the Estado de México described the same conduct; in one case, as a basic definition of the similar-to-rape criminal offense and, in the other, as an aggravating circumstance of the generic crime of rape, which could violate legal certainty. In this regard, the Chamber considered that the aggravating circumstance which requires the conduct to be committed against a person under the age of 15 or over the age of 60, is directed at the generic category of rape, which requires it to be committed through physical or mental violence. For its part, the similar-to-rape crime is updated even in the absence of physical or moral violence, since what it requires is for the active subject to sustain copulation, or to introduce by vaginal, anal, or oral route, any part of the body, object, or instrument other than the male organ, against a person deprived of reason or sense, when by any disease or any other cause it is unable to resist the act, or when the victim is a person under the age of 15. For this reason, it cannot be assumed that the aggravating circumstance is also directed at the similar-to-rape offense, but rather that it constitutes a modifying circumstance that aggravates the crime of rape as set out in the first and second paragraphs of paragraph 273 of the law under examination.

On the other hand, the First Chamber analyzed whether Articles 174, first paragraph, and 178, section II, of the Criminal Code for the Distrito Federal, which provide for the crime of aggravated rape, violate the principle of proportionality of punishment, established under Article 22 of the Constitution. Such precepts of the criminal law stipulate an increased penalty when the crime is committed by the mother's or father's couple against any of its children, or the children against them.

The Chamber determined that the increase of the penalties does not infringe the principle of proportionality of punishment; since such increment intends to punish a conduct that violates the personal integrity and sexual rights of the victims of a crime aggravated by the very close and direct relationship between the parties. The latter, because in the mentioned circumstances, it would not be expected that the rapist would have such behavior against the victim, because this condition augments vulnerability and facilitates access to the victim, making these cases challenging to report.

* 1. *Is rape by more than one perpetrator an aggravating circumstance?*

Yes. The violation of more than one perpetrator is considered an aggravating circumstance in section I of article 266 Bis of the FPC.

Also, the First Chamber analyzed the Articles of the Criminal Code for the Distrito Federal that establish an increase in the penalties foreseen for the crimes of rape and sexual abuse when committed with the intervention of two or more persons, in relation to the provision that establishes the qualifying-circumstance of gangsterism.

In this regard, the Chamber indicated that gangsterism is a qualifying-circumstance for crimes committed by three or more persons who meet on a regular, occasional, or transitory basis, even if they are not organized to commit crimes nor have as their goal to commit crimes. Thus, this qualifying-circumstance is not linked to any specific criminal offense, but may update with respect to any illicit foreseen in the Criminal Code.

Nevertheless, the Chamber indicated that gangsterism's qualifying-circumstance could not be updated in offenses as rape or sexual abuse, since these crimes already foresee an aggravating circumstance if committed by three or more persons. Thus, the application of such an aggravating circumstance, in conjunction with the qualifying-circumstance of gangsterism, would entail imposing a double penalty for the same conduct in violation of the *non bis in idem* legal principle, enshrined under Article 23 of the Constitution.

* 1. *Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)*

Yes. The Supreme Court has ruled on the constitutionality of provisions that establish the existence of some circumstance generating a power imbalance as an aggravating factor for the crime of rape.

In the ***Amparo Directo en Revisión 5176/2017***[[9]](#footnote-9), the First Chamber stated that according to Article 274, Section VI of the Criminal Code of the Estado de México, the crime of rape with modifying-circumstances is committed by a person who, using physical or moral violence, has intercourse with a person with a disability. This modifying-circumstance implies an autonomous and more severe penalty than for the basic offense, when the victim has a disability that generates limitations in his daily activities and impedes its individual and social development. In this regard, the Chamber considered that this precept does not violate the principle of legality in criminal law, since the concept of "disability" is sufficiently precise to determine, in light of the case's circumstances, if a conduct is to be reproached or not.

On the other hand, the First Chamber analyzed whether Articles 174, first paragraph, and 178, section II, of the Criminal Code for the Distrito Federal, which provide for the crime of rape with qualifying-circumstances, violate the principle of proportionality of penalties, as set forth under Article 22 of the Constitution. In this regard, the Chamber determined that the increase of the penalties does not infringe the principle of proportionality of punishment; since such increment intends to punish a conduct that violates the personal integrity and sexual rights of the victims of a crime aggravated by the very close and direct relationship between the parties. The latter, because in the mentioned circumstances, it would not be expected that the rapist would have such behavior against the victim, because this condition augments vulnerability and facilitates access to the victim, making these cases challenging to report.

Besides, the rape of a particularly vulnerable person is an aggravating circumstance or the imbalance of power between the alleged perpetrator and the victims is considered as aggravating circumstances in sections II, III, IV and V of article 266 Bis of the CPF.

"Article 266 Bis. The penalties provided for sexual abuse and rape will be increased by up to half in its minimum and maximum, when:

I.- The crime was committed with the direct or immediate intervention of two or more people;

II.- The crime was committed by an ascendant against his descendant, the latter against him, the brother against his collateral, the guardian against his ward, or by the stepfather or amasio of the mother of the offended against the stepson. In addition to the prison sentence, the offender will lose parental authority or guardianship, in cases where he exercises it over the victim;

III.- The crime is committed by someone who holds a public office or job or exercises his profession, using the means or circumstances that they provide. In addition to the prison sentence, the convicted person will be removed from office or employment or suspended for a term of five years in the exercise of said profession;

IV.- The crime was committed by the person who has the offended person in her custody, guard or education of her or take advantage of the trust placed in him. V. The crime was committed after supplying narcotics or psychotropic drugs to the victim, against her will or without her knowledge "

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

No. Rape by a spouse or intimate partner is not an aggravation of the crime. The same penalty is recognized as that corresponding to the generic violation; see articles 265 and 265 BIS of the FPC.

1. *Does the law foresee mitigating circumstances for the purposes of punishment?*

No. The FPC does not foresee extenuating circumstances for the purposes of the punishment foreseen for the type of violation.

1. *Is reconciliation between the victim and the perpetrator allowed as part of a legal response?*

As a general rule, no reconciliation is foreseen between the rape victim and its perpetrator, since this crime in most of the cases foreseen, is prosecuted ex officio.

In particular, regarding marital rape provided for in article 265 BIS of the FPC in its second paragraph, it establishes that this is a crime that is prosecuted by complaint.

In this sense, the admission of reparation agreements concluded between the victim or offended and the accused is established. Once approved by the Public Ministry or the Control Judge and complied with in its terms, they have the effect of extinguishing the criminal action and proceed from the presentation of the complaint or complaint until before the order to open the trial is decreed.

* 1. *Regardless of the law, is reconciliation permitted in practice?*

No information is available.

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

The Supreme Court analyzed the case of a member of an indigenous community who was sentenced for the crime of rape under Article 273 of the Criminal Code of the Estado de Mexico, on the grounds of forcing a 12-year-old girl to have sexual intercourse. The perpetrator alleged that this practice was legitimate in his community because he intended to form a family with the minor.

On this matter, the First Chamber determined that the practice of indigenous habits and customs cannot be used as an excuse to intensify the oppression suffered by those members traditionally excluded, such as women, children, or persons with disabilities, among other historically disadvantaged groups.

Furthermore, considering the State' obligation to guarantee that children and adolescents' decisions regarding sexuality are made under safe, effective and complete conditions of freedom, and in harmony with their psychological development, the Court determined that even if the custom in question existed, it could not be considered in the Amparo trial to diminish or eliminate the criminal responsibility of the perpetrator, because said conduct infringes the human rights of girls.

To sum up, the Chamber concluded that customs cannot justify unlawful practices and that indigenous communities cannot hide behind legal pluralism to legitimize them.

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

**Prosecution**

1. *Is rape reported to the police prosecuted ex officio (public prosecution)?*

Yes. In Mexico, the Police can receive complaints, which will be made known to the Agent of the Public Ministry. On the other hand, the Supreme Court of Justice has established the characteristics that gender perspective based prosecutions and trials must satisfy, and has shown the relationship between the different types of violence against women.

This is what the First Chamber of the Supreme Court did when ruling on the ***Amparo en Revisión 554/2013****[[10]](#footnote-10)*, in which, in response to the violent death of a woman, it highlighted the omission of the prosecutorial authorities to carry out a diligent investigation, aware that —at the time—, the State in which the events took place was known nationwide because of a constant context of violence against women.

In this judgment, the Chamber indicated that, when investigating the violent death of a woman, besides carrying out the appropriate steps for any diligent investigation, the prosecutorial authorities must identify any pattern or practice that may have caused the death and verify the presence or absence of gender-based grounds for it.

Also, the Court detailed, specific evidence must be preserved to determine if sexual violence took place, and expert appraisals must be performed to determine if the victim was immersed in a context of violence. The Chamber emphasized that the examination of possible sexual violence must be thorough, since samples that are not taken and processed within the first few hours are difficult to rescue, and also that signs of defense and struggle must always be sought.

On the other hand, the Supreme Court has studied sexual violence as torture, a crime of *ex officio* and no-statute of limitations prosecution. In the Dossier ***Varios 1396/2011***[[11]](#footnote-11), —concerning the measures to be adopted for the reception of the judgments ruled by the Inter-American Court of Human Rights in the cases "Fernández Ortega" and "Rosendo Cantú," both vs. Mexico—, the Plenary emphasized that sexual violence is assumed as an act of torture when the mistreatment is intentional, causes severe physical or mental suffering, and is perpetrated with a particular purpose. In order to determine the latter, authorities must consider the duration, method used, the physical and mental effects of the treatment, and the victim's conditions, such as age, sex, and health conditions.

The Court also highlighted that torture and other cruel, inhuman, or degrading treatment or punishment must be investigated immediately and *ex officio*, and that such investigation must be impartial, independent, and thorough, in order to: (i) determine the nature and source of the injuries noticed; (ii) identify the responsible parties; and (iii) initiate the necessary proceedings. Furthermore, the Court specified that claims of torture involving rape should be subject to greater scrutiny by the judges and to special attention by the authorities due to the victims' vulnerability.

1. *Is rape reported to the police prosecuted ex parte (private prosecution)?*

Only one of the cases for rape cases, it is contemplated that it will be prosecuted by complaint and is the one that corresponds to the rape between spouses (article 265 Bis, second paragraph of the Federal Criminal Code).

1. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?*

Only if the rape victim was the wife or concubine.

The National Code of Criminal Procedures refers to reparatory agreements such as those concluded between the victim or offended and the accused that, once approved by the Public Ministry or the Control Judge and complied with in its terms, have the effect of terminating the action. penal.

These only proceed in the following cases:

I. Crimes that are prosecuted by complaint, by equivalent requirement of the offended party or that admit the pardon of the victim or the offended;

II. Wrongful crimes; or

III. Patrimonial crimes committed without violence against people.

In view of these criteria, a reparation agreement could only be entered into in the case referred to in this question, since it is the only one referred to as a complaint offense.

1. *Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?*

As mentioned in the previous question, reparatory agreements proceed only in the following cases:

I. Crimes that are prosecuted by complaint, by equivalent requirement of the offended party or that admit the pardon of the victim or the offended;

II. Wrongful crimes; or

III. Patrimonial crimes committed without violence against people.

In that sense, since rape is a crime that is prosecuted ex officio, there could not be a reparation agreement in this case.

It is also relevant to mention that the penalties provided for rape are increased by up to half in their minimum and maximum when the crime is committed by an ascendant against his descendant, the guardian against his ward, or by the stepfather or amasio of the mother of the offended person against the stepchild. In addition, the guilty person will lose parental authority or guardianship, in cases where it is exercised over the victim.

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

The statute of limitations indicator in a case of violation is 2 years in accordance with the provisions of article 20, section B, Section VII, of the Political Constitution of the United Mexican States, and article 165, second paragraph, of the National Code of Criminal Procedures.

"Pretrial detention may not exceed the time that the law sets the maximum penalty for the crime that motivates the process and in no case will it exceed two years".

In the aforementioned Dossier ***Varios 1396/2011***[[12]](#footnote-12), the Plenary of the Supreme Court held that sexual violence is assumed as an act of torture when: (I) it is intentional, (II) causes severe physical or mental suffering, (III) and is perpetrated with a particular purpose (to intimidate, degrade, humiliate, punish or control the victim).

In cases where rape qualifies as torture, it is important to consider that Article 8 of the Anti-Torture Legislation[[13]](#footnote-13) foresees that torture is a crime to which the statute of limitations does not apply. Accordingly, the First Chamber of the Court held that, since torture is a direct offense against human dignity and one of the most severe human rights violations, the statute of limitations is not consistent with the claim that such abuses shall not remain unpunished. It is, therefore, inadmissible to apply it to the crime of torture[[14]](#footnote-14).

Besides, the Federal Criminal Code recognizes the statute of limitations as the figure through which criminal action and sanctions are extinguished. This is personal and for her the simple passage of time is enough.

The terms for the prescription of the criminal action are continuous, they consider the crime with its modalities, and include:

I. From the moment the crime was committed, if instantaneous;

II. As of the day on which the last act of execution was carried out or the due conduct was omitted, if the crime was attempted;

III. From the day the last conduct was carried out, in the case of a continuing crime; Y

IV. Since the cessation of consummation in permanent crime.

As in the previous case, the terms for the prescription of sanctions are continuous and run from the day following the day on which the convicted person withdraws from the action of justice, if the sanctions are private or restrictive of liberty, and if they are not, from the date of the final judgment.

1. *Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?*

Yes, since the term for which the right of a minor to denounce the crime of rape can be precluded, will begin to run as of the age of majority, in accordance with the provisions of article 107 Bis, of the Federal Penal Code.

Further, the FCP establishes that in the case of crimes against freedom and normal psychosexual development, among which is rape, which have been committed against a person under eighteen years of age, although the rules for prescription, the beginning of the calculation of the terms will begin from the day on which the victim reaches the age of majority.

1. *Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?*

No. Medical evidence or witness statements are not a fundamental requirement in the crime of rape.

When ruling on Dossier ***Varios 1396/2011***[[15]](#footnote-15), the Supreme Court's Plenary determined that judges must analyze sexual violence cases with a gender perspective, including the cases that involve this form of violence used as a torture method. It also warned that sexual violence could be exacerbated by diverse factors, such as poverty and childhood, leading to overlapping discriminations against victims. The Court pointed out that in these cases, judges must grant preponderant value to the victim's testimony, given the secrecy in which these aggressions generally occur, which limits the existence of graphic or documentary evidence. The Plenary explained that any inconsistencies in the victim's account of the events must be reasonably assessed, considering the traumatic nature of the events and additional factors that may hinder communication. Likewise, subjective elements proper of the victim must be considered, such as age, social status, academic level, or membership in a historically disadvantaged group, in order to establish the feasibility of the event and its concrete impact, as well as to make appropriate use of circumstantial evidence, presumptions, and clues aimed to draw consistent conclusions[[16]](#footnote-16).

In said judgment, the Supreme Court also echoed the considerations of the Inter-American Court of Human Rights, which held that an investigation of sexual violence requires that i) the victim's testimony should be heard in a comfortable and safe environment that provides privacy and trust; ii) the victim's testimony should be recorded to avoid or limit the need for repetition; iii) the victim should be provided with medical, health, and psychological care, both on an emergency basis and on an ongoing basis if required, following a care protocol aimed to reduce the consequences of the violation; (iv) a full and detailed medical and psychological examination should be performed immediately by suitable and trained personnel, if possible according to the sex indicated by the victim, with the possibility of having someone she trusts accompanying her if she chooses; v) the investigation acts should be documented and coordinated, and the evidence should be handled diligently, collecting sufficient samples, performing studies to determine the possible perpetrator and ensuring other evidence such as the victim's clothes, the immediate examination of the scene and ensuring the correct chain of custody; and vi) access to free legal assistance should be provided to the victim during all stages of the process.

The First Chamber took up these considerations again in the judgments of the ***Amparos Directos en Revisión 3186/2016***[[17]](#footnote-17)and***1412/2017***[[18]](#footnote-18), where It held that, in order to remove the barriers that women victims of sexual crimes face when accessing justice, their testimony must be evaluated from a gender perspective, and considering that when facing this type of aggression, the victims usually do not report it because of the stigma that such a report usually carries. In these two rulings, the Chamber also held that the victim's statement is the primary evidence, but it must be analyzed in conjunction with other conviction elements.

Furthermore, the First Chamber of the Court held that children's and adolescents' right to participate in jurisdictional processes that affect their legal sphere includes their right to be heard and have their opinions taken into account, to which end special measures must be taken.

These same considerations were taken up again by the First Chamber in the ***Amparo Directo en Revisión 3797/2014***[[19]](#footnote-19), where the Court held that, in criminal and civil proceedings involving possibly sexually abused children and adolescents, the participation of a psychology professional must be guaranteed. Such psychologists should be well trained in the techniques needed to help obtain the victim's statement in order to assess its credibility; also, it should be capable of conducting an investigative interview taking into account both the perspective and factors associated with the child, formulate the questions appropriately, and videotape the interview.

It is important to note that in this ruling, the Chamber clarified that said interview does not constitute expert evidence, but rather a professional mechanism that contributes to the externalization of information by the child. Therefore, the psychologist's expertise is employed to obtain the statement, not to interpret or evaluate it.

1. *Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial?*

Yes, considering that in all criminal proceedings the right to privacy of any person is respected and all information that has to do with the private life of people must be protected, as established in article 15 of the National Code of Criminal Procedures.

In addition, article 346 of the same National Code establishes that in cases of crimes against sexual freedom and security and normal psychosexual development, the Judge will exclude the evidence that he intends to render on the previous or later sexual conduct of the victim.

Moreover, through an Isolated Thesis, it has been mentioned that when it is a matter of a comparable violation, the jurisdictional authorities must refrain from making expressions and prejudging the previous sexual life of the crime victim and their consent.

Likewise, the Supreme Court of Justice of the Nation has shared criteria with the Inter-American Court of Human Rights, establishing that, in view of the fact that women victims of violence, especially sexual violence, face extraordinary barriers when they try to access justice, the testimonies of the victims of all crimes that involve acts of sexual violence, must be valued with a gender perspective in order to avoid statements, insinuations and stereotyped allusions, which generate an inadequate assessment in the mind of the judge that reduces credibility to the version of the victims.

1. *Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings?*

Yes.The General Law on Victims alludes to the principle of secondary victimization in its article 5, where it establishes that the State may not establish requirements that hinder and prevent the exercise of the victim's rights or that expose her to suffer further harm from the conduct of public servants.

Regarding children and adolescents, the First Chamber analyzed the courts' duties when dealing with criminal proceedings that involve children's rights. The Court stated that such duties include providing the minors with professional assistance, ensuring sensitivity and tact throughout the proceedings, considering their immediate needs, and ensuring that the proceedings are conducted with full respect for their intimacy and physical, mental, and moral integrity. In this sense, the Court emphasized that the judges' duty shall include protection against any suffering, risk, or unnecessary stress, including intimidation, retaliation and re-victimization, and ensuring a process without discrimination.

Likewise, the Chamber held that professionals qualified to assist children and adolescents *vis-à-vis* administrative and judicial authorities must apply measures to: 1) limit the number of interviews; 2) avoid contact with the alleged perpetrator; and 3) utilize support measures to facilitate their testimony.

Consequently, the First Chamber held that the investigative interview, whose purpose is to produce the children's —possibly victims of sexual abuse— declaration, when participating in judicial processes, also aims to protect them from an eventual re-victimization. It protects them, especially when it is carried out right at the beginning of the judicial process, since this way, it is less probable to require further appearances of the victims in front of the courts than those strictly indispensable to guarantee the rights of the parties. The Chamber also remarked on the importance of videotaping the interview, which also helps to avoid re-victimizing the children and becomes essential for the subsequent assessment regarding their statement's credibility.

Regarding women victims of the crime of rape, it is worth recalling that the Second Chamber of the Supreme Court determined that the refusal to terminate the pregnancy of women who have suffered this crime is contrary to the legal and constitutional framework. Furthermore, it constitutes a severe violation of their sexual and reproductive rights, placing them in an additional victimization situation to the one suffered by the crime.

In the first of these Amparos, the Court studied the case of a 17-year-old girl who was denied a pregnancy termination service —the pregnancy resulted from rape— by a public hospital; in this case, the product had also been diagnosed with hydrocephalus. In the second precedent, the Court addressed the case of a woman who went to a public hospital to request the termination of her pregnancy —also resulted from rape—, but the service was denied to her under the argument that health sector personnel were on strike and the hospital was only dealing with emergencies.

The Chamber ruled that Articles 30 and 35 of the General Law of Victims provide access to voluntary pregnancy interruption and emergency contraception in cases of rape, and under the circumstances permitted by law; while Articles 3 and 4 of the same law state that in case of incompatibility between rules protecting victims, the rule that most benefits the person shall always prevail. In this sense, the Chamber considered that the refusal to terminate a pregnancy resulting from rape constitutes a detriment to the sexual and reproductive rights, as it extends the suffering and the physical and psychological harm suffered by the victim as a consequence of the criminal act.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? No
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?

In accordance with article 8, of the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the exercise of criminal action and the sanction that is judicially imposed for the crime of torture, are imprescriptible. This type of torture includes that provided for in article 27, section V of the Law, regarding cases of sexual violence.

1. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? Yes

The First Chamber held that the "soft law" instruments, the international treaties on the matter[[20]](#footnote-20), and the criterion of both the Inter-American Court of Human Rights and the Human Rights Committee, suggest that there is a shared standard regarding a rule of non-applicability of statutory limitations —with various nuances and without being absolute. Said standard is provided for cases of serious human rights violations and offenses derived from international humanitarian law.

1. Has the Rome Statute of the International Criminal Court (ICC) been ratified? Yes.

When ruling on the ***Amparo Directo en Revisión 4865/2015***[[21]](#footnote-21)*,* the First Chamber pointed out that the Mexican State ratified the Rome Statute on October 28th, 2005; and became enforceable on January 1st, 2006.

**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.

In the 5-year period, 70 complaints, 12 processes and 9 convictions have been registered; However, it should be noted that the crime of rape is reported both at the federal and local levels, with the highest percentage of complaints at the local level.

It should be noted that the content of this official letter is reserved and confidential, in accordance with Articles 113, section VII, XII and 116 of the General Law of Transparency and Access to Public Information.

|  |
| --- |
| **Crimes recorded in preliminary investigations or investigation files initiated for crimes against sexual freedom and security by type and year, 2015-2019** |
|  | **Year** |
|  | **2015** | **2016** | **2017** | **2018** | **2019** |
| **Total crimes** | **1,563,831** | **1,635,129** | **1,821,951** | **1,935,486** | **1,950,717** |
| **Total de delitos contra la libertad y la seguridad sexual** | 37,414 | 38,186 | 39,561 | 43,948 | 71,513 |
| Sexual abuse | 14,732 | 15,213 | 16,977 | 18,663 | 23,377 |
| Sexual harassment | 1,064 | 1,212 | 1,723 | 2,767 | 4,113 |
| Hostigamiento sexual | 927 | 1,008 | 965 | 1,223 | 1,720 |
| **Rape (Total)** | **15,933** | **14,919** | **15,072** | **16,546** | **17,444** |
| Rape - Simple rape | 13,569 | 12,149 | 11,002 | 12,956 | 13,239 |
| Equated rape | 2,364 | 2,770 | 3,341 | 3,450 | 4,034 |
| Rape - Equal rape for introducing any element, instrument or any part of the human body, other than the penis | n.a. | n.a. | 2,051 | 2,197 | 2,550 |
| Rape - Equal rape against minors and the disabled | n.a. | n.a. | 1,290 | 1,253 | 1,484 |
| Rape - Another type of rape | n.a. | n.a. | 254 | 140 | 171 |
| Rape - Unspecified | n.a. | n.a. | 475 | 0 | 0 |
| Rape | 1762 | 1609 | 1,160 | 1,242 | 1,328 |
| Incest | 24 | 20 | 114 | 9 | 12 |
| Other crimes that threaten sexual freedom and security | 2972 | 4205 | 3,550 | 3,498 | 2,041 |
| \* Includes crimes committed by adolescents.n.a.- not availableCNPJE 2016, 2017, 2018 and 2019 - Interactive tables. CNPJE 2020. Preliminary data. Basic tabulations.Consultation date: January 15, 2020Available at: https://www.inegi.org.mx/programas/cnpje/2020/CNPJE 2015 and 2016. Equal rape: consists of copulation with a minor or who does not have the ability to understand the meaning of the act. Likewise, it is considered as the anal or vaginal introduction of any element, instrument or any part of the human body other than the penis. |

|  |
| --- |
| **Victims registered in preliminary investigations or investigation folders for crimes against sexual freedom and security by sex and year** |
|  | **Year** |
|  | **2015** | **2016** | **2017** | **2018** |
|  | **M** | **H** | **N.e.** | **M** | **H** | **N.e.** | **M** | **H** | **N.e.** | **M** | **H** | **N.e.** |
| **Total crimes** | 586,917 | 850,339 | 94,229 | 601,481 | 821,934 | 90,312 | 611,543 | 790,329 | 127,685 | 700,060 | 884,203 | 172,494 |
| **Total de delitos contra la libertad y la seguridad sexual** | 37,841 | 9,074 | 1,330 | 30,734 | 5,189 | 2,310 | 27,913 | 4,746 | 5,318 | 36,047 | 4,839 | 2,565 |
| Sexual abuse | 13,727 | 4,334 | 401 | 12,425 | 2,428 | 961 | 11,355 | 2,156 | 3,209 | 14,897 | 2,007 | 1,717 |
| Acoso sexual | 1,643 | 124 | 51 | 838 | 85 | 81 | 1,039 | 127 | 346 | 2,303 | 165 | 66 |
| Hostigamiento sexual | 843 | 239 | 28 | 866 | 85 | 104 | 768 | 80 | 196 | 1,094 | 158 | 37 |
| **Violación (Total)** | **17,785** | **3,754** | **466** | **12,014** | **1,939** | **981** | **11,567** | **1,880** | **1,271** | **14,211** | **2,008** | **649** |
| Simple rape | 13,968 | 3,319 | 317 | 9,445 | 1,465 | 834 | 8,063 | 1,209 | 744 | 11,066 | 1,391 | 512 |
| Equated rape | 3,817 | 435 | 149 | 2,569 | 474 | 147 | 1,787 | 207 | 78 | 2,053 | 254 | 40 |
| Equal rape for introducing any element, instrument or any part of the human body, other than the penis | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | 925 | 337 | 51 | 960 | 343 | 92 |
| Equal rape against minors and the disabled | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | 201 | 58 | 1 | 132 | 20 | 5 |
| Another type of violation | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | 591 | 69 | 397 | n.a. | n.a. | n.a. |
| Rape - Unspecified | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. | n.a. |
| Rape | 1,581 | 157 | 84 | 1,487 | 158 | 95 | 954 | 116 | 138 | 1,082 | 110 | 56 |
| Incest | 21 | 3 | 0 | 11 | 9 | 1 | 29 | 11 | 5 | 4 | 3 | 1 |
| Other crimes that threaten sexual freedom and security | 2,241 | 463 | 300 | 3,093 | 485 | 87 | 2,201 | 376 | 153 | 2,456 | 388 | 39 |
| \* Includes victims of crimes committed by adolescents.n.a.- not availablen.e. - not specifiedThe results of the CNPJE 2020 are not yet availableCNPJE 2016, 2017, 2018 and 2019 - Interactive tables.Consultation date: January 15, 2020Available at: https://www.inegi.org.mx/programas/cnpje/2020/CNPJE 2015 and 2016. Equal rape: consists of copulation with a minor or who does not have the ability to understand the meaning of the act. Likewise, it is considered as the anal or vaginal introduction of any element, instrument or any part of the human body other than the penis.. |

|  |
| --- |
| **Crimes registered in investigation files initiated for crimes against sexual freedom and security, by type and year, 2015-2020** |
|  | **Year** |
|  | **2015** | **2016** | **2017** | **2018** | **2019** | **2020** |
| **Total crimes** | 1,657,803 | 1,761,830 | 1,939,497 | 1,989,930 | 2,069,788 | 1,841,141 |
| Freedom and sexual security | 31,408 | 35,242 | 37,025 | 43,016 | 53,358 | 54,342 |
| Sexual abuse | 11,980 | 15,090 | 15,899 | 18,875 | 23,625 | 22,377 |
| sexual harassment | 1,109 | 1,325 | 1,700 | 2,712 | 4,204 | 5,598 |
| Sexual harassment | 784 | 929 | 1,052 | 1,276 | 1,860 | 1,751 |
| Incest | 17 | 73 | 35 | 10 | 14 | 42 |
| **Rape (total)** | **12,619** | **13,539** | **13,520** | **15,322** | **17,330** | **16,543** |
| Simple rape | 10,538 | 10,992 | 10,786 | 12,360 | 13,656 | 12,318 |
| Equated rape | 2,081 | 2,547 | 2,734 | 2,962 | 3,674 | 4,225 |
| Other crimes that threaten sexual freedom and security | 4,899 | 4,286 | 4,819 | 4,821 | 6,325 | 8,031 |
| SESNSP. Cifras de incidencia delictiva. Consultada el 20 de enero de 2021 Disponible en: <https://www.gob.mx/sesnsp/acciones-y-programas/incidencia-delictiva-del-fuero-comun-nueva-metodologia?state=published> |

|  |
| --- |
| **Crimes registered in criminal cases entered in the first instance, by type, according to system and subject, 2015-2019** |
|  | **Year** |
|  | **2015** | **2016** | **2017** | **2018** | **2019** |
| **Total** | 210,713 | 151,467 | 177,907 | 204,472 | 190,093 |
| Total crimes that threaten sexual freedom and security | 10,051 | 6,826 | 9,145 | 10,687 | 11,356 |
| Sexual abuse | 3,166 | 2,510 | 3,207 | 4,002 | 4,030 |
| sexual harassment | 118 | 49 | 55 | 92 | 108 |
| Sexual harassment | 48 | 33 | 56 | 115 | 139 |
| **Rape** | **4,799** | **3,023** | **4,850** | **5,673** | **6,133** |
| Simple rape | 4,148 | 2,511 | 342 | 325 | n.a. |
| Equal rape for introducing any element, instrument or any part of the human body, other than the penis | 651 | 512 | 890 | 715 | n.a. |
| Equal rape against minors and the disabled | n.a. | n.a. | 103 | 318 | n.a. |
| Another type of violation | n.a. | n.a. | 632 | 77 | n.a. |
| Rape - Unspecified | n.a. | n.a. | 2,883 | 4,238 | n.a. |
| Rape | 298 | 182 | 144 | 158 | 112 |
| Incest | 13 | 7 | 8 | 25 | 5 |
| Other crimes that threaten sexual freedom and security | 1,609 | 1,022 | 825 | 622 | 829 |
| \* Includes crimes committed by adolescents.n.a.- not availableCNPJE 2016, 2017, 2018 and 2019 - Interactive tables. CNPJE 2020. Preliminary data. Basic tabulations.Consultation date: January 15, 2020Available at: https://www.inegi.org.mx/programas/cnpje/2020/CNPJE 2015 and 2016. Equal rape: consists of copulation with a minor or who does not have the ability to understand the meaning of the act. Likewise, it is considered as the anal or vaginal introduction of any element, instrument or any part of the human body other than the penis. |

**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.

There are no additional barriers to add.

1. Mexico’s Supreme Court of Justice comprises eleven Justices and operates by forming two Chambers and a Plenary Court. The Plenary, which is composed of all the Justices, deals with the most relevant cases received by the Court and those matters whose resolution causes general effects. Meanwhile, the Chambers, composed of five Justices each, are in charge of the rest of the cases involving constitutional matters. Their focus areas are divided as follows: The First Chamber deals mainly with civil and criminal law cases, whereas the Second Chamber studies administrative and labor law cases. [↑](#footnote-ref-1)
2. Ruled by the First Chamber of the Mexican Supreme Court of Justice on November 15th, 2017, which derived in the case law registration number 2 015 705. [↑](#footnote-ref-2)
3. Ruled by a four-vote majority by the First Chamber of the Supreme Court of Justice on September 28th, 2016, which derived in the case law registration numbers 2 020 986 and 2 020 975. [↑](#footnote-ref-3)
4. In particular, Article 265 of the Criminal Code for the Distrito Federal. [↑](#footnote-ref-4)
5. Ruled by the First Chamber of the Supreme Court of Justice on November 16th, 2005, which derived in the case law registration number 176 065**.** [↑](#footnote-ref-5)
6. Op. Cit. [↑](#footnote-ref-6)
7. The criminal law provision dictates: “Whoever takes advantage of the trust, subordination or superiority they have over a minor under the age of eighteen, derived from their family relationship in any degree, guardianship and curatorship, guardianship or custody; teaching, religious, employment, medical, cultural, domestic relationship or of any nature execute, oblige, induce or convince to execute any sexual act, with or without consent”. [↑](#footnote-ref-7)
8. Ruled by a three-vote majority by the First Chamber of the Supreme Court of Justice on May 3rd, 2017, which derived in the case law registration number 2 018 646. [↑](#footnote-ref-8)
9. Ruled unanimously by the First Chamber of the Supreme Court of Justice on April 18th, 2018. [↑](#footnote-ref-9)
10. Ruled unanimously by the First Chamber of the Supreme Court of Justice on March 25th, 2015, which derived in the case law registration number 2 009 086. [↑](#footnote-ref-10)
11. Ruled by the Plenary of the Supreme Court of Justice on May 11th, 2015, which derived in the case law registration number 2 010 004. [↑](#footnote-ref-11)
12. Idem. [↑](#footnote-ref-12)
13. General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [↑](#footnote-ref-13)
14. Such considerations derived in the case law registration number 2 019 265. [↑](#footnote-ref-14)
15. Op. Cit. [↑](#footnote-ref-15)
16. Such considerations derived in the non-binding case law registration number 2 010 003. [↑](#footnote-ref-16)
17. Ruled by a three-vote majority by the First Chamber of the Supreme Court of Justice on March 1st, 2017, which derived in the case law registration number 2 015 634. [↑](#footnote-ref-17)
18. Ruled by a four-vote majority by the First Chamber of the Supreme Court of Justice on November 15th, 2017. [↑](#footnote-ref-18)
19. Ruled by a three-vote majority by the First Chamber of the Supreme Court of Justice on October 14th, 2015. [↑](#footnote-ref-19)
20. For example, the Rome Statute of the International Criminal Court and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. [↑](#footnote-ref-20)
21. Ruled by a four-vote majority of the First Chamber of the Supreme Court on November 15th, 2017, which derived in the case law registration number 2 018 870. [↑](#footnote-ref-21)