

Inputs to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women

Definition and scope of criminal law provisions

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

Please find full transcripts of pertinent laws via hyperlinks:

Republic Act No. 8353 -“The Anti-Rape Law of 1997”
<https://www.officialgazette.gov.ph/1997/09/30/republic-act-no-8353/>

Republic Act No. 8505 – “Rape Victim Assistance and Protection Act of 1998”
<https://www.officialgazette.gov.ph/1998/02/13/republic-act-no-8505/>

Republic Act No. 7309- “An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes”
<https://www.officialgazette.gov.ph/1992/03/30/republic-act-no-7309/>

Republic Act No. 9851-“Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity”
<https://www.officialgazette.gov.ph/2009/12/11/republic-act-no-9851/>

Supreme Court Administrative Memorandum No. 004-07-SC- “Rule on the Examination of a Child Witness”
https://lawphil.net/courts/supreme/am/am_004_07_sc_2000.html

2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific, covering women only. YES/NO

YES. Article 266-A of the Revised Penal Code (as amended by Republic Act No. 8353 or the “Anti-Rape Law of 1997”) provides two definitions of rape, the first of which is gender-specific, to wit:

“Sec. 2. Rape as a Crime Against Persons. - The crime of rape shall hereafter be classified as a Crime Against Persons under Title Eight of Act No. 3815, as amended, otherwise known as the Revised Penal Code. Accordingly, there shall be incorporated into Title Eight of the same Code a new chapter to be known as Chapter Three on Rape, to read as follows:

“Chapter Three”
“Rape”

“Article 266-A. Rape: When And How Committed. - Rape is committed:

“1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x” (*Underscoring supplied*)

b. Gender neutral, covering all persons. YES/NO

YES. The second definition of rape under Article 266-A of the Revised Penal Code is gender neutral such that the offender and offended party may either be male or female:

"x x x

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

x x x" (*Underscoring supplied*)

c. Based on the lack of consent of victim. YES/ NO

YES. "Lack of consent" is not expressly mentioned in the definition of rape but the circumstances in which it could be committed involve vitiated consent or inability to give consent on the part of the offended party:

"**Article 266-A. Rape: When And How Committed.** - Rape is committed:

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

"b) When the offended party is deprived of reason or otherwise unconscious;

"c) By means of fraudulent machination or grave abuse of authority; and

"d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."

x x x"

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

YES. The use of force or threat is included in the definition of rape:

"**Article 266-A. Rape: When And How Committed.** - Rape is committed:

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

"a) Through force, threat, or intimidation;

x x x" (*Underscoring supplied*)

e. Some combination of the above. YES / NO. Please specify.

YES. Please see responses to 2 (c) and 2 (d).

f. Does it cover only vaginal rape? YES /NO

NO. The second definition of rape under 266-A covers rape through the insertion of the offender's penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

g. Does it cover all forms of penetration? YES/NO Please specify.

YES. It covers the insertion of the offender's penis or any other instrument or object into the vagina, genitalia, or anal orifice of the offended party. It also includes the insertion of the offender's penis into the mouth of the offended party.

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

NO. The definition of rape does not explicitly mention marital rape.

i. Is the law silent on marital rape? YES/NO

NO. It is not silent on marital rape as Article 266-C of the Revised Penal Code speaks of cases where the offender is the legal husband of the offended party.

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

YES. Marital rape is covered by legal precedent. The Supreme Court in the case of *People of the Philippines vs. Edgar Jumawan (G.R. No. 187495, April 21, 2014)*, held that:

“x x x

As above discussed, the definition of rape in Section 1 of R.A. No. 8353 pertains to: (a) rape, as traditionally known; (b) sexual assault; and (c) marital rape or that where the victim is the perpetrator's own spouse. The single definition for all three forms of the crime shows that the law does not distinguish between rape committed in wedlock and those committed without a marriage. Hence, the law affords protection to women raped by their husband and those raped by any other man alike

The posture advanced by the accused-appellant arbitrarily discriminates against married rape victims over unmarried rape victims because it withholds from married women raped by their husbands the penal redress equally granted by law to all rape victims.

Further, the Court adheres to and hereby adopts the rationale in *Liberta* in rejecting the argument akin to those raised by herein accused-appellant. A marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body, as does an unmarried woman. She can give or withhold her consent to a sexual intercourse with her husband and he cannot unlawfully wrestle such consent from her in case she refuses.

Lastly, the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence. Women do not divest themselves of such right by contracting marriage for the simple reason that human rights are inalienable.

In fine, since the law does not separately categorize marital rape and non-marital rape nor provide for different definition or elements for either, the Court, tasked to interpret and apply what the law dictates, cannot trudge the forbidden sphere of judicial legisla-

tion and unlawfully divert from what the law sets forth. Neither can the Court frame distinct or stricter evidentiary rules for marital rape cases as it would inequitably burden its victims and unreasonably and irrationally classify them differently from the victims of non-marital rape.

Indeed, there exists no legal or rational reason for the Court to apply the law and the evidentiary rules on rape any differently if the aggressor is the woman's own legal husband. The elements and quantum of proof that support a moral certainty of guilt in rape cases should apply uniformly regardless of the legal relationship between the accused and his accuser.

x x x" (Citations omitted. Underscoring supplied)

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

NO. Marital rape is considered a crime despite not being explicitly mentioned in this law, as elucidated by the Supreme Court in the above-mentioned case.

3. To what extent legislation in your country excludes criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit relevant articles with corresponding translations.

The law does not exclude the criminalization of the offender based on their sexual relationship with the offender.

4. What is the legal age for sexual consent?

The legal age for sexual consent is 12 years old:

""**Article 266-A. Rape: When And How Committed.** - Rape is committed:

"1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x

"d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present."

(Underscoring supplied)

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

NO. There are no provisions that differentiate for sexual activity between peers.

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

The prescribed penalties for rape are as follows:

"Article 266-B. *Penalty.* - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*¹.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.

"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

x x x

"Rape under paragraph 2 of the next preceding article shall be punished by *prision mayor*.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *prision mayor* to *reclusion temporal*.

"When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be *reclusion temporal*.

"When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion temporal* to *reclusion perpetua*.

"When by reason or on the occasion of the rape, homicide is committed, the penalty shall be *reclusion perpetua*.

"*Reclusion temporal* shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article."

(Italics and underscoring supplied)

¹ Article 27 of the Revised Penal Code sets the duration of penalties as follows:

"Article 27. *Reclusion perpetua.* - Any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon.

Reclusion temporal. - The penalty of reclusion temporal shall be from twelve years and one day to twenty years.

Prision mayor and temporary disqualification. - The duration of the penalties of prision mayor and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty. x x x"

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?

Victims of violent crimes including rape may file a claim for compensation as provided for under Republic Act No. 7309² before the Board of Claims of the Department of Justice within six (6) months from the date the victim suffered damage or injury.

The law provides that “the maximum amount for which the Board may approve a claim shall not exceed Ten thousand pesos (P10,000.00) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury, whichever is lower”. It further states that this is “without prejudice to the right of the claimant to seek other remedies under existing laws”.

Several provisions under the Revised Penal Code (Article 100) and the Civil Code (Articles 2229 and 2230) allow rape victims to claim civil indemnity, moral damages, and exemplary damages the amounts of which vary depending on the imposable penalty.

In rape cases where the imposable penalty is *reclusion perpetua* to death, the Supreme Court has held that proper amounts for the award of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 exemplary damages³.

Aggravating and mitigating circumstances

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

YES. The law states several aggravating circumstances, to wit:

“Article 266-B. *Penalty*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

"2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

"3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

"4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

² “An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes”

³ People of the Philippines vs. Rommel Ronquillo (G.R. No. 214762, September 20, 2017)

"5) When the victim is a child below seven (7) years old;

"6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

"7) When committed by any member of the Armed Forces of the Philippines or paramilitary units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

"8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

"Rape under paragraph 2 of the next preceding article shall be punished by prison mayor.

x x x

"*Reclusion temporal* shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article." (*Italics supplied*)

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

Rape by more than one perpetrator is not included in the list of aggravating circumstances. However, one of the prescribed penalties for rape in both paragraphs 1 and 2 of Article 266-A is the same as the prescribed penalty for rape cases attended by an aggravating circumstance:

"Article 266-B. *Penalty.* - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.

x x x

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

x x x

"Rape under paragraph 2 of the next preceding article shall be punished by prison mayor.

"Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be prison mayor to reclusion temporal.

x x x

"*Reclusion temporal* shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article."

(Italics and underscoring supplied)

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. The law states aggravating circumstances which take cognizance of the vulnerability of an individual and unequal power relations between the offender and offended party:

"Article 266-B. *Penalty*. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x

"The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

"1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

"2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

x x x

"4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

"5) When the victim is a child below seven (7) years old;

x x x

"7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

x x x

"9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

"10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime."

"Rape under paragraph 2 of the next preceding article shall be punished by prision mayor.

x x x

"*Reclusion temporal* shall be imposed if the rape is committed with any of the ten aggravating/ qualifying circumstances mentioned in this article."⁴ (*Italics and underscoring supplied*)

c. Is rape by spouse or intimate partner an aggravating circumstance? YES/NO

NO. Rape by a spouse or an intimate partner is not an aggravating circumstance.

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

NO. The law does not foresee mitigating circumstances for the purposes of punishment.

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?

NO. Reconciliation between the offender and the offended party are not stated in the law as part of a legal response.

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

NO. Rape cases are not subject to reconciliation/conciliation or mediation proceedings.

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

YES. The law contains a provision that allows for the non-prosecution of the offender if he marries the victim of rape:

"Article 266-C. Effect of Pardon. - The subsequent valid marriage between the offended party shall extinguish the criminal action or the penalty imposed.

"In case it is the legal husband who is the offender, the subsequent forgiveness by the wife as the offended party shall extinguish the criminal action or the penalty: Provided, That the crime shall not be extinguished or the penalty shall not be abated if the marriage is void *ab initio*."⁴ (*Underscoring supplied*)

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

NO. The effects of forgiveness are only limited to pardon given by the offended party in cases of marital rape or through subsequent valid marriage between the offender and offended party.

Other than those stated in Article 266-C, reconciliation of the offender with the offended party does not have any other effect under the law.

An offended party has an option to execute an affidavit of desistance before a criminal action is instituted. However, courts are generally cautious when it comes to giving weight to such affidavits. In *People vs. Ramirez Jr.*⁴, the Supreme Court stated that:

⁴ G.R. Nos. 150079-80, June 10, 2004

“As a rule, a recantation or an affidavit of desistance is viewed with suspicion and reservation. Jurisprudence has invariably regarded such affidavit as exceedingly unreliable, because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration. Moreover, there is always the probability that it would later on be repudiated, and criminal prosecution would thus be interminable.”

The Supreme Court also held in the same case that “affidavits of desistance or pardon is not a ground for the dismissal of an action, once it has been instituted in court”. As such, private complainants “lose the right or absolute privilege to decide whether the rape charge should proceed, because the case had already reached and must therefore continue to be heard by the court a quo”.

Prosecution

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

YES. Rape cases either filed through a complaint (subscribed by either the offended party, any peace officer, or other public officer charged with the enforcement of the law violated) or information, are publicly prosecuted pursuant to Rule 110, Section 5 of the Revised Rules of Criminal Procedure⁵:

“SECTION 5. Who must prosecute criminal actions. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor, or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court. (As amended by Circular No. 39-02 of the Office of the Court Administrator dated Aug. 21, 2002)

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness, independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be

⁵ As amended by Office of the Court Administrator Circular No. 39-02 (dated Aug. 21, 2002)

exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution for violation of special laws shall be governed by the provisions thereof." (*Emphasis ours*)

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

YES. Rape cases like most criminal actions are prosecuted ex officio. However, a private prosecutor may be authorized by chief public prosecutors under certain circumstances to prosecute a criminal case, subject to approval of the court. (See Rule 110, Sec. 5 of the Revised Rules of Criminal Procedure, as amended)

Note that the foregoing rule excludes rape cases from the exclusive list of criminal actions which may only be initiated by the offended party or their parents, grandparents, or guardian. In line with this, it may also bear stressing that rape has been reclassified from a crime against chastity (private crime) to a crime against persons (public crime). Hence, anyone who has personal knowledge of the crime may file a case on the victim's behalf.

14. Is a plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES/NO

YES. Plea-bargaining is allowed in cases of rape of women.⁶

15. Is plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO

YES. Plea-bargaining is allowed in cases of rape of children.⁷

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

Article 90 of the Revised Penal Code provides that crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in twenty (20) years. Crimes punishable by other afflictive penalties shall prescribe in fifteen (15) years.

Since *reclusion perpetua* is the penalty for rape under the 1st paragraph of Article 266-A, then rape as defined therein shall prescribe in twenty (20) years.

The punishment for rape under the 2nd paragraph of Article 266-A is *prison mayor*, an afflictive penalty, and shall prescribe in fifteen (15) years. If the rape was attended by any of the aggravating circumstances stated in the law, the crime is punishable by *reclusion temporal*, in which case, the criminal action shall prescribe in twenty (20) years.

Article 91 of the Revised Penal Code provides for the computation of prescription of offenses as follows:

"Article 91. Computation of prescription of offenses. - The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or

⁶ See Section 2 of Rule 116 and Section 1, Rule 118 of the Revised Rules of Criminal Procedure

⁷ Ibid

information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.”

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

A child who was a victim of rape may file a complaint within the same period set by the statute of limitations (See Articles 90 and 91 of the Revised Penal Code). Given the length of the prescriptive period for the prosecution of a rape case, it is tenable for a person to report at a much later time a case of rape which occurred during their childhood.

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

NO. Medical evidence or the need of witnesses are not mandatory requirements for proof of rape. This was ratiocinated by the Supreme Court in *People of the Philippines vs. Jerry Ferrer (G.R. No. 142662, August 14, 2001)* where it held that:

“x x x

We accordingly reject accused-appellants arguments which hinge on alleged inconsistencies between the statements made by the private complainant vis-a-vis the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character.

x x x” (*Citations omitted. Emphasis ours*)

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

Section 6 of Republic Act No. 8505 or the Rape Victim and Assistance Act of 1998 states that:

“**Section 6. Rape Shield.** - In prosecutions for rape, evidence of complainant's past sexual conduct, opinion thereof or of his/her reputation shall not be admitted unless, and only to the extent that the court finds, that such evidence is material and relevant to the case.”

The “Rule on Examination of a Child Witness” (A.M. No. 004-07-SC) issued by the Supreme Court in November 21, 2000 also established a sexual abuse shield rule as follows:

Section 30. Sexual abuse shield rule. -

(a) Inadmissible evidence. - The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:

(1) Evidence offered to prove that the alleged victim engaged in other sexual behavior;
and

(2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) Exception. - Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

(1) File a written motion at least fifteen (15) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(2) Serve the motion on all parties and the guardian ad litem at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian ad litem, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

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

The "Rule on Examination of a Child Witness" (A.M. No. 004-07-SC) in the foregoing section laid down guidelines to minimize trauma for children who are victims of a crime, accused of a crime, and witnesses to a crime. The rule covers any person who at the time of giving testimony is below the age of eighteen (18) years. In child abuse cases, a child includes one over eighteen (18) years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

Such measures include the provision of an interpreter, appointment of a facilitator, support persons, redesign of courtroom environment (i.e. positioning of witness chair), usage of testimonial aids, usage of live-link television testimony, usage of screens or one-way mirrors to shield the child, videotaped depositions, among others.

War and/or conflict

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

YES. Rape is considered as a war crime under Republic Act No. 9851 or "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity":

"Section 4. War Crimes. - For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

x x x

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

x x x

(19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;”

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

NO. R.A. No. 9851 states that the prosecution of the crimes defined therein (which include rape as a war crime) does not prescribe:

“**Section 11. Non-prescription.** - The crimes defined and penalized under this Act, their prosecution, and the execution of sentences imposed on their account, shall not be subject to any prescription.”

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

YES. However, the non-prescription clause in the law is not limited to rape committed during war and armed conflict. The provision applies to all crimes defined therein.

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

YES. The Rome Statute of the International Criminal Court (ICC) was ratified by the Philippines on August 30, 2011. The State however withdrew from the Rome Statute on March 17, 2018. The withdrawal became effective a year later pursuant to Article 127 of the Rome Statute.

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.

No. of Rape Cases Reported to the Philippine National Police

2019	2,341
2018	2,319
2017	2,707
2016	2,599

No. of Rape Cases Handled by the National Prosecution Service
(see https://www.doj.gov.ph/open_data.html)

Year	Handled	Resolved	Filed in Court
2018	15,350	13,592	11,819
2017	10,666	8,887	8,515
2016	10,067	8,627	7,971
2015	10,957	—	7,009

Data updates may be requested from the Philippine National Police, Department of Justice National Prosecution Service, and the Supreme Court-Office of the Court Administrator (for data on case disposition)

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.**

Barriers to reporting and prosecution of rape cases include, among others: low help-seeking behaviour in victims of sexual violence and other forms of violence against women; lack of gender-responsive facilities or rape crisis intervention centres in several localities; reported insensitivity of medical, legal, and law enforcement officers as well as officers of courts; socio-economic challenges personal to the offended party; case decongestion in courts which result to delays in prosecution; and other issues attributable to access to justice concerns.

Nothing follows.