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**FROM:** PROMSEX  
**TO:** United Nations Office of the High Commissioner for Human Rights  
Special Rapporteur on Violence against Women, its causes and consequences  
**DATE:** 20 May 2020  
**SUBJECT:** Questionnaire on the criminalisation and prosecution of rape in Peru<sup>1</sup>

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<sup>1</sup> Questionnaire available at: <https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRVAVW.aspx> (latest accessed 05-18-2020)





## 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.**

*Peruvian Criminal Code - Part II: Crimes - Title II: Crimes against Freedom - Chapter IX: Violations against Sexual Freedom*

### *Article 170 – Rape*

“He who, with violence, physical or psychological, serious threat, or taking advantage of a coercive environment or any other environment that impedes the victim to give free consent, forces a person to practice the sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices, shall be punished of no less than fourteen years and no more than twenty years of imprisonment.

The custodial sentence shall be no less than twenty years and no more than twenty-six years, when any of the following circumstances concur:

1. when the act of rape is committed with the use of weapons or by joint action of two or more persons.
2. when the offender abuses of his/her profession, science or trade or any position, charge or legal responsibility that gives the offender a duty of vigilance, custody or a particular authority over the victim or that compels the victim to trust the offender.
3. when the offender takes advantage of a quality as ascendant, descendant, by consanguinity, by adoption or affinity, or spouse or ex-spouse, partner or ex-partner, have or had developed similar relationships with the victim; or have children with the victim; or live in the same household of the victim without contractual or laboural relationships; or be a close relative to the fourth degree, by consanguinity or adoption or the second degree of kinship.
4. when the acts are committed by a priest, or a leader of a religious or spiritual organisation with a particular influence on the victim.



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5. when the offender is the manager, instructor, assistant or administrative assistant of the education centre when the victim studies.
6. when the offender has a contractual relationship with the victim based on the provision of services, or a working relationship, or when the victim provides the offender with services as a domestic worker.
7. when the acts are committed by a member of the Peruvian Armed Forces, National Police, municipal security services, municipal police or personnel of private security, or any officer or civil servant, availing himself/herself of the exercise of his/her duties or in results of his/her duties.
8. when the offender knows being infected by a severe sexually transmitted disease.
9. when the offender, knowingly, commits the act of rape in the presence of any girl, boy or teenager.
10. when the victim is pregnant.
11. when the victim is between fourteen and less than eighteen years old, or is an elderly or suffers from a handicap, physical or sensorial, and the offender is taking advantage of this condition.
12. when the victim is a woman and she is aggrieved for her condition as such in any of the previous contexts referred in the article 108-B.<sup>2</sup>
13. when the offender acts in a state of intoxication, with concentration of alcohol exceeding 0.5 grams-litres, or under the effect of toxic, narcotic drugs, psychotropic or synthetic substances that can alter the offender's judgment.

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<sup>2</sup> Note from Promsex: article 108-B of the Peruvian Criminal Code refers to femicide as a specific crime, separate from murder and manslaughter (see translation available in question 2.a)





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*Article 171: Rape of a Person in an Unconscious State or a Person Unable to Resist*

He who commits the sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices, after putting the victim in an unconscious state or in a situation where the victim is unable to resist to the sexual act, shall be convicted with a sentence of imprisonment of no less than twenty years and no more than twenty-six years.

*Article 172 – Rape of a Person Unable of Consenting*

He who commits the sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices, with the knowledge of the incapacity of the victim to consent due to psychological abnormality, severe loss of awareness, mental retardation or that the victim is in a situation where she could not resist, shall be convicted with a sentence of imprisonment of no less than twenty years and no more than twenty-six years.

*Article 173 – Rape of Minors*

He who commits the sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices, with a person under the age of fourteen, shall be convicted with a sentence of imprisonment for life.

*Article 174 – Rape of a Person under Authority*

He who, taking advantage of a situation of dependence, authority or surveillance, sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices on a person registered in a hospital, mental asylum or other similar institutions, or a person that was detained or secluded shall be convicted with a sentence of no less than twenty years and no more than twenty-six years.



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*Article 175 – Rape by Fraud*

He who, by fraud, commits the sexual act of vaginal, anal or oral penetration, or commits any other similar acts with the insertion of objects or body parts into either of the former two orifices on a person of fourteen years old and less than eighteen years old shall be sanctioned with prison of no less than six years and no more than nine years.

*Article 176 – Sexual Touching, Sexual Offence, Libidinous Acts Without Consent*

He who without the intent of committing the sexual acts as stated in the article 170, commits on a person, without that person's consent, sexual touching, acts of sexual offences or libidinous acts, in the intimate parts or in any other parts of the body of the victim, shall be sanctioned with imprisonment of no less than three years and no more than six years.

When the offender commits the act described in the first paragraph, with threats, violence or by taking advantage of a situation of coercion or any other situation that would impede the victim to consent freely, or by availing himself/herself of these means to force the victim to achieve the sexual acts on the offender, the victim or a third party, shall be condemned with imprisonment of no less than six and no more than nine years.

In any of the situations described in the first and second paragraphs, the sentence shall be augmented of five years of imprisonment of the minimum and maximum of the conviction, when the victim is between fourteen and less than eighteen years old.

*Article 176 – A - Sexual Touching, Sexual Offence, Libidinous Acts with Minors*

He who without the purpose of committing a sexual act as stated in the article 170, commits on a minor of fourteen years old, sexual touching on any body parts or commits libidinous acts, or forces the victim to perform the act on herself/himself, on the offender or on a third party, shall be sanctioned with no less than nine and no more than fifteen years of imprisonment.





### *Article 176 – B – Sexual Harassment*

He who, in any way, watches, chases, harasses, besieges, or intends to establish contact or to pursue closer proximity to a person, without that person's consent, with the intent of committing a sexual offence, shall be sanctioned of imprisonment of no less than three years and no more than five years and, depending on the circumstances, shall be disqualified in line with the paragraphs 5, 9, 10 and 11 of the article 36.<sup>3</sup>

The same sentence shall be executed to whoever commits the same acts by using any information or communication technology.

The offender shall be condemned of no less than four and no more than eight years imprisonment, depending of the circumstances, in line with the paragraphs 5, 9, 10 and 11 of the article 36, if any of the following aggravating circumstances concur:

1. The victim is an elderly, is pregnant, or is a person with disability.
2. The victim and the offender have or had a relationship, are or were spouses or partners, or relatives until the fourth degree of consanguinity or second of kinship.
3. The victim lives in the same household as the offender or share common spaces of the same property.
4. The victim is in a position of dependency or subordination towards the offender.
5. The act was committed within the framework of a contractual relationship of work, education or training with the victim.
6. The victim is between fourteen and less than eighteen years old.

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<sup>3</sup> Note from PROMSEX: the rules referenced by this provision of the Peruvian Criminal Code establish the following disqualifications for an offender:

- To exercise custody of his/her children (article 36.5).
- To become a teacher or administrative worker at a educational institution, to work for the Ministry of Education or its regional offices or, in general, to work within any institution -public or private- dedicated to education, training, rehabilitation, or to exercise any profession, craft or occupation that involves teaching, caring for, supervising or attending to children, teenagers or students at higher education institutions (article 36.9).
- To live in certain places (article 36.10).
- To approach the victim, his/her relatives or any other persons determined by a judge (article 36.11).



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### *Article 176 – C – Sexual Blackmail*

He who threatens or intimidates a person, by any means, including the use of technology of information or communication, to obtain from the person a conduct or a sexual offence act, shall be sanctioned of no less than two years and no more than four years of imprisonment and shall be disqualified, depending of the circumstances, in line with the paragraphs 5, 9, 10, 11 of the article 36.

The sanction of imprisonment shall be no less than three years and no more than five years and the offenders shall be disqualified, depending of the circumstances, and in line with the paragraphs 5, 9, 10 and 11 of the article 36, when the offender, to commit the crime, threatens the victim with the dissemination of images, audio-visual materials or audios with sexual content in which the person appears or participates.

### *Article 177 – Aggravating Circumstances*

In any of the cases described in the articles 170, 171, 172, 174, 175, 176 and 176-A:

1. When the offender commits the acts with cruelty, malice or to humiliate the victim, the sentence shall be augmented of five years in the mimum and maximum threshold of the penalty.
2. When the act results in severe lesions on the victim and the offender could have foreseen the results, the sanction of imprisonment shall be of no less than thirty years and no more than thirty-five years.
3. When the acts caused the death of the victim and the offender could have foreseen this result, the imprisonment shall be for life.

For the crimes described in the articles 171, 172, 174, 176 and 176-A, the sentence shall be augmented by five years in the mimum and maximum threshold of the penalty, if it concurs with any of the circumstances described in the article 170, second paragraph.



When the offender records any of the acts described in the articles 170, 171, 172, 174, 175, 176 and 176-A with any visual, auditory or audio-visual means or transfer the record via any technology of information or communication, the sentence shall be increased by five years in the minimum and maximum threshold of the penalty applicable to the recorded or transferred crime.

#### *Article 178 – Special Responsibility*

For the situations described in this Chapter, the penal judge should settle, ex officio or upon request of a party, on the alimony to the children born as a result of the sexual act, by applying the respective standards.

The alimony referred in the first paragraph includes the necessary expenses for maintenance, accommodation, clothes, education, professional training, medical and psychological assistance, recreational activities of the child or teenager, and any expenses resulting from the pregnancy of the mother since the conception to the postpartum stage.

The decision of the judge regarding the alimony corresponds to the anticipated order to pay for alimony during the financial investigation, as well as the establishment of the obligation of paying for alimony before the sentencing on the basis of the evidence provided to the court.

#### *Article 178 – A – Therapeutic Treatment*

The person convicted to imprisonment for the crimes described in this Chapter, prior medical and psychological examination that determines the sentence application, shall be submitted to a therapeutic treatment to facilitate that person's social rehabilitation.





#	Question	Answer	Criminal Code	Case Law	Inter American Court of Human Rights Case Laws	Additional Comments
2.a	Based on the wording of those provisions, is the provided definition of rape: Gender specific, covering women only	Overall, the criminal code is gender-neutral.  But it includes some provisions for women.	In Spanish, the Peruvian Criminal Code’s provisions literally state “He who...” (“ <i>El que...</i> ”). However, prosecutors and judges understand this to be gender-neutral, meaning that a woman can be convicted for rape.  The article 170, paragraph 2.12 establishes as an aggravating circumstance when the act of rape was committed against a woman because of her condition as such.  The article 108 - B provides provisions on femicide as follows: “He who kills a women for her condition as such, shall be condemned with imprisonment of no less than twenty years, in any of the following circumstances: 1. Domestic violence 2. Coercion, harassment or sexual harassment			According to the ECOSOC handbook, the legislation on violence against women should be gender-sensitive, not gender-blind. For instance, a gender-sensitive approach would acknowledge that women and men experience violence in a different way due to historical unequal power relations between them. <sup>4</sup>

<sup>4</sup> ECOSOC, “Handbook for Legislation on Violence Against Women”, pp.27



			<p>3. Abuse of power, trust or any other position or relationship that confers authority to the offender on the victim</p> <p>4. Any form of discrimination against woman, independently of the existence of a marital or domestic partnership with the offender”</p> <p>In addition, the femicide is aggravated when the victim was submitted to sexual violence or acts of mutilation (see the Article 108 paragraph 2,3)</p>			
2.b	Gender neutral, covering all persons	Gender-neutral	<p>The Peruvian Criminal Code is gender neutral regarding its legislation on rape</p>	<p>In practice, reports from the Commission of Truth and Reconciliation included testimonies from male victims that were sexually abused during detention or witnesses highlighted that “homosexual victims had their sexual parts cut before being executed”.</p> <p>Following this, the Inter-American Court of Human Rights (IACHR) established that sexual violence should be sanctioned by Peruvian</p>		



				authorities including when the victim is male. (see <i>Case Penal Miguel Castro Castro vs. Perú</i> , Sentence 26 November 2006). <sup>5</sup>		
2.c	Based on the lack of consent of victim	Yes	As per the article 170, rape is defined, in part, by the lack of consent of the victim: “when the offender commits with violence, physical or psychological, threatens severely or take advantage of a coercive environment or any other environment that impedes the victim to consent freely”. However, the Peruvian Criminal Code does not define what “free consent” is.	<p>The Plenary Accord 1-2011/CJ-116 established that the consent of the victim cannot be inferred from her/his lack of resistance. In other words, the consent cannot be inferred from silence, words or conducts when the victim is put in a situation of coercion or when the victim is unable to give free consent.<sup>6</sup></p> <p>The legislation was reformed in september 2018 to clarify this approach to rape and to include aggravating circumstances for the offender, such as being a clerical official or being under the influence of alcohol or drugs.</p>		According to standards established by the ECOSOC, free consent is defined as the unequivocal and voluntary agreement to enter in the sexual activity in question. <sup>8</sup>

<sup>5</sup> Inter-American Court of Human Rights, *Case of the Miguel Castro-Castro Prison vs. Perú*, Judgment of November 25, 2006. Accessible at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf) (latest accessed 05-16-2020)

<sup>6</sup> Jeannette Llaja Villena, Cynthia Silva Ticllacuri, “*La Justicia Penal Frente a los Delitos Sexuales. Aplicación del Nuevo Código Procesal Penal en el distrito judicial de San Martín*”. Accessible at: <https://www.demus.org.pe/wp-content/uploads/2016/05/Txt-Jus-Penal.pdf> (latest accessed on 05-16-2020, available in Spanish only)

<sup>8</sup> ECOSOC, “*Handbook Legislation on Violence against Women*”, pp.27



				The Supreme Court established in the <i>Huánuco</i> case that the consent given by the victim of less than fourteen years old is irrelevant. Nevertheless, the Court also highlighted that it should be taken in consideration that the victim told the offender that she was 14 years old at the moment of the fact. This is qualified as a an “ <i>error of fact</i> ” ( In Spanish “ <i>error de tipo</i> ”) by the Supreme Court. <sup>7</sup>		
2.d	Based on the use of force or threat	Yes	As per the article 170, the use of force or threat or the existence of a coercive environment is necessary to establish that there was rape.	There is no definition of what is a coercive environment but it is usually defined by Peruvian courts by the use of threats or violence against the victim.		
2.e	Some combination of the above	Yes	The trend is to show violence or the use of threat to illustrate that there was no consent. However, the Plenary Accord <sup>9</sup> also states that consent cannot be inferred by silence or words in a situation of coercion.	The Supreme Court refused to qualify rape under the articles 172 and 171 in the two following cases. Firstly, the Court used the article 170 in a case when the victim was 21 years old but, according to the		

<sup>7</sup> Corte Suprema de Justicia de la República, R.N.N. 2321-2014, Huánuco. Accesible at: <https://img.lpderecho.pe/wp-content/uploads/2018/02/Violación-de-menor-Irrelevancia-del-«consentimiento»-de-niña-de-11-años-para-tener-relaciones-R.N.-2321-2014-Huánuco.pdf> (latest accessed on 05-15-2020, available in Spanish only)

<sup>9</sup> Plenary Accord Numero 1-2011/CJ-111. Accesible at: <https://www.pj.gob.pe/wps/wcm/connect/10b3e2004075b5dcb483f499ab657107/ACUERDO+PLENARIO+N°+1-2011.pdf?MOD=AJPERES&CACHEID=10b3e2004075b5dcb483f499ab657107> (latest accessed on 20-20-2020, available in Spanish only)



			The Peruvian code contains provisions for victims in a situation where they could not give their informed consent (see the articles 172 and 171)	psychologists, had the mental maturity of a person aged of 9 years old. Secondly, the Court did not use the articles 171-172 in a case where the 14 years-old victim was drugged by the offender. <sup>10</sup>		
2.f	Does it cover only vaginal rape?	No	The article 170 sanctions rape committed as the sexual act of vaginal, anal and oral penetration			
2.g	Does it cover all forms of penetration?	Yes	The article 170 covers sexual, anal and oral penetration.	The Criminal Court of Ayacucho reiterated that a complete penetration is not required to qualify as rape. The facts of the case were based on the sexual touching by the accused on the victim. Although the medical evidence showed that the hymen of the victim was not perforated, the Criminal Court of Ayacucho qualified the sexual act as rape. <sup>11</sup> However, the judge reiterated that while the perforation of the hymen is not required, a	The InterAmerican Court of Human Rights established in the decision <i>Espinoza González vs. Perú</i> that rape is a form of sexual violence. The Court interpreted that “for any act to be considered rape, it is sufficient that penetration occurs, however slight this may be, in the terms described above [vaginal or anal penetration].” <sup>12</sup>	

<sup>10</sup> Jeannette Llaja Villena, Cynthia Silva Ticllacuri, “La Justicia Penal Frente a los Delitos Sexuales, Aplicación del Nuevo Código Procesal Penal en el distrito judicial de San Martín”. Accessible at: <https://www.demus.org.pe/wp-content/uploads/2016/05/Txt-Jus-Penal.pdf> (latest accessed on 05-16-2020, available in Spanish only)

<sup>11</sup> Tribunal de Ayacucho, R.N Numero 28-2016. Accessible at: [https://static.legis.pe/wp-content/uploads/2018/09/RN.28-2016-Ayacucho-Legis.pe\\_.pdf](https://static.legis.pe/wp-content/uploads/2018/09/RN.28-2016-Ayacucho-Legis.pe_.pdf) (latest accessed 05-18-2020, available in Spanish only)

<sup>12</sup> Inter-American Court of Human Rights, *Case of Espinoza González v. Peru*, Judgment of November 20,2014, para 192. Accessible at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_289\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_289_ing.pdf) (latest accessed on 05-15-2020)

				physical contact between the sexual parts of the victim and the offender is necessary to qualify as rape.		
2.h	Is marital rape explicitly included?	No	<p>There are no specific provisions on marital rape. The exonerating circumstance of marital relationship between the victim and the offender was removed from the Criminal Code in 1999 by the Act 27115. This provided the possibility of prosecuting cases of allegations of rape within marital relationships.</p> <p>The existence of a marital relationship between the offender and the victim is also listed as an aggravating circumstance in the article 170.</p>	<p>Although the exonerating circumstance of marital rape was removed from the penal code, the marital relationship between the victim and the offender still plays an important role in the prosecution and sentence of sexual violence.</p> <p>In 2011, the Public Ministry stated that it is not necessary to provide civil reparation to the victim in a rape case, because the parties are living together and are planning to get married, to avoid conflicts in their social surroundings.”<sup>13</sup></p>		<p>The Office of the Ombudsman conducted an investigation on the persistence of cultural patterns of discrimination between judges. For instance 47,1% of respondents said to be against the elimination of the exonerating circumstance of marital relationships between the offender and the victim.<sup>14</sup></p>
2.i	Is the law silence on marital rape?	No	The act of rape committed within a marital relationship is an aggravated circumstance in the Criminal Code.			
2.j	Is marital rape covered in the	Yes	See above			

<sup>13</sup> Defensoría del Pueblo, “Violencia Sexual en el Perú: Un análisis de casos judiciales”. Accessible at: <https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe-adjuntia-004-2011-DP-ADM.pdf> (latest accessed 05-16-2020, available in Spanish only)

<sup>14</sup> Defensoría del Pueblo, “Violencia Sexual en el Perú: Un análisis de casos judiciales”. Accessible at: <https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe-adjuntia-004-2011-DP-ADM.pdf> (latest accessed 05-16-2020, available in Spanish only)



	general provisions or by legal precedent even if it is not explicitly included?					
2.k	Is marital rape excluded in the provisions, or is marital rape not considered as a crime?	No	Marital rape is considered as a crime.	In May 2019, the Peruvian court condemned the act of rape committed by a spouse against his wife. The Tribunal reiterated that the institution of marriage does not imply a submission of one spouse to the sexual desire of the other. <sup>15</sup>		
3	Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have	No	As stated in the article 170, the existence of a relationship as spouse or ex-spouse, partner or ex-partner is an aggravating circumstance.			

<sup>15</sup> Noticias Jurídicas, “El Supremo Recuerda que no Existe el Débito Conyugal en el Matrimonio y Condena por Violación si se fuerza a la Pareja”, May 2019. Accessible at: <http://noticias.juridicas.com/actualidad/jurisprudencia/13994-el-supremo-recuerda-que-no-existe-el-debito-conyugal-en-el-matrimonio-y-condena-por-violacion-si-se-fuerza-a-la-pareja/> (latest accessed on 05-16-2020, available in Spanish only)



	a sexual relationship/had a sexual relationship?					
4	What is the legal age for sexual consent?	14 years old	Article 173	Contrary to rape allegations committed on adult victims, the Peruvian criminal code does not require the use of force or the existence of a coercive environment, sexual penetration alone is enough to qualify as rape when the victim is less than 14 years old. However, the use of force or threats will be taken in consideration to establish the sentence. When the offender could not achieve the act of sexual penetration, the crime could be qualified as act against decency. <sup>16</sup>		
5.	Are there provisions that differentiate for sexual activity between peers?	No	No special provisions on sexual activity between peers but the Constitutional Tribunal decriminalized activities sexual acts	In 2006, the Act N°28704 established in the former Article 173 <sup>3</sup> that when the victims was of fourteen years or less than eighteen years old, the sentence		In 2013, 13,5% of teenagers in Peru between 14 and 19 years old were mothers. In some areas

<sup>16</sup> Defensoría del Pueblo, “La Aplicación de la Justicia Penal ante Casos de Violencia Sexual Perpetrados contra Niñas, Niños y Adolescentes”. Accessible at: [http://www2.congreso.gob.pe/sicr/cendocbib/con3\\_uibd.nsf/CE02B1C2A68AB6AC052578CB006E3E25/\\$FILE/informe\\_126.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/CE02B1C2A68AB6AC052578CB006E3E25/$FILE/informe_126.pdf) (latest accessed on 05-16-2020, available in Spanish only)





	If so, please provide them.		committed between teenagers in 2012.	shall be from twenty years to thirty years of prison.  In 2012, the former article 173°3 was declared unconstitutional by the Consitutional Court. Amongst other things, the Court based its decision on the right to sexual development and the rights of freedom of information of teenagers <sup>17</sup>		in the jungle of Peru, up to 25% of adolescent girls are pregnant or already mothers. <sup>18</sup>
6.	Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.			The Peruvian doctrine established that the <i>quantum</i> of criminal sanctions against a crime of rape should be proportional. The factors of diminution of a sentence should take into consideration several factors, including: (i) the absence of violence or threats to complete the sexual act (ii) the proximity in age of the passive subject to the age of 14 years old (iii) the minimum psychological impact of the		

<sup>17</sup> Tribunal Constitucional Pleno Jurisdiccional, 00008-2012-PI/TC. Accessible at: <https://www.tc.gob.pe/jurisprudencia/2013/00008-2012-AI.html> (latest accessed 05-17-2020, available in Spanish only)

<sup>18</sup> Dra. Esperanza Tafur Gupioc, “Despenalización de Las Relaciones Sexuales en Menores de Edad”. Accessible at: <https://www.aulavirtualusmp.pe/ojs/index.php/VJ/article/viewFile/48/49> (latest accessed on 05-17-2020, available in Spanish only)



				<p>victim. In other words, if the victim does not show psychological damage due to the sexual act, the offender could see his/her sentence reduced.</p> <p>(iv) the age difference between the active and passive subject.</p> <p>In the <i>Huánuco</i> case, the Supreme Court reduced the sentence by 20 years because the Court defined the fact that the victim told the offender that she was 14 years old and not 11 years old at the time of the fact. This qualified as an error of fact that allowed the reduction of the sentence of imprisonment from 30 years to 10 years of imprisonment.<sup>19</sup></p> <p>In addition of the “<i>error of fact</i>” described in the <i>Huánuco</i> case, the Peruvian Code established the “culturally conditioned error” in Article 15.</p>		
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<sup>19</sup> Corte Suprema de Justicia de la República, R.N.N. 2321-2014, Huánuco. Accessible at: <https://img.lpderecho.pe/wp-content/uploads/2018/02/Violación-de-menor-Irrelevancia-del-«consentimiento»-de-niña-de-11-años-para-tener-relaciones-R.N.-2321-2014-Huánuco.pdf> (latest accessed on 05-15-2020, available in Spanish only)



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?	Pecuniary compensation  Maintenance obligation  Disqualification of the accused	The article 178 establishes that the judge should settle, <i>ex officio</i> or upon request, on alimony payments. This includes financial aid on expenses allocated to housing, clothes, education, professional training, medical and psychological assistance and potential cost of the pregnancy of the mother.			
<b>Aggravating and Mitigating Circumstances</b>						
8	Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?	Yes	Article 170, article 176-B, article 177  1. the victim is an elderly, is pregnant or is a person with disability.  2. the victim and the offender have or had a relationship, are or were spouses or partners, or relatives until the forth degree of consanguinity, or second of kinship.			According to UNICEF, 14 out of 100 reported cases of violence against children/teenagers are related to sexual violence. Almost 70% of the sexual violence reported cases involve school teachers or personal working in an educational center. <sup>20</sup>

<sup>20</sup> UNICEF, “*Cifras de la Violencia hacia los Niños, Niñas y Adolescentes en el Perú*”. Accessible at: <https://www.unicef.org/peru/sites/unicef.org/peru/files/2019-09/cifras-violencia-ninas-ninos-adolescentes-peru-2019.pdf> (latest accessed 20-20-2020, available in Spanish only)



			<p>3. the victim lives in the same house as the offender or share common spaces of the same property.</p> <p>4. the victim is in a position of dependency or subordination towards the offender.</p> <p>5. the act was committed within the framework of a contractual relationship of work, education or training with the victim.</p> <p>6. When the acts was committed with the use of weapons or by joint-action of two and more persons</p> <p>7. the victim is less than fourteen years old.</p>			
8.a	Is rape by more than one perpetrator an aggravating circumstance?	Yes	Article 170			
8.b	Is rape of a particularly vulnerable individual an aggravating	Yes	Article 170  2. when, the offender abuse of his/her profession, science or trade or any position, charge or legal			





	<p>circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)</p>		<p>responsibility that gives the offender a duty of vigilance, custody or a particular authority over the victim or that compels the victim to trust the offender.</p> <p>3. when the offender has availed himself/herself of a superiority or relationship, due to being the ascendant, descendant, consanguant by adoption or affiliation, or spouse, ex- spouse, partner, or ex-partner, have or had developed a similar relationship with the victim; or have children with the victim; or live in the same household as the victim without contractual or labour relationships; or be a close relative to the fourth degree, biologically or by adoption or the second degree of kinship.</p> <p>4. when the acts are committed by a priest, or comparable representative of a religious or spiritual organisation with a particular influence on the victim.</p> <p>5. when the offender is the manager, instructor, assistant or administrative</p>			
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			<p>personnel in the education centre when the victim studies.</p> <p>6. when the offender has a contractual relationship with the victim based on the provision of services, or a working relationship, or when the victim provides the offender with services as a domestic worker.</p>			
8.c	Is rape by spouse or intimate partner an aggravating circumstance?	Yes	Article 170 paragraph 2.			
9	Does the law foresee mitigating circumstances for the purposes of punishment?	No	<p>The Article 22 of the Criminal Code establishes mitigating circumstances based on the age of the offender.</p> <p>It states as follows: “The sentence could be reduced prudentially when the offender is more than 18 years old and less than 21 years old or more than 75 years old when the offender committed the crime.” However, this is not</p>	In practice the Peruvian Supreme Court has reduced the sentence of imprisonment based on the criteria of “ <i>error of fact</i> ” <sup>21</sup> and the Article 15 of the Criminal Code on the protection of the cultural autonomy of indigenous people.		

<sup>21</sup> Corte Suprema de Justicia de la República, R.N.N. 2321-2014, Huánuco. Accessible at: <https://img.lpderecho.pe/wp-content/uploads/2018/02/Violación-de-menor-Irrelevancia-del-«consentimiento»-de-niña-de-11-años-para-tener-relaciones-R.N.-2321-2014-Huánuco.pdf> (latest accessed on 05-15-2020, available in Spanish only)



			applicable to those convicted of sexual crimes or femicide, among other crimes.			
10	Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?	No	There is no mediation/reconciliation mechanism established to settle a dispute between the victim and the offender.			
10.a	Regardless of the law, is reconciliation permitted in practice? and what is the practice in this regard?	No				
11	Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?	No				



	If the perpetrator marries the victim of rape? If the perpetrator loses his “socially dangerous” character or reconciles with the victim?					
<b>Prosecution</b>						
12	Is rape reported to the police prosecuted ex officio?	Yes				
13	Is rape reported to the police prosecuted ex parte?	No	Private prosecution is possible only for specific crimes such as defamation.			
14	Are plea bargain or “friendly settlement” of a case allowed in case of rape of women?	Not for sexual offences, but it is possible for people prosecuted for other crimes.	The article 471 of the Criminal Procedure Code states as follows: “the diminution of the sentence for plea bargain shall not be accepted when [...] the crime was qualified under the Chapter IX” of the Peruvian Criminal Code regulating the violations of sexual freedom.	The exclusion of sexual offenders from the benefits of a plea bargaining was first introduced by the Act N° 30838, from August 2018. Then, the Act N° 30963, from June 2019, reformed the text of article 471 to specifically exclude sexual offenders.		





15	Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children?	No				
16	Please provide information on the statute of limitations for prosecuting rape.		<p>The Article 80 of the Criminal Procedure Code states that “the penal action prescribes in a timeframe equal to the maximum of the sentence of the crime committed and established by law when it is a sentence of imprisonment”.</p> <p>The Article 80 also states that “the statute of limitation shall not be superior to twenty years. Concerning crimes condemned with life imprisonment, criminal proceedings extinct after thirty years”.</p> <p>The Article 81 establishes that “the statute of limitation shall be reduced by half when the offender was less than twenty-one years or more than</p>	<p>In 15 January 2018, the Supreme Court established that there was prescription concerning a case of continuous sexual abuses allegedly perpetrated against a 12 -year-old victim. The decision annulled the decision of the lower court condemning the defendant of seven years of imprisonment. Interestingly, the Supreme Court established that the statute of limitation started running from the day the crime was committed and not since the victim reached adulthood.<sup>22</sup></p>		

<sup>22</sup> Tribunal Supremo, Sala de lo Penal, Sentencia Núm.9/2018. Accessible at: <https://diariolaley.laleynext.es/content/Documento.aspx?params=H4sIAAAAAAAAAEAMtMSbH1CjUwMDAzMDI0MjJSK0stKs7Mz7Mty0xPzStJBfEz0yPd8pNDKgtSbdMSc4pT1RKtTivNzSktSQ4sybUOKSIMBJFratEUAAAA=WKE> (latest accessed on 05-17-2020, available in Spanish only)



			<p>seventy-five years old when the offender committed the crime”.</p> <p>The Article 82 states that the “statute of limitation of criminal proceedings starts running:</p> <ol style="list-style-type: none"> <li>1. when it is an attempt, since the day that the criminal activity ended.</li> <li>2. when it is an instantaneous crime, since the day that the crime was committed.</li> <li>3. when it is a continuous crime, since the day that the criminal activity ended.</li> <li>4. when the crime is permanent, since the day that the permanent aspect of the crime ended.”</li> </ol>			
17	Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?	No	No specific provisions are included for children victims of rape in the articles 80 and 82.	The draft version of the Act on the Comprehensive Protection of Children and Teenagers against Violence <sup>23</sup> includes a modification on the statute of limitation. The modification would allow the statute of limitation to start running after the victim is 30 years old.		

<sup>23</sup> Republica Del Perú, Proyecto de Ley Num. 2305/2017CR. Accessible at: [http://www.leyes.congreso.gob.pe/Documentos/2016\\_2021/Proyectos\\_de\\_Ley\\_y\\_de\\_Resoluciones\\_Legislativas/PL0230520180110..pdf](http://www.leyes.congreso.gob.pe/Documentos/2016_2021/Proyectos_de_Ley_y_de_Resoluciones_Legislativas/PL0230520180110..pdf) (latest accessed 05-17-2020, available in Spanish only)



				Should the law been approved, victims will be able to file a complaint until they reach 45 years old. <sup>24</sup>		
18	Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?	Yes	The Article 170 defines a coercive environment by the use of threats or violence.  However, the Plenary Agreement N° 1-2011/CJ-116 established that the resistance of the victim is not required to qualify the crime as rape. <sup>25</sup>	In practice, this is often associated with an obligation to submit evidence corroborating that the victim has been through a traumatic experience and suffers from psychological damages.  In the <i>Gutiérrez</i> case, the Supreme Court established that in a case of the allegations of rape through anal penetration, the victim should support his allegations based on evidence provided by a medical report. <sup>26</sup>	The Inter-American Court of Human Rights established that sexual abuse cases are not necessarily demonstrable after a medical exam (see: <i>Case J. vs Peru</i> , Judgement 27 November 2013, para 329).	
19	Are there rape shield provisions aimed at preventing judges and	Yes	Although no specific provisions are contained in the Criminal Procedure Code, the Plenary Agreement N° 1-2011/CJ-116 establishes that the sexual behavior of the victim cannot		According to the Inter-American Court of Human Rights, evidences exposing a woman's sexual history during a	

<sup>24</sup> J.M. Barjola, “Denunciar Delitos Sexuales una Vez Adulto, Cuándo Prescribe la Acción?”, Noticias de Actualidad, 2019. Accessible at: <http://noticias.juridicas.com/actualidad/noticias/14035-denunciar-delitos-sexuales-una-vez-adulto-iquest%3Bcuando-prescribe-la-accion/> (latest accessed on 05-17-2020, available in Spanish only)

<sup>25</sup> Corte Suprema de Justicia de la República, Acuerdo Plenario Numero 1-2011/116. Accessible at: <https://www.pj.gob.pe/wps/wcm/connect/10b3e2004075b5dcb483f499ab657107/ACUERDO+PLENARIO+N°+1-2011.pdf?MOD=AJPERES&CACHEID=10b3e2004075b5dcb483f499ab657107> (latest accessed 05-17-2020, available in Spanish only)

<sup>26</sup> Corte Suprema de Justicia de la República, Sala Penal Transitoria Recurso de Nulidad Numero 1844-2018 Lima Sur. Accessible at: [https://static.legis.pe/wp-content/uploads/2019/08/Recurso-de-nulidad-1844-2018-Lima-Legis.pe\\_.pdf](https://static.legis.pe/wp-content/uploads/2019/08/Recurso-de-nulidad-1844-2018-Lima-Legis.pe_.pdf) (latest accessed 05-17-2020, available in Spanish only)



	defense lawyers from exposing a woman's sexual history during trial?		be used to infer the consent of the victim to the criminal act		trial related to sexual abuse are inadmissible. <sup>27</sup>	
20	Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.	Yes	<p>The Act N° 27055 and the Act N° 27115 put several measures to avoid re-victimizations of minor victims.</p> <p>The Article 3.1 of the Act N°27115 promotes the protection of the identity of the victim during the criminal proceedings.<sup>28</sup></p> <p>The article 95.1.c of the Criminal Procedure Code states that when the acts was a violation of sexual freedom, the identity of the aggravated person shall be protected</p> <p>The article 194.2 of the Criminal Procedure Code states that “when the acts committed is a crime against sexual freedom, cross-examination of aggravated minors or of victims that could be psychologically impacted by it, is not required”.</p>	The standard process to denounce a case of sexual violence in Peru such as rape consists of submitting a complaint to the national police, going through a medical and psychological exam and then submitting a complaint to the tribunal. This process <i>de facto</i> obliges the victim to give her/his story several times.	The Inter-American Court of Human Rights established that it is not reasonable to request the victims of sexual violence to reiterate their testimonies each time that they turn to national authorities. (see <i>Case J vs. Peru</i> , para 351)	

<sup>27</sup> Inter-American Court of Human Rights, Case *Veliz Franco and others vs. Guatemala*, Judgment of 19 May 2014, para. 209

<sup>28</sup> Defensoría Del Pueblo, “*La Aplicación de la Justicia Penal Ante Casos de Violencia Sexual Perpetrados contra Niñas, Niños y Adolescentes*”. Accessible at: [http://www2.congreso.gob.pe/sicr/cendocbib/con3\\_uibd.nsf/CE02B1C2A68AB6AC052578CB006E3E25/\\$FILE/informe\\_126.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con3_uibd.nsf/CE02B1C2A68AB6AC052578CB006E3E25/$FILE/informe_126.pdf) (latest accessed 05-17-2020, available in Spanish only)



			<p>The article 242 of the Criminal Procedure Code establishes testimonies of children and teenagers based on allegations of acts committed in violation of the Chapter on Sexual Freedom in the criminal code will be recorded and conducted by psychologists, to avoid the re-victimization of victims.</p> <p>The Plenary Agreement N° 1-2011/CJ-116 established that special attention should be drawn to minors victim of rape. To avoid re-victimization during the criminal proceedings, the following rules should be respected: (i) reserve in acts performed during judicial proceedings; (ii) protection of the identity of the victim; (iii) promote and foster the only testimony of the victim. These rules are mandatory when the victim is a minor.<sup>29</sup></p>			
<b>War and/or Conflict</b>						

<sup>29</sup> Corte Supreme de Justicia de la República, Acuerdo Plenario Numero 1-2011/116. Accessible at: <https://www.pj.gob.pe/wps/wcm/connect/10b3e2004075b5dcb483f499ab657107/ACUERDO+PLENARIO+N°+1-2011.pdf?MOD=AJPERES&CACHEID=10b3e2004075b5dcb483f499ab657107> (latest accessed 05-17-2020, available in Spanish only)



21	Is rape criminalized as a war crime or crime against humanity?	Not in the criminal code	<p>Provisions on war crime and crime against humanity are included under Title XIV – A “Crime against Humanity”. There is no reference to sexual violence in this Chapter of the Peruvian Code.</p> <p>However, the article 170 establishes that when the sexual act is committed by the armed forces, this is an aggravated circumstance.</p>	<p>The case of <i>Manta and Vilca</i> reporting allegations of rape against more than 20 persons committed by Peruvian military officials during the civil war shows that a “systemic practice of rape” against part of the population was conducted by the military forces. The Prosecutor claims that the parties involved used sexual violence in a systematic and generalized way against civilians.<sup>30</sup></p>	<p>The IACHR referred for the first time of a case sexual violence within an armed conflict in the case <i>María Elena Loayza vs. Perú</i>. The case criminalized rape as a cruel, inhuman and humiliating treatment based on the article 5 of the Convention.</p> <p>In the case <i>Penal Miguel Castro Castro</i> in 2006<sup>31</sup>, the IACHR recognized the act of sexual penetration by the Peruvian armed forces during the conflict as an act torture.</p>	<p>The civil war started in 1980 and ended in 2000, it involved the government of Peru, the Peruvian Communist Party – Shining Path (<i>Sendero Luminoso</i>) and the Tupac Amaru Revolutionary Movement. The Quechua, Aymara populations were particularly impacted by the conflict, especially women.</p> <p>A total of 69,000 victims were reported during the armed conflict in Peru out of which only 500 victims came forward to report on sexual violence allegations. Most victims were</p>
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<sup>30</sup> Jerónimo Ríos, Roberto Brocate, “*Violencia Sexual Como Crimen de Lesa Humanidad: los casos de Guatemala y Perú*”. Accessible at: <http://www.corteidh.or.cr/tablas/r37874.pdf> (latest accessed 05-16-2020, available in Spanish only)

<sup>31</sup> Inter-American Court of Human Rights, *Case of Miguel Castro-Castro Prison vs. Peru*, Judgement of November 25, 2006. Accessible at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_160\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_160_ing.pdf) (latest accessed 05-16-2020)



						stigmatized and re-victimized during the process. <sup>32</sup>
22	Is there a statute of limitations for prosecuting rape in war or in conflict contexts?	No	See above			
23	Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?	No	See above			
24	Has the Rome Statute of the International Criminal Court (ICC) been ratified?	Yes	Peru signed the Rome Statute on 7 December 2000.  Peru deposited its instrument of ratification of the Rome Statute on 10 November 2001 <sup>33</sup>			

<sup>32</sup> Jerónimo Ríos, Roberto Brocate, “*Violencia Sexual Como Crimen de Lesa Humanidad: los casos de Guatemala y Perú*”. Accessible at: <http://www.corteidh.or.cr/tablas/r37874.pdf> (latest accessed 05-16-2020, available in Spanish only)

<sup>33</sup> See further information available at: [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/latin%20american%20and%20caribbean%20states/Pages/peru.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/latin%20american%20and%20caribbean%20states/Pages/peru.aspx) (latest accessed 05-16-2020)





## 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.

As illustrated in Table 1, although we can note a significant augmentation in the number of cases reported and the majority of cases reported did not lead to criminal convictions.

Table 1: Number of Cases Reported and Sentences Based on the Allegations of Rape per Year							
	2012	2013	2014	2015	2016	2017	2018
Number of cases reported based on rape allegations <sup>34</sup>	6172	5807	5614	5702	5683	7113	7789
Number of persons condemned based on rape allegations <sup>35</sup>	1894	2313	2171	2137	2656	3031	3237

As illustrated in Table 2, a total of 321 accused persons were part of the family of the victim. For the large majority of the accused, the imprisonment sentence was of less than a year.

Table 2: Timeframe of Prison Sentence Based on the Conviction of Rape in 2018 <sup>36</sup>						
Time prison	Less than a year	1-2 years	2-3 years	3-5 years	5-10 years	10-15 years
Number of persons	216	37	36	24	7	1

<sup>34</sup> INEI, see further information available at: [https://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitaes/Est/Lib1686/](https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitaes/Est/Lib1686/) (latest accessed on 05-17-2020, available in Spanish only)

<sup>35</sup> INEI, see further information available at: [https://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitaes/Est/Lib1686/](https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitaes/Est/Lib1686/) (latest accessed on 05-17-2020, available in Spanish only)

<sup>36</sup> INEI, see further information available at: [https://www.inei.gob.pe/media/MenuRecursivo/publicaciones\\_digitaes/Est/Lib1686/](https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitaes/Est/Lib1686/) (latest accessed on 05-17-2020, available in Spanish only)





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## 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.

In 2011, the Ombudsman Office led an investigation targeting Peruvian judges to reflect on gender-stereotypes. In her report, she highlighted the existence of preconceived ideas based on gender deeply rooted in Peruvian culture. For instance, an interviewed judge said that: “several times, we have to take into consideration the circumstances of the case, because these cases could be related to a desire of revenge from the victim”. Another respondent explained that: “it is not a question of honor and dignity for the victim, but for the offender.”<sup>37</sup>

Since then, Peru has enacted the Plenary Agreement N° 1-2011/CJ-116 that contains provisions to protect victims from gender-stereotyping. However, because these gender-based stereotypes are deeply anchored in Peruvian culture, it could prevent some victims to file a complaint with the local authorities. Indeed, the significant difference between the number of cases reported and the number of cases that led to criminal convictions illustrated in Table 1 could be explained by issues related to gender-stereotyping.

This is corroborated by a letter from the UN Human Rights Council Working Group on the issue of discrimination against women addressed to the government of Peru in 2014. The letter highlighted that the UN expert working group received “repeated complaints of mistreatment of women, based on gender stereotyping and prejudice, by police and officials of the justice system.”<sup>38</sup>

<sup>37</sup> Defensoría del Pueblo, “*Violencia Sexual en el Perú: Un Análisis de Casos Judiciales*”. Accessible at: <https://www.defensoria.gob.pe/wp-content/uploads/2018/05/informe-adjuntia-004-2011-DP-ADM.pdf> (latest accessed on 05-17-2020, available in Spanish only)

<sup>38</sup> OHCHR, “*UN Human Rights Council Working Group on the Issue of Discrimination against Women in Law and in Practice Concludes Country Visit to Peru*”, 19 September 2014. Accessible at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15078&LangID=E> (latest accessed 05-17-2020)