

E-mail: yaw@ohchr.org

WILDERS PLADS 8K
DK-1403 COPENHAGEN K
PHONE +45 3269 8888
SINL@HUMANRIGHTS.DK
HUMANRIGHTS.DK

CLICK OR TAP HERE TO ENTER
TEXT.

20 MAY 2020

CALL FOR SUBMISSIONS TO THE UN SRVAW THEMATIC REPORT ON RAPE AS A GRAVE AND SYSTEMATIC HUMAN RIGHTS VIOLATION AND GENDER-BASED VIOLENCE AGAINST WOMEN

The Danish Institute for Human Rights has completed the questionnaire on the criminalization and prosecution of rape in relation to the Danish Criminal Code.

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.**

The Danish Criminal Code:

§ 216(1): Rape is punishable with up to 8 years of imprisonment for the one who

- (1) Compels sexual intercourse with the use of violence or by threatening to use violence or
- (2) Obtains sexual intercourse with the use of another illegal coercion, cf. § 260, or with a person, who is in a condition or situation, in which the person in question, is unable to oppose the action.

§ 216(2): Rape is punishable with up to 12 years of imprisonment for the one who has sexual intercourse with a child under the age of 12.

§ 216(3): The punishment after the first section can rise up to 12 years of imprisonment if the rape has had a particularly dangerous character or there exist other particularly aggravating circumstances.

§ 216(4): In the stipulation of the punishment due weight must be given to the intrusion that relates to the offence.

§ 216(5): In the stipulation of the punishment it is in general considered as an aggravating circumstance that the injured party is a victim of human trafficking.

§ 81: In the stipulation of the punishment it is in general considered as an aggravating circumstance that

- 1) The perpetrator has committed the same crime before.
- 2) The crime is committed by more than one person.
- 3) The crime is particularly planned or part of organized crime.
- 4) It was the intention of the perpetrator that the crime got more serious consequences than it did.
- 5) The perpetrator has shown recklessness.
- 6) The crime is due to the other person's ethnicity, faith, sexual orientation or something similar.
- 7) The crime is due to the victim expressing his or her freedom of speech in a public debate.
- 8) The crime is committed while carrying out public service or office or misusing a position or a specific relationship of trust.
- 9) That the perpetrator forced another person to participate in the crime by use of coercion, fraud or exploitation of the other persons young age or serious economic or personal difficulties, lack of insight, naivety, recklessness or existing dependency.
- 10) The perpetrator participated in a crime committed by a child under the age of 15.
- 11) The perpetrator has exploited the injured party's defenseless position.
- 12) The perpetrator is in custody of the police.
- 13) The perpetrator is in custody of the police and commits the crime against the institution or a person who works there.
- 14) The motive is due to the injured party or his immediate associates working in public service or office.

§ 82: In the stipulation of the punishment it is in general considered as a mitigating circumstance that

- 1) The perpetrator was under the age of 18 when committing the crime.
- 2) The perpetrator is so old that it would be unnecessary or harmful that the normal sentence applies.
- 3) The crime is closely related to a provision concerning impunity.
- 4) The perpetrators trespassing the provision was due to an excusable ignorance about the said provision.
- 5) The crime is committed when the perpetrator was in an agitated state of mind and this state of mind is due to the injured party.
- 6) The crime is committed due to coercion, fraud or exploitation of the perpetrators young age or serious economic or personal

difficulties, lack of insight, naivety, recklessness or existing dependency.

- 7) The crime is committed due to a strong sense of empathy or emotion, or there are other particular circumstances about the perpetrators state of mind or the circumstances concerning the crime.
- 8) The perpetrator voluntarily prevented or sought to prevent the danger that relates to the crime that he or she has caused.
- 9) The perpetrator has turned himself in and confessed the crime completely.
- 10) The perpetrator has given information that is crucial to solving the crime that others have committed.
- 11) The perpetrator has restored or sought to restore the harm that relates to the crime that he or she has caused.
- 12) The perpetrator loses some of the rights in § 79 or is inflicted with other consequences that can be compared to a punishment
- 13) The criminal proceedings are not resolved in due time and it is not the fault of the perpetrator.
- 14) The crime was committed long time ago and it would be unnecessary for the normal sentence to apply.

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

- a. **Gender specific, covering women only. YES/NO**
 - i. No.
- b. **Based on the lack of consent of victim. YES/ NO**
 - i. No.
- c. **Based on the use of force or threat. YES/ NO**
 - i. Yes.
- d. **Some combination of the above. YES / NO. Please specify.**
 - i. No.
- e. **Does it cover only vaginal rape? YES /NO**
 - i. No
- f. **Does it cover all forms of penetration? YES/NO Please specify.**
 - i. No
 - ii. It covers vaginal and anal penetration. It does not cover "oral sex".
 - iii. "Oral sex" is considered as another form for "sexual relationship" and is not considered as sexual intercourse, cf. § 225 in the Danish Criminal Code.
- g. **Is marital rape in this provision explicitly included? YES / NO**
 - i. No
- h. **Is the law silent on marital rape? YES/NO**
 - i. Yes
- i. **Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**
 - i. Yes
- j. **Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO**

- i. No
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.**
 - a. It is not excluded.
4. **What is the legal age for sexual consent?**
 - a. 15 years.
5. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**
 - a. No
6. **Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**
 - a. Rape is punishable with up to 8 years of imprisonment
 - b. The sentence can rise to 12 years if the perpetrator rapes a child under the age of 12.
 - c. The sentence can rise to 12 years of imprisonment, if the rape has had a particularly dangerous character or there exist other particularly aggravating circumstances.
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?**
 - a. The victim of rape or another sexual offence can recover damages/receive a compensation.
 - b. Some conditions must be met before the victim can attain reparation. These conditions are that the victim must report the crime within 72 hours after it has taken place, and the victim must make a claim regarding damages during the court case, cf. § 10 in the Law on damages to victims of crimes (offererstatningsloven).

Aggravating and mitigating circumstances

8. **Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**
 - i. The aggravating circumstances are:
 1. Rape that has a particularly dangerous character or there exist other particularly aggravating circumstances (§ 216(3)).
 2. The injured party is a victim of human trafficking (§ 216(5)).
 3. The circumstances mentioned in § 81, see answer in question 1. Not all the aggravating circumstances are applicable to rape.

- b. **Is rape by more than one perpetrator an aggravating circumstance? YES/NO**
 - i. Yes.
 - c. **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**
 - i. Yes
 - d. **Is rape by spouse or intimate partner an aggravating circumstance? YES/NO**
 - i. No.
9. **Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.**
- a. Yes.
 - b. The mitigating circumstances are:
 - i. If the perpetrator does not know that the victim is in a condition or is an age, and the perpetrators ignorance is not intentional, the punishment can be proportionately lesser, however, the perpetrators action must be due to negligence (§ 228 in the criminal code)
 - ii. The circumstances mentioned in § 82, see answer in question 1. Not all the mitigating circumstances are applicable to rape.
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?**
- i. No.
 - ii. The victim and the perpetrator can participate in a victim-offender mediation session (konfliktråd). A victim-offender mediation session is a meeting between the victim and the perpetrator and there is a mediator at the meeting. The mediator's job is to assist the parties' conversation concerning the crime and the mediator can assist them in drafting an agreement.
 - iii. A victim-offender mediation session can only be held if both parties consent to it. The perpetrator must confess to the essential parts of the offence.
 - iv. The victim-offender mediation session does not entail that the criminal procedure will be waived. They are independent of one another.
- b. **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**
- i. Yes.
11. **Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.**
- i. No

- b. **if the perpetrator marries the victim of rape? YES/NO**
 - i. No
- c. **if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NO**
 - i. No.

Prosecution

- 12. **Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO**
 - a. Yes
- 13. **Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**
 - a. No.
- 14. **Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES/NO**
 - a. No.
- 15. **Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO**
 - a. No.
- 16. **Please provide information on the statute of limitations for prosecuting rape.**
 - a. There are none, unless the case is deemed obsolete.
 - b. Rape is deemed obsolete if it is not reported within 10 years after it has taken place, cf. § 93(1)(3) in The Danish Criminal Code
- 17. **What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?**
 - a. If a child (a person under the age of 18) was raped he or she can report the crime at any time during adulthood because the statutes concerning obsolescence does not apply to children, cf. § 93b (2) in The Danish Criminal Code.
- 18. **Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES/NO If yes, please specify.**
 - a. No.
- 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?**
 - a. There are none.
- 20. **What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.**
 - a. There are none.

War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity?
YES/NO
- a. Yes, cf. ICC, article 8(xxii).
22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO
- a. No.
23. Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO
- a. No.
24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO
- a. Yes.

Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.
- a. **Cases were rape was reported¹:**
 - i. **2019:** 1.094 (646)²
 - ii. **2018:** 1.079 (615)
 - iii. **2017:** 944 (536)
 - iv. **2016:** 791 (443)
 - v. **2015:** 480 (327)
 - b. **Cases were rape was prosecuted³:**
 - i. **2019:** 493
 - ii. **2018:** 495
 - iii. **2017:** 423
 - iv. **2016:** 340
 - v. **2015:** 233
 - c. **Cases were raped was sanctioned⁴:**
 - i. **2019:**79
 - ii. **2018:** 77
 - iii. **2017:** 94
 - iv. **2016:** 71
 - v. **2015:** 57

¹ Statistics Denmark, available in Danish at: https://www.statistikbanken.dk/statbank5a/SelectVarVal/Define.asp?MainTable=STR_AF20&PLanguage=0&PXSID=0&wsid=cftree

² The first numbers show all the reported cases. The numbers in parenthesis show those cases that were reported and where there was filed preliminary charges against the perpetrator.

³ Statistics Denmark, available in Danish at: <https://www.statistikbanken.dk/10061>

⁴ Statistics Denmark, available in Danish at: <https://www.statistikbanken.dk/10061>

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.**

- a. In Denmark the provision on rape is based on coercion. The provision has been criticized because the burden of proof is difficult to satisfy.
- b. The section on rape will be amended. The Danish Prime Minister has said that the amendment must be based on consent.⁵

Yours sincerely,

Sinja Laursen

LEGAL ADVISOR

⁵ The Danish Broadcasting Corporation, Mette Frederiksen states: New provision on rape must be based on consent (*Mette Frederiksen slår fast: Ny voldtægtslov skal basere sig på samtykke*), available in Danish at: <https://www.dr.dk/nyheder/politik/mette-frederiksen-slaar-fast-ny-voldtægtslov-skal-basere-sig-paa-samtykke>