**UN special rapporteur on violence against women, its causes and consequences**

**questionnaire: rape as a grave and systematic human rights violation and gender-based violence against women**

**BELGIUM**

**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.**

Criminal Code - Article 375

Any act of sexual penetration, regardless of its nature and by whatever means, committed against a non-consenting person, represents a crime of rape. Consent is not considered to have been given, if the crime is committed by violence, coercion or deceit, or is made possible by the infirmity or physical or mental impairment of the victim.

The Law of 4 July 1989 amending certain provisions concerning the crime of rape has broadened the definition of rape. Marital rape is forbidden and condemned by the law in the same way as other forms of rape: it represents an aggravating circumstance in cases of rape.

*Art.375. Any act of sexual penetration, regardless of its nature and by whatever means, committed against a non-consenting person, represents a crime of rape.*

*There is no consent, in particular when the act has been imposed by violence, coercion, threat, surprise or deceit, or is made possible by the infirmity or physical or mental impairment of the victim.*

*Anyone who commits the crime of rape shall be punished by imprisonment of between five and ten years.*

*If the crime has been committed against a minor over the age of sixteen, the perpetrator shall be punished by imprisonment for a term of ten to fifteen years.*

*If the crime has been committed against a child over 14 and under 16 years of age, the offender shall be punished by imprisonment for a term of 15 to 20 years.*

*Rape with violence shall be deemed to be any act of sexual penetration, of whatever nature and by whatever means, committed in the person of a child who has not attained the age of fourteen years. In this case, the penalty shall be imprisonment for 15 to 20 years.*

*It shall be imprisonment from twenty years to thirty years if the child was less than ten years of age.*

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

a. Gender specific, covering women only ~~YES~~/**NO**

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

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

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

e. Some combination of the above. **YES** / ~~NO~~

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

g. Does it cover all forms of penetration? **YES**/~~NO~~. Any penetration (whether vaginal, anal or oral) by means of a part of the perpetrator's body or an object.

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

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

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

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

**3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship?**

NO.

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

Rape is used to refer to any sexual intercourse with a young person under the age of 16, i.e. a sexual minor, whether or not there is consent. However, the legal framework provides for an exception: if a young person between 14 and 16 years of age consents "voluntarily and consciously" to have sexual relations, this is not considered rape, even though he/she is a minor, but rather an indecent assault.

**5. Are there provisions that differentiate for sexual activity between peers?** NO.

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

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Rape with violence shall be deemed to be any act of sexual penetration, of whatever nature and by whatever means, committed in the person of a child who has not attained the age of fourteen years. In this case, the penalty shall be imprisonment for 15 to 20 years.

It shall be imprisonment from twenty years to thirty years if the child was less than ten years of age.

**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?**

This claim can be made through a civil action brought either before the criminal court or the civil court.

If the court declares the civil action well-founded, the author will be ordered to compensate for the damage by paying compensation for the loss suffered within the limits set by the court.

If the public prosecutor decides to bring the case before the criminal court, the victim may conduct the civil action in parallel with the public action. However, he or she must be a civil party.

The victim may bring the civil action before the civil court if, for example, he or she did not intervene in the criminal trial or if the case was dismissed.

In the civil court, the victim must prove the fault committed by the offender. Moreover, if a trial is pending before the criminal court, the civil judge will have to wait until the case is closed before giving a decision.

If the facts concern intentional acts of violence and the victim cannot obtain sufficient compensation for the damage (e.g. because the perpetrator is unknown), the "Commission for Financial Assistance to Victims of Intentional Acts of Violence and Occasional Rescuers" may, in certain cases and under certain conditions, grant financial assistance.

**Aggravating and mitigating circumstances**

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

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

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~~

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

**9. Does the law foresee mitigating circumstances for the purposes of punishment?** ~~YES~~/**NO**

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response?** ~~YES~~/**NO**

a. Regardless of the law, is reconciliation permitted in practice? ~~YES~~/**NO**

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?** ~~YES~~/**NO**

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

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

**Prosecution**

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

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

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

Criminal mediation is possible (Article 216 ter of the Criminal Investigation Code). It is a voluntary procedure. It requires the agreement and active participation of all parties. It is the public prosecutor who can propose penal mediation. This procedure is only for adult offenders. It represents less than 0.5% of the processing of rape cases.

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

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

|  |  |  |
| --- | --- | --- |
|  | Age of the victim at the time of the incidents | Limitation period for public action |
| Rape or indecent assault causing the death of the victim | Under 18 years  | No limitation period |
| Rape or indecent assault causing the death of the victim | Over 18 years  | 15 years |
| Rape or indecent assault | Under 18 years | No limitation period |
| Rape | Over 18 years | 10 years |

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

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?** ~~YES~~/**NO**

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

Article 190 of the Code of Criminal Investigation provides for the possibility of derogation from the principle of public hearings. The provision expressly provides for this for victims of certain sexual offences, such as rape or indecent assault, who may require a hearing in camera. The judge may also order the hearing in camera to be held in the interest of a minor or when the protection of the privacy of the parties requires so. Article 190bis of the same Code provides for the possibility of a minor witness to be heard by videoconference in a separate room unless he or she wishes to testify at the hearing. The court can in any case limit or exclude visual contact between the minor and the defendant. According to Article 378 of the Criminal Code, the publication and dissemination of written, visual or audio material of such a nature as to reveal the identity of the victim of sexual violence is prohibited except with the consent of the victim or for the purposes of the investigation. A circular also provides for this with regard to information transmitted to the press. It further specifies that no details that could lead to secondary victimisation of the victim and his or her relatives may be given and that care must be taken to ensure that they do not learn directly from the press about certain sensitive facts or elements of the case file that concern them. The press may be asked not to reveal the identity of the victim if it appears to be aware of it, pending information from the authorities. Articles 54 and 56 of the Code of Ethics for Police Services also require them to respect and protect, in the performance of their duties, the private life of citizens and staff members, in particular by avoiding unnecessary intrusion and refraining from improper curiosity or indiscretion. Finally, an accused person's request to appear in open court may be refused if such disclosure is likely to prejudice the interests of justice by reason of the dangers it entails for the safety of victims or witnesses.

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

The Joint Circular of the Minister of Justice and the College of Public Prosecutors at the Courts of Appeal on the reception of victims in public prosecutor's offices and courts (COL 16/2012) is part of the policy in favour of victims developed and implemented by the authorities. Its aim is, on the one hand, to enable the victim to overcome his or her trauma and to restore a new balance as quickly as possible. On the other hand, to avoid secondary victimisation that may result from judicial intervention by doing everything possible to ensure that the trauma caused by the offence itself is not compounded or aggravated by the fact that the case is being handled by the police, the courts or any other intervening party. This COL 16/2012 contains guidelines and cooperation agreements focusing on the reception of victims of all crimes in courts and public prosecutor's offices, and although it is therefore not specifically addressed to victims of rape, it constitutes the general basis on which the specific scheme is developed.

The ministerial directive on sexual assault (SAS) is intended for magistrates in public prosecutor's offices and the police (and investigating judges for their information). Its aim is to standardise the findings relating to acts of rape or indecent assault. It also aims to optimise the collection, in the best possible conditions, of material traces that can help to demonstrate the potential involvement of a suspect by determining the genetic profile of the perpetrator on the basis of the analysis of the DNA contained in the samples. Finally, it aims to limit the psychological disruption caused by the sexual assault and to avoid any secondary victimisation, and to provide the victim and her relatives with the necessary attention and assistance throughout the procedure. Particular attention is paid to minors.

A revision of this directive (COL 4/2017) has contributed in particular to improving the conclusion of cooperation protocols between public prosecutors' offices and hospitals and to strengthening their influence in medical circles. To this end, the lists of doctors or hospital services likely to be required to examine the victim must be regularly updated. The closing of the physical examination has been reviewed in order to clarify the role of each intervener. In addition, the use of the detailed inventory of exhibits has been systematised in order to accurately identify the exhibits and reduce secondary victimisation linked to their restitution.

**War and/or conflict**

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

Article 136 quinquies and 136 septies of the criminal code.

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

Article 136 ter of the criminal code.

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

Article 92 of the criminal code.

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

Belgium ratified the Rome Statute on 28 June 2000.

**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.**

***Number of complaints recorded (completed and attempted) by the police in relation to rape, during the years 2016 to 2019 at the national level***

|  |  |  |  |
| --- | --- | --- | --- |
| ***2016*** | ***2017*** | ***2018*** | ***2019*** |
| *3.443* | *3.673* | *3.643* | *3.532* |

*Source : statistiques policières de criminalité.*

***Number of rape cases that entered the correctional prosecutor's offices in Belgium in the years 2016 to 2019***

|  |  |  |  |
| --- | --- | --- | --- |
| ***2016*** | ***2017*** | ***2018*** | ***2019*** |
| *3.771* | *4.098* | *4.275* | *4.653* |

*Source : banque de données du Collège des Procureurs généraux – Analystes statistiques.*

**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.**

Unfortunately, sexual violence is still widespread in Belgium, at all levels of the population, and continues to be haunted by a considerable ‘dark number’. No less than 90% of the victims of sexual violence do not go to the police, for various reasons. The consequences for the victims are nevertheless considerable. Being confronted with sexual violence is a traumatic experience with far reaching physical and psychological consequences.

The Istanbul Convention emphasises the need for multidisciplinary centres that offer primary care for victims of sexual violence. These centres are specialised in offering acute primary care, forensic analysis, trauma care and aid to victims. For this reason, Belgium has commissioned a feasibility study that has looked into the establishment of ‘sexual assault centres’ (SACs) throughout Belgium.

In November 2017, three SACs opened in Ghent, Brussels and Liège. A collaboration agreement was concluded by the SACS with the hospital, the police zone and the public prosecutor's office concerned. A number of training sessions were organised in this context. 68% of the victims who came to the SAC filed a complaint with the police, much more than usual in cases of sexual violence. The fact that the SAC concentrates all the help in one place helps victims to take the step to file a complaint. The SACs are very much appreciated by the victims they take care of. The vast majority of victims appreciate the expertise and care provided by the forensic nurses, specially trained morality inspectors, psychologists and case managers. Victims are satisfied that they can turn to one place for everything.

In view of the great success of the SACs, the Federal State decided in June 2020 to extend their number from 3 to 10. Thus, in addition to the SACs in Ghent, Brussels and Liège, SACs will be set up throughout the country.

**Additional information** ([source](https://www.violencessexuelles.be/sites/default/files/bestanden/EN%20Guide%20for%20significant%20others%20victims%20of%20sexual%20violence_0.pdf)[[1]](#footnote-1))

A Sexual Assault Centre (SAC) is a service in a few hospitals (starting in University Hospital Ghent, UMC Sint-Pieter in Brussels and the UMC Liege) where every victim of sexual violence can seek help, at any time and on any day. The victim can receive the following care at the SAC:

* Medical care: both care for bruises and injuries, and examinations and treatments for physical, sexual or reproductive concerns.
* Psychological care: the first psychological care (both a listening ear and an explanation of normal reactions after a shocking event, and advice on how to deal with this) and further guidance from the SAC psychologist.
* Forensic examination: determining injuries, examination for traces of the perpetrator, gathering evidence for a possible charge and lawsuit.
* Filing a complaint to the police if wished, with the help of specially trained vice inspectors.
* Follow-up afterwards: both medical follow-up for possible medication or for injuries, and psychological follow-up during the processing phase of the event.

It has been proven that victims who receive this comprehensive care after sexual violence have a greater chance of recovery, of faster recovery and less chance of becoming a victim again.

At the Belgian SACs, you receive this care by specially trained forensic nurses who cooperate with and are supported by specialists such as emergency doctors, gynaecologists, urologists, paediatricians, geriatricians, psychiatrists and specially trained SAC psychologists. Significant others who come along with a victim can also contact the forensic nurse for first relief, explanation and advice.

What the SAC can do for a victim depends on how long ago the sexual violence took place:

* If the sexual violence took place less than 72 hours ago, a victim can go to the SAC, call or email and he/she can immediately receive the necessary care. If the victim wishes to do so, he/she can also file a complaint with the police vice-inspectors at the SAC.
* If the sexual violence took place more than 72 hours ago but less than a month ago, then a victim can call or email for an appointment. There will be an investigation to find out what is still possible in terms of medical and psychological care and forensic investigation and who can offer each type of care best. An appointment can be made for the filing of a complaint at the police station or the SAC.
* If it happened more than a month ago, it is better to make an appointment. It will be determined what medical and psychological care is needed and, if possible, the victim is referred to support available. An appointment can also be made with the police for the filing a complaint.
1. <https://www.violencessexuelles.be/sites/default/files/bestanden/EN%20Guide%20for%20significant%20others%20victims%20of%20sexual%20violence_0.pdf> [↑](#footnote-ref-1)