

Questionnaire on criminalization and prosecution of rape

Definition and scope on 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 relevant articles are attached.

2. Based on the wording of those provisions, is the provided definition of rape :
 - a. Gender specific, covering women only **NO**
 - b. Gender neutral, covering all persons **YES**
 - c. Based on the lack of consent of victim **YES**
 - d. Based on the use of force or threat **YES**
 - e. Some combination of the above **YES**. If yes, please specify.

Art. 375.

Any act of sexual penetration , of whatever nature, by any means whatsoever, committed on a person who does not consent, including using violence or serious threats , by ruse or artifice, or abusing a person incapable of giving free consent or to oppose resistance, constitutes rape and shall be punished with imprisonment from five to ten years.

- f. Does it cover only vaginal rape ? **NO**
- g. Does it over all forms of penetration ? **YES**. If yes, please specify.

“Any act of sexual penetration, of whatever nature, by any means whatsoever” which means that the material element of rape is constituted by any act of sexual penetration by sex or another object, whether penetration is vaginal, anal or oral.

- h. Is marital rape in this provision explicitly included ? **YES**

It ranges as aggravating circumstance.

- i. Is the law silent on marital law ? **NO**
 - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included ? **NO**
 - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime ? **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 ? If so, please submit it with corresponding translations. **NO**
 4. What is the legal age for sexual consent? **16.**
 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.

The relevant articles regarding criminal sanctions are attached.

7. What does the legislation in your country provide in terms of reparations to the victim of rape and/or sexual violence after conviction of the perpetrator?

During the trial, the victim is entitled to join a civil action on ongoing criminal proceedings and to claim damages. The court will decide whether, and to what extent, to award damages. After conviction and in case of non-payment by the offender, the victim can additionally apply for compensation from the State as stated in the amended law of 12 March 1984 on compensation to victims who have suffered injuries resulting from crime. The victim of a rape or another non-consensual act of sexual nature does not need to prove a physical or mental damage, which is presumed, but the victim must have been unable to obtain full or adequate compensation by another source.

Aggravating and mitigating circumstances

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

Yes, the relevant articles are attached.

- a. Is rape by more than one perpetrator an aggravating circumstance? **YES**
 - 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**
 - 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**

Articles 73 to 79 of the Criminal Code do foresee mitigating circumstances for the purposes of punishment.

- a. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? **NO**
- b. Regardless of the law, is reconciliation permitted in practice?

The public investigation may not be stopped by the withdrawal of the accusation or the complaint.

10. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? **NO**
- a. If the perpetrator marries the victim of rape ? **NO**
 - b. If the perpetrator loses his “socially dangerous” character or reconciles with the victim? **NO**

Prosecution

11. Is rape reported to the police prosecuted ex officio (public prosecution)? **YES**
12. Is rape reported to the police prosecuted ex parte (private prosecution)? **NO**
13. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women ? **YES**
14. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children ? **YES**

The articles 563 to 578 of the Criminal procedure code concern the possibility of a consent judgment (jugement sur accord). Introduced by the law of 24 February 2015, either the public prosecutor or the accused person can suggest to use this kind of procedure and no crimes are excluded from it. In practice, however, this procedure is quite rarely used. To this day, it has never been used in a case of rape.

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

Rape is classified as a crime by the Criminal Code and the limitation period is, in principle, ten years. It starts on the day on which the rape has been committed. However, if the victim of the rape is a child, the limitation period of ten years only starts to run at the victim's majority – 18 years. (Article 637 of the Criminal Procedure Code).

16. Which are the provisions allowing a child who was the victim of rape and report it after reaching adulthood, if any ? **YES**

See answer to question 5 : the limitation period only starts to run at the majority of the victim.

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

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

During a trial, the presiding judge decides whether a question, which a defense lawyer or the prosecutor wants to ask a witness, is relevant or not. The judge could forbid questions on the sexual history of the victim if he thinks that these are not relevant for the finding of the truth concerning the rape case in question.

In principle, the public is admitted to court hearings, also in rape cases. However, it is possible to exclude the public from the court room during the hearing of a witness (for instance the victim of the rape). The court must decide this in a specific sentence. (Art. 190 of the Criminal Procedure Code)

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

The statement of any witness, and also that of the victim of a rape, can be recorded by video. If the victim of the rape is a child, the video-recording is mandatory (Art. 48-1 of the Criminal Procedure Code). During the trial, the video-recording can be shown in court, so that the witness does not have to appear before the court (Art. 158-1 of the Criminal Procedure Code). If the court wants to hear the witness anyways, it has to take a specific decision.

War and/or conflict

20. Is rape criminalized as a war crime or crime against humanity ? **YES**

21. Is there a statute of limitations for prosecuting rape in war or in conflict contexts ? **NO**

22. Is there explicit provisions excluding statutes of limitation of rape committed during war and armed conflict ? **YES**

23. Has the Rome Statute of the International Criminal Court (ICC) been ratified ? **YES**

Data

24. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

1. *New cases*

Overview 11 : Number of rape cases processed by the district prosecutors' offices per year

	2015	2016	2017	2018	2019
Diekirch	12	16	21	21	22
Luxembourg	75	91	59	73	129
Total	87	107	80	94	151

2. *Prosecution*

Overview 2 : Number of rape cases per year prosecuted before the district's courts

	2015	2016	2017	2018	2019
Diekirch	6	3	11	9	5
Luxembourg	25	34	25	16	39
Total	31	37	36	25	44

3. *Convictions*

Overview 3 : Number of rape convictions per year

	2015	2016	2017	2018	2019
Court of Cassation LUXEMBOURG	1	0	2	1	3
Court of Appeal LUXEMBOURG	1	3	6	3	2
Criminal chamber of the District Court LUXEMBOURG	0	1	2	3	6
Criminal chamber of the District Court DIEKIRCH	0	1	0	2	0
Correctional chamber of the District Court LUXEMBOURG	5	4	0	2	3
Correctional chamber of the District Court DIEKIRCH	0	0	1	0	0
Total	7	9	11	11	14

Other

25. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

There are no such barriers known in procedural criminal law, nor in the social context.