

Response of the Dutch government to a questionnaire, composed by the Special Rapporteur on Violence against Women, its causes and consequences (United Nations)

February 2, 2021

Abbreviations used:

DPC Dutch Penal Code
DCPP Dutch Code of Penal Procedure

Question	Answer	Additional information
1		<p>The general rape provision in the Dutch Penal Code can be found in Article 242. This document – and the answers to the questions in the survey – will be primarily addressed from this provision’s point of view. Article 242 reads as follows:</p> <p>Section 242 <i>Any person who by an act of violence or any other act or by threat of violence or threat of any other act compels a person to submit to acts comprising or including sexual penetration of the body shall be guilty of rape and shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category</i></p> <p>When it comes to minors specific provisions may apply, such as Articles 244 and 245 DPC:</p> <p>Section 244 <i>Any person who engages in acts comprising or including sexual penetration of the body with a person who is under the age of twelve years, shall be liable to a term of imprisonment not exceeding twelve years or a fine of the fifth category.</i></p> <p>Section 245 <i>Any person who, out of wedlock, engages in lewd acts comprising or including sexual penetration of the body with a person who has reached the age of twelve years but not yet sixteen years, shall be liable to a term of imprisonment not exceeding eight years or a fine of the fifth category.</i></p> <p>*It should be noted here that the Dutch Minister of Justice and Security has proposed a thorough revision of the crimes concerning sexual violence, including the criminalization of rape. A Draft Bill will, for consultation purposes, be published in the Spring of 2021.</p>
2a	No	
2b	Yes	

2c	Yes	In the specific provisions applying to minors, 'lack of consent' is not a mandatory requirement for rape. When it comes to adolescents, any act or threat of an act compelling a person to sexual penetration – meaning thus that there is lack of consent by the victim to this action -, constitutes rape.
2d	Yes	
2e	Yes	The definition of rape in Article 242 DCP is based on the use of either threat, an act of violence or any other act to compel a person.
2f	No	
2g	Yes	The rape provision does not specify different types of sexual penetration. The provision covers a broad category of acts of sexual penetration in general.
2h	No	Marital rape falls within the scope of the Dutch rape provision. However this form of rape is not explicitly mentioned in the text of the article.
2i	No	No, marital rape falls within the scope of the rape provision in Article 242
2j	Yes	
2k	No	
3	No	
4		The legal age of sexual consent is sixteen years.
5	No	No explicit provisions are in place that differentiate for sexual activity between peers. However, in cases regarding unlawful sexual activity between minors, the criminal judge has the possibility to apply the so-called 'judicial pardon', leading to the impunity of the minor defendant. In most of these cases, it must be established that the sexual activity that occurred between the minors can only be conceived as evident 'sexual experimental behavior'.
6		The maximum sentence for the form of rape criminalized in Article 242 DPC is twelve years of imprisonment or a maximum fine of the fifth category, i.e. EUR 87.000. Imposing community service as a sanction is not allowed since rape is a crime threatened with a maximum sentence of twelve years of imprisonment (Article 22b DPC).
7		Victims in the Netherlands have the possibility to apply for compensation in the context of the criminal proceedings against the perpetrator. The decision on compensation has a civil legal character but is decided upon by the criminal judge simultaneously to the decision in the criminal case against the perpetrator. Therefore, the application by the victim will be dealt with by the criminal judge during the hearings of the court in the criminal case. During the hearing, a victim can be represented or supported by his/her own lawyer. It is very common that the criminal judge also imposes the compensation measure (<i>schadevergoedingsmaatregel</i>), whereby the State will become responsible for the execution (i.e. collecting the money from the perpetrator). Furthermore, the law grants victims of sexual and violent crimes the right to 'payment in advance'; the State will pay the victim the full amount of compensation (Article 6:4:8, Paragraph 3, Dutch Code of Penal Procedure).
8		
8a	Yes	
8b	Yes	
8c	No	
9	No	
10	Yes	Restorative justice can be used during a criminal case. The most important forms are mediation in criminal cases and victim offender mediation. Mediation in criminal matters is a referral facility. Judge and Public Prosecutor can refer those involved. Lawyers for suspects and victims can make a request for this. The court's mediation bureau contacts the suspect and the

		<p>victim to fully inform them and checks the commitment of the parties. The suspect must acknowledge the facts underlying the case. The mediation then takes place in the secure area of the courthouse under the guidance of two specially trained criminal mediators, who are linked to the case by the court's mediation office. Mediation in criminal cases focuses on recovery from both emotional and material consequences of a criminal offense. Agreements made during the mediation (eg about damage, contact or location prohibition) are, if desired, recorded in a written agreement, which is signed by the parties. This will be added to the criminal file. The state of affairs in Mediation in criminal cases can be viewed at https://www.rechtspraak.nl/English/Pages/mediation.aspx</p> <p>Mediation is used in various sex offenses, including rape cases, although to a limited extent. The guiding principle is whether the victim needs it, participation is voluntary and remains throughout the entire process on the basis of voluntary consent that can be withdrawn at any time.</p> <p>Recovery mediation involves mediation discussions that are aimed at emotional recovery and are separate from criminal proceedings. The parties will enter into discussions on a voluntary basis under the leadership of an independent third party - the recovery mediator. In principle, recovery mediation can be conducted at any time desired by the parties. In all cases, voluntary action is central to the use of restorative justice and victims' rights must be guaranteed.</p> <p>Article 51h of the Dutch Code of Penal Procedure and Articles 17 and 18 of the Victims of Criminal Offenses Decree form the legal framework. Article 51h states that the Public Prosecution Service promotes the use of mediation (read: restorative justice), provided the victim agrees. It has also been laid down that if the mediation (read: mediation in criminal cases) has resulted in an agreement between victim and suspect, the judge will take this into account when imposing a punishment / measure. The way in which the court takes into account the final agreement from mediation is entirely up to the judgment of the court, which will consider the outcome in the light of all other facts and circumstances. the suspect or convicted person has acknowledged the facts underlying the case; Articles 17 and 19 of the Victims of Criminal Offenses Decree contain guarantees for the rights of the victim and requirements with which restorative justice provisions must comply.</p> <p>Since the beginning of 2020, the "Policy Framework for Restorative Justice Provisions During Criminal Proceedings" has been in force. This policy framework describes which restorative justice facilities are available during criminal proceedings, under what conditions and with what consequences.</p>
11		In general, in the Netherlands public prosecutors have discretionary powers to refrain from prosecution in the general interest. There is no specific non-prosecution provision for rape cases.
11a	No	
11b	No	
12	Yes	
13	No	The Dutch criminal law system does not consist of forms of privately instigated prosecution
14	No	The Dutch criminal law system does not contain a legal figure of plea bargaining
15	No	The Dutch criminal law system does not contain a legal figure of plea bargaining
16		There are no limitations in time to the prosecution in rape cases

17		In general, pursuant to Article 161 Dutch Code of Penal Procedure (DCPP), citizens are allowed to file a complaint with the police, regardless of their age and the period in which the alleged crime took place. As mentioned, there are also no limitations in time to the prosecution in rape; rape is not subject to prescription.															
18	No	Other than the general evidentiary rules and requirements (such as the principle of "unus testis nullus testis") Dutch law does not require specific mandatory requirements for the proof of the crime of rape.															
19																	
20	Yes	<p>The Guideline on Sexual Violence from the Dutch Prosecutors Office (2016A004) contains the framework and the rules for the criminal law approach to cases of sexual violence. This framework is aimed at preventing secondary victimisation and its rules derive from the EU Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.</p> <p>The Guideline obliges criminal justice organisations to prevent and/or mitigate secondary victimisation at the side of the victim and aims at a predictable and transparent criminal procedure, so that victims feel 'in control' during the criminal proceedings against the perpetrator. A useful instrument is the so-called 'victim conversation' between prosecutor and victim; this meeting is used to inform the victim on the (progress) of the criminal procedure and prepares the victim for the court hearing(s).</p> <p>When a decision should be made about hearing a victim as a witness, all relevant interests are being weighed, such as the protection of the victims' personal integrity, his safety and health and the right of the defendant to a fair trial. Interrogations of victims should be executed without unduly delay and the number of hearings should be limited. Policies are aimed at avoiding or limiting visual contact between victim and defendant, even if the victim has to be present as a witness during the public court hearing. It should also be noted that questions on the victims private life or about the person of the victim are avoided.</p>															
21	No																
22	Not applicable																
23	Not applicable																
24	Yes																
25		<p>Reports, number of prosecutions and number of adjudicated rape cases (Article 242 DPC)</p> <table border="1"> <thead> <tr> <th></th> <th>Number of official reports to the police</th> <th>Number of prosecutions</th> <th>Number of adjudicated cases (in first instance)</th> <th>Number of adjudicated cases (in first instance) in which rape was proven</th> </tr> </thead> <tbody> <tr> <td>2019</td> <td>730</td> <td>253</td> <td>226</td> <td>154</td> </tr> <tr> <td>2020 (January-September)</td> <td>525</td> <td>175</td> <td>133</td> <td>76</td> </tr> </tbody> </table> <p>*The numbers in this table can not be compared. Cases prosecuted in 2019 or 2020, could be reported in other years. An official report to the police may later be followed by a prosecution for other crimes than the crime of rape. Furthermore, an investigation or prosecution can also be instigated without official report to the police.</p>		Number of official reports to the police	Number of prosecutions	Number of adjudicated cases (in first instance)	Number of adjudicated cases (in first instance) in which rape was proven	2019	730	253	226	154	2020 (January-September)	525	175	133	76
	Number of official reports to the police	Number of prosecutions	Number of adjudicated cases (in first instance)	Number of adjudicated cases (in first instance) in which rape was proven													
2019	730	253	226	154													
2020 (January-September)	525	175	133	76													

