

11. Is there any provision in the Criminal Code that allows for non-prosecution of the perpetrator? If so, please specify.

a. If the perpetrator marries the rape victim? NO.

b. If the perpetrator loses his or her "socially dangerous character" or reconciles with the victim. It should be clarified that a conviction or a not-guilty verdict at trial does not depend on the quality of "socially dangerous". It depends on the evidence that could have been produced before the trial court in compliance with the principles of the oral proceedings. Hence, the answer to both of the assumptions raised in this section is "NO" (we have already addressed the issue of reconciliation above).

However, only if the indicted/accused is declared legally not liable when he or she committed the crime (cf. Article 38: "Any person who, at the time of the act or omission, does not have full capacity to understand the unlawful nature of the act, acts with diminished liability) or becomes legally not liable during the proceedings for any mental pathology, as determined by a forensic psychiatrist from the Institute of Legal Medicine, is prosecuted in the same way but always in the company of a *guardian ad litem* and his or her defence. If guilt is proven, the judge applies a security measure in a Mental Health Hospital for the time that his or her treatment takes, having periodically his or her family doctor to send reports to the Court about his or her condition. Once discharged, his or her release from prison may be considered. In our experience, perpetrators remain within the walls of mental health facilities for years. If acquitted, he or she is released, however, we know that the risk he or she poses to the *guardian ad litem* is serious and the *guardian ad litem* usually seeks to bring a restraining order against him or her in a mental health hospital.

Trial

12. Is the rape reported to the police ex officio? (public trial)?

A:: YES. The investigation of a rape can begin with an anonymous phone call, but it is essential to involve the victim in the preliminary stage, where his or her account is required, unless there are eyewitnesses and he or she is not in a position to talk about what happened. This person must undergo forensic medical examinations (in clinical and forensic psychology), go through the Victims,

Witnesses and Other Intervention Unit, where there is a clinical psychologist to provide crisis support if necessary. His or her presence and collaboration are critical for the apprehension of the subject identified as the alleged perpetrator of the crime or within 24 hours, as well as for the Prosecutor's Office to request the application of the most severe precautionary measure, which is provisional detention, as it is considered necessary, proportional and reasonable to the crime attributed to him or her, as well as considering the dangers of the proceedings, of evasion of the process, of destruction of potential evidence, as well as to prevent other attacks on the integrity of the victim and witnesses from being committed at liberty.

13. Is the rape reported to the police processed ex parte?

A.: YES. However, we must clarify that both in the previous case and in this one, the actions of the police as the first party, if applicable, as a matter of time allowed for appearance (they have 24 hours but must do so as soon as possible), are transferred to the Public Prosecutor's Office, which is the competent authority for prosecuting the case and recognizing the perpetrator's constitutional and legal rights and guarantees, also within the absolute time limit of 24 hours (the practice is that this is done in about 7-8 hours, likewise, as soon as possible).

14. Is a plea agreement or "friendly settlement" allowed in cases of rape of women? A.: NO.

15. Is a plea agreement or "friendly settlement" allowed in cases of child rape?

A.: NO. In the jurisdiction of adolescents, Law 40 allows for re-educational measures, as already indicated, even when it has occurred between relatives and the age of the adolescent perpetrator is under 14.

16. Provide information on the statute of limitations for prosecuting rape.

A.: The Penal Code refers to the statute of limitations for criminal proceedings in article 116 of the Penal Code. The statute of limitations is set for crimes punishable by imprisonment for a period of time equal to the maximum penalty for the crime. However, in order to start the period covered by this rule with regard to sexual offences against minors, article 119, second paragraph, provides that this shall occur from the time they reach the age of 18.

At the moment, a law initiative is pending in the National Assembly that will make sexual crimes against minors imprescriptible.

17. What are the provisions that allow a child who was a victim of rape to report it after reaching adulthood, if applicable?

A. Article 119 of the Code of Criminal Procedure, second paragraph, provides: "In crimes Against Sexual Freedom and Integrity, established in Title III of Book Two of the Penal Code, when the victim is a minor, the term of the prescription shall commence on the date on which the victim reaches the age of majority".

A.: The Penal Code refers to the statute of limitations for criminal proceedings in article 116 of the Penal Code. It states that the statute of limitations for crimes punishable by imprisonment, such as rape, is equal to the maximum term of the sentence corresponding to the crime (depending on the factual circumstances of the case, we have to start counting from the basic penalty of 174 of the Penal Code, 8 years; for aggravated rape, 10 years, for that referred to in article 175, 12 years. At this moment, in second debate, a draft law is being discussed in the National Assembly that will cause sexual crimes committed against minors not to be prescribed.

18. Are there mandatory requirements for rape testing, such as medical evidence or the need for witnesses? If yes, please specify.

A.: Although our national legal order does not have a system of assessed evidence, even under the system of probation (article 376 of the Code of Criminal Procedure), there is still a need for the victim's account, which, because of the clandestine nature of the crimes committed, must be accompanied by peripheral or corroborative evidence. Judges apply the so-called "Triple Test". Its most well-known origin comes from Spanish jurisprudence and implies that the victim's account must be credible, devoid of subjective incredibility and persistent in its content of incrimination against the perpetrator. Therefore. Such peripheral evidence is usually constituted by the medical gynecological forensic evaluation, the forensic psychological evaluation, the report of the clinical psychologist of the Victims, Witnesses, and Interveners Unit.

19. Are there protective provisions in rape cases designed to prevent judges and defence lawyers from exposing a woman's sexual history during the trial?

A. There are no provisions that expressly prohibit this in domestic law, but we have the Rome Statute, which is binding not only because it has been a law of the Republic since 2002, article 68 of which establishes: "The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. ..."

Under article 4 ("The Republic of Panama shall abide by the rules of international law") and the second paragraph of article 17 of the Constitution ("The rights and guarantees enshrined in this Constitution shall be regarded as minimal and not exclusive of others that affect the fundamental rights and dignity of the individual"), all State agents, specifically in the case of this question, are obliged to keep strictly confidential everything necessary to safeguard the victim's privacy when the information does not form a core part of the factual component of the prosecution's case.

It is by means of horizontal control, i.e. the objections raised by the prosecution to questions put by the defence in this regard, that invasions of the victim's privacy that are not relevant to the discussion of the facts of the case could be avoided (article 397 of the Code of Criminal Procedure: "The person presiding over the interrogation shall moderate the interrogation, prevent the witness from answering trick, suggestive or impertinent questions and ensure that the interrogation is conducted without undue pressure and without offending the dignity of the person"). Likewise, by way of incidences, before the evidentiary relief, duly founded and based on the supranational norm, the Prosecutors, knowing of an illegal evidence previously admitted by the Judge of Guarantees that violates the privacy of the victim and is not pertinent to the purposes of the process, denounce it as such and insist that it be excluded or during the debate, attempt to be more vigilant in protecting the victim's rights to personal dignity, when the defence is following a line of questioning aimed at discovering aspects of this person's privacy which, although unrelated to the facts of the case under discussion, clearly seek to decompensate and embarrass him or her and finally discredit him or her as a witness for the prosecution (Article 397 of the Procedural Code).

In our system of criminal procedure, judges do not question the victim about the facts of the case.

20. Are there any criminal procedure law provisions to prevent revictimization during prosecution and court hearings?

A.: YES. Article 391 of the Code of Criminal Procedure clearly provides, for example, for the use of closed circuit or the Gesell camera when referring to

the testimony of a person in a condition of vulnerability or when a minor is involved. These testimonies have also been used in the form of a jurisdictional advance of evidence (Article 279 of the Criminal Procedural Code), to avoid the victim having to appear at the trial, which usually takes place about a year after the complaint, undoubtedly more in line with his or her reality and that of the process, as the Brasilia Rules rightly state in their April 2018 update.

Conflict/War

21. Is rape a war crime or a crime against humanity?

A.: YES, in article 441, paragraph 7, under Title IV, "Crimes against Humanity", Chapter I "Crimes against International Human Rights Law".

22. Is there a statute of limitations for the prosecution of violations in war or in conflict contexts?

A: No. These crimes are imprescriptible by virtue of the express mandate of article 121 of the Penal Code.

23. Are there any explicit provisions that exclude statutes of limitation for violations committed during war and armed conflict?

A.: YES, as indicated above, Article 121 of the Penal Code, which states: "The statute of limitations shall not apply to the crimes of terrorism, crimes against humanity and crimes of forced disappearance of persons.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified?

A.: YES, it has been enacted in Official Gazette 24512 which promulgates Law 14 of March 13, 2002 with its subsequent amendments.

DATA

25. Please provide data on the number of rape cases reported, prosecuted, and sanctioned during the 2 to 5 years.

OTHER

26. Please explain the particular and additional barriers to reporting and prosecuting violations and the responsibility of the perpetrators in their legal and social context not covered by the above. The system has not

internalized the standard of enhanced due diligence in these cases, which is the obligation of all State agents to observe it from the beginning of the investigation in the reception of the complaint by whatever means. The stages of the process follow one after the other, without applying a biased and sensitive gender and child perspective, which in these cases of violations would require, at a minimum, the immediate implementation of advance evidence of the victim's testimony, whether adult or minor, to avoid the secondary victimisation that occurs as a result of the constant re-victimisation of the experiences of the crime, which he or she must endure because there is a constant risk that he or she will arrive at the trial without having generated "credible" information, that he or she will "convince", because in front of the accuser, he or she will be presumed mendacious, he or she will be innocent and he or she must do what he or she can to be believed. Generally, when he or she leaves the trial, if he or she gets there, he or she goes empty-handed to make dignified and transformative reparations and take charge of the rest of his or her life, trying to forget because the assistance services provided by the State depend to a great extent on his or her having social security, if he or she pays for it or his or her parents, if not, therapy has a cost in a health center crowded with patients who come for all kinds of unimaginable reasons, since positive discrimination for these victims is a non-uniform slope to public health policies committed to adopting these minimal care measures for survivors of sexual violence. Nor is their reinsertion in school assured, when they are minors, in the area where they have had to move if the perpetrator is released under precautionary measures other than provisional detention during the process, or, has been threatened in the neighborhood by family members who know where he or she lives. The police do not have sufficient resources to assume responsibility for the care of victims and witnesses who have been threatened with death until the trial. The Prosecutor's Office does not have resources for this either. That's why we're promoting the adoption of more regular follow-up measures for these protection measures so that they do not expire after 6 months and that the prosecutors maintain communication like the psychologists from the Victims and Witnesses Protection Unit, like the other interveners (UPAVIT), make an extra effort so that even through phone calls we do the accompaniment as a team and they don't feel, as they actually express it, The first stories and forensic medical examinations are used and then forgotten, only to be reminded that the end of the investigation has been reached and that the intermediate stage is now underway, where the perpetrator will be charged or that, because the evidence is insufficient, it will not be passed and we will promote the dismissal of the process, or a plea agreement will be made and the victim will be told how many years in prison with or without replacement by a less severe one, such as community work if the victim is of age. It should be

noted that, under article 220 of the Code of Criminal Procedure, penalty agreements are concluded between the perpetrator and his or her defence and the Office of the Public Prosecutor; the opinion of the victim is not binding and the victim must be informed of it, but that is as far as it goes. Another barrier to victims' rights in the process is the vulnerability of, for example, those who are part of a minority ethnic group or have a different gender identity. The principle of equality that provides that in reality you are equal before the law, in treatment and response, is not fulfilled; nor is the principle of non-discrimination and absolute respect for the personal dignity of all parties in the process, not only for the accused but also for the person who accuses him, with all the risks involved in doing so before an audience of strangers, which includes all those called upon to participate in the investigation, doctors, psychologists, criminal investigation experts, those who intervene on behalf of the other party, the Public Prosecutor's Office, the defence, the complainant, the Guarantee and Trial Court judges, the Appeals Court if that is where it comes in, and even the Court of Cassation if this extraordinary appeal against the sentence is attempted.

CERTIFICATION: This is, in my opinion, a faithful translation of a document originally written in Spanish done by me, Anaxímenes González, bilingual translator of the Superior Office of the Prosecutor of International Affairs of the Public Ministry, today Friday, June 1, 2020 at 08:01 a.m.).

