**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.**

On March 9, 2013, Law No. 348, the Comprehensive Law to Guarantee a Life Free of Violence for Women, was introduced. With the enactment of the law, the following definitions in the criminal code were modified (Law No. 348, Art. 308): • Rape, a crime punishable with deprivation of liberty for fifteen (15) to twenty (20) years to those whom through intimidation, physical violence, or psychological violence carry out sexual acts with an individual of any gender in a nonconsensual manner; sexual intercourse, through the penetration of the virile member or another part of the body, or of whatever object vaginally, anally, or orally, with lewd purposes; and whoever, under the same circumstances, even in the absence of physical violence or intimidation, takes advantage of the victim’s serious mental illness or lack of intelligence or whatever disability that may inhibit ability to resist (Ley 348, Cap. 2).

Article 310 establishes circumstances in which the penalty rises five (5) years. Those circumstances: f) If the perpetrator was a spouse, cohabitant or with whom the victim maintains or has maintained a similar relationship of intimacy.

1. Based on the wording of those provisions, is the provided definition of rape:
   1. Gender specific, covering women only YES/NO X
   2. Gender neutral, covering  all persons   YESX/NO
   3. Based on the lack of consent of victim YESX/ NO
   4. Based on the use of force or threat  YESX/ NO
   5. Some combination of the above.  YES X/ NO
   6. Does it cover only vaginal rape?  YES /NO X
   7. Does it cover all forms of penetration? YESX/NO. If yes, please specify.
   8. Is marital rape in this provision explicitly included? YESX / NO
   9. Is the law silent on marital rape? YES/NOX
   10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YESX/NO
   11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?   YES /NOX
2. **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.**

In Art. 308 bis it is established that consensual sexual relations between adolescents who are twelve (12) years or older will remain exempt of this punishment, as long as the age difference is not greater than three (3) years between both parties, and that violence or intimidation was not involved (Ley 348, Art. 308 bis).

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

The legal age for sexual consent is 14 years old

1. **Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

In Art. 308 bis it is established that consensual sexual relations between adolescents who are twelve (12) years or older will remain exempt of this punishment, as long as the age difference is not greater than three (3) years between both parties, and that violence or intimidation was not involved (Ley 348, Art. 308 bis).

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

* Rape, a crime punishable with deprivation of liberty for fifteen (15) to twenty (20) years. Additional five (5) years for aggravating circumstances. If the victim dies the penalty will be thirty (30) years without the right of pardon.
* Rape of a minor, a crime committed against an individual of any gender under the age of fourteen (14) years old, punishable with deprivation of liberty from twenty (20) to twenty-five (25) years. (Ley 348, Art. 308 bis)
* Sexual abuse, a crime under the same circumstances and means referred to in Articles 308 and 308 bis, in which nonconsensual sexual acts that do not constitute penetration or sexual intercourse are carried out; punishable with six (6) to ten (10) years of deprivation of liberty. When relevant, the aggravated circumstances cited in Article 310 shall be applied, and if the victim is a child, the sentence will be ten (10) to fifteen (15) years (Ley 349, Art. 312).
* Statutory rape a crime punishable with deprivation of liberty for four (4) to eight (8) years.

1. **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?**

The criminal law establish that perpetrator are obliged to the reparation of the damages caused by the crime. (material and moral damages) (Art. 87 Penal Code)

Also, Article 86 of the Comprehensive Law to Guarantee a Life Free of Violence for Women (law No. 348), “, states that reparation is the compensation for the material and immaterial damage caused, to every woman who has suffered violence.

**Aggravating and mitigating circumstances**

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

Yes, Article 310 of the Criminal Law establishes circumstances in which the penalty rises five (5) years. Those circumstances are:

a) Rape resulted in one of the circumstances set out in the Articles 270 and 271 of this Code (serious injuries)

b) If the rape occurs in front of children or adolescents.

c) If two (2) or more people have been involved in the execution of the rape.

d) If the rape occurs while the victim is unconsciousness.

e) If for the commission of the act, weapons or other hazard objects were employed. Objects that are susceptible to produce the death of the victim.

f) If the perpetrator was a spouse, cohabitant or with whom the victim maintains or has maintained a similar relationship of intimacy.

g) If the perpetrator is responsible for the education or custody of the victim, or if the victim will be in a situation of dependence on it or under its authority.

h) If the perpretrator would have subjected the victim to degrading or vexatious conditions.

(i) If the victim suffers from disability.

(j) If the victim is more than sixty (60) years old.

(k) If the victim is pregnant or becomes pregnant as a result of the rape.

(l) If in the case of rape, the victim is more than fourteen (14) and under eighteen (18) years old.

(m) If the perpetrator has committed the act on more than one occasion against the victim

(n) If the act resulted in a sexually transmitted infection or HIV; or

(o) The author was an ascendant, descendant or relative in the fourth degree of consanguinity or second of kinship.

If the event results in the death of the victim, the penalty shall be applied corresponding to femicide, murder or infanticide. The penalty stablished is thirty (30) years in jail, given without the right of pardon.

* 1. Is rape by more than one perpetrator an aggravating circumstance?  YESX/NO
  2. 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) YESX/NO
  3. Is rape by spouse or intimate partner an aggravating circumstance? YESX/NO

1. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

In Art. 308 bis it is established that consensual sexual relations between adolescents who are twelve (12) years or older will remain exempt of this punishment, as long as the age difference is not greater than three (3) years between both parties, and that violence or intimidation was not involved (Ley 348, Art. 308 bis).

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO X If so, at what stage and what are the consequences?
   1. Regardless of the law, is reconciliation permitted in practice? YESX/NO and what is the practice in this regard?

Besides that article 46 of 348 Law, the conciliation is forbidden for violence against women that affects the life and sexual integrity, however according to media and some studies, children`s rape have been negotiated[[1]](#footnote-1).

Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NOX If yes, please specify.

* 1. if the perpetrator marries the victim of rape? YES/NOX
  2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/NOX

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YESX/NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YESX/NO
3. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YESX/NO

The accused or the prosecutor may submit an abbreviated procedure (plea bargain) as an alternative resolution for the case. This requires agreement from the defendant and defense lawyer. The defendant voluntarily renounces their right to an ordinary oral trial, freely presenting the recognition of guilt (CPP, Art. 373 & 374). This request may be made to the pretrial or tribunal judge.

1. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YESX/NO
2. Please provide information on the statute of limitations for prosecuting rape.

Article 29 Criminal Procedure Code. Eight (8) years

1. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood?   YESX/NO

Yes, the children could complaint after reaching adulthood. In the legislation, prescription of crimes against physical integrity health and sexual rights/liberty, does not start to count until 4 years after the victim has reached the age of majority (Art. 30 Criminal Procedure Code).

1. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses?  In YESX/NO If yes, please specify.

The judge or the tribunal in which the trial was opened requires medical evidence, psychological evaluation to identify the alleged perpetrator to the conviction sentence. According the circumstances the witness will be required.

Law 1226 modifies the Art. “393 *noveter*” Criminal Procedure Code and establishes that the medical certificates attesting to the physical condition of the child, adolescent or woman who has been physically or sexually assaulted must be issued immediately and compulsorily by any professional in the public health system who has carried out the first examination of the victim, in accordance with the single health protocol integrated into the single form and without further formality.

In cases of sexual violence, the medical personnel of the public health system in the short term may collect evidence, without the need for a legal requirement, which will be immediately delivered to the competent authority within the framework of the chain of custody protocol, and then delivered to the forensic laboratories network. In case of sexual violence, especially when Article 310(k) of the Criminal Code is applicable, health care personnel would call of the Public Health Ministry current standards and protocols for comprehensive care of victims of sexual violence.

1. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman’s sexual history during trial? YES/NOX
2. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YESX/NO. If yes, please specify.

The Criminal Procedure Code does not establish a minimum series of direct interventions required by the victim, however Law No. 348 stipulates that judicial authorities should take the necessary measures to avoid revictimization in the course of the investigative process.

Law No. 1173 in the article 15 establishes that the judge or prosecutor orders the testimony to be given by the victim only once in private and with the assistance of family members or specialized experts, using special and appropriate technological means to ensure that the statement is valid at all stages of the proceedings, within the framework of respect for the conditions inherent to the declarant or to avoid revictimization. When different expert requires other activities, these shall be concentrated by ordering them to act jointly and in an interdisciplinary manner, strictly observing the special rules of protection, preserving the health and privacy of the victim and avoiding his or her re-victimization. The event may be attended by a person trusted by the person examined.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO X
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO X
3. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO X
4. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YESX/NO

**Data**

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

|  |  |  |  |
| --- | --- | --- | --- |
| Year | Reported | Prosecuted | Sancionated |
| 2019 | 1909 |  |  |
| 2018 | 1826 |  |  |
| 2017 | 1933 |  |  |
| 2016 | 921 | 264 |  |

Fuente: Accountability Report Prosecutor Office

<https://drive.google.com/file/d/1VjYUmJ__y1CimHbbQgwARqsuZk_sEHf2/view>

**Other**

1. **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 gap exists between law and its implementation due to material deficiencies and lack of coordination between prosecutor and police investigation.
* Backlog of cases as a result of the amount of work that is undertaken. Many cases were reported but a few sentences are obtained. Generally, the victims abandon the process because of bureaucracy, large time and they don´t find any responses from the judiciary.
* The personnel are not specialized. Training and specialization in the subject of sexual violence are limited.

1. <https://www.lostiempos.com/actualidad/cochabamba/20191006/50-casos-violacion-sexual-ninos-no-es-denunciado> [↑](#footnote-ref-1)