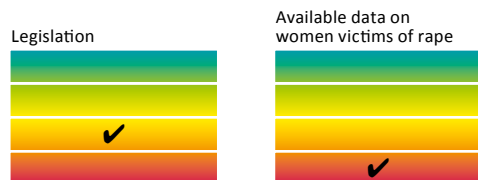


NATIONAL ANALYSIS

Belgium



Expert

Irène Balcers

Legislation

Rape is defined in Article 375 of the Belgian Criminal Code (1989) as ‘any act of sexual penetration committed on a person who does not consent. Consent is deemed to be absent when the act is imposed by means of violence, force or by a trick, or if the victim is suffering from a physical or mental disability.’ Sexual intercourse with a child under 14 years is statutory rape, because of an irrefutable presumption of lack of consent.

The 1989 Criminal code also introduced the concept of rape within marriage.

In the Belgian Criminal Code this is referred to as ‘sexual or indecent assault’ but there is no clear definition of which acts are covered by these terms. There is some consensus (among the police and the judiciary) that these terms refer to “an act which constitutes an assault on the sexual integrity of a person, committed on or with the help of a living person, without consent and with the aim of committing an act of indecency, with the exception of rape.”

Sexual acts with a person other than the partner but committed in his/her presence and with his/her consent are qualified as sexual offences. Sexual acts with more than two people, or in front of third parties, sadomasochism, bestiality, urolagnia and coprophagia are also considered sexual offences.

Inter alia the following acts are prohibited:

- favouring or facilitating sexual acts (1995 Law on Human Trafficking)
- recruiting, accompanying or retaining persons (1995 Law on Human Trafficking)
- running a house of prostitution or debauchery (1995 Law on Human Trafficking)
- selling, renting or providing a space in which sexual offences happen (1995 Law on Human Trafficking)
- any form of sexual exploitation (1995 Law on Human Trafficking)

- enabling the debauchery or prostitution of a minor by offering or promising a material or financial advantage (2000 Law on Human Trafficking)
- advertising services of a sexual nature (1995 Law on Human Trafficking)

In the content of ‘sexual or indecent assault’ in the Criminal Code (see 1 b): this definition should include the notion of ‘indecent assault without violence or threat **to an adult**’. Such an amendment in the Criminal Code would meet the needs of victims of inappropriate behaviour and acts of sexual abuse (excluding rape) by professionals who by their role are always in a dominant position towards the patient or client

The possible consent of the minors or the adults involved in these sexual acts does not prevent their labelling as criminal acts. These acts are punishable even when the perpetrator does not use coercion.

Heavier penalties are imposed when the perpetrator makes direct or indirect use of cunning tricks, violence, threats or any other form of coercion or abuses the particularly vulnerable position in which a person is as a result of an illegal or precarious administrative status or due to pregnancy, illness or a physical or mental disability.

Additional comments

A ‘Set of sexual aggression’ (a rape kit) is made available to the police which allows them to collect DNA materials from the perpetrator. However this is not systematically or adequately used (it should be used in the 72h after the aggression), nor are the results always properly analyzed.



16

More awareness training should be provided for judges, as well as a special checklist for judges on this issue, as there is a lack of coherence in the verdicts of rape cases.

There is also need for more training of professionals who may have to deal with victims of rape and perpetrators.

Available data on women victims of rape

In 2011 the Belgian Institute for the Equality of Women and Men published a second report on 'Women and men in Belgium' with some general data on gender related violence, and focus on partner violence (pp. 271 – 297).

This report indicates that according to the information in a 2008 police report women represented 87% of victims of rape and 89% of collective rape, but there is no link with actual numbers.

In 2011 the public prosecutor recorded 4,038 reported rapes, an increase of 20% compared to 2009. That is an average of 11 rapes a day!

The crucial problem is that gender-based statistics are not systematically provided. The available administrative data on victims and perpetrators (police reports; figures from the prosecutors on intake and outtake; number of convictions) are not gender differentiated. The same remark applies to administrative surveys.

There are no figures available on rape by partners or ex-partners: although it is stated in the Criminal Code gender of perpetrators and victims is not systematically recorded in police reports.

The following figures are published in a survey of the Belgian Institute 'Les expériences des femmes et des hommes en matière de violence liée au genre' (Experience of men and women in gender based violence) :

Relation victim / perpetrator, as identified for the most serious act according to the victims (N=828), in % (table 40)

	Women	Men	Total
Partner	30,8%	5,7%	17,5%
Family	27,4%	16,2%	21,5%
Acquaintance	11,3%	15,8%	13,6%
Work	17,2%	21,9%	19,7%
Unknown	13,3%	40,4%	27,7%



Useful Contacts

In the Flemish community:

- helpline number 1712 : www.1712.be
- specialised centres : CAW (www.caw.be); SEN-SOA (www.sensoa.be)

In the French community:

- SOS Viol: www.sosviol.be