



**Call for Submissions for the UN SRVAW:**

**Thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

**Stop Violències, Andorra**

**December 2020**



**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**

Find here below, translated transcript of the relevant provisions of the Criminal Code<sup>1</sup>.

*Title VII. Crimes against sexual freedom*

**Article 144.** *Sexual assault: The one who, through violence or intimidation, coerces a person to take part in a behaviour or sexual relationship has to be punished with a prison sentence of three months to three years. The attempt is punishable*

**Article 145.** *Sexual assault constituting rape:*

*If the sexual assault consists of carnal access by vaginal, anal or oral route, or in the introduction of objects or bodily members for any of the two first times, the perpetrator must be punished with a prison sentence of three years.*

*The attempt is punishable.*

**Article 146.** *“Qualified” aggressions (aggravating circumstances)*

*1. Sexual assault must be punished with a prison sentence of two to seven years in the cases of article 144 and with a prison sentence of six to fifteen years in the articles of 145, if the aggression constitutes one of the following circumstances:*

*a) The act is executed in group, with two or more people.*

*b) That the guilty lives with the victim or either continues ascendent, descendent or brother of the victim or a person who exercises, legally or in fact, some family authority over her.*

*c) If the victim is particularly vulnerable due to her age, illness, incapacity or other situation. In all cases, the victim is considered to be vulnerable because of age when is less than fourteen years old.*

*In this case, the penalties are applied in the higher version.*

*d) When in regard to the nature of the sexual conduct, the mitigating circumstances, the specific circumstances or any other motive, the sexual assault has a particularly degrading and vexative character for the victim.*

*e) When, through the aggression, the life or physical integrity of the victim is at stake.*

*2. The attempt is punishable.*

*Chapter Second. Sexual abuses*

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<sup>1</sup> Find here attached link in Catalan (original version) of the Andorra Criminal Code: <https://leslleis.com/L2005009>. For the purposes of this report **Stop Violències** has translated the relevant articles;



**Article 147. Non-consensual sexual acts**

1. *Whoever engages in sexual conduct with a person under the age of fourteen or without consciousness, unconscious or unable to resist, or with abuse of his capacity, shall be punished by imprisonment from three months to three years.*
2. *When the act consists of carnal access by vaginal, anal or oral route or the introduction of objects or body limbs by one of the first two routes, he shall be punished with imprisonment from three to ten years.*
3. *If the perpetrator lives with or is an ascendant, descendant or sibling of the victim or is a person who exercises a family authority over him or her, or if the victim is particularly vulnerable because of his or her age, illness or situation, the penalty shall be two to seven years 'imprisonment in the case of the first section and six-fifteen years' imprisonment in the case of the second section.*
4. *The attempt is punishable in all cases. The proposal through information and communication technologies of a meeting with a child under 14 years of age in order to commit the offense described in section 1 of this article is considered tentative if the proposal has been followed by material acts leading to the said meeting.*

**Article 148. Sexual abuse (perpetrator with situation of superiority) with minors**

1. *Whoever engages in sexual behaviour with a person over fourteen and less than eighteen years of age, whereby the perpetrator is in a situation of superiority abusing authority, superiority, abuse of trust or a situation of need or dependence shall be punished with imprisonment from three months to three years.*
2. *If the act consists of carnal access by vaginal, anal, oral route or the introduction of objects or body limbs by one of the first two routes, the prison sentence shall be two to six years.*
3. *If the perpetrator is an ascendant, descendant, or brother of the victim, or a person exercising family authority in fact or in law, or if the victim is especially vulnerable because of his age, illness or situation, the penalty it must be imposed in its upper half.*
4. *The attempt is punishable.*

**Article 149. Sexual abuse (perpetrator with situation of superiority) of adults**

1. *Whoever engages in sexual conduct with an adult, whereby the perpetrator is in a situation of superiority abusing authority, superiority, abuse of trust or a situation of need or dependence, shall be punished by imprisonment for up to one year or more. arrest.*
2. *If the act consists of carnal access by vaginal, anal or oral route, or introduction of objects or body limbs by any of the first two routes, the penalty shall be imprisonment from three months to three years.*
3. *The attempt is punishable.*

Aside from the Criminal Code, in Andorra on 2015 they passed the [Law 1/2015 to eradicate gender-based violence and domestic violence](#). We found it relevant to



mention in this subsection, as it provides an accurate definition of Domestic violence, sexual aggressions.

### **Article 2 (definitions)**

*Domestic violence: All cases of physical violence, sexual, psychological or economic that happen within family, home, between partners, spouses, be that old or current, regardless of whether the perpetrator may have shared or not the victim's house.*

*Sexual aggression: An expression of disparity of powers. It is the use of violence whether physical or sexual against a gender or minor with calculated intent to use sex as a weapon to abuse, from a position of power (rape, incest, marital rape, sexual harassment, sexual aggression, exploitation, etc.).*

### **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.

#### **PARTIALLY:**

According to Article 147 of the Criminal Code, consent is only based on age of sexual consent, if there is disability or inability to resist. There are no wider definitions of consent based on the decision and autonomy of women. Consent is therefore, based only on the vulnerability or illness of the person.

- d. Based on the use of force or threat.

#### **PARTIALLY:**

Articles 144 and 145 hint that the use of violence and intimidation can be an aggravating element, but the different types of violence are not defined. This creates a problem of too wide interpretations. Indeed, violence either physical or psychological is not defined when there is intimidation, leaving too wide room for interpretation.

- e. Some combination of the above. **NO**
- f. Does it cover only vaginal rape? **NO**
- g. Does it cover all forms of penetration? **YES**



**If yes, please specify:** Carnal access by vaginal, anal or oral route, or introduction of objects or body limbs by any of the first two routes

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

**NO:** Not specifically. The relevant article only states “that the perpetrator is an ascendant, descendant, or brother of the victim, or a person exercising family authority in fact or in law”, but not specifically mentioning marital rape.

**i. Is the law silent on marital rape?**

**PARTIALLY.**

The law does not particularly refer to marital rape. Further, the Criminal Code does not directly mention it either, leaving room for interpretation to this type of rape. As mentioned previously, the only one referring to marital rape is [Law 1/2015 to eradicate gender-based violence and domestic violence](#). It should be noted that it is only provided at the beginning of the definition not further developed in any of the articles specifically.

**j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? NO,** at least not specifically.

**k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? NO,** not specifically.

**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.**

No article mentions specifically that it excludes responsibility. However, according to Article 146.b, it constitutes an aggravating circumstance living together but does not mention if they have or not a sexual relationship. In addition, Article 31 of the Criminal Code, it mentions the situation of kinship as an aggravating or mitigating circumstance, however, is silent on whether the perpetrator and victim had a relationship or lived together.

*Article 31 Mixt circumstance of kinship*

*Marital bond or similar situation and kinship until third degree, adoption, are circumstances that may modify the criminal responsibility, either aggravating or mitigating the nature and effects of the crime, or the author’s motives behind it.*



#### **4- What is the legal age for sexual consent?**

Article 147 of the Criminal Code hints at the fact that the age of consent may be 14 years old. However, there is no legal norm that clearly determines 14 as the consenting age. In the Rule of the procedure for immediate action in cases of facts or evidence of sexual abuse, sexual aggression, sexual violence or ill-treatment against minors or adolescents (of 11 November, 2020) does not mention the age of consent.

Furthermore, other questions regarding consent are neither explained, such as : That the person should at all times be informed about what will happen, consent should be given at the beginning of the sexual act but does not necessarily mean consent is given through to the end, consent is reversible.

Lastly, it should also be recalled the clear and specific guidelines given to states regarding consent, such as the ones provided by the [OHCHR](#).

#### **5- Are there provisions that differentiate for sexual activity between peers? If so, please provide them**

If the question refers to homosexual partners, there are none. If it refers to minors, we have no knowledge. Further, the law on minors (Articles 12 and 20) does not clarify when crimes of this nature are committed by minors. It is a law created to determine their responsibility, ages, disciplinary measures and civil responsibilities. However, it does mention sexual aggression and abuse as a major crime when considering when allowing detention of minors. Other than that, crimes are laid down in the Criminal Code.<sup>2</sup>

Lastly, if the question refers to peers as in “couple” or other relationship situation, we should point to Article 31 of the Criminal Code, which considers as aggravating or mitigating circumstances in the cases of marital or other bond, leaving it to much too wider interpretation, to the prejudice of the victim.

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

Sexual aggression, from three months to three years imprisonment. (Article 144, Criminal Code)

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<sup>2</sup> <http://www.consellgeneral.ad/fitxers/documents/lleis-2019/llei-15-2019-qualificada-de-la-responsabilitat-penal-de-les-persones-menors-d2019edat/view>



Sexual aggression as rape, three to ten years imprisonment. (Article 145, Criminal Code)  
“Qualified” aggressions (i.e., aggravating circumstances of aggressions), depending on whether they constitute sexual aggressions, two to seven years imprisonment, if they constitute rape six to fifteen years imprisonment (Article 146, Criminal Code).

**7- 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?**

Every crime has a civil responsibility derived from it. This ought to be asked by the victim, however it is not provided for by law. If the victim refuses reparation, this is neither given to her by the state. Civil responsibility of crimes means that either it should be able to invoke in a criminal trial, or later in a civil jurisdiction. We have no further legal or factual elements that in Andorra talk about or describe reparations for these circumstances.

However, Article 29 of the Criminal Code, which refers to the mitigating circumstances in general (not specific for the crime of rape or sexual aggression) provides that “reparation” will be considered as a mitigating circumstance.

Further, the [Law 1/2015 against gender-based violence](#), Articles 23.1 and 11.3 they mention reparations for violence, although not specific for rape. It ought to be mentioned that in the Preamble of this law sexual violence is described in terms of sexual aggression. Find below the definition:

***Sexual aggression acts:*** *They are an expression of disparity of powers. It is the use of violence physical and sexual against a gender and a minor with the predetermined intention of using sex as a tool of abuse and is executed from a position of authority and power (rape, incest, marital rape, sexual harassment, sexual exploitation).*

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

**YES**, they exist, and they are typified under Article 146 of the Criminal Code, referred to as “qualified aggressions” (i.e., aggressions typified as aggravating) The sexual abuses (with superiority power over the victim) against minors and adults (Articles 148 and 149 of the Criminal Code).

Furthermore, Article 158 of the Criminal Code also provides aggravating circumstances. See below translation.

**Article 158**



(...) *the following conducts will be considered as aggravating:*

- a. *That the crime carries a grave attempt to physical or mental victim*
- b. *That the crime follows grave physical or mental violence*
- c. *If the victim is particularly vulnerable because of age, illness, incapacity or other situation. In any event the victim will be considered vulnerable for reasons of age at 14 years.*
- d. *That the perpetrator had or has a marital relationship with the victim or similar relationship, lives with or is ascendant or descendant of the victim, or that exercises legal or factual familiar authority over the victim.*
- e. *That the conduct is executed from a position of abuse of power and superiority, with abuse of confidence, need or dependence*
- f. *If the act is executed in group, with two or more people.*
- g. *If the act is committed by organised group*
- h. *Recidivism*
- i. *If the act is perpetrated in front of a minor*

*In the crimes of aggressions or sexual abuse asking forgiveness does not extinguish criminal responsibility*

**a. Is rape by more than one perpetrator an aggravating circumstance?** YES, at Article 146 of the Criminal Code and 158.f

**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, partially.** although the particular circumstance of the perpetrator abusing power (i.e., teacher, employer, etc) is not described as such. Article 146 mentions a particular vulnerability of the victim, as an aggravating circumstance (e.g., illness, age) however it does not specify elements that may describe the perpetrator as having any sort of superior power over the victim. In addition, Article 158.c also mentions the vulnerability of the victim as an aggravating circumstance.

**c. Is rape by spouse or intimate partner an aggravating circumstance?** **NOT clearly,** although it can be inferred. In Article 148 of the Criminal Code, subsection 3, it mentions “person which has legal or factual familiar authority”. However, this is not specific enough. However, Article 158 does mention “other type of relationship” in subsection d.

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





**NO.** There are no mitigating circumstances for the crime of rape provided in the law specifically, although one can find, generally speaking and applicable to other crimes in general, the elements that exclude or mitigate liability which apply to crimes other than rape. We believe however, that although it does not specify rape in its wording, the legislator may have intended they be also applied. They may be found in Articles 27, 28 and 29 of the Criminal Code. Particularly, from Article 29 one may infer that elements such as “passion” that “the offended has contributed to the illegal act” are considered as mitigating circumstances. Note, however, that Article 31 (transcribed below) of the Criminal Code considers “kinship” and “marital bond” as circumstances that may either mitigate or aggravate the penalty.

**Article 27.** *Excluding circumstances* These are circumstances that exclude criminal liability: 4. Committing the criminal offense and not being able to understand the illegality of the act, or acting in accordance with this understanding, due to any anomaly or mental alteration. If it is a temporary mental disorder, this disorder does not exclude liability when it has been caused by the subject with the intention of committing the criminal offense or has foreseen or should have foreseen the commission. 5. Committing the criminal offense in a state of full intoxication caused by the consumption of alcoholic beverages, toxic drugs or others that produce similar effects, provided that the subject has not sought it with the intention of committing it or has not planned or had to anticipate the commission. The commission of the offense under the influence of an abstinence syndrome, due to the dependence on these substances, which prevents the subject from understanding the illegality of the act or acting from it, also constitutes an excluding circumstance of liability. 6. Suffering from alterations in perception from birth or childhood that prevent understanding the illegality of the fact or act in accordance with this understanding.

**Article 28.** *Incomplete excluding circumstances*

The circumstances set out in the previous article, when all the necessary requirements for exemption from liability do not occur, constitute mitigating circumstances, in accordance with the provisions of article 54.

**Article 29.** *Mitigating circumstances*

These are circumstances that mitigate criminal liability:

1. Acting for causes or stimuli that have produced an outburst, obsession or a **state of passion** of similar importance.
2. The offended person (i.e victim) to have contributed to a significant extent to the accomplishment of the typical fact, with an action or omission, wilful or guilty.
3. Acting due to an addiction to toxic drugs, psychotropic substances or alcoholic beverages.



5. *The offender to have confessed the infraction to the authorities, before knowing that the criminal procedure is directed against him.*
6. *Collaborate with the authorities until the time of the oral hearing to avoid another infraction that has the character of a major crime, the commission of which is rationally foreseeable.*
7. *Have repaired the damage caused to the victim, in whole or in a relevant measure in accordance with their own capacity and the nature of the crime committed, up to the time of the oral hearing, or have endeavoured to obtain compensation in favour of the victim.*
8. *Any other circumstance which has a meaning analogous to the previous ones or to that of kinship provided for in Article 31.*

**Article 31. Mixt circumstance of kinship**

*Marital bond or similar situation and kinship until third degree, adoption, are circumstances that may modify the criminal responsibility, either aggravating or mitigating the nature and effects of the crime, or the author's motives behind it.*

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

**NO.** Not specifically. However, as mentioned previously, a mitigating circumstance under Article 29 refers to a form of reparation to the victim, in a manner according to the crime committed until the oral heading or attempting to compensate the victim somehow.

Concerning whether reconciliation is permitted in practice, we have no knowledge of that. In the event that the victim lodges a criminal suit against the perpetrator, if after decides to withdraw it, it may imply a form of forgiveness or renouncing their actions.

Lastly, there is the [Law 3/2018 of 22d march on mediation](#) which is an alternative.

**11- Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.**

**PARTIALLY.** Please, see aforementioned answer at question 9. Particularly, there are mitigating circumstances under Articles 27-29. Indeed, Article 27 provides for excluding circumstances.

- 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

**12- Is rape reported to the police prosecuted ex officio (public prosecution)? YES**

However, it should be noted that rape is not included among private crimes, so it follows that it is considered a public crime punishable by the Public Prosecutor once the victim has lodged the appropriate claim. At this point we would like to mention that according to national law, there is a difference between a **claim** and a **criminal suit (i.e. before courts)**. As regards the criminal suit, the victim may withdraw it at any point. The claim however it follows its course through investigation stage and after deliberation by the

**13- Is rape reported to the police prosecuted ex parte (private prosecution)? NO**

It follows the usual proceeding, as any other crime.

**14- Are plea bargain or “friendly settlement” of a case allowed in cases of rape of women?**

### PARTIALLY.

First Instance judgments are not published. It is, in practice, very difficult to find out whether there are “friendly settlements” and the state does not give that information, to the best of our knowledge. Therefore, it is difficult at this point to answer YES or NO. Should the casefile be opened during and before “night courts”, the case will follow a quick procedure (i.e., “ordenanza penal o juicio rápido”). In the abovementioned case, the accused knows beforehand which judgment it will be delivered and will have to be in agreement with it. Contrarily, the casefile is brought before Court to be judged before a Chamber.

**15- Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? NO**

**16- Please provide information on the statute of limitations for prosecuting rape.**

There are, indeed, many problems when rape occurs among minors because the law is silent on that particular aspect.



We have witnessed judicial negligence first-hand in the case of a twelve-year-old girl raped and compelled to give birth in Andorra (abortion is not legal). In this case, the rape was perpetrated by a minor of 17 years old soon-to-turn 18.

**17- Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? NO**

The expiration of a crime is regulated under Articles 81 and 82 of the Criminal Code. See here below:

**Article 81. The prescription (or expiration) of the crime**

*The prescription of the criminal action extinguishes the criminal responsibility of the perpetrator after the following time-limits:*

- a) Thirty years for offenses that have been assigned a penalty whose maximum limit is ten years or more.*
- b) Ten years for other major crimes.*
- c) Four years for minor offenses.*
- d) Six months for the crimes of slander, insult and defamation and for criminal offenses. Criminal action for the prosecution of the crime of torture, the crime of genocide and crimes against humanity is not prescribed in any case*

**Article 82. Calculation of the prescription of the crime**

*The limitation period begins to run from the day on which the punishable action or omission ceases. However, in the crimes of consummated result the calculation is verified from the moment in which the result has taken place, and in the willful crimes against the life, the physical and moral integrity, the freedom, the sexual freedom and the family relationships, and in crimes of misappropriation and unfair administration, from the time the victim turns eighteen or from the date of his or her death if he or she has not committed them.*

*In the event of a continuing infringement, the time limit shall be calculated from the day on which the last infringement was committed.*

To note that Andorra has not modified the Criminal Code in that sense. That aside, it does the Code does not contemplate continuing with a criminal prosecution of a perpetrator in case of suicide of the victim. Once the latter dies, the judicial process is over.

**18- Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES If yes, please specify.**

**YES.**



The Criminal Procedural Code does not specifically mention proof for the crime of rape. It does it in a generic way. To prove rape, there is a need of expert medical testimony provided by one of the accredited doctors in the country.

**19- Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? NO**

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

**PARTIALLY.**

There is no specific norm that aims to avoid re-victimization during prosecution. Although "re-victimization" as such appears in some laws, like Law 1/2015 ([Law 1/2015, of 15 January, for the eradication of gender-based violence and domestic violence](#)), particularly in Articles 4 and 15 but without further explanation.

**Article 4**

*The principles that should guide the content and application of this Law are the following: a) Prevention as a fundamental and transversal element: The design of the policies and actions must be undertaken with the goal of preventing and avoiding actions, omissions, or behaviors of gender and domestic violence. For this reason, strategies must be designed to promote a change of attitude on the part of society in relation to the prevention and eradication of such actions, omissions or behaviors, and strategies to protect and empower victims to avoid revictimization situations.*

**Article 15**

*Social assistance:*

*f) Carry out training assistance that allows victims a comprehensive recovery in order to prevent revictimization*

However, the above trainings are not specifically directed to sexual violence, but in the generic law on gender violence.

**War and/or conflict**

**21- Is rape criminalized as a war crime or crime against humanity? YES**



Article 459 and 460 mention war crimes and crimes against humanity. Please, see below translated provision of the Criminal Code.

**Art. 459.- Basic type.**

*The perpetrators of crimes against humanity are those who commit the acts provided for in the following article as part of a widespread systematic attack on the civilian population or a section of that population.*

*In any case, the commission of such an attack is considered a crime against humanity: The fact that the victim belongs to a group or group persecuted for political, racial, national, ethnic, cultural or religious reasons.*

*In the context of an institutionalized regime of systematic oppression and domination of a racial group over one or more racial groups and with the intention of maintaining that regime.*

**Art. 460 Penalties**

*The perpetrators of crimes against humanity must be punished:*

- (...)

- *Imprisonment from twelve to fifteen years if they commit rape and from four to six years if the act consists of another type of sexual assault.*

- (...)

**22- Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**

**NO**

**23- Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? NO**

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

The Rome Statute was ratified by Andorra in 1998.<sup>3</sup>

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<sup>3</sup> [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/western%20european%20and%20other%20states/Pages/andorra.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/western%20european%20and%20other%20states/Pages/andorra.aspx)



## Data

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

During the years 2019 and 2020, there have been a total of 52 criminal proceedings: 40 investigation proceedings, 8 trials for major crimes (out of which 2 belonging to prior investigation proceedings, 4 from minor crimes, and 1 for offence.<sup>4</sup>

Further, 13 cases concern pornography, 6 sexual abuse, 1 sexual aggression as rape, 11 sexual harassment, 3 sexual aggression and 5 to exhibitionism.<sup>5</sup> Here below find vertically sexual aggression and rape, horizontally the number of aggressions from 2015 to 2020.

	ANY 15-16	ANY 16-17	ANY 17-18	ANY 18-19	ANY 19-20
Contra el comportament sexual	40	40	52	62	52
Violació	6	6	5	13	1

## Other

**21- 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.**

In this part of the Report, we would like to mention the following topics regarding the different existing public protocols for sexual violence and rape:

- I. Introduction
- II. General questions
  - I. The Government's Equality Service: Attention to women, analysis of their protocols
- III. Addressing sexual violence: Health Services "SAAS"
- IV. Police Service
- V. Other website links

- I. Introduction

Thanks to the different projects undertaken by Stop Violències, we have come up with an analysis of the current situation of women facing violence in Andorra. Because of

<sup>4</sup> <http://www.justicia.ad/en/memoria/memoria-2019-2020/detail.html>

<sup>5</sup> See <http://www.justicia.ad/en/memoria/memoria-2019-2020/detail.html>, at p. 289



which, in this subsection we will illustrate and highlight the deficiencies of the public system. Further, if that is the case, the recommendations that we think appropriate. In this introduction we will summarize the biggest challenges, to later develop them in the following subsections.

#### FIRST. Lack of response by the Government to our contributions

In 2018, Stop Violències started a project in order to raise awareness and call for action against sexual aggressions in the nightlife of the country. Although many data on specific cases of aggressions were gathered in the different social events and parties, and a report was sent, the government did not follow-up with any response other than what we gathered and denounced.

Here attached, you will find some links which explain the project and the different responses undertaken by Stop Violències, among which, the campaign we made, recommendations on how to avoid aggressions (including education, alcohol prevention, specialization of authorities and prevention mechanisms).<sup>6</sup>

#### SECOND. Lack of visibility on relevant information

On a different note, when it comes administrative and public services we find, in general, a lack of visibility in the equality service and the one providing attention to women in gender-based violence, and particularly sexual violence. There is, in general, a lack of information and difficulty in accessing information, public protocols under these situations, and professionals that take care of these issues. Following, we will explain further the weaknesses of these systems, particularly the police, the hospital (the only one in the country, i.e. Hospital Nostra Senyora de Meritxell). In addition, a small study has been made concerning three different public services.

1. [Equality Service](#): here are the attention services to violence, to LGBTIQ and refugees.
2. [Police Service](#)
3. Health Services (“SAAS”)

## II. **General questions**

#### THIRD. Lack of coordination

From Stop Violències, we have detected a lack of efficient coordination among the different public services.

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<sup>6</sup> [https://www.ara.ad/societat/Stop-Violencies-estrenara-campanya-Carnaval\\_0\\_1946805477.html](https://www.ara.ad/societat/Stop-Violencies-estrenara-campanya-Carnaval_0_1946805477.html)  
[https://www.ara.ad/societat/Agressions-sexuals-intensitat-Carnaval-dEncamp\\_0\\_1963003930.html](https://www.ara.ad/societat/Agressions-sexuals-intensitat-Carnaval-dEncamp_0_1963003930.html)  
[https://www.ara.ad/societat/Stop-Violencies\\_0\\_2040396064.html](https://www.ara.ad/societat/Stop-Violencies_0_2040396064.html)  
[https://www.ara.ad/societat/Recomanacions-evitar-agressions-violencies-sexuals\\_0\\_2129787255.html](https://www.ara.ad/societat/Recomanacions-evitar-agressions-violencies-sexuals_0_2129787255.html)





#### FOURTH. Language barriers

All the websites (including those attached) are only in Catalan (which is the official language in Andorra) however this puts a barrier to people not speaking the language in the country. Despite the co-princes (heads of State) being respectively both Spanish and French no public services websites are available in any other language, let alone in other widely spoken and international languages such as English. Many people visit Andorra, both as temporary workers and tourists, being a trans-frontier and transit country information should be understandable for anyone that needs it, and the government should make sure it is available in other languages.

#### FIFTH. Lack of specialized services

On the other side, there is a **lack of specialized sexual violence services**. For instance, the emergency phone to tend to women facing violence, 181, it is neither included in the main websites of any of the public services. Moreover, it is particularly difficult to find it in the government's website. In sum, it is not accessible enough. On a similar note, there is not a single service (including attention, prevention, detection, sensibilization) only for sexual violence. If there was, it is not public enough. As you may have heard, we want to recall that abortion is not legalized in Andorra. It is still criminalized, including for rape, even if the victim is a minor. Please, see attached documentary with testimonies.<sup>7</sup>

### **III. The Government's Equality Service: Attention to women, analysis of their protocols**

#### SIXTH. Lack of attention to violence on women in general, and sexual violence and rape in particular

This is the only public body dedicated to fight violence against women. Regarding this service we will be analyzing sexual violence protocols, and equality sensibilization.

To note, that in many cases the protocols are not published, only information that they give in the different public acts, hampering access to information on several matters.

The only place where one can find the different intervention protocols on sexual violence is in the so-called "[Guide of cooperation against gender-based and domestic violence](#)". This guides offers details concerning the different acting protocols not found in either of the las we have specified and studied for the purposes of this report.

To highlight the following aspects in the Guide:

Firstly, at p. 14, sexual aggressions are defined like Article 3 of the Law on gender-based violence. However, they introduce a new element not to be found in the law: the relationships of power as a factor of sexual violence.

Secondly, at p. 33 and 34, when mentioning detecting intervention health protocols on sexual cases, it mentions informing women on the different physical examinations she will be subjected to however not precisely which those will be. For instance, if the

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<sup>7</sup> <https://www.youtube.com/watch?v=UgxFigWJEYQ>



examinations concern exploring possible sexual transmitted diseases, if they are vaginal which. Further, we don't know whether in those cases is there an official document that specifies the different tests that are run. If there indeed are, our association has had no access to and they are not public enough.

Thirdly, at p. 37 (para. 2), it mentions police protocol in case of sexual aggression: "(...) when the victim has suffered sexual aggression should be directly tended by forensic doctor or in the hospital". However, it mentions nothing further.

Lastly, at p. 39, mentioning proof or evidence gathering, "injuries will be photographed whenever considered appropriate". We have no knowledge on whether this also includes sexual violence, where these photos end up in, or if they also are taken in intimate body places.

#### SEVENTH. Lack of education and action on sexual violence

Concerning sensibilization, we find in the Service's website another interesting document which is the "[White book on equality](#)". However, it does not mention protocols on sexual violence.

Further, another reference document is the [Awareness-Raising Plan on Gender Equality](#). It is a plan to raise awareness within the education sphere in Andorra. Particularly, and in relation to sexual violence we find that:

- a. At p. 7, there is a plan to introduce the role of the "agent for equality" in schools, so that at the end of each calendar year they have to sent a report to the different Ministries with proposals to foster equality, highlighting the different activities that have been carried out towards that goal throughout the year. Since this is not widely known or published, we have no way of knowing if schools have made any proposals or act against sexual violence and rape nor to what extent.
- b. At pp. 11 and 12, subsection 2, It mentions sexual violence in the adolescent period. However, no mention to sexual violence among equals. Notwithstanding the fact relations of power are mentioned as a tool of submission and sexual violence, this against is not mentioned in the law.
- c. At p. 12, subsection 3, the Plan mentions gender-based violence in the context of technologies. Under this subsection forms of violence are mentioned such as sexting, grooming, revenge porn, women registering in websites offering sexual services as sexual violence with their sensitive data online. No legislation has been found on that matter.
- d. Throughout the Plan no mention is made to sexual violence among equals, nor intervention protocols are defined. On this, the only we could find is a [National Plan to Prevent School Harassment](#) created by the Government in 2016 and 2019 school harassment. To note that, even though p. 7 mentions physical harassment, no further mention is made to sexual violence or rape, no detecting mechanisms are put in place. As far as our experience is concerned, we have



found that in all cases the perpetrator didn't face disciplinary measures. If there are, indeed, they are not public or accessible enough. This is the information [factsheet](#) distributed in schools.

#### **IV. Addressing sexual violence: Health Services "SAAS"**

##### EIGHTH. Lack of publicity of health protocols for sexual violence

There is only one hospital in Andorra. In 2018, the "Purple Code" was created in the hospital, in order to address women suffering from gender-based violence so that they wouldn't suffer from secondary revictimization. The information concerning this Code and its health protocols is not made public nor accessible enough for victims. We have not found this Code in the Government's website, nor in the hospital one. However, we have found a link to a [news article](#) talking about it.

##### NINETH. Lack of specialized professionals in sexual violence

There is no specialized team to tend to victims of gender-based violence in general, nor sexual violence in particular. Moreover, in the hospital's website the emergency contact phone cannot be found for the victims who may want to use it. Furthermore, no mention whatsoever is being made to women facing violence.

##### TENTH. High medication given to women facing violence

As far as our experience is concerned, from Stop Violències we have witnessed how women facing violence have been administered large doses of medication, however there is no way to see that reflected in the hospital's reports. Please, see attached reports ("memoirs") of the hospital.

- Report(2019): [https://saas.ad/images/PDFS/SAAS\\_Memoria\\_2019\\_v4\\_02cd.pdf](https://saas.ad/images/PDFS/SAAS_Memoria_2019_v4_02cd.pdf)
- Report (2018): [https://saas.ad/images/PDFS/SAAS\\_Memoria\\_com\\_2018.pdf](https://saas.ad/images/PDFS/SAAS_Memoria_com_2018.pdf)
- Report(2017):[https://saas.ad/images/PDFS/memoria\\_2017.pdf](https://saas.ad/images/PDFS/memoria_2017.pdf)
- Report(2016):  
<https://saas.ad/images/PDFS/Memoria2016Indicadorsprincipals.pdf>
- Report (2015): <https://saas.ad/images/PDFS/Memria-Reduda-2015.pdf>

To highlight, that in the reports of 2019, 2018 there is no info concerning mental health. However, in the 2015 and 2016 report we find that there were 12.372 and 11.896 medical consultations on the matter, respectively. However, we have not been able to gather further information concerning the nature of these appointments, nor have we information on the medication and treatment given to women facing sexual violence and rape.



## V. Police Service

### ELEVENTH. Lack of specialized police team in violence against women

Currently, there is no specialized team in violence against women in general, and sexual violence in particular, within Andorran Police Services.

### TWELEVETH. No accessible emergency contact for women facing violence

Similarly, in the police's [website](#) (i.e., Home Affairs), there is no emergency phone contact for women facing violence, which is 181. Indeed, here are the emergency numbers (not translated) that are directly accessible at the website. This are related, in that order to, firefighters, emergencies (in general), police, and medical emergencies.



Lastly, the protocol for violence against women is not public, if there is one not accessible enough.

### THIRTEENTH. Irregularities witnessed by Stop Violències when accompanying women facing violence

One of the tasks of Stop Violències is to accompany women facing violence throughout all the process since the violence has occurred. From the first moment they call, we give psychological and legal support. We accompany them to police to file a claim, etc. In these circumstances, and within police quarters, we have to report the following:

- a. The room women are put in are small with no temperature comfort of any sort.
- b. No offering of comfort such as water.
- c. No specialized police to handle cases of violence against women, even less of rape.
- d. The specialized public police service is only opened in regular office hours, and during the week only.
- e. Uncomfortable questions are put to victims that clearly point to a serious lack of specialization.
- f. The regular police service is reluctant to file claims on sexual violence, preferring this be put during weekdays.
- g. We have had to assist women not speaking Catalan nor Spanish language, with an translator from Stop Violències having to perform that task.



- h. Police does not provide for translators whenever asked by women in situation of violence. This has happened, for instance, in violence among couples.

#### FOURTEENTH. Stop Violències's recommendations

First, we have repeatedly asked the Government to investigate these irregularities and the different claims lodged by victims and these calls have been ignored.

Second, according to Stop Violències, the disparity and irregular police interventions call for a specific and specialized training so that women are not revictimized when resort to Police Services. Further, their claims ought not to depend on the "goodness" of the police in charge of filing the claim.

Thirdly, there is no independent mechanism to investigate whether police forces in Andorra are abusing of their authority. More protecting mechanisms should be put in place for the victim wishing to claim and seek remedies.

#### **VI. Other links of interest:**

We attach here below, consequence of the lack of further publicly available information, news illustrating some of the facts that we have narrated in this subsection.

- a. The problem of not regulating sexual violence among peers. Link to [news](#) concerning minors not facing charges after sexual aggression.
- b. Sexual harassment at the workplace : [News](#) concerning a case where the perpetrator declares before the judge that the victim consented to the act and the judge files the case
- c. Lack of effective sexual violence intervention protocols : [News](#) on a case where the victim has had to explain up to nine times (before police, courts, etc) how she was raped
- d. Case-law on sexual violence
  - a. [News](#): Case of a victim does not appear before court and the judge files the suit against the perpetrator (even if he was facing five years imprisonment for rape)
  - b. [News](#): Case of a young woman denouncing rape in group. Only having the description of the facts by the victim presented before the court, the judge after arresting the perpetrator and hearing that he attested the act as consented decides to file the case and liberate the man without charges for insufficient evidence.



- c. [News](#): Case of a woman that after filing a claim for sexual aggression has no access to the casefile for 10 months
  
- e. On Police Services:
  - a. [News](#): Case of a women filing a case of sexual aggression perpetrated by a fireman. She subsequently is facing slander and hate speech over social networks consequence of filing that claim.
  - b. [News](#): The first time that the First Instance Court investigates a report against a fireman for sexual aggression
  
- f. Case of group rape filed for not believing a victim: [News](#)