



Questions and Answers

1. Is the situation for rape survivors in Denmark worse than in other countries in Europe?

Amnesty International's research in Europe shows that access to justice for rape is an issue throughout the region, including in other Nordic countries. Denmark is not isolated in this regard. As is the case in most European countries, rape is not defined on the basis of the absence of consent in Danish criminal legislation, in contravention of the Istanbul Convention and other international human rights law and standards.

An [EU-wide survey](#) on violence against women in 2014 found Denmark had the highest prevalence of rape of women and girls over the age of 15 (19% of women and girls interviewed). But, the [survey](#) found it had among the lowest number of rapes reported to the police of any country (7%). In a [follow-up report to the 2017 Gender Equality Index](#), Denmark was also identified as having the highest prevalence of violence against women, including sexual violence, amongst Member States.

In 2018, the [University of Southern Denmark](#) estimated that 24,000 women in Denmark experienced rape or attempted rape in 2017. The [Danish Ministry of Justice](#), on the other hand, estimates that around 5,100 women are subjected to rape or attempted rape each year. However, only 890 rapes were reported to the police in [2017](#) and, of these, 535 resulted in prosecutions and only 94 in [convictions](#).

2. So why Denmark?

Although women and girls throughout the region face legal and practical barriers in accessing justice for rape, Denmark now has real opportunities for improvement, with strong survivor activism driving change. It has an opportunity to join the tide of change that is sweeping Europe, led by courageous women, that has so far resulted in eight countries in Europe adopting consent-based rape definitions.

In December 2018, the Danish Parliament rejected a bill which proposed amending the legal definition of rape to one based on consent, citing lack of evidence that this change is needed. Several activists, rape survivors and NGOs including Amnesty International are currently advocating for the law to be changed and a new proposal is likely to be brought forward in 2019.

The Danish Ministry of Justice has also invited representatives from the police, prosecution services, judges, experts and NGOs to join an expert group on improving access to justice for rape.

3. But isn't Denmark one of the best countries for gender equality?

There is a widespread perception, inside and outside Denmark, that gender equality in the country has been achieved. As one of the Danish NGO representatives, Helena Gleesborg Hansen from the Danish Women's Society noted in the report, "Denmark is a paradox in terms



of gender. There is a perception that we already have equality so there is no need to talk about it. So raising issues such as sexism and ‘rape culture’ is seen as exaggerated.”

Indeed, Denmark has achieved high scores in terms of gender equality in many areas of life. For example, Denmark came second only to Sweden in the [2017 Gender Equality Index](#), which examines areas such as work, money and health. Nevertheless, in a [follow-up report to the Index](#) published in November 2017, which provides more data on violence against women in EU Member States, Denmark was identified as having the highest prevalence of violence against women, including sexual violence, of any Member State.

This picture of widespread sexual violence and impunity for its perpetrators stands in stark contrast with the image of Denmark as a country where gender equality has been achieved. Amnesty International believes that the Danish authorities now have an opportunity to make changes that will allow Denmark to live up to its image as truly gender equal.

4. Why focus on women? Men get raped too!

Rape is a serious human rights violation that affects people regardless of their sex, gender or gender identity. However, in this research and campaign we focus on women and girls as they are disproportionately affected by this violation.

According to the most recent EU-wide prevalence survey, the 2014 Fundamental Rights Agency (FRA) [survey](#) on violence against women, one in ten women in the EU (11%) has experienced some form of sexual violence from the age of 15. One in 20 women in the EU (5%) has been raped after the age of 15. The FRA concludes that this corresponds to more than 9 million women in the EU who have been raped since they were 15 years old.

5. Does the research include transgender women?

Trans women are women, and people of all genders - including women, men, non-binary and gender non-conforming people - should be free from rape. Our report is not as reflective of the experiences of women other than cisgender women as we would have liked. Amnesty International’s researchers interviewed a representative of a trans rights organization. However, the transgender women who were to be interviewed decided that they were not yet ready to share their experiences and the researchers respected this. All the survivors interviewed were cisgender women and the report’s findings reflect their experiences.

There is currently no data or research on how transgender people are affected by rape in Denmark and we believe that this is an important area for future research. As noted in the report by Nico Miskow Friberg of TransAktion, an organization providing support to transgender people in Denmark, “As with most services and research in Denmark (and beyond), the surveys are catered to an assumed cisgender recipient. As a result, the only available categories are ‘men’ and ‘women’ – leaving out other genders such as for an example non-binary folks – and we do not know whether these ‘men’ and ‘women’ are cisgender people or also transgender people. As a result, we have no access to statistics concerning sexual violence and rape of transgender persons in Denmark.”



6. Is a definition of rape based on lack of consent a new, untested concept?

No. The legal definition of rape based on the absence of consent is not new or ground-breaking.

Based on the recognition that sexual assault is a violation of person's sexual autonomy, international human rights law and standards, as well as international criminal law, have evolved to the understanding that sexual assault - including rape - should be defined on the basis of lack of consent to sexual activity assessed in the context of the surrounding circumstances.

The [Istanbul Convention](#), which has been ratified by 23 EU countries (and 33 members of the Council of Europe altogether), including Denmark, clearly requires the lack of consent to be at the centre of any legal definition of rape and other forms of sexual violence. Yet the majority of these countries still haven't amended their legal definitions of rape accordingly.

However, in eight countries in Europe out of the 31 analysed in Amnesty International's November 2018 [report](#), consent-based definitions are already a reality. These countries are: Belgium, Cyprus, Germany, Iceland, Ireland, Luxembourg, Sweden and the UK.

Ireland has had a consent-based definition since 1981. In England and Wales, consent has been defined in law in its current form since 2003. In 2015, new guidance and toolkits for prosecutors and police were introduced to clarify the law and remind prosecuting counsel that the Sexual Offences Act 2003 requires them to ask defendants to explain how they obtained consent.

7. Does a consent definition reverse the burden of proof?

No. Consent-based definitions of rape do not shift the burden of proof from the victim to the alleged perpetrator. The presumption of innocence prevails, just as all other fair trial rights.

In countries with consent-based laws, the onus is still on the prosecution to prove beyond reasonable doubt that the sexual act was not consensual and that the rape was committed intentionally, recklessly or negligently. The fact that during the investigation and court proceedings the accused can be asked about the steps taken to establish whether the other person consented, does not mean that they are presumed guilty.

It's a necessary step to gather evidence that can prove lack of consent, which is the key element that defines rape in these jurisdictions, rather than the use or threat of physical violence.

8. Is Amnesty saying that people have to sign a contract in order to have sex?

No. The idea of consent is simple: To have sex, you need to know that the person you wish to have sex with wants to have sex with you too.

That simply means communicating both verbally and non-verbally with your partner and making sure all sexual activities they engage in happen with full mutual agreement. It should be clear that being silent or not actually saying the word "no" is not the same as giving consent. A general rule is: if in doubt, ask. If you're still in doubt, stop. It is not embarrassing to ask, and



you should not proceed unless the other person consents.

If a person is asleep or unconscious, that person is not able to respond and cannot consent to any kind of sexual activity. There might be other situations in which a person is not capable to genuinely consent – for example, if they don't have the mental capacity to consent or are underage.

9. What do we mean by “only yes means yes” or “Let’s talk about Yes”? Does consent have to be verbal? Is the word “yes” the only one acceptable?

“Yes” - or consent - can be expressed in a variety of verbal and non-verbal ways. It is important to notice, sense and respect each other’s verbal and non-verbal signals, and to communicate. Active participation is key in consensual sexual relationships.

10. Does Amnesty endorse “consent apps”?

No. Consent is an ongoing process of communication and can be rescinded at any time as boundaries and comfort levels can change prior to and throughout a sexual encounter. Thus, even if someone gives consent on an app, they’re entitled to withdraw consent at any stage, which most “consent apps” don’t take into account.

Moreover, while “consent apps” market themselves as helping an accused person provide evidence in the event of sexual assault, being able to produce a “contract” that says someone consented seems to offer potential protection for perpetrators – again, such consent can be withdrawn at any time, or could have been forced, which would not be recorded on the app. By making consent about liability, “consent apps” ignore that consent is about active participation, mutuality and equality, and respect for each other’s bodily and sexual autonomy.

11. What about false accusations?

There is no evidence that false reports of rape are common and certainly no evidence that consent-based laws increase the number of false rape accusations. Rapes are, in fact, hugely underreported due to lack of trust in the justice system or because of fear of not being believed.

The reality is that it takes a lot of courage and determination to report a rape. And when they do so, women are often blamed and humiliated, being repeatedly asked what they did to provoke it or why they put themselves in a particular situation. Survivors deserve to be believed, their reports should be thoroughly investigated, and they should get the support they are entitled to.

12. What about rapes that do not involve physical violence? Are we treating them as a less serious offence?

No. What defines rape is the absence of consent. And there should be no assumption, in law or in practice, that a person gives consent because there are no signs of physical violence, such as bruises or because they did not physically resist. Just because a woman doesn’t have visible injuries, didn’t say NO or didn’t show resistance, doesn’t mean she was not raped. Despite the expectation that a “model” rape victim will fight the attacker back, freezing when confronted



with a sexual attack has been recognized as a common physiological and psychological response, leaving the victim unable to oppose the assault, often to the point of immobility. For example, a 2017 Swedish [clinical study](#) found that 70 percent of the 298 women rape survivors assessed, experienced “involuntary paralysis” during the assault.

13. How can consent or lack of consent be proven in court?

Developments in international criminal law have led to the recognition that consent can be given freely and genuinely only where the free will of one of the consenting parties is not overpowered by coercive circumstances, and when the person is capable of consenting.

Therefore, the definition of rape should include a broad range of coercive circumstances where consent cannot be freely given, while outside such circumstances, while the burden of proof remains with the prosecution, the accused should be questioned about how they ensured the complainant was consenting.

The Explanatory Report to the Istanbul Convention specifies that prosecutions “will require a context-sensitive assessment of the evidence in order to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognize the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations.”

14. What about cases where it’s “his word against hers”?

“He-said, she-said” is a myth about rape cases, rooted in harmful gender stereotypes. However, there is no evidence that false accusations of rape are more common than false accusations for other crimes, such as for example robbery.

This myth also ignores that criminal prosecutors have methods available to them to go beyond the parties’ contradictory statements to prove a case beyond reasonable doubt in court, from forensic evidence, to witness statements, to other corroborative evidence.

In the end, it is simple: testimonies of sexual violence victims should be treated in the same way as the testimonies of victims of every other crime; and all cases need to include these testimonies as evidence, as well as all other evidence for examination.

15. Does the consent definition put survivors at risk as they may be asked even more questions during the court proceedings?

International human rights standards require states to protect victims during legal proceedings to ensure that there is no “secondary victimization” irrespective of a consent-based definition of rape. In practice, authorities don’t always take the necessary steps to prevent this and it is happening both in countries with consent-based laws and those that don’t have them.

The measures recommended to protect victims during legal proceedings, for example in the [United Nations Handbook for Legislation on Violence against Women](#) include free legal aid for victims, especially in criminal proceedings; support in court, including being accompanied and



represented by a specialized survivors' service; as well as measures such as not having to meet the defendant when appearing in court, in camera proceedings or testifying through video link. International human rights standards provide that evidence relating to past sexual history and conduct of the victim can be permitted, in both civil and criminal proceedings, only when it is relevant and necessary.

16. Can Amnesty prove that the introduction of consent laws has increased the number of convictions, e.g. in the UK or Sweden?

There is currently no research available showing such a correlation. However, it is also a fallacy to expect that consent-based laws in themselves will increase the number of convictions. Consent-based laws in themselves are not the whole solution to addressing and preventing rape; they are a starting point. In addition to legal change, proper implementation including through training of relevant professionals alongside awareness-raising, myth-busting, and appropriate sexuality education are crucial to ensure access to justice and prevention. For example, in the UK, which has a consent-based definition of rape, there have been other systemic failings, which show that consent-based laws are only one element of the puzzle.

Consent-based definitions can affect societal changes and hence contribute to ending rape through affecting people's attitudes and behaviours. If the law defines sex without consent as rape this should filter down to the broader society, if accompanied by proper awareness raising and public education, resulting in better prevention of rape in the long-term.

It is also important to stress that legal definitions recognizing that sex without consent is rape are based on international human rights law and Amnesty International is calling for such changes highlighting states' legal obligations, as well as the need for protecting everyone's human rights to sexual autonomy, bodily integrity and human dignity and ensuring a life free from rape.