



## WHAT IS 'ESTUPRO'?

The crime of *estupro* usually describes cases in which an adult has sexual relations with a minor above the legal age of consent by means of seduction or deceit. This discriminatory law mislabels rape and contributes to impunity for rapists as it ignores the exploitation of unequal power dynamics and the vulnerability of teenage girls. In addition, the penalties prescribed under *estupro* provisions are generally very low, far lower than applicable penalties for rape (see table below), and are not commensurate with the severity of the crime.

Examples of Sentences for Rape vs. Estupro (See Equality Now's Report for text of the laws and more jurisdiction examples)		
<b>Bolivia</b>	Rape: 15-20 years	<i>Estupro</i> : 3-6 years
<b>Cuba</b>	Rape: 4-10 years	<i>Estupro</i> : 3-9 months (but criminal action extinguishes on marriage with the victim)
<b>Paraguay</b>	Rape: up to 10 years	<i>Estupro</i> : Fine (no prison sentence)

In Equality Now's recent report *Failure to Protect: How Discriminatory Sexual Violence Laws and Practices are Hurting Women, Girls, and Adolescents in the Americas*, 17 of the 43 jurisdictions surveyed have discriminatory *estupro* or *estupro*-like provisions in their laws, which provide for a lesser penalty for adults who rape adolescents between certain ages, often between 14 and 16 years of age, by means of "seduction" or deceit. In most of these jurisdictions, the penalty for *estupro* is less than half the penalty for rape, with some jurisdictions only imposing a fine for the offense of *estupro*.

## Why are Estupro provisions problematic?

Rapists are often charged with the lesser offense of *estupro*, as opposed to rape, contributing to impunity for rapists. **The existence of this discriminatory offense in relation to teenage girls is frequently used to circumvent application of the rape offense** either through the exercise of prosecutorial discretion to charge the accused with *estupro* as opposed to rape or through the use of judicial discretion to reduce charges of rape to that of *estupro*.

In a recent report, the UN Special Rapporteur on Violence Against Women established with respect to *estupro* provisions that "the existence of a less severe offence involving teenage girls contributes to the impunity of rapists, as evidence suggests that rapists tend to be charged with the lesser offence instead of rape, if they ever face prosecution". She recommended they be abolished.<sup>1</sup>

This misuse of the *estupro* provision by criminal justice system officials denies justice to adolescent victims of rape. Furthermore, ***estupro* laws ignore the unequal power dynamics between adults and adolescents, perpetuate harmful myths and stereotypes<sup>2</sup> about adolescents, and allow adults who rape adolescents to avoid the full consequences of their crime.** These harmful myths and gender stereotypes have far-reaching impacts. They create an enabling environment for further discrimination and harm against adolescent girls in particular, and women in general, including that girls sexually exploited by older men often end up being coerced into marriage or informal unions on the basis of the structural discrimination they face.

Finally, although *estupro* laws mean that rape of adolescents can be prosecuted, albeit with less accountability, this provision tends to weaken the overall statutory scheme against sexual violence. This is for two reasons:

- 1) judges and/or prosecutors frequently reduce what should be rape charges to *estupro* because they buy into rape myths that tend to blame the adolescent girls for being "temptresses" and therefore blame the adolescent victims for the violence perpetrated against them; and
- 2) the law plays a normative role in suggesting a notion of a hierarchy of rape where some perpetrators are deemed less guilty than others for effectively the same crime and some victims are implied to be less harmed by the experience and so less deserving of justice.

## What Should The Law Look Like?

Sexual violence laws must ensure that those who commit rape of adolescents will always be held accountable and therefore ***estupro* provisions, where they exist, should be abolished.**<sup>3</sup> Repeal of discriminatory *estupro* provisions, however, must be accompanied by a complete overhaul of sexual violence laws including adopting consent-based definitions of rape (see Consent-Based Rape Definitions Factsheet), to ensure that adolescent girls are protected from sexual violence in all circumstances. While existing *estupro* provisions remain in the statute books, prosecutors and judges should ensure that acts of sexual violence against adolescent girls which meet the threshold of the rape definition should always be prosecuted/charged as rape and not *estupro*.

<sup>1</sup> See Report of Dubravka Šimonović - Special Rapporteur on violence against women, its causes and consequences, on Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention, 19 April 2021, A/HRC/47/26 para. 84-85(e).

<sup>2</sup> *Estupro* laws are grounded in cultural and legal traditions and stereotypes in which women and girls were expected to be chaste, and sex outside of marriage was an extreme taboo, especially for the female sex. *Estupro* and similar crimes evolved to punish men who had sex with females who were not their wives through deception, by "seducing" them or promising them marriage. Walker, G., *Sexual violence and rape in Europe, 1500–1750*. In: Fisher, Kate and Toulalan, Sarah eds. *The Routledge History of Sex and the Body, 1500 to the Present*, Routledge Histories, London and New York: Routledge, 2013, pp. 429–443.

<sup>3</sup> Report of the Special Rapporteur on violence against women, its causes and consequences, Dubravka Šimonović, *Rape as a grave, systematic and widespread human rights violation, a crime and a manifestation of gender-based violence against women and girls, and its prevention*, A/HRC/47/26, 19 April 2021, paras 84-85.

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