

Sentencing of sexual violence in the Peruvian Justice System



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## **Declaration**

This dissertation is the result of my own work and includes nothing which is the outcome of work done in collaboration except where specifically indicated in the text.

This dissertation does not exceed the word limit as set out by the Degree Committee of the Faculty of Law. The total word count is 17,912.

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## List of Abbreviations and Acronyms

CJS	Criminal Justice System
CC	Peruvian Criminal Code
CDA	Critical Discourse Analysis
ENDES	National Demographic and Family Health Survey ( <i>Encuesta Demográfica y de Salud Familiar</i> )
ENARES	National Survey on Social Relations ( <i>Encuesta Nacional sobre Relaciones Sociales</i> )
IACtHR	Inter-American Court of Human Rights
IACHR	Inter-American Commission of Human Rights
NGO	Non-Governmental Organization
VAW	Violence Against Women
PAHO	Pan American Health Organization

## **Abstract**

In Peru, there is a widely held view that judges reproduce gender-based stereotypes when sentencing on sexual violence. However, very few studies have critically examined if rape myths and other gender stereotypes permeate judicial decision-making and how they do so. This qualitative work addresses this gap by exploring written sentencing remarks of rape cases against female victim-survivors over 14 years-old, from 2015-2020, through thematic and critical discourse analysis. Findings indicate that rape myths still inform judicial decision-making in the interpretation of statutes, assessment of evidence and construction of facts. Key implications include a better understanding of the criminal justice system's strengths and weaknesses, the role of judges in neutralizing rape myths and the need to explore alternatives means to satisfy rape victim-survivors' justice interests.

*“...justice suffers the evils of its own society”*

(Pásara 2018:97)

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# Introduction

In November 2020, one of the most influential tabloids in Peru (“Perú21”), published the following phrase on its front cover: “*Machismo colegiado: Two judges and a judge reject a rape complaint because the victim was wearing red panties*”. The story of a young woman from Ica, Peru, who had been sexually victimized by a friend, acquitted with questionable arguments, triggered a collective outrage towards the Peruvian justice system. It also confirmed a nationwide prejudice: that judges are as susceptible as anyone to rape myths and gender-based stereotypes.

Research on the influence of these myths in judicial opinions has been carried out in many jurisdictions: Croatia (Radačić, 2014), Australia (Taylor, 2007), Malaysia (Othman et al., 2019), Canada (Ehrlich, 2001; Wood & MacMartin, 2007), Japan (Burns, 2005), United States (Hildebrand & Najdowski, 2015), U.K. (Ellison & Munro, 2009; Munro & Kelly, 2009; Smith & Skinner, 2012; Temkin & Krahé, 2008), Rwanda (Bizimungu, 2018), Cyprus (Charalambous, 2015), Vietnam and Nepal (Skinnider et al., 2017), Argentina (Salanueva & Zaikosky Biscay, 2015), etc. In Peru, two studies are relevant. The first is a 1995 investigation that focuses on identifying gender stereotypes in processing rape cases across the Criminal Justice System (CJS) (Siles, 1995). The second is a 2011 Ombudsman Office report that describes the main features of rape cases and measures judges’ attitudes towards violence against women (VAW) through a survey. While the former is now outdated, the latter did not analyse written judgements. This work, hence, aims to offer a contemporary qualitative research of sentencing remarks aimed at exploring, through thematic and critical discourse analysis (CDA), whether (and how) rape myths and gender stereotypes inform judicial reasoning.

According to the Inter-American Court of Human Rights (IACHR), among the multiple obstacles that victim-survivors of gender-based violence in Latin America face in their access to justice, are the negative stereotyping and *machista*<sup>1</sup> prejudices from public servants that distort investigations and even trial proceedings and potential punishment of the offender

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<sup>1</sup> ‘Machismo’ is the Spanish word for ‘patriarchy’ that fashions out a specific form of Latino hyper-masculinity, based on honor and pride (Rogers, 2020).



(CIDH, 2019:67). Law enforcement and judicial systems are perceived as “the institutions that offer the worst responses to women who seek help” (Sagot, 2005:1306). In a region where the justice system is widely perceived as corrupted, the State as ineffective (or illegitimate) and the social contract that defines western societies does not exist for most of its countries (Schulte-Bockholt, 2013), it is fundamental to understand how rape myths and gender stereotypes, embedded in a dominant ‘*machista*’ culture, permeates the delivery of justice.

In Peru, no available data has revealed the views of rape victim-survivors towards the CJS. Yet, a survey-based research from the Peruvian Ombudsman Office, portrays unsatisfactory responses from VAW survivors who have come into contact with the system. According to this, 62% had no faith or trust in the police, 59% considered their physical settings inadequate to report and 50% perceived that their personal behaviour was constantly being questioned by legal practitioners during the process (Defensoría del Pueblo, 2018). This complements the 71.1% of women who have been physically, verbally or sexually victimized and decided not to ask for help or disclose their experience to a public institution at all (ENDES, 2018).

Over the years, the increasing awareness of sexual violence as an endemic problem has led to a call for more punitive state responses (Burman & Gelsthorpe, 2017). However, despite decades of legislative and policy reform, most rape cases against women remain unpunished (Kelly et al., 2005). The increasing distance between the number of offences recorded by police officers and the securing of convictions in court, termed the “justice gap” (Temkin & Krahé, 2008), adds to the negative effects of secondary victimization experienced by women who come into contact with the CJS, leading to a problematic paradox (Brooks-Hay, 2020). That is, while encouraging victim-survivors to report their victimization, not only are their needs insufficiently satisfied by the CJS, but even more, the harm suffered is deepened by it (Mirrlees-Black, 1999). Certainly, this paradox is a result of different decision-making processes within the CJS chain. Exploring what occurs in one of these chain links – sentencing – will contribute to identifying the flaws affecting women’s right to judicial protection and a fair trial.

The exposure and analysis of judges’ response to rape in this work does not seek to advocate towards a more punitive turn, but to reflect on alternative responses within and outside the legal system (Clark, 2015; Daly, 2014; McGlynn & Westmarland, 2019; Morris & Gelsthorpe, 2000). As stated by Powell et al., “[w]hile it is true that victims of crime often turn to law as

the normative remedy for injury, law at times can engender oppressive and deleterious effects, serving as a tool of further injustice” (2015:5). Nicolson, based on Carol Smart’s reflection, states that law is a “double-edged sword” that takes with one hand what it gives with the other. According to him, the binary logic of rape trials, where a court declares either that a woman was raped, or her allegation was false, plus the difficulties of gaining convictions, and the harmful stereotypes that abound, should lead us to abandon the prosecution of rape cases as doing more harm than good (Nicolson, 2000:23). Searching for new avenues implies not only addressing the needs and contexts of individualised lived experiences of rape victim-survivors, but also the broader societal contexts and collective expectations of justice (Powell et al., 2015:7). This dissertation is, then, expected to encourage academic and political debates on different ways of doing justice that better satisfy victim-survivors’ needs.

The first chapter reviews the literature on rape myths in Peruvian society, the CJS’s response to this crime and the available research on the influence of rape myths in judicial decision making. The second chapter outlines the research questions, the research design and methodology including the theoretical framework that guides this study, the process by which data was collected and analysed, the ethical implications and research limitations. Chapter three offers a discussion of the findings through a thematic and critical discourse analysis of a sample of 18 sentences. Where identified, rape myths or gender biases are critically evaluated. Finally, conclusions are drawn out of these findings, to identify challenges and offer institutional solutions to improve the judiciary response to rape cases in Peru.

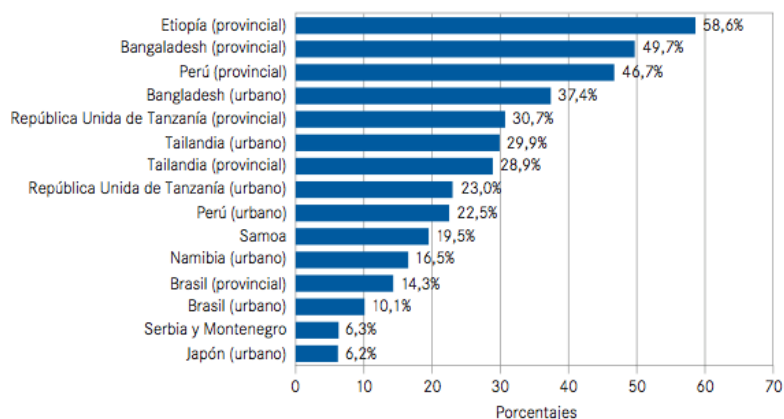
# 1. Literature Review

This chapter will focus on three areas: 1) the current state of sexual violence in Peru and the Peruvian CJS's response to it; 2) the nature and diverse manifestations of rape myths and other gender stereotypes, and their entrenchment in Peruvian society; and 3) a comparative review of available research of rape myths in judicial decision-making across different jurisdictions.

## 1.1. Sexual Violence and Peruvian CJS's response

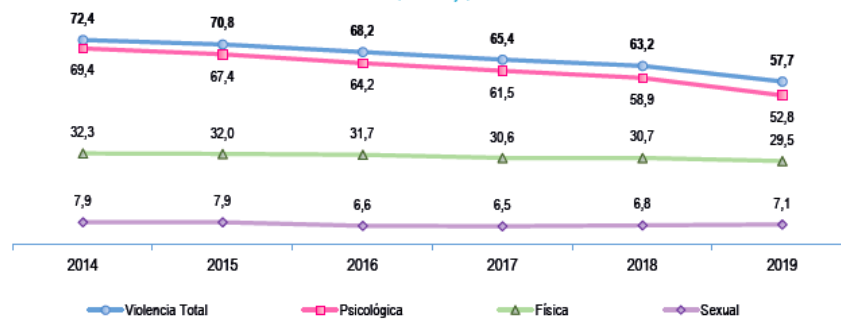
By 2013, at a provincial level, Peru reported the third highest rate of lifetime prevalence of sexual intimate partner violence in the world with 46.6%. At urban level, it ranked ninth with 22.5% (Mujica, 2011; OPS, 2013). In South America, it has the most reported cases of sexual violence (Mujica, 2011). But given its under-reported nature, its real magnitude is unknown. The 'dark figure of crime' may be accessed through victimization surveys (DeKeseredy, 2011:61). According to the ENDES, by 2018, 63.2% of women aged 15-49 in Peru had experienced some sort of violence from their husband or partner. Out of the 3 million women aged 15-49 who were in a relationship in 2018 (ENAHO, 2018), 2.6% were sexually victimized in that period. This makes an approximate of 78,000 women or adolescents' survivors that year, which contrasts with the average of 6,881 police reports of sexual violence a year and the 34,153 "sexual integrity" examinations carried out by the Institute of Forensic Medicine in 2009 (Boesten, 2012:362).

**Percentage of women 15-49 years of age who have ever had a partner and who reported experiencing sexual violence from a partner after the age of 15 (Percentage)**



Source: PAHO (2013)

Gráfico N° 3.5  
 PERÚ: EVOLUCIÓN DE LA VIOLENCIA FAMILIAR CONTRA LA MUJER DE 15 A 49 AÑOS DE EDAD,  
 EJERCIDA ALGUNAS VECES POR EL ESPOSO O CONVIVIENTE, SEGÚN TIPO DE VIOLENCIA, 2014-2019  
 (Porcentaje)



Fuente: Instituto Nacional de Estadística e Informática. Encuesta Demográfica y de Salud Familiar 2019.

Source: ENARES (2019)

Following a general decline of victimization rates in Peru by 14 % from 2010 (Hernández et al., 2020), levels of gender-based violence have also decreased in recent years. Sexual violence, yet, remains at similar rates. These numbers are an underestimate, since they do not include cases of women outside the age limit of 15-49, or violence exerted by someone who is not a current or former partner. This is particularly relevant because, according to the Public Prosecution Office rape data (2018), only 3.9% of the accused were a partner or former partner, 16.7% a stranger, 38.2% a family member and 41.2%, an acquaintance. In short, the vast majority of rape cases are not included in these surveys.

Reasons for not reporting rape are diverse. Some include lack of acknowledgement from victim-survivors that they have been victimized (Daigle & Muftić, 2016:146), fear of retaliation from the aggressor, feelings of shame and embarrassment, the belief that it was a minor incident and not a police matter, and a concern that police and prosecutors will question the authenticity of their claim (Lievore, 2003; Ortega, 2019). Since rape commonly occurs in private, it is hard for victim-survivors to prove it beyond their own word. It is even more difficult when the case does not fit the “real” rape myth (Estrich, 1987). That is, the idea by which rape is only “rape” if it is perpetrated by a stranger in public and leaves visible injuries to the victim. If this does not occur, it is considered a ‘simple’ rape, i.e. not treated as criminal by the CJS, or even considered rape by their women victims (1987:8). In other words, this widespread myth is by no means harmless. Not only can it impact a victim-survivor’s ability to recognize themselves as a victim but it can also affect levels of empathy and support given by family, friends and professionals (Daigle & Muftić, 2016), and access to justice can be

seriously jeopardized if such beliefs are espoused by legal practitioners (Brooks-Hay, 2020; Gracia et al., 2014; Kruahiran et al., 2020).

Since this work seeks to study the presence and role of rape myths and gender stereotypes in sentencing, it is key to understand where these beliefs come from. Research demonstrates that they shape not only the contours of ‘androcentric’ criminal law, but also its discriminatory outcomes (Burman & Gelsthorpe, 2017; Maqueda Abreu, 2014; Nicolson, 2000; Smart, 1989). If the premise is that gender not only influences the likelihood of rape, but also the response from the CJS, then the extent and nature of the beliefs that breed the referred rape myths in a specific society must be explored. The following section will then address the origins of this phenomenon, its manifestations, and its impact on CJS’s response.

## 1.2 Rape Myths and Gender Stereotypes in Peruvian Society

Rape myths are defined as “prejudicial, stereotyped or false beliefs about rape, rape victims, rape offenders that trivialize or justify male sexual violence against women” (Burt, 1980:217). Examples include: blaming victim-survivors (i.e. provoked rape by what they were wearing); casting doubt on their allegations (i.e. delays in report); excusing offenders (i.e. male sexuality is uncontrollable once ‘ignited’); or assuming rape only occurs in specific contexts (i.e. between strangers) (Bohner et al., 2009). These operate as a cognitive framework within which people understand rape, and against which they judge any specific incident (Bohner et al., 2009). Since they are based on generalizations, for those who believe in them, characterise very few allegations as ‘real rapes’ (Temkin et al., 2018:206). By reproducing sexual scripts, expected sexual interactions between men and women are prescribed, the former portrayed as the “initiators and pursuers of sex” and the latter as “gatekeepers with the associated responsibility for refusing men’s sexual advances” (Gray & Horvath, 2018:17).

Such representations mirror a general attitudinal orientation of beliefs about women rooted in traditional gender/sex roles, prejudice and acceptance of violence (Gray & Horvath, 2018:18). These derive from socio-cultural expectations of female and male ideals of behaviour, attributes and roles that are considered ‘appropriate’ in a society, called “gender stereotypes” (Cook et al., 2010). Gender-based violence is mediated by these conceptions. Various studies show that attitudes towards VAW is one of its strongest predictors (Abbey & Harnish, 1995; Akbary et al., 2020; Ben-David & Schneider, 2005; Flood & Pease, 2009; Sardinha & Nájera

Catalán, 2018). How people perceive and represent certain forms of VAW, be it by supporting, minimising, accepting or normalising them, contributes to its perpetration.

In this regard, Latin America is a region where rigid gender roles are often endorsed (Fuller, 2018; IACHR, 2019; Mizrahi, 2003; Raffaelli & Ontai, 2001). It is the “the cradle of *machismo*” (Valdés & Olavarria, 1997), where traditional social representations of women and men persist. Women’s subordinate role in Latin American is a problem deeply rooted in its political, social, economic and racial history. Two factors contributed to this: *marianism* (the idea of female submission and self-sacrifice) and *machismo* (the notion of male sexual prowess and aggression). Research on the influence of “*mestizaje*”<sup>2</sup> in the identity of Latin American men and women suggests that the mixture of European men with indigenous women, as a result of violence in the context of war, as well as the combination of indigenous religious beliefs (where women were symbolized as life givers), with European Catholicism and its worship for Virgin Mary, generated a hybrid *ethos* for women. On one side, women had to find their justification in motherhood, and on the other, they had to identify themselves with Virgin Mary, striving to be as pure and selfless as “she” was (Montecino et al., 1988).

These conservative and *machista* ideas continue to be prevalent in current Peruvian society. According to public national survey ENARES, in 2019, 52.7% considered that women should first fulfil their role as mother and wife before achieving their dreams; 33.2% believe that if she is unfaithful, she should be punished by her partner; 31.1% state that if she dresses up in a provocative way, she is looking to be harassed and 26% considers that women should be willing to have sex if their partner so wishes. Although most of these figures have decreased over the years, social tolerance is still high: 58.9% accept, tolerate and/or justify VAW; almost two out of three Peruvians.

Focusing on rape, Janos’ 2015 study of sexual violence representations and myths, and their relationship with ambivalent sexism<sup>3</sup> in Lima, Peru, found that benevolent sexism (the idea that women are to be respected and protected as long as they adhere to their gender role) is a

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<sup>2</sup> Mestizaje, “the process of interracial and/or intercultural mixing”, plays an important role in the recognition of plurality of identities in Latin America and the hybrid constitution of the nation, as well as the formation of a diaspora identity forged under the rubric of ‘lo hispano’ or ‘lo latino’ (Martinez-Echazabal, 1998:21).

<sup>3</sup> Ambivalent sexism theory considers that prejudice toward women is made up of two interrelated ideologies with ambivalent tones: endorsement of hostile sexism (aggressive and competitive attitudes toward women) and endorsement of benevolent sexism (paternalistic and patronizing attitudes toward women) (Hammond et al., 2018).

predictor of rape myth acceptance (2015). On one side, the belief by which women should abide to their traditional role of “good woman” leads to the thought that victims of VAW “deserve” the violence they have experienced because they challenged gender norms (the “just world” theory) (Lerner & Miller, 1978). On the other side, it backs up the idea of men as women’s protectors, reinforcing characteristics of male dominance and facilitating acts of sexual violence (Janos 2015:38). In accordance with a meta-analysis study of rape myths developed by Suarez & Gadalla (2010), this study also determined that rape myths are more prevalent in men than in women, and backed up the thesis by which social representations of traditional gender roles contribute to victim-blaming in rape cases (Janos 2015:41). In other words, adhering to *machista* gender stereotypes increases the chance of reproducing rape myths.

Regarding the influence of these gender expectations and beliefs in the CJS’s response in Peru, the bulk amount of research is focused on sexual violence as a crime against humanity in the context of Peruvian non-international armed conflict between 1980-2000 (APRODEH, 2005; Boesten, 2010, 2016; Dador Tozzini, 2007; Mantilla Falcón, 2019; Salazar Luzula, 2006; Silva & Portal, 2017). Other studies focus on normative and legal perspectives on how to improve rape prosecution (Caro, 1999; Ramírez, 2017; Ugaz, 1999). But very few have centered on analyzing the extent to which rape myths and gender stereotypes permeate the system in rape cases not related to contexts of war.

In relation to the police, a Peruvian Ombudsman Office report concluded in 1995 that manuals guiding sexual crime investigations had clear discriminatory provisions. They required officers to examine whether the victim opposed the attack, screamed or was persuaded by someone to denounce it, whether she immediately reported it or had a prior relationship with the aggressor, whether she was lying or not, etc (Villanueva Flores, 1999:80). Boesten’s work on sexual violence in war and peace time is also revealing on this matter: “Sexual violence perpetrated by intimate partners is not taken seriously; interviewed prosecutors and forensic doctors suggested that one can only prove rape perpetrated against a virgin, virtually dismissing the possibility of rape against adult women and within marriage” (2012:371). As such, law enforcement, as well as first line of victim support, hardly take the side of women, and often blame them for the situation they find themselves in (2012:375).

In addition, recent unpublished work on gender stereotypes in Peruvian public prosecutors showed that 34% considered women partially responsible for their victimization; 40% disagreed that certain masculinities are a risk factor for gender based violence; 28% considered female victim-survivors were submissive; 73% thought only men with mental health problems exerted VAW; 22% considered women report for vengeance; 31% perceived only sexist men were violent against women, and more (De Assis, 2019). Overall, nearly a third of prosecutors were influenced by gender stereotypes, though this number could be higher, given the ‘social desirability’ factor that prompts participants to satisfy the researcher’s expectations. Interestingly, there were no differences in the answers given by female or male prosecutors (2019:38). Research done on the judiciary will be explored in the next section.

### 1.3 Rape Myths and Gender Stereotypes in judicial decision-making

Evidence shows that rape myths and gender stereotypes influence juror decision-making (Dinos et al., 2015; Leverick, 2020). In the U.K., Smith and Skinner (2017) have demonstrated that these myths are routinely incorporated by courts in England and Wales as ‘markers’ against which the ‘normality’ of the complainant’s behaviour is judged, casting divergent accounts as irrational and untruthful. Deviance from ‘virtuous’ or ‘restrained’ female sexuality or behaviour is also emphasized as evidence that certain cases are not rape (Smith & Skinner, 2017). This latter was also found in Temkin et al.’s study that, using thematic analysis in modern rape trials, found that when cases did not fit the real rape script, rape myths were stressed to reduce the culpability of the defendant and shift blame to the complainant (2018). Similar patterns have been identified in Australia’s juror attitudes in sexual assault cases (Taylor, 2007) and Canada’s written trial judgements (Coates et al., 1994).

In non-common law countries, where judges, not juries, deliver the verdict, research on this topic has also been carried out. In Croatia, Radačić analysed rape myths and gender stereotypes in Zagreb County Court sentencing remarks and found a lack of consistency in defining rape, where its central elements, like force/threat or intent, were interpreted in line with rape myths. Findings showed that the Court endorsed a model of possessive sexuality that assumes women like to be sexually possessed by men. Except for one judge, Radačić showed that the rest demanded serious and continuous resistance from victims, defined force narrowly and equated submission with consent (2014:85).



In Rwanda, Bizimungu analysed 175 cases and concluded that judges, as well as prosecutors, are influenced by rape myths, and although conviction rape rates are seemingly high, cases that turn into convictions meet the 'real rape' standard (2018:205). In Malaysia, furthermore, Othman et al., studied the language used by judges to describe accounts of rape in 17 appellate judgements of sexual violence cases and revealed that rape is often characterized as a non-coerced and mutually-consented behaviour rather than a criminal act, minimizing the level of violence, mitigating the offender's responsibility, and relegating the victim's experience (Othman et al., 2019). Additionally, in Cyprus, research on rape court cases showed that the characterisation of victims' identities and reformulations of rape by judges changed victims into consenting individuals (Charalambous, 2015).

Looking specifically at Latin America, a study on legal discourse of rape sentences in Argentina, determined that rape myths were commonly used by legal practitioners throughout the process, prioritizing or validating the perpetrator's account while ignoring women and girls' voices. Through a qualitative analysis of 232 sentencing remarks it was shown that, despite legal changes, judges continue to reproduce gender stereotypes when inquiring about the honesty of the victim, interpreting their consent, resistance or will, conceiving of rape as a private or family matter, increasing the victim's credibility if the offender is a stranger, being suspicious when survivors delay or retract their complaint, etc. (Salanueva & Zaikosky Biscay, 2015). In Chile, a recent case study of judges assessments of evidence given in rape trials highlighted that gender stereotypes filter in when applying concepts like the "maxims of experience"<sup>4</sup>, a hypothetical judgement used by judges to infer factual conclusions from their own personal beliefs when backing up their decisions (Aguirre Mussa et al., 2019).

Despite the theoretical claim that the judiciary is an impartial and non-ideological institution, judges are highly influenced by underlying personal or social prejudices and stereotypes (Charalambous, 2015). Solan (1993), cited by Cotterill, suggests that judges, "whilst going to great lengths to appear 'neutral' in their judgments, are in fact often guilty of concealing hidden agendas and ideological positions which inform and, ultimately, bias their decision-making

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<sup>4</sup> As with the "principles of logic" and the "scientifically established knowledge", the "maxims of experience", are tools used by courts for evidence assessment. They are hypothetical judgments of general content, independent from the facts that are being discussed in a process, which derive from the "experience", pretending to be valid for other cases. (Limardo, 2021).

process" (Cotterill, 2003:7). It has been agreed that, if we are to understand judicial decision-making, the role of legal interpretation needs to be scrutinized, as much as the judges' construction of the facts (Burns, 2005:8). Through a feminist critique of law's disciplinary power as a means of social normalization and control, linguistic practices in judicial discourse represent a pathway into revealing how latent gender ideologies impact judges decision-making and construction of a monopolized 'truth' (Deborah De Carvalho Figueredo, 1998; Ehrlich, 2001).

Pásara, who has long studied the Peruvian judiciary, explains how some of its main features can be traced back to the colonial legacy. The imposition of an external legal system divorced from the reality where it was applied led to a wide gap between the law and its efficacy. From the 19<sup>th</sup> century onwards, the process of French codification that inspired Latin American legislations deepened this, reinforcing the idea that the law was no more than what the codes said and that judges had to subordinate to it. This historical heritage defined Peruvian judges as mechanical enforcers of legal texts who did not have the power that the Constitutions appointed them. This subordinated position also explains the lack of prestige that judges have and the difficulties in attracting highly qualified lawyers to the judiciary. As such, judges in Peru are represented as public servants, important but repetitive and bureaucratic in their task: "Their reasonings are not published nor, even less, studied and subjected to public scrutiny because they are not expected to be creative or original and very exceptionally they are" (Pásara, 2019:44).

Some of this diagnosis is evidenced in a 1995 qualitative analysis of 30 legal files on sexual violence against adults and children (Siles, 1995). According to the author, despite attempts to reform the judiciary in the 1960s and 70s, in broad terms, civil and criminal courts preserved traditional features such as formalism, worship of the literality of legal statutes, fear and obedience to power, detachment from social problems, resistance to change, plus mediocrity and corruption that spread across different instances (1995:28-29). In relation to rape cases' treatment, through a qualitative analysis of rape files, Siles concluded that the judiciary discriminates on the basis of gender, especially against adult rape victim-survivors with no mental disabilities (1995:259). When treating cases against girls under 14 or victims with disabilities, however, judges showed themselves more 'open' and 'flexible' in the evidence assessment, giving more 'value' to the victim's testimony (1995:263).

Besides this last work, no other qualitative research on the specific role of rape myths and other gender stereotypes in written sentencing remarks of rape crimes against women has been carried out in Peru. The 2011 Ombudsman Office report on judicial treatment of cases against adult women was a descriptive analysis of its main features (e.g. profile of perpetrators, victims, penalties, etc.), and identified gender biases through surveys of judges by measuring their attitudes towards VAW (Defensoría del Pueblo, 2011), but not through their written judgements. This current project, hence, seeks to address this lacuna. The aim is to answer whether rape myths and gender stereotypes inform judicial decision-making, and critically analyse how they operate and hide within judicial discourse. Findings are also intended to shed light on the high levels of acquittals of rape cases in Peru against women over 14, which by 2011 reached 90% (Villanueva Flores, 2012), and explore whether the presence of these myths has any impact on the judicial outcome.

## 2. Methodology

### 2.1 Research Aims

This research aims to explore whether, and to what extent, judicial written judgements of rape cases in Peru against women and adolescents over 14 include rape myths and gender stereotypes. To achieve this, the following research questions were formulated:

- a) Are rape myths and other gender stereotypes present in judges' **crime definition** of rape, evaluation of evidence and construction of facts?
- b) What are the implications of the meanings and underlying assumptions of judges' rape representation, for the outcome of a case?
- c) How are issues of power and gender ideology created and reproduced through judicial discourse in rape cases?

### 2.2 Research Design and Methods

This research is based on a qualitative, exploratory design. Qualitative research studies “things in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people bring to them” (Denzin & Lincoln, 2018:46). Within criminology, it seeks to explore the processes by which crimes are created and the social reactions to it, under the premise that the social world -including crime and deviance-, is a product of social interactions (Noaks & Wincup, 2004b). Given the scarce existing data on this thesis' topic, an exploratory approach has guided this work in order to build insight into the phenomenon.

Using documentary analysis, 18 sentencing remarks of rape cases adjudicated by Peruvian judiciary from 2015 to 2020 were critically scrutinized to identify and analyse rape myths and other gender stereotypes in the judges' interpretation and application of the legal framework. The study of documents not only allows social scientists to explore what it contains, but also how they are manufactured and how they function in specific social settings (Prior, 2003). Sentencing remarks provide insightful information and evidence on how crime is being represented by judges in the CJS. As stated by Pásara, court rulings are the main product of the

justice system, throughout which not only the system is known but, in particular, the judges who dictate them (2006:2). Judicial opinions and statutory representations, furthermore, enable to analyze the power and ideology of law, expressed in linguistic strategies of judges (Cotterill, 2003:8).

### 2.2.1 Theoretical Framework

This work has been designed under a socio-legal framework that draws on feminist theory. The aim is to address the role of gender in the CJS, and power imbalances resulting from ‘malestream’ criminal law and its application (Nicolson, 2000; Smart, 1989). The cornerstone that guided this work is the study of gender, defined as “the socially constructed expectations and norms governing female and male behaviour and attitudes, usually organized dichotomously as femininity and masculinity, reproduced and transmitted through socialization” (Renzetti, 2013:129). This ought to be understood as integrated with a complex tapestry of racial, class, sexual and colonial oppressions, under an intersectional lens (Burgess-Proctor, 2006; Carrington, 2013).

Feminist legal scholars critique of the objectivity and neutrality claimed by law has also inspired this work (Bodelón, 2008; Daly & Chesney-Lind, 1988; Facio & Fries, 2005; Larrauri, 2008b; MacKinnon, 2006; Olsen, 2009; Smart, 1977). Rape, specifically, has been a significant source of attention because it “epitomizes the core of the problem of law for feminism” (Smart, 1989:50). Feminist linguistic approaches that explore how linguistic representations encode culturally dominant notions of gender were also used to ground the analysis (Ajzenstadt & Steinberg, 2001; Bavelas & Coates, 2001; Cotterill, 2003; Deborah De Carvalho Figueredo, 1998; Ehrlich, 2001).

Furthermore, legal storytelling or narrative approaches to law, born from Critical Legal Studies, are also used to explore how ‘knowledge’ or ‘truth’ are determined by relations to power and materialised through the ‘subjugation’ of alternative accounts of experiences (Burns, 2005:8). This is particularly relevant in the discursive construction, central to judicial decision-making, of crimes. In this account, rape myths and gender stereotypes function as templates by which rape stories are measured, turning the narratives that fits the mould into more persuasive and believable stories than others.

Regarding the literature, much of it hails from the West, since most research on rape myths in the CJS have been conducted in the Western world (Bizimungu, 2018). A vast majority derives from traditional common law countries, such as the U.K., or the U.S. Their legal system differs from Peru's civil law system. Nevertheless, studies in other latitudes have been used to inform this research and contribute in identifying common patterns and understanding of the rape myth phenomena in judicial decision-making. The scant Peruvian literature found on this topic has been complemented with Latin American research (Bascary, 2019; Guereño, 2019; Pásara, 2006, 2015a; Rogers, 2020; Salanueva & Zaikosky Biscay, 2015), since across the region, common trends in terms of social, political, legal and *machismo* culture can be found (Schulte-Bockholt, 2013). However, special caution was taken not to generalise or import policy "recipes" from foreign realities.

### 2.3 Research sample

Initially, the aim was to have an approximated sample of 20-30 sentences. Given time and space constraints, it was considered a manageable sample size. Yet, as with the scope of the research, due to hurdles in the data collection, it had to be modified.

The original intent was to explore rape myths and gender stereotypes only in acquittal cases, where the victim-survivor was an adult woman. Finding these acquittals, however, was problematic. Most cases that reach trial do so if prosecutors consider it is a 'solid case', which will likely turn into a conviction (Pásara, 2015b:320). If it is a 'weak' one, it tends to fall at earlier stages of the process (Kelly et al., 2005; Munro & Kelly, 2009). In addition, the vast majority of rape cases that reach trial are against minors (this makes a case 'strong') (Salanueva & Zaikosky Biscay, 2015; Siles, 1995; Wentz, 2020). For this reason, the research scope was broadened to include convictions and cases of adolescent girls over 14. Below this, the legal interests at stake are different. Instead of sexual autonomy, criminal law here seeks to protect the sexual safety, development and integrity of children under 14. These readjustments enabled me to explore the relationship between rape myths and reasons given to acquit and compare them with convictions where judges considered a rape had been committed. In other words, to explore the threshold determined by judges to declare rape, and whether their definition or evaluation of evidence was influenced by gender stereotypes.

Since sentences are in the public domain, in theory, anybody interested in gaining access to them should be able to do so. In reality, several barriers must be overcome. Only the ones produced by the Supreme Court are available on the Peruvian Judiciary website. In general terms, cases here arrive as a 'third' appeal, questioning formal or procedural aspects of the law. At this stage, the evidence and facts are no longer discussed as they have already been considered in lower courts. Therefore, to enable a more in-depth qualitative analysis into how judges interpret the evidence in trial and how they construct the facts, only sentences from first instance and appeals from the Superior Court were included. Yet, given that these are not published in the official website, access has to be obtained through informal means, such as contacting judges (Hernández, 2015; Siles, 1995), or parties involved in the case (defence of victims, defendants, or prosecutors). Some of these sentencing remarks may be later published in the media.

Data were obtained through a combination of purposive and convenience sampling. The first is guided by the researcher's specific interest to provide better insight into the purpose of the research (Emmel, 2013). The second refers to the available sample by virtue of its accessibility (Bryman, 2012:201).

In relation to the purposive sample, the following characteristics were chosen:

- 1) Regarding the legal categorisation of the crime: rape, attempted rape and similar legal figures -be it as a single or multiple offence case- that sanction rape in specific circumstances<sup>5</sup> were included. Hence, cases of 'seduction' or 'acts against indecency', which are sexual crimes against minors (close to, but not considered yet rape), were removed.
- 2) Only cases where victim-survivors were either a woman or an adolescent over 14 were taken, since both are legally able to consent sexual relations.
- 3) Cases that had convictions or acquittals as outcomes. This not only secures a wider sample but also enriches the study by allowing comparison between them.
- 4) Sentences from first or second instance from the Superior Court were selected, since both offer broader written discussion for a detailed qualitative analysis in the interpretation of evidence.

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<sup>5</sup> Although article 170 of the CC is the basic crime for rape, there are other similar legal figures also used for rape under specific circumstances. For example, when the victim is under a situation that impedes her to resist due to alcohol or drug consumption, in article 171, or when there is a relation of dependency with the aggressor, as in article 174.

- 5) Only cases from 2015 and 2020 were included. This was done to explore the current prevalence of rape myths, in a contemporary context where gender-based violence has gained increasing national and worldwide exposure (Alcázar et al., 2019). This also allows me to scrutinize the extent to which judges are complying with recent robust international standards that obliges States to actively combat gender stereotypes (Mantilla Falcón, 2019; Pérez Castañeda, 2021).

On the convenience sampling, due to the professional relationships acquired through my legal career, I contacted criminal law litigators, teachers and researchers to extend my academic request for sentencing remarks through their networks. Given the limitations and context faced, the ones I managed to receive were the only ones available. Though convenience sample does not lead to a representative sample, it can “provide a springboard for further research or allow links to be forged with existing findings in an area” (Bryman, 2012:202).

Gathering the data was challenging, mainly due to the Covid-19 pandemic and geographical limitations. Of the several e-mails sent to regional courts of the Superior Court requesting access to sentences, only a few Presidents of Courts replied: Piura and Lima. This is why most cases come from these jurisdictions. Formal requests were also sent to the ‘Programa Aurora’ of the Ministry of Women that offers legal advice and defence to victims of gender-based violence but received no response. NGOs that advocate for girl and women’s rights were also contacted but their cases did not meet the required criteria for this thesis. In addition, leveraging my network as a lawyer, I connected with acquaintances who litigate criminal cases, teach criminal law, or do research on criminology. Finally, some cases were taken from legal media sites that publishes ‘emblematic’ jurisprudence. Since Peru’s official language is Spanish, all sentences were written in this language.

Some of the main limitations in data collection included the following. First, the Peruvian judiciary does not have a systematic repository of sentences of inferior courts. This makes it difficult for judges to identify the criteria I requested for this research. For this reason, my initial request was broadened, going from asking only acquittal cases, to any rape sentence, regardless of the outcome. The second barrier was the lack of digitalization, which reduces chances of having a wider sample of sentences, especially, if there are geographical barriers to gathering them. Having physical files was also a hurdle in the context of the pandemic, since Peru, during the period of data collection, was facing a quarantine that obliged many public



servants to work remotely. A public defendant lawyer eager to offer cases was also unable to have in-person access to them. A third limitation involved the delay of public administration to offer a response to formal requests. Due to its bureaucratic nature, within the same institution, a request can be sent from one office to another, without giving clear indications of who and when will be solved.

As a result of this, a total of 18 sentences, were collected from 1) files shared by presidents of Superior Courts in Peru (8/18); 2) acquaintance lawyers who litigate or teach criminal law, as well as criminology researchers (7/18); and 3) legal online sites that share relevant cases for the legal community (3/18). These had the following features:

#### Characteristics of the Sample

<b>Case</b>	<b>Outcome</b>	<b>Gender of Judge/s</b>	<b>Jurisdiction</b>	<b>Age of Victim</b>	<b>Alcohol?</b>	<b>Physical injuries (victim)?</b>	<b>Stranger, acquaintance rape?</b>	<b>Length (# of pages)</b>
1	Acquittal	Mix	Ayacucho	21-30	Both	Yes	(Ex)Partner	98
2	Acquittal	Woman	Lima	14-20	Victim	No	Acquaintance	12
3	Acquittal	Woman	Piura	14-20	No	No	Acquaintance	20
4	Acquittal	Mix	Ica	14-20	Both	No	Acquaintance	37
5	Acquittal	Man	Lima	x	Both	No	Acquaintance	15
6	Acquittal	Mix	Piura	14-20	No	No	Acquaintance	26
7	Acquittal	Woman	Lima	14-20	No	No	Acquaintance	10
8	Conviction	Woman	Lima	14-20	Offender	Yes	Acquaintance	20
9	Conviction	Woman	Arequipa	14-20	Both	No	Acquaintance	28
10	Conviction	Woman	Lima	x	Both	No	Acquaintance	14
11	Conviction	Woman	Lima	x	No	Yes	(Ex)Partner	12
12	Conviction	Woman	Lima	x	No	Yes	(Ex)Partner	18
13	Conviction	Man	Arequipa	41-50	Offender	Yes	Acquaintance	15
14	Conviction	Mix	Lima Sur	14-20	Yes	No	Acquaintance	47
15	Conviction	Man	Piura	x	Both	Yes	Acquaintance	5
16	Conviction	Man	Piura	x	x	Yes	Stranger	14
17	Conviction	Man	Piura	14-20	x	Yes	Stranger	7
18	Conviction	Man	Lima Sur	x	x	Yes	Stranger	9

The sample included 11 convictions and 7 acquittals. Eight cases were solved by a female judge or judges; six by a male judge or judges; and four by female and male judges. Although gender might have played a role in the treatment of these cases (see Temkin & Krahe, 2008:197), my analysis did not reveal clear distinctions, hence, this will not be developed further.

In relation to the victim's age, not all of the sentences documented it<sup>6</sup>, because of its secondary role in the criminal processes (Defensoría del Pueblo, 2011:50). Nevertheless, out of the available information (11/18), the majority (9/11) were young women between 14 and 20. In relation to the perpetrator's gender, all of them were men. On the geographical aspect, currently Peru has 34 Superior Courts. The sample contains sentencing remarks from 6 of them: Arequipa (2), Ayacucho (1), Ica (1), Lima (7), Lima Sur (2) and Piura (5). Even though this is not a systematic nor representative sample, and it is drawn from a varied set of regions, it is a rich avenue for further research across Peru.

Regarding the sentencing remarks characteristics, the length range was quite varied, with 5 pages in the simplest case, up to 98 in the most controversial one. The longest ones included cases where there were other offences, there was a vast amount of evidence, or a dissident opinion amongst judges, annexed to the overall decision.

## 2.4 Data Analysis

The method chosen to analyse the data was thematic and CDA. While the first is used for "identifying, analysing and reporting patterns (themes) within the data" (Braun & Clarke, 2006:79), the second one focuses on interdiscursivity, power relations and assumptions in speech (Fairclough, 1995). The latter's aim is to investigate how linguistic practices mirror and reproduce structures of social interaction -in this case, gender ideologies-, where power is frequently distributed asymmetrically (De Carvalho Figueredo, 1998:98).

Thematic analysis is used to code words or phrases in the data and reduce them into analytic categories, such as concepts, ideas and issues relevant to the research. This is not just a mechanical process by which one reviews the data, tags or labels it, but an opportunity for further reflection on the messages and meanings that emerge from it (Noaks & Wincup, 2004a).

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<sup>6</sup> The reason why I knew if these cases fitted the age range of the study was because of the crime classification.

In this case, the 18 sentences were coded using a list of themes drawn out from the literature review on categories and examples of rape myths in judicial decision-making (Burt, 1980; Gray & Horvath, 2018; Radačić, 2014) (see Appendix 1).

The first task was to familiarize myself with the sentencing remarks received. An initial quantitative analysis was completed looking for features that distinguished one case from another (i.e. number of acquittals and convictions, jurisdiction where they came from, gender of judges, etc.). Characteristics that would classify a case in accordance to the ‘real rape’ paradigm were also used, like the presence of alcohol (in the victim, offender or both); physical injuries (in the victim) and prior relationship between the offender and victim (current or former partner, acquaintance or stranger). This was used to inform the main qualitative analysis, adding weight to its validity. For instance, this would reveal whether those cases that fit the ‘real rape’ paradigm (i.e. stranger rape) had as an outcome a conviction.

After having overviewed these broad scale patterns, sentencing remarks were methodically read, in accordance to key themes. Using Nvivo, a Computer-Assisted Qualitative Data Analysis Software, these themes were categorized into four codes of rape myths: 1) victim-blaming, 2) excusing male offenders; 3) minimizing rape; 4) casting doubt on allegations; and an additional code of other gender stereotypes. Each item had specific examples as subcategories (e.g., ‘dressed seductively’ or ‘delay report’ for the first code) (see Appendix 1). These were used to screen the documents and identify ideas in the judge’s arguments that would reflect or contest the referred myths.

Since the sentences were in Spanish, once coded, the selected phrases were then translated to English. Having roughly interrogated the data and categorized it in line with the key themes, initial reflections on meanings, symbols and representations hidden in the phrases of each excerpt were written down. The act of writing itself allows us to think about data in new and different ways (Coffey & Atkinson, 1996:109). At this point, it was identified that rape myths were present in two broad separate areas: the interpretation of the crime, and the assessment of evidence and construction of the facts.

For this reason, thematic analysis was used to code rape myths and gender stereotypes identified in both the judge’s definitions of rape, and evaluation of the evidence and construction of the facts. This was done using deductive and inductive strategies (Bryman,

2012). Using deductive strategy, codes were generated with the above-mentioned theoretical framework related to types of rape myths. Codes allowed me to classify phrases that reflected these myths in the evaluations of the case evidence and construction of the facts. Regarding inductive strategy, data were also coded in a ‘grounded’ or inductive way, following a period of ‘immersion’ in the data (Varpio et al., 2017). Different themes not initially anticipated emerged from the analysis of how judges interpreted the legal definition of rape. References to elements like ‘physical violence’, ‘lack of resistance’, ‘[men’s] sexual desire/attraction’ and ‘consent/power’ were included as separate codes in this section.

Finally, CDA was used to critically explore how rape myths permeate the judicial discourse across the written sentences. Influenced by Foucault’s work on the role of language in the constitution of social subjects, CDA explores how discourse is not only shaped by relations of power and ideologies, but itself shapes social identities, social relations and systems of knowledge and beliefs, of which people are generally unaware (Fairclough, 1992). Written judicial opinions represents a rich source to better understand the connection between language, power and ideology in the discourse of law (Othman et al., 2019).

Hence, particular attention was paid to the way in which propositions were expressed, “on the basis that the linguistic choices writers make are crucial for an analysis of what the text communicates” (Cameron & Panović, 2014:67). For this reason, once the statements in the sentencing remarks were coded in accordance to the analytical framework, they were critically scrutinized in the search of “hidden” ideological assumptions that would show how judges construct their vision of rape. The analysis was done looking for patterns in the text, and covert meanings beneath it (Cameron & Panović, 2014:67).

The focus of analysis was on segments where judges described the definition of the crime and evaluation of the evidence and building up of the facts. For example, the framing of rape as a crime motivated by desire or passion, leading to notions of ‘uncontrollable’ acts and ‘non-agency’ within men. Likewise, attention was drawn to irrelevant information included by judges, which either blamed the victim, casted doubt on her testimony or justified aggressors, and also to the lack of relevant information, such as explanations of consent and power, which might have contributed to a better understanding of the crime’s nature. These subtle references embedded in the language were then discussed in light of the broader social context, and the

role played by gender and law to dictate authoritative views of masculinity and femininity, as mechanisms of social normalization and control (Smart, 1989).

## 2.5 Ethics

The main ethical considerations in this study are related to duties of anonymity and confidentiality. Since sentences are considered in the public domain, due to the sensitive nature of the crime, identities of the victims are concealed by law. Nonetheless, across the sentences it was identified that, even though the victim's initials were used at the beginning of the document, their full name was later revealed when describing the evidence and facts. This occurred through the testimonies of witnesses who mention them, or a judge's narrative of the crime. To assure confidentiality, when citing sentences' excerpts in the findings, special care was applied to avoid identifying anyone involved in the case. All names were anonymized through the use of initials and no information that would reasonably facilitate identifying the persons anonymized was mentioned in this work.

## 2.6 Limitations

This study faces four main limitations. The first one is related to the small sample of judicial opinions. As pointed out before, most rape cases fall before reaching the trial stage, and the majority that pass it, are against minors. Given also the time and space constraints of an MPhil dissertation, the amount of rape sentences that fit the required criteria were limited. In future research, it would be interesting to explore whether a bigger sample would result in similar findings. A second limitation is related to the transferability of the findings, since the sample only includes a small geographical and dispersed area across the country. Notwithstanding this, the issues being raised here are likely to be present in other regions in Peru, as shown by the extent of gender stereotypes nationwide. The third limitation is related to language. Although it was an advantage to be a Spanish native speaker for data collection and analysis, this was also a challenge. Translating excerpts was not always clear cut, and some English phrases used were limited in matching 'culturally specific' information.

Finally, it is important to acknowledge my position as a feminist activist in the analysis of the sentencing remarks. From a constructivist perspective, "a researcher's subjectivity is always

part of the interpretive process, from the crafting of the research questions, the designing of the study and collection of data to the identification of themes in those data” (Varpio et al., 2017:43). This view is also shared by feminists who, as Renzetti says, emphasize that no research is completely unbiased, and no matter how objective researchers like to believe they are, “they cannot help but be influenced by values, personal preferences, and aspects of the cultural setting and institutional structures in which they live” (2013:131); simply because research does not take place in a philosophical vacuum (Murray & Overton, 2014).

Taking this into account, the inescapable subjectivities in research need to be recognised and the robustness of the interpretation of findings maximised. In this case, it was done so through systematically scrutinizing the documents and actively searching for any evidence that could refute or contradict general assumptions, prejudices or beliefs on judges’ disposition towards rape myths. For example, by carefully analysing if a judge’s inference was the result of personal interpretation or if it was constrained by statute; or if judges, contrary to what is widely thought, actively contest rape myths and other gender stereotypes incorporated by other actors.

## 3. Findings & Discussion

Across the 18 sentences, rape myths and other gender stereotypes were identified in the decision-making of judges in most acquittals and convictions. The analysis focuses on two main areas. The first addresses the judge's interpretation of rape legal definition, which enables the exploration of whether abstract representation impact the building up of facts and final outcomes. The second targets the judge's assessment of evidence and construction of 'what happened' in the light of legal and extra-legal factors. The latter also includes the case of a judge's active resistance towards rape myths.

### Part I. Definition matters

As part of their duty to motivate their decisions, before discussing the facts, judges tend to describe the legal framework that they will use to interpret the evidence. Since the current Peruvian criminal process is guided by adversarial principles, judges act as an impartial third arbitrator that decides only on the parties arguments and evidence taken to trial (Oré Guardia & Loza Ávalos, 2005; Pásara, 2019). An important part of sentencing includes summarizing the main arguments alleged by the prosecutor (the 'case theory'), the defendant and the evidence admitted. After this, generally, the relevant articles of the CC in force at the time the crime took place are mentioned in order to know which law will be applied.

Here, judges either duplicate what the statute says or offer an interpretation of it. The studied sentences show that this can either be done arbitrarily with no references to binding legal sources, or it may rely on criminal jurisprudence or what the legal doctrine says. Though legal categories and concepts may be codified in statutes, they do not have a 'fixed' or 'cemented' meanings and can, therefore, be interpreted and implemented in ways that are far removed from their intended meanings (Ehrlich, 2001:28).

In order to determine whether judges' linguistic representation of rape encodes sexist assumptions, the following topics will be analysed: a) the narrowing of the means of commission to physical force; b) the victim's resistance to the aggression; c) the offender's satisfaction of sexual appetite; and d) the lack of discussion of 'consent' or 'power' as part of

rape's central elements. Each topic emerged when examining the judge's interpretation of the legal definition before going into the evidence.

a) Narrowing to 'physical violence'

With minor variations, the definition of rape in force at the time most crimes were committed is based on article 170 of the CC. This punishes the act of forcing a person, through "violence" or "serious threat", to have "carnal access through the vagina, anus or mouth, or performs other analogous acts by introducing objects or parts of the body through any of the first two". Although this description has now evolved to include other means of commission (e.g., taking advantage of a coercive context or any other that impedes the victim to freely consent), it has never been reduced only to "physical force". While some judges copy or rephrase article 170, others interpret it to only being committed by this means, as the following extracts demonstrates:

*"The use of violence in article 170 of the CC (...) is equivalent to the attack or material imposition, to the use of any physical means to bend the will of the victim (...) the force required must be effective and have sufficient objective entity" (Case 1).*

*"[violence is] any physical act or physical force tending to change or violate the will of the victim to obtain an undesired result." (Case 13)*

*"Rape is configured in accordance with the provisions of Article 170 (...), the active subject<sup>7</sup> obliges the passive subject to have sexual carnal access, making use of physical force" (Case 15)*

Interestingly, the level of physical violence required to commit the crime, in some cases, ought to meet a higher threshold in order to be considered an "effective" tool to counteract the victim's will:

*"[the violence] must be physical, effective and be causally connected (...). 2. It must be about the deployment of a certain dose of physical violence capable of breaking the defence mechanisms of the victim, of smoothing the obstacles for the carnal conjunction. 3. It must be about physical, continuous and efficient violence, committed against the victim and capable of overcoming resistance." (Case 1)*

*"[violence must be] exercised by the agent on the victim in a physical, effective way and be connected with the current sexual offense intended to be perpetrated" (Case 2)*

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<sup>7</sup> All crimes in the CC are described in terms of an "active subject" that commits the crime against a "passive subject", that suffers the harm. While the first one refers to the perpetrator, the latter refers to the victim.



By conceptualizing rape as a crime necessarily committed with physical force, judges evoke Estrich's (1987) stereotypical 'real rape' myth. Narrowing rape to these terms leads judges not only to increase the standard of proof but disregard the vast majority of cases. According to the WHO, at least 2/3 do not leave physical injuries (2003:11). Since victim-survivors are commonly afraid of being harmed if they show resistance, offenders do not need to use great levels of physical force to subdue them (2003:11). Still, research shows that this way of regarding rape continues to inform decision-making in the criminal process by: being one of the reasons why police officers in the U.K believe a rape allegation is false if no physical harm is present (McMillan, 2018); increasing the likelihood of taking a case to court, as prosecutors in the U.S consider these injuries facilitate convictions (Wentz, 2020) or emphasizing the lack of them when juries' justify their non-guilty verdicts (Munro & Kelly, 2009).

Interestingly, the cases that abstractly described rape in these narrow terms had either an acquittal (Cases 1, 2) or a conviction, if evidence of physical force was proven (Cases 13, 15). In the first two, the standard of physical violence was defined in even more narrow terms ("continuous", "effective", "connected to"). Likewise, out of the 9 cases where physical injuries were identified in the victim-survivor, 8 resulted in a conviction, while only 1 led to an acquittal. Taking into account the 'real rape' script, moreover, all three cases where the defendant was a stranger had a conviction as an outcome (cases 16,17,18).

b) Resisting resistance

This second myth derives from the first one: if rape is thought to be only committed through physical force, it is presumed that victim-survivors will need to actively resist it. Hence, if there is no evidence of the latter, it is inferred that the act was consented, and no rape was committed.

Given that this myth has been historically raised in Peru to disregard cases where victims did not physically resist (Caro, 1999; Ugaz, 1999), it was not until recent years that legal scholars and higher courts agreed that many chose not to resist the attack to avoid greater harms. By 2011, a judgement decree from Peru's Supreme Court (Acuerdo Plenario 2011-116), binding to all judges, was published to point out: "*there is no way in which the resistance of the victim establishes itself as a material condition sine qua non for the configuration of this act*" (Paragraph 21). Even though some judges do state the 'irrelevance' of this element (case 10,

11, 12), others keep linking rape to the amount of ‘force’ needed to resist it, as in the former example (case 1) and the following:

*“...it is not necessary that the resistance persist at all times of the abuse, but it is necessary that the force applied to the victim completely overcomes all resistance of this”* (Case 6)

*“...prior to carnal access, the resistance or opposition of the victim is overcome or cancelled, therefore the prohibited carnal access will be punishable (...). To overcome or nullify the resistance of the victim, violence or a serious threat is needed.”* (Case 8)

*“...the use of violence requires the corresponding expert examination that reliably verifies the physical event. The expertise can be carried out on both the victim and the perpetrator, since generally there are not only traces of the violence of the perpetrator but also of the resistance of the victim”* (Case 14)

*“Sexual freedom is violated when suitable means are used to overcome the resistance”* (Case 11).

The cases illustrate that the understanding of rape is still reliant on the victim’s resistance. This defines whether the use of either ‘physical force’ or ‘serious threat’, is suitable to neutralize it. In other words, the ‘appropriate level’ of prohibited force depends on if it effectively overcomes the victim’s resistance, and to measure this, some sort of resistance needs to be externalized. This latter is shown in case 14, where judges state the need to have “traces” of it. The required element of ‘force’ ends up, then, being defined in terms of women’s resistance (Estrich 1987:60). Interpreting rape in these terms diverts the attention from analysing the concept of power, key to understanding the context in which a victim’s lack of resistance may not indicate lack of consent, but a ‘more reasonable’ way to react to the attack (Mujica, 2011:31).

Radačić’s study on Zagreb’s County Court decisions on rape cases identified that judges used this myth based on gender norms of possessive heterosexuality (2014:77). According to this, women, who enjoy being sexually possessed, “will lie about being raped when sex goes bad, for which they also bear the responsibility” (2014:68). Based on both feminine archetypes of the Madonna and the Whore, women are portrait as expected to follow ‘respectable modes of sexuality’, by not engaging in sex other than for procreative reasons; but if they do so, it is presumed that they will ‘cry rape’ to justify their ‘deviant’ behaviour. From this lens, rape is only considered as such if the level of force is as intense to completely prevent a victim from acting and if the amount of resistance is as strong and continuously exteriorized to prove it. Here, a victim’s submission due to fear is seen, hence, as consent (Radačić, 2014:68).

This way of conceiving rape understands ‘sexual autonomy’ in a passive way, where ‘silence’ or ‘no physical resistance’ is interpreted as implicit consent. Likewise, it misunderstands that victim-survivors can resist rape other than through physical struggle. In Randall’s words, resistance strategies can be “complicated, varied, creative, often subtle, and always context-specific”, but social and legal understandings of what they mean are far too constricted and stereotyped (2010:422). Mock jury studies show that dominant ideas of non-resisting victim-survivors still continue to shape juror perceptions towards them as ‘less victims’ (Munro & Kelly, 2009; Ong & Ward, 1999).

c) Desire and sexual appetite

An explicit third element was identified in judge’s explanation of the crime’s motivation: “to satisfy sexual appetite or desire”. The ‘*mens rea*’ (the mental element) is defined here not only as the intention of ‘forcing someone to have sex against their will’, but as having an additional purpose, as seen:

*“[the agent with] the knowledge and willingness to satisfy his sexual desires...” (Case 3)*

*“... the perpetrator makes use of their judgments regarding the human instinct that it arouses attraction between the sexes” (Case 5)*

*“... if the agent does not seek to satisfy any of his sexual appetites with his actions and, on the contrary, only seeks to injure, the commission of the crime of sexual carnal access will be ruled out even if objects have been introduced into the vaginal cavity or parts of the body” (Case 5)*

*“the purpose of violence or serious threat is to overcome the resistance, opposition or contrary will of the victim to practice the act (...). That way one satisfies their sexual desires” (Case 8)*

According to this framework, rape is guided by sexual attraction, not power. Under this hegemonic notion of masculinity, the perpetrators are perceived as being driven by wild impulses, in an almost animalistic depiction of their actions. As stated by Nicola Lacey, paradoxically, “[T]he rational male whose sexuality is so potent is, after all, that same poor creature who is driven to rape by the urgings of his uncontrollable/unstoppable sexual drives and whose cognitive capacities are so fragile that he is at times incapable of recognizing between the apparently straightforward dichotomy, yes and no.” (1998:100). From the possessive heterosexuality model, men are depicted as the initiators of sexual intercourse, but at the same time, they are ‘powerless’ individuals unable to control their ‘urges’. The grammar construction of agentless men was identified by Ehrlich as a useful resource for defendants in

sexual assault tribunals to diffuse their responsibility (2001). That is, to be seen as less ‘blameworthy’.

By having to show that the offender seeks to “satisfy his sexual desire” judges contribute to shape male sexuality (Larrauri, 2008b). Siles sentencing remark studies from almost 30 years ago, also included Peruvian judges references to the “stereotypical image of a man subjected to uncontrollable lascivious drives, unable to contain himself” (1995:167). By constraining rape in these terms, lack of evidence of this additional element in a case leads to dismiss it. While this happened in case 5, in cases 8 and 18, where this feature was said to be demonstrated, the accused was convicted.

Studies have shown that, contrary to this prevalent myth, the motivating factor for sexual offenders is not a craving for sex, but sex is only a medium to express various types of non-sexual feelings like anger and hostility towards women, and a need to control, dominate and assert power over them (WHO, 2003:10). Regarding Peruvian research, this has been confirmed with interviews to sex offenders in the prisons of San Jorge and Lurigancho in Lima, where men revealed that they did not conceive rape as a crime and believed, in any case, that they were just “acting like a man” (Leon & Stahr, 1995).

d) No consent, no power

Finally, though this last feature does not properly reflect a rape myth, it does reveal how judge’s understand rape. This is not only shaped by what they say, but also by what they do not. With a few exceptions, both the element of ‘consent’ and ‘power’, both vital elements to understand the criminal phenomenon, were rarely included and explained in the account of the crime definition. Even if these were mentioned by direct quotes from legal scholars, there was no attempt to explain further on in detail what is meant by ‘consent’ in a sexual context, as if the definition was already presupposed:

*“the use of any physical means to bend the will of the victim must be appreciated when it is suitable and adequate to prevent the victim from developing self-determination...” (Case 1)*

*“As pointed out by Professor PC, [rape] is determined by the performance of the sexual act by the agent against the will of the victim, using violence (absolute vision).” (Case 2)*

*“[t]he consent expressed by the passive subject operates as justifying element...” (Case 4)*

*“To commit the crime, (...) there is no consent given from the victim.” (Case 7)*

*“Sexual carnal access is configured when the agent, making use of violence or serious threat, achieves carnal access (...) with the victim without their consent or will.” (Case 8)*

*“...as indicated by Professor SS ‘for the purposes of configuring the punishable act it will only suffice to verify the contrary will of the victim (...). The absence of consent, the opposition of the victim to the sexual relationship sought by the agent, is a transcendent element of the offense’.” (Cases 11 & 12)*

Sexual consent is the expression or outcome of exerting sexual autonomy. Defining the latter is key, but insufficient to understand consent. Some sentences focus on sexual autonomy to explain what is at risk in rape, but do not state how ‘consent’ is identified. Such an element divides the line between sexual freedom and sexual violence. The closest judges get to this is to define ‘sexual autonomy’:

*“It is a concretion and individual manifestation of personal freedom that expresses the faculty and power of self-determination spontaneously and without external coercion, abuse or deception within the scope of sexual behaviours.” (Case 4)*

*“The legal interest protected is sexual freedom, which must be understood in its double aspect: as a free disposition of one's own body with no limitations other than respect for the freedom of others and as the ability to repel sexual assaults from another, thus understanding not only the acceptance [of the act], but the when or with whom we are going to interact sexually...” (Case 15).*

One of the main achievements of the Supreme Court’s binding guidelines to prosecute and judge rape cases (Acuerdo Plenario 2011-116) was the definition of ‘consent’. Based on Rules of Procedure and Evidence of the International Criminal Court (70 y 71), it stated that ‘consent’ cannot be inferred from:

1. Any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined their ability to give a voluntary and genuine consent;
2. Words or conduct of a victim who is incapable of giving genuine consent;
3. Silence or lack of resistance of the victim to the alleged sexual violence;
4. The credibility or sexual availability of the victim or a witness when they are intended to be based on the sexual nature of prior or subsequent conduct of the victim or witness.

Although this binding jurisprudence is frequently quoted in the assessment of the victim’s testimony, none of the sentencing remarks refer to these criteria when explaining ‘consent’.

Moreover, as a form of gender-based violence, judges are obliged to analyse rape cases under a gender perspective where contextual elements are fundamental to understand the crime. This is particularly important considering the historical and cultural power disparities between men and women, and the socio-sexual norms that construct and constrain women's ability to say 'no'. But only one case referred to this:

*“...it leads us to think that there was a situation of the passive subject that was subjected to the power of the accused, a reason why she decided to end up the relationship, which also explains that the victim did not use any resistance to prevent the harmful act” (Case 12)*

By not clearing up what 'consent' means in a gendered sexual context, the judicial understanding of rape continues to rely on rape myths that tie 'consent' to 'lack of resistance'. This interpretation not only increases the standard of proof but excludes most cases that do not fit this script. According to this narrow definition, if there is no physical force or serious threat from an aggressor, or resistance from the victim, but there is a context of power imbalances and fear that conditions a victim-survivor's silence, it would not be labelled as 'rape', even though there was no consent. The understanding of 'consent' is then endowed with meanings that derive from normative expectations of how women and men should exert their sexuality.

The normative sexuality, based in the model of possessive heterosexuality, establishes that when women say “no” to men's sexual advances, the “no” is filtered by dominant discourse of what “normal” sex is, and women's direct negative is turned into an “indirect affirmative” (Gavey, 1999:60). In this view, since women are supposed to be the “passive recipients of male sexual desire”, or at least, must not express their own desire unless being overcome by the “seductive power of men”, their resistance or protest is seen as an expected response of “normal” heterosexual sex (Ehrlich, 2001:29).

Dominant notions about normative sex restrains, then, how consent is defined. Unlike the former model, the “communicative model of sexuality”, conceives intercourse as a mutual agreement, based on “yes plus” or “affirmative consent” standards (Radačić, 2014:82). According to this, “submission to coercion would not constitute consent, and neither would token acquiescence in the absence of coercion; rather, there would be an inquiry into the process of deliberation on, and communication of, agreement” (2014:82). This interpretation

of consent would better adhere to understanding rape as a violation of “sexual autonomy”, instead of a protection of “women’s integrity from sexual coercion”.

e) Considerations

How judges interpret the scope of rape is not only limited by the legal constraints of article 170 (and similar) of the CC, but also by prevalent rape myths. This is seen when narrowing the concept of ‘violence’ as a means of commission to ‘physical force’, when requiring the victim’s active resistance to the attack or conditioning the ‘mens rea’ to the ‘sexual appetites or desires’ of the offender.

The four themes identified in this section combine to reproduce a stereotypical representation of rape that fits the ‘real rape’ script (Estrich, 1987). The analysed extracts display a dominant view by which some forms of rape are considered ‘real’ (if there are physical injuries or the victim actively resisted), while others are not. These interpretations respond also to an expected model of heterosexuality, where women are depicted as victims that are expected to passively “enjoy” being sexually possessed, while men are actively driven by their urges and desires. Paradoxically, when it is a sex related matter, men no longer represent the “rational” paradigm, but an agentless actor that is nothing but an innocent man.

Although this is not a representative sample, it is interesting to note a prevalent feature identified in almost all cases (except case 12), which is the lack of judges to reflect deeply and discuss the most important element of the crime: ‘consent’, and how to identify it in each case. Additionally, there is no reference to the role of power and social context in a crime that is one of the most blatant expressions of gender inequality. Analysing these crimes through a gender lens is also an international obligation that the Peruvian state should abide to, when prosecuting this violence (Mantilla Falcón, 2019).

## **Part II. In light of ‘extra-legal’ evidence**

This part of the analysis includes the identification of rape myths and other gender norms through the judge’s assessment of the evidence and construction of the facts. Based on definitions offered by multiple studies (Bizimungu, 2018; Bohner et al., 2009; Estrich, 1987; Garza & Franklin, 2021; Radačić, 2014; Suarez & Gadalla, 2010), four types of rape myths were used: a) victim-blaming; b) minimizing rape; c) justifying the offender; and d) casting doubt on the victims’ credibility (see Appendix 1). In the last section, findings of a judge’s active resistance towards such myths are exposed. Although space constrains did not allow an extensive discussion on this topic, it was crucial to recognize that there are judges contesting these beliefs.

### a. Victim-blaming

‘Victim-blaming’ myths uphold the view that victims to some extent precipitate their victimization; that is, they “ask for it” (Estrich 1987). By doing so, the responsibility of the crime is shifted away from the offender to the victim. The sentences analysed included: 1) the idea that women who get voluntarily intoxicated are partly responsible for their rape, 2) that they provoke it by the way they behave and/or dress, or 3) that if they do not scream, fight or get injured, then it is not rape (Eyssel & Bohner, 2011).

Regarding victim’s alcohol consumption, the following phrasings were identified:

*“it is clear that they were all drinking large amounts of liquor (yards of beer), by their own decision...”*  
(Case 5)

*“... [although] she only had a small glass of cachina colada, saying that after that she does not remember anymore, however by the rules of logic and maxims of experience, she may well have adopted the same behaviour before drinking the cachina colada, avoiding excessive drinking”* (Case 4)

*“(...) it is not apparent that the defendant wanted to put the victim or take advantage of a state in which she could not give her free consent to lie with him sexually, since the victim is a 20-year-old adult who has drunk the amount of liquor she wanted to drink...”* (Case 4)

As it is clear, references to alcohol consumption from victims are depicted in a way that enhances her willingness to be situated in that state of intoxication, meaning the acceptance of everything that comes with it, including sexual assault. By saying it was “her decision”, “she



wanted to drink” or she could have “avoided excessive drinking”, judges portray victims as blameworthy for being in a high-risk condition that they are expected to prevent. In other words, voluntary intoxication is perceived as a “form of sexual invitation” (Clarke, 2011:17).

Substance use by victims remains an important extra-legal factor that influences CJS’s response to sexual assault. For example, it has been demonstrated that victims’ alcohol use decreases an officer’s likelihood of responding more vigorously, diminishing the chances of calling a detective or arresting the suspect (Venema, 2019). This is consistent with previous research that shows negative evaluation, regarding victim-blaming and reduced perceptions of victim’s credibility, when victims were intoxicated at the time of the assault (Bieneck & Krahé, 2011; Schuller & Stewart, 2000).

Another ‘victim-blaming’ myth identified is the one related to the victim’s behaviour or dress previous to the aggression:

*“35. (...) it is striking that according to psychologists (...), who examined the victim, they agree in pointing out that she is a shy woman, she shows a passive attitude, difficulties to be able to be assertive and being able to say no, in a categorical way (...) however, she usually wears undergarments like the one described by forensic biologist (...), describing it: as a “red female panties with lace in the front area, lace around the leg”, being so strange that the supposed personality that she presents (shy) is not related to the intimate garment that she used on the day of the events, because by the maxims of experience, this type of female underwear is usually used on special occasions for moments of intimacy. Therefore, one can infer that the victim had prepared or was willing to have sexual relations with the defendant, hence she consciously decided to stay in the defendant’s house...” (Case 4)*

The argument related to the ‘red panties’, interpreted as a sign of ‘consent’ draws back to the ‘mini-skirt’ narrative, used as a defence in rape trials. What lies behind is that “women who dress in a way which is perceived as seductive (for example, wearing tight clothing or a short dress) consciously desire or subconsciously want to be assaulted” (Clarke, 2011:13). Interestingly, the judges rely on expert witnesses -psychologists and forensic biologist- to back up their statements. As a way to counteract any doubts of possible arbitrary reasoning, judges refer to observations provided by actors whose status offers ‘undoubtedly’ objectivity. As stated by Cotterill, “from a Foucauldian perspective, the testimony of an expert witness in court is an illustration of the way in which locally determined discursive practices serve to construct what

kinds of talk can and cannot be heard, and who is qualified to present an authoritative version of the truth” (2003:171).

Under this view, evidence narrated by expert-witnesses is credited as more valuable than what the victim-survivor themselves could offer in court. This latter is usually perceived as testifying from the ‘commonplace’ rather than a ‘specialized’ locus. Following Foucault’s concept of power/knowledge in discourse, “a great deal of power and control is exercised not by brute physical force or economic coercion, but by the activities of ‘experts’ who are licensed to define, describe and classify things and people” (Cameron & Panović, 2014:14). Relying on experts enables judges to secure their statements.

Finally, the myth by which victim-survivors have to have ‘physical injuries’, or resist the assault, on the risk of being blamed for not doing so, is also present in the judge’s evaluation of the facts:

*“no internal vaginal tears were found as a result of a penetration into a “non-lubricated” vaginal canal, since an unconscious person does not have the excitement prior to the consensual sexual act that leads to the lubrication of his vaginal canal, whose liquidity increases with the female orgasm and that, therefore, does not allow the internal vaginal tears mentioned above.” (Case 5)*

*“...the victim does not present an injury compatible with sexual assault because it has not been observed physical injuries compatible with an assault against sexual freedom (...)” (Case 1)*

*“... there is scientific evidence that confirms that the victim has not been violated in her sexuality, since no vestiges of penile introduction into the vaginal cavity have been found (...) if it was a non-consensual act, the female genital area would not be lubricated and forcing the introduction [of a penis] would cause some injury, not properly in the hymen but in the vaginal introitus, be it labia majora, minora, clitoris, border, among others, produced by friction or smear as indicated in the forensic psychologist expert.” (Case 4)*

*“[the sexual autonomy] not exercised and violated, can be evidenced through different means of proof, in the case of [the complainant’s] declaration or psychological expertise, we notice an intangible content because it allows an analysis of memories and emotions: and in the case of the medical certificate, we notice a tangible content because it allows us to analyse the somatic injuries of the victim, a perspective that this court adopts for a better didactic to guide its reasoning.” (Case 18)*

Two main things can be pointed out. First, regarding the lack of physical injury to the victim (cases 1, 4, 5), judges determined that this as an element that confirms no rape occurred. Even more, in case 5, the fact that the vagina cavity had no “internal tears” is interpreted not only as

a signal of consent, but of desire. The argument raised is that, if there are no injuries, it is because the vagina was lubricated, and if it was lubricated, it is due to a ‘female orgasm’ that proves ‘she liked it’. As in the former examples, to legitimize their reasoning, the judges rely on ‘evidence’ given by experts. This masochistic representation of women brings back the norm of ‘possessive heterosexuality’, which deems them as subconsciously wanting or enjoying being raped (Ben-David & Schneider, 2005).

The second aspect is the hierarchical classification of evidence. As stated in case 18, while injuries related to the body are ‘tangible’, those that refer to the ‘psyche’ or the victim’s ‘subjectivity’ are perceived as ‘intangible’, hence, less objective. In other words, what is related to ‘her memories’ and ‘emotions’ are valued as ‘less’ reliable sources of knowledge. This approach mirrors the dualisms that define the gender system and permeate the legal one, where features such as emotion or subjectivity, commonly associated with femininity, are devalued, while ‘scientific’ evidence, associated to the masculine ideal of ‘reason’, crafted by an external examiner is credited as more definite and trustworthy (Olsen, 2009). This was also present in the 1995 Peruvian rape cases study: “It constitutes a common judicial practice, however, the reference to relying almost exclusively on what is provided by the medical examination of the victim, which is given a superlative value” (Siles, 1995:145).

b. Minimizing rape

The next type of rape myth identified is related to the perception by which certain behaviours that fit the rape definition but that occur in specific circumstances, are not seen as a ‘serious’ crime or not a ‘crime at all’. This has been identified through the use of inappropriate and inaccurate terminology by judges to describe rape in terms of consented or affectionous sex, instead of portraying it as a violent act.

Phrases like “*lie sexually with her victim*” (cases 1, 4), “*copulate her*<sup>8</sup>” (Case 18), “*touched her and kissed her breasts*” (Case 18), or “*not having used protection during the sexual act*” (Case 5), indirectly creates a misleading description of rape, as if it was mutually consented sex. In addition, cold and non-emotive passages of the crime were identified such as “...was

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<sup>8</sup> According to the Merriam-Webster dictionary, to ‘copulate’ is to engage in sexual intercourse. This term, nonetheless, is most commonly used to refer to animals, as in the following example: “Some animals have complex mating rituals before they copulate. From: <https://www.merriam-webster.com/dictionary/copulate#other-words>

*inserting his penis into her vagina*” (Case 4), “[he] stood on top of the victim, and proceeded to *insert his penis into her vagina*” (Case 9), “[he] succeeded in *inserting his penis into the victim's vagina*” (Case 13). The terms ‘inserting’ or ‘introducing’ contribute to represent rape as a seemingly technical act, not necessarily violent. Interestingly, in the description of the evidence, some phrases are written in a highly erotic or sexualized way, which as stated by Bavela and Coates, minimizes the inherent violence of sexual assault (2001), as in: “*he penetrated with his virile member through the anus*” (Case 8), or “*he did not ejaculate inside her and he sprayed semen all over her breasts*” (Case 17). Similar to Othman et al.’s study, the reading of “some physical and violent descriptions of the crime in the written decisions can be quite awkward, graphical and some might be even closely bordering pornographic narrative” (2019:95).

According to research on rape myths in trials, these beliefs are commonly facilitated by discursive strategies that describe the accounts of the crime in ways that diminish its severity, as well as mitigates the offender’s responsibility and relegates the victim’s experience. The study on linguistic representation of sexual violence in judicial opinions in Malaysia shows, as in the excerpts analysed, how judges often characterize rape as a non-coerced and mutually-consented behaviour rather than a violent crime (Othman et al., 2019). For example, by adopting ambiguous terms like “the connection”, “the act”, “the episode”, judges indirectly minimize the victim’s resistance and downplay the seriousness of the offence (Othman et al., 2019:93).

c. Justifying the offender

Rape myths not only blame victims, but as a result, excuse offenders or minimize their responsibility in perpetrating the crime (Sanday, 1997). Bohner *et al* mentions as examples the assumption that ‘most rapists are over-sexed’, or that ‘rape happens when a man’s sex drive gets out of control’ (2009:19), as seen in former judge’s interpretation in Part I. These ideas reinforce the construction of hegemonic masculinity associated to power dominance and sexual performance as features of manhood (Fuller, 2018). In this case, regarding the assessment of evidence, the following reference was found:

*“...the malicious and violent action to satisfy his sexual desires has been sufficiently proven, which determines that a conviction is handed down.” (Case 18)*

Paradoxically, in another case (case 5), even though rape has been previously described legally in terms of sexual desire, the judge, when evaluating the evidence, considers that the victim's "LGBT condition" is a reason to back up the unlikeliness of the defendant to want to intoxicate the victim in order to rape her. In other words, sexual desire, which was interpreted as an inherent element of rape, is no longer relevant to this judge when it comes to justifying the offender, who "as a heterosexual man", cannot "feel desire" for a lesbian woman, and hence, cannot rape her. The narrative of 'desire' is here conveniently used to excuse the offender's responsibility. While, theoretically, 'sexual attraction or desire' is determinant for rape to be committed, it is not important when it comes to 'consented sex' (what the judge considers it is), as seen in the following example:

*"nor can we affirm that the fact that the victim "does not remember anything" is due to the fact that the defendant has intentionally given her to drink excess liquor so that, in the end, he bends her will [even more regarding her LGBT condition] and agree to have sexual relations with him..." (Case 5)*

As in this last case, other forms of reducing the offender's blameworthiness are used, as follows:

*"...upon waking up in the morning hours and -via WhatsApp- in the immediate successive days, they discussed what happened with absolute normality, being the case that by not having used protection during the sexual act, the defendant gave money to the complainant to buy a "morning after pill", which was accepted by the latter" (Case 5)*

*"From the assessment of both psychologists and psychiatrists, it appears that the defendant presents a borderline personality (...) it cannot be specified whether they may be capable of killing a person and regarding whether or not they can outrage a person, that cannot be determined (Psychiatrist MQ); but he cannot cause harm to a person he loves (Psychologist OM); and when he establishes affective relationships with a man or woman, they can see them as a God or Goddess, in other cases he can devalue them; furthermore, this person is not capable of raping ... (Psychologist ZM)." (Case 1)*

*"the defendant is an outgoing person, resilient, handles emotions, has resources to handle emotions, but this does not prevent him from having immature behaviour in some circumstances." (Case 9)*

In case 5, the court highlights not only details that are irrelevant to determine whether the rape occurred or not, but that downplay the representation of the offender as an aggressor, by saying he gave her money to buy 'a morning after pill' -depicting the scene almost as if it was a 'courtesy' of him-, right after describing the aggression as 'a sexual act'. By adding that she accepted the pill, and that they both immediately had a conversation with 'absolute normality',

the judge exposes an irrelevant subsequent behaviour that distracts the attention from the crime, misleading it as a ‘consented act’, on the basis that she was not ‘visibly’ distressed. With regard to cases 1 and 9, offenders are portrayed as being suppressed of their agency, whether it is through deterministic psychiatric or psychological diagnoses that describe them as persons “incapable of raping”, or through adjectives that characterize them as “immature” non-adults less responsible for their acts. This idea is also present in relation to the offender’s intoxication prior to the crime, as in the following case:

*“...this exam only allows us to know the personality of the defendant useful to graduate his penalty, but it is not ideal for assessing his responsibility, since a maxim from experience allows us to affirm that people in a state of intoxication, sometimes do not control their actions” (Case 9)*

In regard to alcohol consumption, a double standard often exists between men and women. As stated by WHO, “if a woman has been drinking or using drugs she is often blamed for her victimization. On the other hand, the perpetrator’s behaviour is excused or justified because he was “under the influence” and thus not expected to control his behaviour.” (2003:8). Case 9 exemplifies how alcohol consumption is treated as a mitigating factor that conceives drunken men are less “blameworthy” of rape since “sometimes they do not control their actions”, whilst for women, they are depicted as responsible for not preventing being victimized. In other words, drunken women should be responsible for the “mixed signals” that their behaviour could unintentionally emit on drunken men, since alcohol impedes men to notice women’s reluctance or to curb their ‘natural’ sexual urges (Munro & Kelly, 2009:291). The belief that alcohol or drug use reduces rapist culpability (but increases women’s blame) is found in several measures of rape myths (Bieneck & Krahe, 2011; Burt, 1980; Payne et al., 1999).

#### d. Casting doubt on the victim

As with victim-blaming myths, this also focuses on the victim, but with the purpose of discrediting her testimony. Examples include the idea that false allegations are common, mostly because of revenge or regret, that all victim/survivors will be visibly distressed in the aftermath of a rape, or that any delay in reporting is suspicious (Smith & Skinner, 2012:443). The following references were identified:

*“...the complainant, though she refers that they were friends [with the defendant], the fact of finding out in such circumstances that he [defendant] was going to be a father would in some way had an impact on her that she determined to declare in the way that she did.” (Case 5)*

*“...between one and the other testimony, one can verify relevant omissions of what really happened to her, (...) to the expert witness CA, she said “... the next day I woke up at 6:14 am I was in his bed without clothes, he was touching my vagina, rubbing me, then he got on top and tried to penetrate me (...); while in court she ignored [mentioning] that the defendant prior to get on her naked body, had rubbed her vagina; then he told the psychologist DCN “... that at that time he was touching her intimate parts, that is, her vagina and got on top of her wanting to penetrate her, she said no, she got up, she was scared. But “in court she said that “he was inserting [his penis]” (Case 4)*

*“...the victim two years before these events, when she was 18 years old, had already been receiving care at the psychology service (...), due to intra-household problems, as noted by the psychologist CA (...) However, given the scientific evidence supported by trial, rationality this cannot be considered as valuable evidence to support a judgment of guilt”. (Case 4)*

*“...the victim has pointed out contradictory and lacking facts, and her syndication (..) shows a negative intention to attribute false facts against him to hide her activities carried at night” (Case 2)*

*“There is no uniform and persistent statement by the complainant regarding the place and time in which the events occurred, since in her police report (...) she indicates that she went with her friend “Leonela” at a party at 10pm, however, this information later varies and indicates (...) that she went with her friend “Leonela” to a jukebox type bar at 11pm”. (Case 2)”*

Due to the nature of the crime, the victim’s testimony is key. According to binding jurisprudence, a conviction can be guaranteed as long as this meets certain criteria. One of them relates to the consistency or coherence of the narrative account. The standard by which a testimony is deemed as such, yet, will depend on the judge’s perspective, and in some cases, is defined in stark contrast with evidence of how rape victims commonly react to their victimization.

This is perceived in cases 2 and 4, where judges describe as ‘relevant omission’ and ‘contradictory’ statements, minor variations in the victim’s account. For example, on recalling whether the aggressor ‘rubbed’ her intimate parts, if he ‘tried’ or did penetrate her (case 4), or the exact order and time of a specific event (case 2). Besides the traumatic experiences that distorts a victim’s appreciation of time sequences and creates memory blocks, evidence shows that “shame or embarrassment that rape can elicit, as well as the concern that conduct prior to the attack may be viewed negatively, contribute to making it difficult for them to give a full and candid disclosure” (Munro & Kelly, 2009:293). Studies, furthermore, demonstrate that

several victims suffer severe learning difficulties, mental health problems and many that were drunk or drugged have severely impaired memories (Kelly et al., 2005:54).

Finally, though lay witnesses or victim-survivors may misrepresent events because of memory failure or malice, it could also be that they have different interpretations of an event or feel pressure to conform to societal norms (Hunter, 1996). This is particularly true with the tension felt by victims after a sexual assault: while they are aware of the ‘rational’ precautions advised by society, the situation is also very complex and it is not always clear-cut what the ‘rational’ conduct should be (Smith & Skinner, 2017:27). Despite this, many legal practitioners still think that only women who are able to give a fully coherent and consistent testimony are “genuine victims”. Research with juries show that delay reporting or inconsistencies in a victim’s testimony is interpreted as a sign of false allegations (Rose et al., 2006).

The risk of reproducing these myths is that it assumes that all victims respond the same way. The ideal of a ‘real’ victim becomes, then, a yardstick by which women are compared. Those who do not have a highly coherent narrative not only are not seen as victims, but are also, women with ‘evil’ motivations, as in case 2. Here, the victim-survivor is depicted as a liar and a vengeful woman with “negative intentions”, harking back to the stereotypical representations of women as liars who fabricate rape allegation, or who only report the crime to get some benefit in return (Larrauri, 2008a). In Crenshaw’s words, cited by Ehrlich, “once these ideologically informed character assignments are made, 'the story' tells itself, usually supplanting the women's accounts of what transpired between the complainant and the accused with a fiction of villainous female intentionality that misleads and entraps the 'innocent' or ‘unsuspecting male’” (2001:29).

e. Resisting rape myths

Almost 30 years ago, Sile’s study on gender stereotypes in rape cases in Peru defined as “alarming” that the Peruvian judiciary did not attempt to combat stereotypical representations of women and men when presiding over cases (Siles, 1995:72). This study shows that, although judges can reproduce rape myths, they can also actively resist them when drawn into trial by other actors, as shown in case 9:



*“experts (...) analyse this circumstance and conclude that the [sexual] relationship was not consented, because if it had been so, a love game would have had to have previously presented and she would be happy; Although this conclusion is not entirely objective (...)”*

*“...if it is true what was indicated by the victim when she refers that at the time of the sexual assault, she was a virgin (...) it does not affect the core of the charges.”*

*“he alleges that the victim **lies** because (...) she said that all she wanted to do when arriving home was to tell her father what happened; yet, once she got home, it did not happen. What was stated by the defendant's defence is true, but a maxim of the experience allows us to affirm that common people, out of shame, do not always report the facts immediately, sometimes they do not even report it.”*

*“The defendant presents six photographs with images of the victim smiling, (...) indicating that it is contradictory that the victim appears in that photo smiling and, on the contrary, in interviews presented an anxious behaviour. In this regard, **it is not reasonable for a person to remain sad or distressed all the time in the face of a traumatic event, a maxim from experience allows us to affirm that people tend to become distressed or manifest sadness when they remember, or relate about the facts.**”*

In the first two excerpts, the judge addresses arguments raised by expert-witnesses. This is done by questioning their ‘objectivity’ or stressing the irrelevance of information drawn in the case. By recognizing expert’s fallibility, the ‘over-reliance’ attitude commonly generated towards them due to their status is deflated. Acknowledging that they may not be objective reaffirms that gender stereotypes can be reproduced by anyone, including those who are least “expected” to. Regarding the irrelevant information, the judge aims to counteract chances of diverting the attention from the “core” controversies of the case. This is a useful strategy, considering that research suggests that introducing case-irrelevant information about the plaintiff’s biographical details increases likelihood of blaming them, while it decreasing the chances of finding the defendant guilty of rape (Eyssel & Bohner, 2011; Rempala & Bernieri, 2005).

Likewise, in the last two quotes, the judge responds to the defence strategies, whose aim is to discredit the victim-survivor’s credibility. Their purpose is to shift the focus from the offender’s behaviour to the victim’s reaction, as victim-blaming narratives do, looking to cast doubt on her allegations (‘she is lying’), or deny the harm she has experienced (‘she is smiling’). To neutralize this, alternatives interpretations that explain a perceived ‘irrational’ reaction of rape victims that does not fit the ‘ideal victim’ screenplay are offered. This way of contesting myths has also been identified on studies of attitudes from judges, juries and prosecutors in rape cases (Smith & Skinner, 2012:18). For instance, special judicial instructions (sometimes called ‘myth-busters’), information leaflet or DVDs with realistic dynamics of rape

and common reactions of victims are offered to juries to thwart these harmful narratives (Temkin & Krahé, 2009:309).

f. Considerations

The observations above support the existing literature of how rape myths and gender stereotypes are still routinely used in trials and incorporated in sentences of rape against women, to blame victims, excuse perpetrators, minimize the severity of the crime and cast doubt on the victim's credibility (Hildebrand & Najdowski, 2015; Smith & Skinner, 2012; Temkin & Krahé, 2008).

Each myth shapes the construction of facts and interpretation of evidence to fit the broader picture of the 'real rape' paradigm, which, in some cases, has already been framed by judges in the definition of the crime. These beliefs interact with one another. For example, victim-blaming narratives that emphasize the use of 'provocative' clothes interlock with perceptions of offenders as 'agentless' individuals 'driven' by sexual urges. Similarly, the myth that requires physical injuries from victim-survivors complements with the narrow representation of rape only committed through physical force. The sentencing remarks also show that when building up the 'official truth', judges operate in a selective and convenient way with regards to evidence. The 'who' and 'what' they attend and ignore is mediated by gendered stereotypes. For example, within the same type of evidence, when assessing proof provided by expert-witness, a differential treatment is seen between the evidence aimed at measuring the sequelae in the body (i.e. genital injuries), deemed as objective and unquestionable, versus the one addressing the mind (i.e. trauma syndrome), which is given a lesser value; an idea that derives from the myth by which rape is still tied up to victim-survivor's resistance, physical violence and physical harm.

In relation to different types of evidence, a hierarchical dynamic is also established between what is offered by expert-witnesses and what is given by witnesses like the victim-survivor. Stereotypical representation of women as 'liars' or 'vengeful' interact in diminishing their credibility. This is deepened by the use of an untrue yardstick against which their testimonies are measured, where victim-survivors are expected to give an absolutely accurate and coherent narrative of their experience, in neglect of evidence that shows that traumatic events like rape make it hard for them to provide such. Additionally, in some cases, the doubt casted on them

is reinforced by the judge's incorporation of irrelevant information on their past or future actions. Moreover, turning to intoxication, a sexist approach is also evidenced when the victim is the one consuming alcohol, leading to victim-blaming narratives, while in the case of offenders, judges use references aimed to diminish their responsibility.

Finally, though rape myths and gender stereotypes can be reproduced by judges, they can also be contested. Following their duty to guarantee women's right to a fair trial free of gender discrimination, judges can and should counter rape myths when introduced by other actors in trial. Due to its harmful effects, it is not enough for judges to avoid rape myths, but to engage seriously in tackling them when identified.

## 4. Conclusions

The purpose of this study was to explore whether, and to what extent, judicial written judgements of rape cases in Peru against female victim-survivors over 14, from 2015-2020, include rape myths and gendered stereotypes. The findings suggest that these beliefs still inform judicial decision-making in sentencing remarks and can be found in the judicial interpretations of the crime, as well as in the assessment of the evidence and the construction of the facts that ultimately defined the outcome. Rape myths were present in acquittals and convictions, and a comparative analysis between the two shows that those cases whose outcome led to a conviction had strong features of the real rape paradigm. This work also shows that judicial discourse hides underlying sexist ideologies and issues of power that condition the judge's constructions of an "official truth" when delivering their verdicts.

The findings regarding the judicial definition of rape indicate that there is no consistent understanding of the crime. Some judges, for example, are still reliant on the concept of 'physical force' or victim's 'resistance', both features of the 'real rape' myth (Estrich, 1987). In relation to the outcome, more cases where the defendant used physical force and the victim showed physical injuries resulted in a conviction (cases 8, 11, 12, 13, 15, 16, 17, 18) than in an acquittal (case 1). When the accused was a stranger, moreover, all cases resulted in a conviction (cases 16, 17, 18). Additionally, following the judge's interpretation of rape as a crime that seeks to "satisfy sexual appetites", all cases where this element was proved resulted in a conviction (case 5), and those where it was not, led to an acquittal (cases 8 and 18).

Regarding the assessment of evidence and construction of facts, again no consistency was identified. Judges continue to rely on the following rape myths and gender stereotypes: a) victim-blaming; b) minimization of rape; c) justifying the offender; d) casting doubt on victims. On the first, some judges referred to the victim-survivor's intoxication as a "self-inflicted" risk that they should have prevented (cases 4 and 5). Others inferred that women subconsciously enjoyed being raped, since no physical injuries had been identified in their genitalia (cases 4 and 5). In terms of minimizing rape, the description of the crime at times suggested consensual sexual acts, or even included erotic references that masked its inherent violence (Cases 1, 4, 5, 8, 13, 17, 18). This complements the rape myth that consider men as being driven by sexual urges, and with judicial definitions of a crime motivated by "sexual appetites" (cases 3, 5, 8,

18). Judges' inclusion of irrelevant case-information was also used to downplay the representation of the accused as a rapist, while depicting the victim-survivor as having 'asked for it' (cases 5, 1, 9). Rape myths aimed at casting doubt on victim-survivors' credibility were also found in some judges' narration of their response to the crime, where the 'ideal victim' yardstick was used to measure their aftermath reaction (cases 5, 4, 2). These gender stereotypes were also seen in the assessment of evidence, where victim-survivors' testimony – the benchmark of this under-reported crime – was analysed using an unrealistic threshold that required them to have an absolutely accurate account of their experience.

When assessing the evidence, likewise, gender ideologies were identified in selecting what to consider or ignore. Opinions of expert-witnesses, deemed as rational (and hence masculine), were used by some judges to support their statements, on the basis of expert's pretension to objectivity. While evidence given by experts was over-valued (cases 1, 4, 5, 18), that given by non-experts, like victim-survivors, was deemed as non-trustworthy (cases 5, 4, 2). Even so, among this more 'prestigious' scientific evidence, judges showed a hierarchical relation between those addressed at measuring the somatic and objective harm, perceived as more "tangible", and those that targeted the psychological and subjective sequelae (case 8).

Taken together these results reveal how dominant issues of power and gender come into play through judicial discourse in the sentencing remarks and how language contributes to create and maintain institutionalised power and asymmetry (Cotterill, 2003:7). Whenever 'victim-blaming' or 'justifying offenders' myths are used, dominant narratives of sexual violence and social expectations of women and men's sexuality are enacted. These expectations are informed by a model of possessive heterosexuality, where females are crafted in passive and males in active terms. These underlying assumptions construct and reinforce a conception of gender that feeds hegemonic representations: masculinity as dependant on power dominance and sexual performance, and femininity as a passive response to men's sexual advances. This image, in turn, contributes to building up the definition of 'consent' and the contours of the crime. Since women are to react to men's seductive power (Ehrlich, 2001), and women are to enjoy being sexually possessed (Radačić, 2014), their resistance to rape is not even seen as a rejection, but as an expected sexual behaviour. In this view, crystallized by the authoritative power of law, saying 'no' can easily be read as a sign of compliance.

Although judges are susceptible to reproducing rape myths and reinforcing gender ideology that favour male dominance, they can (as shown in case 9) also resist them. As stated by the IACtHR, judges are obliged to carry out an adequate assessment and selection of the evidence, “in order to neutralize their contamination by statements, insinuations and stereotypical allusions that violate the guarantee of women’s access to justice”<sup>9</sup>. Unfortunately, the current state of legal training is still focused on the passive response of identifying and not reproducing these stereotypes. This work’s findings contribute to existing knowledge of how and the extent to which judges neutralize and tackle these myths in trials, especially when a lawyer’s defence strategy involves humiliating or discrediting rape victim-survivors (Smith & Skinner, 2017).

In considering the contribution of this thesis to Peruvian justice context, notwithstanding the limited sample, the current work offers valuable insights into understanding how the Peruvian judiciary respond to rape cases against adult women and girls over 14. In a highly *machista* society, where two out of three Peruvians accept, tolerate and/or justify VAW, it sheds new light on how rape myths and gender stereotypes permeate judicial decision-making in Peru. Not only did it explore how judges reproduce these dominant beliefs, but also how they can neutralize them. Regarding the latter, the preliminary findings can be used to develop targeted interventions in the judiciary to improve institutional responses to rape, seeking to enhance judges’ role towards actively combating such harmful myths. Additionally, policy implications should include improving legal training aimed at understanding sexual violence, not from a possessive heterosexuality model, but from a communicative model, which conceives of ‘consent’ as a process of communication and negotiation, not simply as a binary ‘yes’ or ‘no’ debate (Clarke, 2011:82). Since this thesis did not address how often rape myths and gender stereotypes appear across all Peruvian jurisdictions, future research should test whether these findings reveal exceptional cases or are part of a widespread phenomenon across the Peruvian CJS. While refining the CJS’s response, these results are also expected to trigger academic debates on more ‘innovative’ ways to satisfy victim-survivors’ justice needs.

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<sup>9</sup> IACtHR, Espinoza González vs. Perú. Sentence from 30th of November 2014. Paragraph. 193.

# References

- Abbey, A., & Harnish, R. J. (1995). Perception of sexual intent: The role of gender, alcohol consumption, and rape supportive attitudes. *Sex Roles, 32*(5-6), 297-313.
- Aguirre Mussa, F., Araya Alburquenque, S., Baratta, R., Barraza Pacheco, M., Guerrero Ponce, A., Rivera Müller, F., Suazo Guacte, F., & Yamal Von-Knorrning, I. (2019). *La influencia de los estereotipos de género en la construcción de máximas de experiencia: Análisis jurisprudencial chileno.*
- Ajzenstadt, M., & Steinberg, O. (2001). Never Mind the Law: Legal Discourse and Rape Reform in Israel. *Affilia, 16*(3), 337-359.
- Akbary, M. F., Ariyo, T., & Jiang, Q. (2020). Sociocultural Determinants of Attitudes Toward Domestic Violence Among Women and Men in Afghanistan: Evidence from Afghanistan Demographic and Health Survey 2015. *Journal of Interpersonal Violence.*
- Alcázar, L., Cueva, R., & Dávalos, M. E. (2019). *10 Mensajes sobre la violencia contra las mujeres en el Perú. Un análisis de las inversiones públicas en esta agenda.* Grupo Banco Mundial.
- APRODEH. (2005). *Violencia contra la mujer durante el conflicto armado interno «warmikuna yuyariniku», lecciones para no repetir la historia. Selección de textos del «Informe Final» de la Comisión de la Verdad y Reconciliación.* Asociación Pro Derechos Humanos.
- Bascary, M. L. (2019). El consentimiento, la libertad sexual y el deseo. En INECIP, *Feminismos y política criminal: Una agenda feminista para la justicia.*
- Bavelas, J., & Coates, L. (2001). Is it Sex or Assault? Erotic Versus Violent Language in Sexual Assault Trial Judgments. *Journal of Social Distress and the Homeless, 10*(1), 29-40.
- Ben-David, S., & Schneider, O. (2005). Rape Perceptions, Gender Role Attitudes, and Victim-Perpetrator Acquaintance. *Sex Roles, 53*(5-6), 385-399.

- Bieneck, S., & Krahe, B. (2011). Blaming the Victim and Exonerating the Perpetrator in Cases of Rape and Robbery: Is There a Double Standard? *Journal of Interpersonal Violence*, 26(9), 1785-1797.
- Bizimungu, C. (2018). *An examination of the impacts of rape myths and gender bias on the legal process for rape in Rwanda*. [University of Sussex].
- Bodelón, E. (2008). La violencia contra las mujeres y el derecho no-androcéntrico: Perdidas en la traducción jurídica del feminismo. En P. Lorenzo, M. L. Maqueda, & A. Rubio (Eds.), *Género, violencia y derecho*. Tirant lo blanch.
- Boesten, J. (2010). Analizando los regímenes de violación en la intersección entre la guerra y la paz en el Perú. *Debates En Sociología*, 35.
- Boesten, J. (2012). The State and Violence Against Women in Peru: Intersecting Inequalities and Patriarchal Rule. *Social Politics: International Studies in Gender, State & Society*, 19(3), 361-382.
- Boesten, J. (2016). *Violencia sexual en la guerra y en la paz: Género, poder y justicia posconflicto en el Perú*. Biblioteca Nacional del Perú. Lima, Peru.
- Bohner, G., Pina, A., & Viki, T. (2009). Chapter 2. Rape myth acceptance: Cognitive, affective, and behavioral effects of beliefs that blame the victim and exonerate the perpetrator. En M. Horvath & J. Brown (Eds.), *Rape* (0 ed.). Willan.
- Braun, V., & Clarke, V. (2006). Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2), 77-101.
- Brooks-Hay, O. (2020). Doing the “Right Thing”? Understanding Why Rape Victim-Survivors Report to the Police. *Feminist Criminology*, 15(2), 174-195.
- Bryman, A. (2012). *Social research methods* (4th ed). Oxford University Press.
- Burgess-Proctor, A. (2006). Intersections of Race, Class, Gender, and Crime: Future Directions for Feminist Criminology. *Feminist Criminology*, 1(1), 27-47.



- Burman, M., & Gelsthorpe, L. (2017). 9. Feminist criminology: Inequalities, powerlessness, and justice. In M. Burman & L. Gelsthorpe, *The Oxford Handbook of Criminology*. Oxford University Press.
- Burns, C. (2005). *Sexual violence and the law in Japan*. Routledge, Taylor & Francis Group.
- Burt, M. R. (1980). Cultural myths and supports for rape. *Journal of Personality and Social Psychology*, 38(2), 217-230.
- Buzawa, E. S., & Buzawa, C. G. (1996). *Domestic violence: The criminal justice response* (2nd ed). SAGE Publications.
- Cameron, D., & Panović, I. (2014). *Working with Written Discourse*. SAGE Publications, Ltd.
- Caro, C. (1999). Problemas de interpretación judicial en los delitos contra la libertad e indemnidad sexuales. *Ius et Veritas*, 19, 250-269.
- Carrington, K. (2013). Chapter 5: Feminism and critical criminology: Confronting genealogies. En R. Hogg & K. Carrington, *Critical Criminology* (1.<sup>a</sup> ed.). Willan.
- Charalambous, K. (2015). Chapter 9: The judicial performativity of rape myths: A discourse analysis of rape court decisions. In M. Koutselini & F. Valanidou (Eds.), *Gender, Law and Institutions* (UNESCO Chair in Gender Equality and Women's Empowerment, University of Cyprus). University of Cyprus.
- Clark, H. (2015). A Fair Way to Go. Justice for Victim-survivors of Sexual Violence. In A. Powell, N. Henry, & A. Flynn (Eds.), *Rape justice: Beyond the criminal law*. Palgrave Macmillan.
- Clarke, G. (2011). *'Real' rape revisited: Exploring issues of gender and intoxication in contemporary English and Welsh criminal justice*. University of Cambridge.
- Coates, L., Bavelas, J. B., & Gibson, J. (1994). Anomalous Language in Sexual Assault Trial Judgments. *Discourse & Society*, 5(2), 189-206.

- Coffey, A., & Atkinson, P. (1996). *Making sense of qualitative data: Complementary research strategies*. Sage Publications.
- Cook, R. J., Cusack, S., Parra, A., & Armour, L. (2010). *Estereotipos de género: Perspectivas legales transnacionales*. Profamilia.
- Cotterill, J. (2003). *Language and power in court: A linguistic analysis of the O.J. Simpson trial*. Palgrave Macmillan.
- Dador Tozzini, M. íJennie. (2007). Mujeres sobrevivientes víctimas de violencia sexual durante el conflicto armado interno en busca de la justicia. En *Justicia y Reparación para Mujeres Víctimas de Violencia Sexual en contextos de Conflicto Armado Interno. Seminario Internacional*. CPS.
- Daigle, L. E., & Muftić, L. R. (2016). *Victimology*. SAGE.
- Daly, K. (2014). Chapter 18. Reconceptualizing sexual victimization and justice. In I. Vanfraechem, A. Pemberton, & F. M. Ndahinda (Eds.), *Justice for victims: Perspectives on rights, transition and reconciliation*. Routledge.
- Daly, K., & Chesney-Lind, M. (1988). Feminism and Criminology. *Justice Quarterly*, 5(4).
- De Assis, C. (2019). *Diagnóstico de Estereotipos de género en las Fiscalías Provinciales Transitorias Especializadas en Violencia contra la Mujer y los Integrantes del Grupo Familiar penales y mixtos del Ministerio Público en la actuación de la investigación de los delitos de violencia de género y feminicidios en el Perú*.
- De Carvalho Figueredo, Débora. (1998). An analysis of transitivity choices present in five reported appellate decisions. *Fragmentos*, 8.
- De Carvalho Figueredo, Deborah. (1998). Identities and Gender in the Discourse of Rape Trials. *Fragmentos*, 85/104.
- Defensoría del Pueblo. (2011). *Violencia sexual en el Perú: Un análisis de casos judiciales* (Informe de Adjuntía N.004-2011-DP/ADM). Defensoría del Pueblo.

- Defensoría del Pueblo. (2018). *Informe de Adjuntía N° 006-2018-DP/ADHPD “Retos del Sistema Penitenciario Peruano: Un diagnóstico de la realidad carcelaria de las mujeres y varones”* [Resumen Ejecutivo].
- DeKeseredy, W. S. (2011). *Contemporary critical criminology*. Routledge.
- Denzin, N. K., & Lincoln, Y. S. (Eds.). (2018). Introduction: The Discipline and Practice of Qualitative Research. En *The SAGE handbook of qualitative research* (Fifth edition). SAGE.
- Dinos, S., Burrowes, N., Hammond, K., & Cunliffe, C. (2015). A systematic review of juries’ assessment of rape victims: Do rape myths impact on juror decision-making? *International Journal of Law, Crime and Justice*, 43(1), 36-49.
- Ehrlich, S. (2001). *Representing rape: Language and sexual consent*. Routledge.
- Ellison, L., & Munro, V. E. (2009). Turning Mirrors Into Windows?: Assessing the Impact of (Mock) Juror Education in Rape Trials. *British Journal of Criminology*, 49(3), 363-383.
- Emmel, N. (2013). *Sampling and choosing cases in qualitative research: A realist approach*. SAGE.
- ENAH0. (2018). *Encuesta Nacional de Hogares sobre Condiciones de Vida y Pobreza 2018*. Instituto Nacional de Estadística e Informática (INEI).
- ENDES. (2018). *Perú: Encuesta Demográfica y de Salud Familiar 2017—Nacional y Regional*. Instituto Nacional de Estadística e Informática.
- Estrich, S. (1987). *Real rape*. Harvard Univ. Press.
- Eyssel, F., & Bohner, G. (2011). Schema Effects of Rape Myth Acceptance on Judgments of Guilt and Blame in Rape Cases: The Role of Perceived Entitlement to Judge. *Journal of Interpersonal Violence*, 26(8), 1579-1605.

- Facio, A., & Fries, L. (2005). Feminismo, género y patriarcado. *Revista sobre enseñanza del Derecho de Buenos Aires, Número 6*, 259-294.
- Fairclough, N. (1992). *Discourse and social change* (Reprinted). Longman.
- Fairclough, N. (1995). *Critical discourse analysis: The critical study of language*. Longman.
- Flood, M., & Pease, B. (2009). Factors Influencing Attitudes to Violence Against Women. *Trauma, Violence, & Abuse, 10*(2), 125-142.
- Fuller, N. (Ed.). (2018). *Difícil ser hombre: Nuevas masculinidades latinoamericanas* (Primera edición). Fondo Editorial, Pontificia Universidad Católica del Perú.
- Garza, A. D., & Franklin, C. A. (2021). The Effect of Rape Myth Endorsement on Police Response to Sexual Assault Survivors. *Violence Against Women, 27*(3-4), 552-573.
- Gavey, N. (1999). «I Wasn't Raped, but...»: Revisiting Definitional Problems in Sexual Victimization. En S. Lamb, *New Versions of Victims: Feminists Struggle With the Concept* (pp. 57-81). New York University Press Address Washington Square.
- Gracia, E., García, F., & Lila, M. (2014). Male Police Officers' Law Enforcement Preferences In Cases of Intimate Partner Violence Versus Non-Intimate Interpersonal Violence: Do Sexist Attitudes and Empathy Matter? *Criminal Justice and Behavior, 41*(10), 1195-1213.
- Gray, J. M., & Horvath, M. A. H. (2018). Rape Myths in the Criminal Justice System. En E. Milne, K. Brennan, N. South, & J. Turton (Eds.), *Women and the Criminal Justice System* (pp. 15-41). Springer International Publishing. [https://doi.org/10.1007/978-3-319-76774-1\\_2](https://doi.org/10.1007/978-3-319-76774-1_2)
- Guereño, I. (2019). Atrapadas por el derecho. Juzgadas por ser. En INECIP, *Feminismos y política criminal: Una agenda feminista para la justicia*. ISBN 978-987-28815-5-9

- Hammond, M. D., Milojev, P., Huang, Y., & Sibley, C. G. (2018). Benevolent Sexism and Hostile Sexism Across the Ages. *Social Psychological and Personality Science*, 9(7), 863-874.
- Hernández, W. (2015). Derecho Versus Sentido Común y Estereotipos: El Tratamiento de los Procesos Judiciales de Pensión de Alimentos de Mujeres de Clase Alta y Baja en Perú. *Sortuz. Oñati Journal of Emergent Socio-legal Studies*, 7(1), 29-58.
- Hernández, W., Dammert, L., & Kanashiro, L. (2020). Fear of crime examined through diversity of crime, social inequalities, and social capital: An empirical evaluation in Peru. *Australian & New Zealand Journal of Criminology*, 53(4), 515-535.
- Hildebrand, M., M., & Najdowski, C. J. (2015). The potential impact of rape culture on juror decision making: Implications for wrongful acquittals in sexual assault trials. *Albany Law Review*, 78(3).
- Hunter, R. (1996). Gender in Evidence: Masculine Norms v. Feminist Reforms. *Harvard Women's Law Journal*, 19, 127-16.
- IACHR. (2019). *Violence and Discrimination against women and girls: Best Practices and Challenges in Latin America and the Caribbean*. (Doc. 233). Organización de los Estados Americanos (OEA).
- Janos, E. (2015). *Representaciones y mitos sobre la violencia sexual y su relación con el sexismo ambivalente*. Pontificia Universidad Católica del Perú (PUCP).
- Kelly, L., Lovett, J., & Regan, L. (2005). *Gap or a Chasm?: Attrition in Reported Rape Cases*. London Metropolitan University.
- Kruahiran, P., Boonyasiriwat, W., & Maneesri, K. (2020). Thai Police Officers' Attitudes Toward Intimate Partner Violence and Victim Blaming: The Influence of Sexism and Female Gender Roles. *Journal of Interpersonal Violence*, 088626052096940.

- Lacey, N. (1998). *Unspeakable subjects: Feminist essays in legal and social theory*. Hart Pub. ;  
Distributed in the United States by Northwestern University Press.
- Larrauri, E. (2008a). Cinco tópicos sobre las mujeres víctimas de violencia... Y algunas respuestas del feminismo oficial. En *Género, violencia y derecho* (Tirant Lo Blanch).
- Larrauri, E. (2008b). Una crítica feminista al Derecho Penal. En *Mujeres y sistema penal: Violencia doméstica*. Euro editores.
- Leon, R., & Stahr, M. (1995). *Yo actuaba como varón solamente: Entrevistas a procesados por delito de violación*. (DEMUS).
- Lerner, M. J., & Miller, D. T. (1978). Just world research and the attribution process: Looking back and ahead. *Psychological Bulletin*, 85(5), 1030-1051.
- Leverick, F. (2020). What do we know about rape myths and juror decision making? *The International Journal of Evidence & Proof*, 24(3), 255-279.
- Lievore, D. (2003). *Non-reporting and hidden recording of sexual assault: An international literature review* (Archive no. Canberra.). Australian Institute of Criminology.
- Limardo, A. (2021). Repensando las máximas de experiencia. *Quaestio facti. Revista internacional sobre razonamiento probatorio*, 2.
- MacKinnon, C. (2006). Feminismo, marxismo, método y Estado: Hacia una teoría del Derecho feminista. En M. García Villegas, I. C. Jaramillo Sierra, & E. Restrepo Saldarriaga, *Crítica jurídica: Teoría y sociología jurídica en los Estados Unidos* (1. ed). Uniandes.
- Mantilla Falcón, J. (2019). Diálogos posibles en la investigación de la violencia sexual: Estándares interamericanos y el caso peruano. *IUS ET VERITAS*, 59, 18-27.
- Maqueda Abreu, M. L. (2014). *Razones y sinrazones para una criminología feminista*.
- Martinez-Echazabal, L. (1998). Mestizaje and the Discourse of National/Cultural Identity in Latin America, 1845-1959. *Latin American Perspectives*, 25(3).

- McGlynn, C., & Westmarland, N. (2019). Kaleidoscopic Justice: Sexual Violence and Victim-Survivors' Perceptions of Justice. *Social & Legal Studies*, 28(2), 179-201.
- McMillan, L. (2018). Police officers' perceptions of false allegations of rape. *Journal of Gender Studies*, 27(1), 9-21. <https://doi.org/10.1080/09589236.2016.1194260>
- Ministerio Público. (2018). *Infografía 2. Violación sexual (2013-2018)*. Observatorio de Criminalidad del Ministerio Público del Perú.
- Mirrlees-Black, C. (1999). *Domestic violence: Findings from a new British Crime Survey self-completion questionnaire*. Home Office.
- Mizrahi, L. (2003). *Las mujeres y la culpa: Herederas de una moral inquisidora*. Nuevohacer, Grupo Editor Latinoamericano.
- Montecino, S., Wilson, A., & Dussuel, M. (1988). Identidad femenina y modelo mariano en Chile. En *Mundo de mujer: Continuidad y cambio* (pp. 501-522). Centro de Estudios de la Mujer.
- Morris, A., & Gelsthorpe, L. (2000). Re-visioning Men's Violence Against Female Partners. *The Howard Journal of Criminal Justice*, 39(4), 412-428.
- Mujica, J. (2011). *Violaciones sexuales en el Perú, 2000-2009: Un informe sobre el estado de la situación*. PROMSEX Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos.
- Munro, V. E., & Kelly, L. (2009). Chapter 12. A vicious cycle? Attrition and conviction patterns in contemporary rape cases in England and Wales. En M. Horvath & J. Brown (Eds.), *Rape: Challenging contemporary thinking*. Willan Publishing.
- Murray, W. E., & Overton, J. (2014). Designing development research. En R. Scheyvens (Ed.), *Development fieldwork: A practical guide* (2nd edition, pp. 17-36). SAGE.
- Nicolson, D. (2000). Criminal law and feminism. En L. Bibbings & D. Nicolson (Eds.), *Feminist perspectives on criminal law*. Cavendish.

- Noaks, L., & Wincup, E. (2004a). 8. Analysing Qualitative Data. En *Criminological research: Understanding qualitative methods*. SAGE.
- Noaks, L., & Wincup, E. (2004b). The Development of Qualitative Approaches to Criminological Research. En *Criminological Research*. SAGE Publications Ltd.
- Olsen, F. (2009). El sexo del derecho. En R. Avila Santamaría, M. J. Salgado Alvarez, L. Valladares, & M. J. Añón Roig, *El género en el derecho: Ensayos críticos*. Ministerio de Justicia y Derechos Humanos : Alto Comisionado de las Naciones Unidas para los Derechos Humanos.
- Ong, A. S. J., & Ward, C. A. (1999). The Effects of Sex and Power Schemas, Attitudes Toward Women, and Victim Resistance on Rape Attributions<sup>1</sup>. *Journal of Applied Social Psychology*, 29(2), 362-376.
- OPS. (2013). *Comprender y abordar la violencia contra las mujeres. Violencia sexual*. Organización Mundial de la Salud.
- Oré Guardia, A., & Loza Ávalos, G. (2005). La Estructura del Proceso Común en el Nuevo Código Procesal Penal Peruano. *Derecho & Sociedad*, 25, 163-177.
- Ortega, J. (2019). Capítulo 3. ¿Por qué las mujeres víctimas de violencia de pareja en el Perú no buscan ayuda? En W. Hernández, *Violencias contra las Mujeres. La necesidad de un doble plural*. GRADE.
- Othman, N., Mohd Nor, N. F., & Ibrahim, N. (2019). Linguistic Representation of Violence in Judicial Opinions in Malaysia. *GEMA Online® Journal of Language Studies*, 19(2), 82-98.
- Pásara, L. (2006). *Cómo sentencian los jueces del distrito federal en materia penal*. Universidad Nacional Autónoma de México.



- Pásara, L. (2015a). *La justicia en la región andina: Miradas de cerca a Bolivia, Colombia, Chile, Ecuador y Perú* (Primera edición). Fondo Editorial, Pontificia Universidad Católica del Perú.
- Pásara, L. (2015b). Las víctimas en el sistema procesal penal reformado. *Derecho PUCP*, 75, 317-331.
- Pásara, L. (2019). *De Montesinos a los cuellos blancos: La persistente crisis de la justicia peruana* (Primera edición). Planeta.
- Payne, D. L., Lonsway, K. A., & Fitzgerald, L. F. (1999). Rape Myth Acceptance: Exploration of Its Structure and Its Measurement Using the Illinois Rape Myth Acceptance Scale. *Journal of Research in Personality*, 33(1), 27-68.
- Pérez Castañeda, J. (2021). La aplicación de los estándares internacionales para evaluar la idoneidad de las investigaciones penales vinculadas a violencia de género. *Gaceta Penal & Procesal Penal*, 181-200.
- Powell, A., Henry, N., & Flynn, A. (Eds.). (2015). *Rape justice: Beyond the criminal law*. Palgrave Macmillan.
- Prior, L. (2003). *Using Documents in Social Research*. SAGE Publications Ltd.
- Radačić, I. (2014). Rape Myths and Gender Stereotypes in Croatian Rape Laws and Judicial Practice. *Feminist Legal Studies*, 22(1), 67-87. <https://doi.org/10.1007/s10691-013-9255-8>
- Raffaelli, M., & Ontai, L. L. (2001). «She's 16 years old and there's boys calling over to the house»: An exploratory study of sexual socialization in Latino families. *Culture, Health & Sexuality*, 3(3), 295-310.
- Ramírez, B. (2017). Articulando respuestas: Estándares sobre violencia contra las mujeres en el Sistema Interamericano de Derechos Humanos y sus concordancias en el Perú. En J.

- Hurtado Pozo & L. C. Silva Tiellacuri (Eds.), *Género y derecho penal: Homenaje al prof. Wolfgang Schöne* (Primera edición). Instituto Pacífico.
- Randall, M. (2010). Sexual Assault Law, Credibility, and “Ideal Victims”: Consent, Resistance, and Victim Blaming. *Canadian Journal of Women and the Law*, 22(2), 397-433.
- Rempala, D. M., & Bernieri, F. J. (2005). The Consideration of Rape: The Effect of Target Information Disparity on Judgments of Guilt<sup>1</sup>. *Journal of Applied Social Psychology*, 35(3), 536-550.
- Renzetti, C. M. (2013). Feminist Perspectives in Criminology. In *Routledge Handbook of Critical Criminology*. Routledge.
- Rogers, A. (2020). “But the Law Won’t Help Us”: Challenges of Mobilizing Law 348 to Address Violence Against Women in Bolivia. *Violence Against Women*, 26(12-13), 1471-1492.
- Rose, M. R., Nadler, J., & Clark, J. (2006). Appropriately Upset? Emotion Norms and Perceptions of Crime Victims. *Law and Human Behavior*, 30(2), 203-219.
- Sagot, M. (2005). The Critical Path of Women Affected by Family Violence in Latin America: Case Studies From 10 Countries. *Violence Against Women*, 11(10), 1292-1318.
- Salanueva, O. L., & Zaikosky Biscay, D. M. J. (Eds.). (2015). *Violencia sexual y discurso jurídico: Análisis der sentencias penales en caso de delitos contra la integridad sexual* (1 a ed). EdUNLPam.
- Salazar Luzula, K. (2006). Género, violencia sexual y derecho penal en el período posterior al conflicto en el Perú. *El legado de la verdad: La justicia penal en la transición peruana*.
- Sanday, P. R. (1997). *A woman scorned: Acquaintance rape on trial*. University of California Press.

- Sardinha, L., & Nájera Catalán, H. E. (2018). Attitudes towards domestic violence in 49 low- and middle-income countries: A gendered analysis of prevalence and country-level correlates. *PLOS ONE*, *13*(10).
- Schuller, R. A., & Stewart, A. (2000). Police responses to sexual assault complaints: The role of perpetrator/complainant intoxication. *Law and Human Behavior*, *24*(5), 535-551.
- Schulte-Bockholt, A. (2013). Latin American Critical Criminology. In *Routledge Handbook of Critical Criminology*. Routledge.
- Siles, A. (1995). *Con el solo dicho de la agraviada: ¿es discriminatoria la justicia en procesos por violación sexual de mujeres?* DEMUS.
- Silva, C., & Portal, D. (2017). Avances en los Estándares Jurídicos Internacionales Aplicables a casos de Violación sexual en el Conflicto Armado Interno peruano. P. 356. En *Género y Derecho Penal. Homenaje al Prof. Wolfgang Schöne*. Instituto Pacífico S.A.C.
- Skinnider, E., Montgomery, R., & Garrett, S. (2017). *The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam* [UN Multi-country study]. United Nations.
- Smart, C. (1977). *Women, crime, and criminology: A feminist critique*. Routledge & K. Paul.
- Smart, C. (1989). *Feminism and the Power of Law* (0 ed.). Routledge.
- Smith, O., & Skinner, T. (2012). Observing Court Responses to Victims of Rape and Sexual Assault. *Feminist Criminology*, *7*(4), 298-326.
- Smith, O., & Skinner, T. (2017). How Rape Myths Are Used and Challenged in Rape and Sexual Assault Trials. *Social & Legal Studies*, *26*(4), 441-466.
- Spohn, C., Tellis, K., & O'Neal, E. N. (2015). Policing and prosecuting sexual assault: Assessing the pathways to justice. In H. Johnson, B. Fisher, & V. Jaquier (Eds.), *Critical Issues on violence against women. International perspectives and promising strategies*. Routledge/Taylor & Francis Group.

- Suarez, E., & Gadalla, T. M. (2010). Stop Blaming the Victim: A Meta-Analysis on Rape Myths. *Journal of Interpersonal Violence*, 25(11), 2010-2035.
- Taylor, N. (2007). *Juror attitudes and biases in sexual assault cases*. Canberra: Australian Institute of Criminology.
- Temkin, J., Gray, J. M., & Barrett, J. (2018). Different Functions of Rape Myth Use in Court: Findings From a Trial Observation Study. *Feminist Criminology*, 13(2), 205-226.
- Temkin, J., & Krahé, B. (2008). *Sexual assault and the justice gap: A question of attitude*. Hart.
- Temkin, J., & Krahé, B. (2009). Chapter 13. Addressing the attitude problem in rape trials: Some proposals and methodological considerations. In M. Horvath & J. Brown (Eds.), *Rape: Challenging contemporary thinking*. Willan Publishing.
- Ugaz, J. (1999). Violación a la libertad sexual desde la perspectiva de género. *Ius et Veritas*, 19, 194-198.
- Valdés, T., & Olavarría, J. (1997). *Masculinidad/es. Poder y crisis*. Flacso Chile.
- Varpio, L., Ajjawi, R., Monrouxe, L. V., O'Brien, B. C., & Rees, C. E. (2017). Shedding the cobra effect: Problematizing thematic emergence, triangulation, saturation and member checking. *Medical Education*, 51(1), 40-50.
- Venema, R. M. (2019). Making Judgments: How Blame Mediates the Influence of Rape Myth Acceptance in Police Response to Sexual Assault. *Journal of Interpersonal Violence*, 34(13), 2697-2722.
- Villanueva Flores, R. (1999). *La violencia sexual: Un problema de seguridad ciudadana* [Informe N° 21]. Defensoría del Pueblo.
- Villanueva Flores, R. (2012). La perspectiva de género en el razonamiento del juez del Estado constitucional: El caso de los delitos sexuales. En *Autonomía y feminismo. Siglo XXI. Escritos en homenaje a Haydée Birgin* (pp. 247-255). Biblos.

- Wentz, E. A. (2020). Funneled Through or Filtered Out: An Examination of Police and Prosecutorial Decision-Making in Adult Sexual Assault Cases. *Violence Against Women*, 26(15-16), 1919-1940.
- WHO (2003). *Guidelines for medico-legal care for victims of sexual violence*. World Health Organization (WHO).
- Wood, L. A., & MacMartin, C. (2007). Constructing Remorse: Judges' Sentencing Decisions in Child Sexual Assault Cases. *Journal of Language and Social Psychology*, 26(4), 343-362.

# Appendix 1

Type of rape myth	Common examples
<p>1. Victim-blaming: beliefs that victim-survivors are to blame for their victimization.</p>	<ul style="list-style-type: none"> <li>- People who get voluntary intoxicated are partially responsible for their rape.</li> <li>- People provoke rape by the way they behave or the clothes they wear.</li> <li>- If the victim-survivor does not scream, fight back or gets injured, then no rape occurred.</li> </ul>
<p>2. Excusing offenders or reducing their responsibility</p>	<ul style="list-style-type: none"> <li>- Rape is primarily motivated by passion or sex.</li> <li>- Male sexuality is uncontrollable once it has been 'ignited'.</li> <li>- Drunk men cannot control themselves.</li> </ul>
<p>3. Minimizing rape: only certain types of rape ('real rape' paradigm) are considered such.</p>	<ul style="list-style-type: none"> <li>- Marital rape is not rape.</li> <li>- Rape that is perpetrated by a partner or former partner is not rape.</li> <li>- Rape is only perpetrated by strangers.</li> <li>- Rape leaves visible injuries.</li> <li>- Rape takes place in a public space.</li> </ul>
<p>4. Casting doubt on victim-survivor's allegations: beliefs that questions the credibility of the complainant.</p>	<ul style="list-style-type: none"> <li>- False allegations are common, mostly because of revenge or regret.</li> <li>- All victim-survivors will be visibly distressed in the aftermath of a rape.</li> <li>- Only certain types of victims ('ideal') are raped (i.e. sex workers cannot be raped).</li> </ul>

	<ul style="list-style-type: none"><li>- Rape is reported immediately to the police; otherwise, it is suspicious.</li></ul>
5. Other gender-based stereotypes	<ul style="list-style-type: none"><li>- No resistance or silence from victim-survivors is consent.</li><li>- Women are liars or vengeful.</li><li>- Victims are weak and lack agency.</li><li>- Women subconsciously want or enjoy being raped.</li><li>- Men cannot be raped.</li></ul>

(Burt, 1980; Gray & Horvath, 2018; Smith & Skinner, 2017; WHO, 2003)