

## THE REPRESSION OF MARITAL RAPE IN MALAGASY LAW: A TENSION BETWEEN LEGAL RECOGNITION AND SOCIAL DENIAL

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### ABSTRACT

Despite the adoption of Law No. 2019-008 of January 16, 2020, which formally criminalizes marital rape in Madagascar, the offense remains socially invisible and judicially neglected. This article explores the contradiction between legal recognition and the persistent lack of enforcement. It investigates how entrenched cultural norms, particularly the presumption of perpetual spousal consent, hinder the acknowledgment and prosecution of marital rape. Relying on a multidisciplinary methodology—legal analysis, sociocultural inquiry, and review of judicial practices—the study identifies systemic obstacles, from patriarchal ideology to institutional inertia. It highlights the gap between the symbolic presence of the norm and its weak application. The article argues for a holistic approach to reform, including the training of legal actors, public awareness on consent within marriage, and the deconstruction of harmful gender norms. By critically analyzing the social and legal reception of this crime, the study contributes to the broader debate on gender-based violence and legal effectiveness in Madagascar.

**Keywords:** Marital rape; consent; Malagasy law; domestic violence.

### A. Introduction

Marital rape has long been overlooked in criminal law, relegated to the private sphere and excluded from the category of sexual offenses. In Madagascar, this phenomenon gained belated legal recognition with the promulgation of Law No. 2019-008 of January 16, 2020, on the fight against gender-based violence. This text explicitly criminalizes rape between spouses, thus breaking with the traditional conception that sexual relations within marriage are based on permanent and irrevocable consent.

However, legal recognition is not enough to ensure the effective repression of this form of violence. Despite the existence of the legal framework, cases of marital rape are rarely prosecuted, due to a host of structural, social, and cultural obstacles. The silence of victims, the weight of patriarchal norms, the inertia of judicial institutions, and the general public's low awareness contribute to the invisibility of this violence. In practice, marriage continues to constitute a legally and symbolically separate space, where sexual violence remains trivialized, even justified.

This situation reveals a paradox: while the legislature has taken an important step by criminalizing marital rape, social representations and judicial practices resist this normative advance. The treatment of marital rape thus creates tension between two normative orders: the positive legal order on the one hand, and the social order, deeply marked by patriarchal representations of the couple and sexuality, on the other.

Although some international and regional studies have examined gender-based violence, there is still little specific scholarly literature addressing marital rape in the Malagasy legal and cultural context. This gap underscores the need for a targeted analysis that situates the Malagasy experience within broader academic debates.

This study questions this gap between law and reality. It analyzes the factors that hinder the full implementation of the law, while highlighting institutional and cultural resistance to the effectiveness of the repression of marital rape. More specifically, the article focuses on three key legal issues: the clarity and enforceability of the new law, the responsiveness of judicial institutions, and the weight of sociocultural barriers impeding prosecution. Through a critical and multidisciplinary approach, the article aims to propose avenues for reform, both on the legal and societal levels, so that the legal recognition of marital rape becomes a real tool for protecting victims. Accordingly, the central research question guiding this study is: what factors hinder the effective implementation of law No. 2019-008 on marital rape in Madagascar?

## **B. Research Method**

This research is based on a qualitative and multidisciplinary approach, combining legal analysis, comparative law studies, and socio-anthropological reflection. It aims to understand why, despite the legal recognition of marital rape by Law No. 2019-008, its repression remains marginal, if not nonexistent, in judicial practice and social discourse.

First, a doctrinal analysis was conducted based on Malagasy domestic law, notably the Penal Code as amended by Law No. 2019-008, as well as the Constitution and international commitments ratified by Madagascar. Attention was focused on the protection mechanisms offered to women, the legal definitions of rape, and the conditions for their application in the marital context. This doctrinal method follows the classical approach of legal scholarship, which interprets and systematizes normative texts.<sup>1</sup>

Next, a comparative perspective was adopted, examining the legislation of several states that have incorporated the concept of marital rape into their criminal law: Rwanda, South Africa, France, and Canada. This comparison sheds light on legal and institutional models likely to inspire more effective implementation of Malagasy law.

Finally, a sociological and anthropological approach helped contextualize the issue of sexual consent in Malagasy marriage. Research from the sociology of gender, legal

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1 cf. H.L.A. Hart, *The concept of Law*, 1961; A. Watson, *Legal Transplants*, 1974.

anthropology, and feminist studies was used to identify cultural barriers to reporting marital rape, including the weight of patriarchy, social pressure, and victim stigmatization.

This cross-methodology sheds light on the dynamics of lawlessness, showing that the problem is no longer legal, but deeply rooted in a social fabric that is reluctant to recognize the sexual autonomy of married women. It thus opens up concrete avenues for legal, institutional, and educational reform.

## C. Discussion

### 1. A little-used legal framework: between formal recognition and practical inoperability

Marital rape, long considered a legal non-issue, is now increasingly recognized in several legal systems. This recognition is based on evolving understandings of marriage, sexual consent, and fundamental human rights. This section aims to outline the main legal foundations on which states have relied to criminalize marital rape, with a particular focus on comparative law, particularly African, European, and North American law.

#### a. A Recent but Tentative Legal Recognition

Contrary to a belief still widespread in certain judicial circles and within Malagasy society, marital rape is now formally criminalized by law. Law No. 2019-008 of January 16, 2020, relating to the fight against gender-based violence (GBV), constitutes a major legislative turning point. Its Article 6, paragraph 2, provides: “Any spouse who, by violence, constraint, threat or surprise, imposes a sexual act on the other spouse shall be punished with imprisonment of two to five years and a fine of 100,000 to 1,000,000,000 Ariary.”

This provision thus unambiguously establishes the criminalization of marital rape. However, it should be noted that this offense does not appear in the Malagasy Penal Code or in the texts relating to marriage, which limits its dissemination, its readability and its integration into the professional reflexes of those involved in the criminal justice system. In addition, the explicit expression “marital rape” is not used by the legislator, which can create terminological ambiguity in the interpretation or legal classification of the facts by magistrates.

#### b. A poorly applied text: the weight of judicial practices

Although the law has existed for over five years, cases of marital rape treated as such remain extremely rare in Malagasy courts. This situation reveals a considerable gap between the written norm and its practical application. Several factors explain this lack of implementation:

On the one hand, the majority of female victims are unaware of the very existence of this text, or do not perceive their experiences as falling within the realm of criminal offenses, due to a culture strongly marked by marital submission and

marital sexual duty.

On the other hand, some judicial police officers and magistrates themselves are reluctant to legally classify a non-consensual sexual act within a couple as rape, often preferring to use lesser definitions such as “domestic violence” or “domestic disturbances,” or even to settle out of court.

Thus, the formal existence of the text is not sufficient to guarantee its effectiveness. Analysis of case law shows a near absence of specific convictions for marital rape, which perpetuates the feeling of impunity and undermines victims’ trust in judicial institutions.

c. Social taboo as a persistent barrier

Beyond purely legal or procedural obstacles, it is above all the weight of patriarchal cultural norms that hinders the social recognition of marital rape. The idea that marital duty includes the unconditional sexual obligation of the wife towards her husband remains deeply rooted in the Malagasy collective imagination. In many communities, the sexual act is perceived as a natural right of the husband, and not as a space of permanent consent between spouses.

This taboo breeds widespread silence: few women dare to report their partners, for fear of being stigmatized, accused of family betrayal, or simply disbelieving that their experience could be legally classified as “rape.” This silence is compounded by the absence of psychosocial support, the lack of training for health and justice professionals, and the ineffectiveness of reporting mechanisms.

Consequently, even in the presence of a law, marital rape remains an invisible offense, tolerated or even denied in the private and public spheres. Criminalization on paper alone fails to break through the wall of social denial.

## 2. The fragility of sexual Consent in Marriage: Between Legal Ambiguity and Symbolic domination

At the heart of the issue of marital rape lies the question of sexual consent, whose significance appears to be diluted within the marital framework. Although modern law upholds the principle of free and informed consent for any sexual act, the reality of conjugal life frequently opposes this notion with the concept of a “sexual duty” owed by the wife to her husband. This idea, inherited from deeply entrenched patriarchal traditions, renders consent both invisible and socially taboo to challenge.<sup>2</sup>

While Law No. 2019-008 of January 16, 2020, introduced the recognition of marital rape into Malagasy law, it does not sufficiently clarify the renewable and revocable nature of consent within marriage.<sup>3</sup> This legal ambiguity contributes to a broader symbolic obstacle:

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2 See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 174.

3 Law No. 2019-008 of January 16, 2020 on the fight against gender-based violence, official Journal on the Republic, 2020.

acknowledging that a forced sexual act may occur within a legally valid marriage is often perceived, in the collective imagination, as undermining the very foundation of marriage itself.<sup>4</sup>

Consequently, sexual violence in marriage is frequently normalized or denied, even by the victims themselves, due to the lack of a clear social and legal framework that would allow them to articulate their suffering.<sup>5</sup> This helps explain the chronic underreporting of cases and the general inaction of judicial institutions when such violence is alleged.<sup>6</sup>

Sociological and legal studies conducted in various jurisdictions have demonstrated that integrating a culture of consent—explicitly including within intimate relationships—can significantly shift social attitudes and strengthen prevention policies.<sup>7</sup> In the Malagasy context, such an approach should be promoted alongside criminal law reform, to assert that marriage can never constitute a perpetual sexual license.<sup>8</sup>

### 3. Institutional Denial and the Challenges of Judicial Practice

Despite the formal inclusion of marital rape in the Malagasy legal system, judicial institutions continue to demonstrate a marked reluctance to address such cases in practice. This denial is not merely a result of legal gaps, but is deeply rooted in institutional cultures marked by gender stereotypes and power asymmetries.<sup>9</sup> Prosecutors, judges, and law enforcement agents may trivialize or dismiss complaints related to marital rape, often invoking cultural norms or questioning the credibility of the victim.<sup>10</sup>

Such practices reinforce the impunity of perpetrators and further isolate victims, who fear not being believed or facing backlash from their community.<sup>11</sup> In many regions of Madagascar, the judicial process remains inaccessible for women due to logistical barriers (costs, distance to courts), but also due to the hostile or condescending attitude of some justice actors.<sup>12</sup> Training and awareness-raising for justice professionals are essential to break this cycle.<sup>13</sup> Without a gender-sensitive interpretation of the law and a proactive application of protective measures, the recognition of marital rape remains largely symbolic.<sup>14</sup>

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4 Rebecca Cook, Bernard Dickens, and Mahmoud Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford: Clarendon Press, 2003), 98.

5 Florence Rochefort, “Le viol conjugal: une construction politique du privé,” *Clio. Femmes, genre, histoire* 26 (2007): 171–192.

6 Amnesty International, *It’s Not Part of the Job: Violence and Discrimination Against Women in Health and Education* (London: Amnesty International Publications, 2010), 33.

7 Deborah L. Rhode, *Justice and Gender: Sex Discrimination and the Law* (Cambridge, MA: Harvard University Press, 1989), 110.

8 UN Women, *Handbook for Legislation on Violence Against Women* (New York: United Nations, 2012), 24.

9 Michel Miaille, *Sociologie du droit* (Paris: Dalloz, 2001), 192.

10 Amnesty International, *Madagascar: Justice Gagged – Gender-Based Violence and Impunity* (London: Amnesty International, 2020), 14.

11 UNFPA Madagascar, *Enquête nationale sur les violences basées sur le genre* (Antananarivo: UNFPA, 2021), 26.

12 Sarah J. White, “Gender, Justice and the State in Africa,” *African Affairs* 113, no. 450 (2014): 257–277.

13 Human Rights Watch, *Justice for Women: Gender Bias in Judicial Systems* (New York: HRW, 2019), 17.

14 CEDAW Committee, *General Recommendation No. 33 on Women’s Access to Justice*, UN Doc. CEDAW/C/GC/33 (2015).

A reform of legal practice is therefore crucial, not only through legislation, but through institutional transformation and the internalization of international human rights norms.<sup>15</sup>

#### **4. Criminal treatment of marital rape in Madagascar: between formal recognition and social resistance**

While many legal systems have gradually integrated the criminalization of marital rape, Madagascar has taken a decisive step with the adoption of Law No. 2019-008 of January 16, 2020 on the fight against gender-based violence. From now on, marital rape is explicitly recognized as a criminal offense, punishable by a sentence of two to five years of imprisonment, accompanied by a fine of 100,000 to 1,000,000,000 Ariary<sup>16</sup>. However, this legislative advance coexists with strong cultural and legal resistance, which hinders the effectiveness of criminal protection for victims.

a. Recent legislative recognition but facing implementation obstacles

Prior to 2020, marital rape was not explicitly named in the Malagasy Penal Code. Article 332 of this code defined rape as “any act of sexual penetration, of whatever nature, committed against the person of another by violence, coercion, threat or surprise”<sup>17</sup>. This general definition, although open, had never been applied in a meaningful way to non-consensual sexual relations between spouses, due to the lack of clear recognition of sexual autonomy within marriage.

With the entry into force of the 2020 law, the legal vacuum has been formally filled. However, prosecutions remain rare. The new criminal provision still appears to be little known to the general public and even to professionals in the criminal justice system. In practice, complaints of marital rape continue to be suppressed or reclassified as ordinary violence or domestic disputes.

Some legal experts denounce the fact that the dominant legal culture remains reluctant to consider the wife as a legitimate complainant against her own husband in sexual matters<sup>18</sup>. In other words, the existence of a criminal law standard is not enough to guarantee its application, especially when social stereotypes remain powerful.

b. The persistence of stereotypes in jurisprudence and judicial practice

The weakness of Malagasy case law in matters of marital rape is therefore no longer due to the silence of the legal text, but rather to an institutional and cultural reluctance to recognize the sexual autonomy of married women. Marriage often continues to be perceived as an institution in which the wife has

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15 United Nations, *Declaration on the Elimination of Violence against Women*, UN Doc. A/RES/48/104 (1993).

16 Law No. 2019-008 of January 16, 2020 on the fight against gender-based violence, Article 6: “Any non-consensual sexual penetration, including within the framework of marriage, constitutes rape.”

17 Criminal Code of Madagascar, Article 332, current version.

18 Rakotondratsimba, Lova, “The judicial treatment of domestic violence in Madagascar”, *Revue Juridique Malgache*, n°14, 2022, p. 87

permanently consented to any sexual relationship. Several recent court cases (often unpublished) show that judges still invoke notions such as “conjugal duty” to refuse to investigate complaints of marital rape<sup>19</sup>.

Furthermore, judicial police officers, prosecutors and even some judges remain poorly trained in the specific realities of sexual violence in domestic situations. This results in a strong tendency to dismiss complaints without further action or to refer cases to family mediation, without regard for the rights of the victim<sup>20</sup>.

Finally, social pressure remains a major obstacle: women who denounce their husbands are often perceived as breaking the family bond, and find themselves isolated, stigmatized, or even rejected by those around them.

c. Implicit legislative resistance

The adoption of the 2020 law marks a turning point, but should not obscure structural obstacles. While marital rape is now criminalized, no landmark case law has yet truly signaled a change in approach within the courts. At the same time, legislative initiatives aimed at strengthening prevention and support for victims still encounter obstacles, particularly in the name of “family stability.” Tension remains strong between two visions of law and society: one based on gender equality and respect for physical and moral integrity, the other attached to a patriarchal conception of marriage and the family. As long as these barriers are not overcome through strong political will, increased training for judges, and awareness-raising in civil society, the offense of marital rape risks remaining symbolic on paper but mute in the courts.

## 5. Social taboo: a barrier to reporting and recognizing marital rape

The legal recognition of marital rape in Madagascar, although formally granted since 2020, remains hampered in its effectiveness by a set of deeply rooted social and cultural barriers. This resistance stems from traditional representations of marriage, the reluctance to expose the private sphere to judicial intervention, and the fear of social rejection. The silence surrounding marital rape is not so much the product of ignorance as that of a persistent taboo.

a. The conjugal imagination and the weight of patriarchal norms

In the Malagasy collective imagination, marriage is often viewed as a moral contract in which the wife implicitly accepts her husband’s sexual control. This conception is based on a patriarchal interpretation of the marital role, in which female submission is normalized, and demanding consent is perceived as an

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19 Testimony of a defense lawyer, criminal hearing, Tuléar Court, March 2024.

20 National Independent Human Rights Commission (CNIDH), 2023 Annual Report on Gender-Based Violence, pp. 21-23

affront to marital authority<sup>21</sup>.

Consequently, the very idea of rape within a couple appears to be at odds with the perception of marriage in many traditional circles. Marital sexuality is shrouded in a collective silence, making it difficult to challenge violent or non-consensual behavior. This representation contributes to blaming victims, who sometimes doubt the legitimacy of their suffering.

b. Fear of stigma and rejection

Women who experience marital rape often face a double trauma: on the one hand, the sexual violence itself; on the other, the rejection, shame, or indifference of those around them when they dare to break the silence. Several testimonies collected in the context of university research or association reports show that victims are sometimes blamed by their own families for having filed a complaint, accused of tarnishing the image of the home or damaging the reputation of the husband<sup>22</sup>.

The weight of the community, particularly in rural areas, also discourages women from speaking out. Recourse to customary dispute resolution methods or family mediation is often preferred to legal action, even in serious cases. Thus, the domestic sphere remains largely impervious to criminal sanctions, reinforcing the feeling of impunity.

c. The silence of religious and customary institutions

Religious and customary institutions play an ambivalent role: while they can sometimes provide a space for listening or mediation, they also tend to reinforce patterns of gendered domination. The dominant religious discourse often emphasizes the indissolubility of marriage and the need to preserve the unity of the couple, even at the cost of sacrificing the wife's physical and psychological integrity<sup>23</sup>.

As for customary authorities (*ray aman-dreny*, *mpanolo-tsaina*), their mediation prioritizes reconciliation over protecting the victim. In many cases, their influence can even lead to a withdrawal of the complaint or a settlement involving symbolic compensation, but without real reparation for the harm suffered<sup>24</sup>.

This institutionalized silence indirectly legitimizes sexual violence within couples and makes it difficult for a genuine public debate to emerge around marital rape.

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21 Randriamaholy, Fanja, "Marriage, sexuality and the status of women in rural areas of Atsimo-Andrefana", *Malagasy Studies Notebooks*, No. 12, 2020, p. 41

22 Women and Men Actors of Madagascar, *Field report on intrafamily sexual violence in the Southwest, 2022*, p. 14-17.

23 Interview conducted with a pastor of the Reformed Church (FJKM) in Toliara, March 2023.

24 Rakotomanga, Hery, "Customary justice and violence against women: between mediation and denial", *National Conference on Human Rights, 2021*, pp. 33-34.

## 6. Prospects for the Evolution of Malagasy Law on Marital Rape

The inclusion of marital rape in Malagasy criminal law, through Law No. 2019-008 on gender-based violence, marks a significant legal advance. However, legal recognition alone is not enough to guarantee effective enforcement or efficient protection for victims. It is now important to consider future developments in the law, not only by strengthening the regulatory framework, but also by a more profound transformation of judicial, educational, and social practices.

a. Clarify and strengthen the criminal justice system

The 2020 law, while innovative, remains relatively general in its articulation. The article criminalizing marital rape is often interpreted within a broader framework of sexual violence, without specific provisions on evidence, aggravating circumstances, or procedural safeguards adapted to domestic violence<sup>25</sup>.

A desirable development would be to explicitly detail, in the Malagasy Penal Code, the constituent elements of marital rape, following the example of certain French-speaking countries that have provided for distinct qualifications and adapted evidentiary regimes<sup>26</sup>. The objective would be to reduce legal ambiguity and promote better understanding of the text by legal practitioners.

b. Training judicial and police actors

Effective law enforcement depends largely on the training of magistrates, police officers, and court officials. However, numerous reports still denounce a lack of understanding of marital rape even within police stations and courts. Some victims are refused permission to register their complaints, on the grounds that it is not a “real rape” due to the marital relationship<sup>27</sup>.

It is therefore urgent to make training modules on gender-based violence more widespread in judicial and police training institutes. This would help combat gender stereotypes and ensure a dignified and professional welcome for victims, without judgment or re-victimization.

c. Promote legal education and community awareness

The fight against marital rape cannot be exclusively judicial. It also requires a change in mentalities through education, awareness campaigns, and community action. Too many women are still unaware that sexual intercourse forced upon them by their spouse constitutes a punishable crime, and many do not dare to file a complaint out of fear or shame<sup>28</sup>.

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25 Law No. 2019-008 of January 16, 2020 relating to the fight against gender-based violence, Official Journal of the Republic of Madagascar, No. 4494, article 5

26 See in particular Article 222-22-1 of the French Penal Code, amended by Law No. 2006-399 of April 4, 2006, which specifies that rape can be committed “between spouses.”

27 Report by the NGO ENJAM (Etoile des Jeunes et des Mères), “Access to justice for women victims of violence in the Atsimo-Andrefana and Anosy regions”, 2023, p. 21.

28 Testimonies from the participatory survey conducted by Gender Links Madagascar, Community Impact Report on GBV, 2021, p. 37.

NGOs, women's associations, community leaders, and the media have a key role to play in this civic education, particularly in rural areas. The widespread dissemination of legal texts in local languages, accompanied by testimonies and community discussions, would help break the social silence and encourage victims to assert their rights.

d. Create specialized support structures

Finally, any legal reform must be accompanied by institutional mechanisms to support victims: listening centers, safe shelters, psychosocial support, free legal assistance, etc. In Madagascar, these structures are still too rare, often concentrated in large cities, and insufficiently funded<sup>29</sup>.

Strengthening cooperation between the state, local authorities, and civil society organizations would allow for the development of an integrated protection network, guaranteeing not only punishment for the crime, but also the rehabilitation of victims' dignity and autonomy.

## D. Conclusion

Marital rape, long ignored by legal systems dominated by a patriarchal vision of marriage, today constitutes a real challenge for the recognition of women's fundamental rights, including in African societies like Madagascar. The evolution of Malagasy law, embodied by Law No. 2019-008 of January 16, 2020, marks a decisive step in the criminalization of this particular form of sexual violence. This legal recognition, although belated, constitutes a historic turning point: for the first time, consent within marriage is legally taken into account and protected.

However, this normative progress cannot disguise the persistent limitations of the law's effectiveness. Cultural obstacles, social perceptions rooted in marital submission, the reluctance of courts, and insufficient institutional resources hamper the practical application of existing criminal provisions. Marital rape thus remains an underreported, undertreated, and often misunderstood offense, both by those involved in the justice system and by the population itself.

It is therefore imperative to consider a more comprehensive and coherent reform: clarifying the legislation, strengthening professional training, raising community awareness, and, above all, ensuring genuine access to justice for victims, regardless of their marital or social status. Such an approach is not solely a matter of criminal law: it engages society as a whole in a process of deconstructing sexist norms and promoting a legal order based on equality and dignity.

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29 Ministry of Population, Social Protection and the Advancement of Women, National Action Plan for the Elimination of Gender-Based Violence (2022-2027), p. 18.

Ultimately, marital rape is neither a mere legal debate nor a private matter: it is one of the most serious symptoms of the structural violence suffered by women. In light of this, Malagasy law is called upon to go beyond mere normative recognition to become a true instrument of social transformation, capable of breaking the silence, restoring victims, and building truly equitable justice, even in the intimacy of marital relations.

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