



**NGO Shadow Report on the implementation of
*The Council of Europe Convention on preventing and
combating violence against women and domestic violence*
in Georgia**

Sexual Violence

*for submission to the GREVIO Committee
October 2021*

TABLE OF CONTENTS

TABLE OF CONTENTS	2
INTRODUCTION	3
INFORMATION ABOUT THE AUTHORS OF THIS REPORT	4
CHAPTER I - PURPOSES, DEFINITIONS, EQUALITY AND NON- DISCRIMINATION, GENERAL OBLIGATIONS	6
Article 4 – Fundamental rights, equality and non-discrimination	6
Recommendations	7
CHAPTER II - INTEGRATED POLICIES AND DATA COLLECTION	7
Article 11 - Data Collection and Research	7
Recommendations	8
CHAPTER III - PREVENTION	8
Article 15 - Training of professionals	8
Recommendations	9
CHAPTER IV - PROTECTION AND SUPPORT	9
Article 27 - Reporting	9
Recommendation	10
CHAPTER V - SUBSTANTIVE LAW	10
Article 36 - Sexual violence, including rape	10
Recommendations	13
Article 37 – Forced marriage	13
Recommendations	14
Article 45 – Sanctions and Measures	15
Recommendations	16
CHAPTER VI - INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES	17
Article 50 - Immediate response, prevention and protection	17
Recommendations	20
Article 55 – Ex parte and ex officio proceedings	21
Recommendation	22

INTRODUCTION

This shadow report outlines the challenges in the criminal justice system and the legislation of Georgia in addressing sexual violence crimes and provides recommendations for improving access to justice for sexual violence through improving legislation and criminal justice procedures. The authors of the report submit that developing effective criminal law mechanisms for the elimination of sexual violence is a fundamental step toward achieving substantive and transformative equality for women and girls in Georgia.

Over the past few years, Georgia has made significant steps in combating violence against women and domestic violence, especially with respect to improving the criminal justice response to such crimes. In 2017, Georgia ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’) and has made efforts to align its legislation in accordance with its obligations under the Istanbul Convention.

Most notably, starting from March 2021, the General Prosecutors’ Office and Ministry of Internal Affairs of Georgia started a specialization program for investigators and prosecutors on sexual violence. This year, 80 investigators and prosecutors of the Prosecutor’s Office, as well as 125 investigators of the Ministry of Interior were trained and granted specialization (by the end of 2021 up to 250 investigators of the Ministry of Internal Affairs will be specialized). The specialization trainings are conducted by the Ministry of Interior and General Prosecutors Office in collaboration with the Council of Europe, UN Women and Equality Now and are based on the Equality Now, UN Women & Council of Europe’s, *Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, 2021*. This manual aims to improve the response of the criminal justice system to sexual violence based on the Istanbul Convention and other international human rights standards. These trainings are a very good basis for improving access to justice for sexual violence in Georgia, and the Ministry of Interior has already reported some improvement. However, the trainings have to be a continuous effort (and most importantly have to involve judges). The long-term impact of the trainings is yet to be assessed.

At the time of writing this report, Georgian legislation continues to fall short of the requirements of the Istanbul Convention and international human rights standards with respect to the definition of rape and other crimes of sexual violence, and substantial challenges remain in relation to reporting, preventing and the overall response by the criminal justice system to sexual violence.

This shadow report is submitted by: Equality Now, Georgian Young Lawyers’ Association (GYLA), Partnership for Human Rights (PHR), Union Sapari, Women’s Initiatives Supporting Group (WISG), Women’s Information Centre, Anti-Violence Network of Georgia (AVNG), Georgian Democracy Initiative (GDI), Coalition for Independent Living, Human Rights Centre, Women Engage for a Common Future (WECF) and Taso Foundation.

This shadow report is supplemented by: Equality Now’s 2019 report, *Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia*,¹ Equality Now’s assessment of the measures to be taken by the States of Eurasia to combat violence against women and girls during COVID-19 and in its aftermath;² and Equality Now, UN Women & Council of Europe’s, *Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, 2021*;³ GYLA’s study “*Forced Marriage – Legislation and Practice*”, 2020; and GYLA’s report, “*Prevention and Forms of Torture and Ill-Treatment*”, 2020.

INFORMATION ABOUT THE AUTHORS OF THIS REPORT

Equality Now is an international human rights NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now is a global organisation with partners and supporters in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now’s work.

Georgian Young Lawyers Association (GYLA) is a non-governmental organisation which aims to protect human rights and promote good governance in Georgia through strategic litigation, advocacy and awareness-raising on human rights. Over the last 20 years, GYLA has been implementing a number of projects dedicated specifically to the recognition and protection of domestic violence victims’ rights, combating domestic and gender-based violence.

Partnership for Human Rights (PHR) is a non-governmental, not-for-profit organisation which aims to create an environment where all humans have equal rights and opportunities to pursue happiness. PHR unites 15 motivated human rights defenders, researchers and other professionals who are dedicated to use their knowledge, beliefs, and solidarity to reach equality and justice for children, the elderly, individuals with disabilities, women and other underprivileged groups of Georgia.

Union Sapari is a women’s rights organisation in Georgia established in 2001. The organisation covers all aspects of women’s rights, gender mainstreaming and women’s empowerment. The mission of ‘Sapari’ is to create and sustain an equal, non-discriminatory and non-violent environment. To that end, the organisation engages, inter alia, in strategic litigation, lobbying and advocacy activities, research, capacity building of professionals and awareness raising campaigns.

Women’s Initiatives Supporting Group (WISG) is a non-governmental, non-profit organisation defending the human rights of lesbian, bisexual women, trans and intersex persons in Georgia.

¹ Available at: https://www.equalitynow.org/roadblocks_to_justice

² Available at: https://www.equalitynow.org/covid_19_vawg_eurasia

³ Available at: https://www.equalitynow.org/equality_now_georgia_manual

Women's Information Center is one of the first organisations which started working on gender issues and improving women's status in Georgia. Its main priorities are to provide assistance, undertake advocacy and raise awareness of women from different regions, internally displaced persons and ethnic minority women. The organisation actively lobbies and advocates for the inclusion of gender issues in legislative and executive bodies.

Anti-Violence Network of Georgia (AVNG) is a non-governmental organisation established in 2003, comprising around 400 members nationwide. Its main goal is to create a non-violent society in Georgia. The immediate goals are to respond appropriately to cases of violence against civilians and to engage government and non-governmental actors on their behalf.

Georgian Democracy Initiative (GDI) is a local human rights organization focusing on civil and political rights (and their protection through strategic litigation), equality, the judiciary, and civic education. During several years it provided free legal aid for victims of domestic violence and was involved in the process of reforming the criminal justice system.

Coalition for Independent Living (CIL) is the largest and one of the leading disability organizations in Georgia bringing together 26 organizations from all over the country including parents, women with disabilities, deaf, blind, persons with intellectual disabilities, and regional disability communities to advocate for equal opportunities and inclusion of women, men and children with different types of disabilities in society. CIL is well known in the Caucasus region for its extensive expertise in disability issues. It is a membership-based umbrella organization, which is run by a 4-member Board of individuals, elected by member organizations, who are widely recognized disability and development experts in the country. Implementing grants from various donors for almost 20 years, CIL has facilitated and contributed to major policy changes nationwide for better protection of social, political and cultural rights of PwDs, empowered a number of local disabled peoples' organizations and disabled communities and has helped establish new grassroots organizations in many regions of Georgia.

Human Rights Center aims to increase respect for human rights, fundamental freedoms and the promotion of peace processes in Georgia. To achieve this, it works towards increasing public awareness and respect for human rights, calling for the government to respect the rule of law, principles of transparency and the redistribution of power.

Women Engage for a Common Future (WECF in Georgia) is a branch office of WECF International and has ECOSOC status. WECF is a worldwide network of 150 women's, health and environmental organisations with a historical focus on Eastern Europe and Central Asia. WECF's NGO network brings people from all over the world together for sustainable development and a healthy environment for all since 1994.

Taso Foundation is an independent Georgian national women's fund, established in 2007, developed as a result of the Open Society Foundation Georgia (OSFG) Women's Program (1998-2006). Its mission was building a women's movement in Georgia and the first generation of women's non-governmental organisations were developed and supported through the Program's grant-making, operational and mixed programs.

CHAPTER I - PURPOSES, DEFINITIONS, EQUALITY AND NON-DISCRIMINATION, GENERAL OBLIGATIONS

Article 4 – Fundamental rights, equality and non-discrimination

In Georgia, women from vulnerable and marginalised groups experience intersecting forms of discrimination and serious barriers in accessing justice for sexual violence.

► Challenge: Intersecting forms of discrimination against vulnerable women and girl victims of sexual violence

In particular, women with disabilities, ethnic minority women, LBT, prostituted women, drug users, migrant women, all experience specific challenges related to their unique situation. Barriers include the existing legislative regulation preventing women from filing reports for fear of themselves being penalised for their activities (legislation penalising women in prostitution and leaving “buyers” unpunished,⁴ repressive legislation on drug use⁵), stigma towards women in prostitution, drug users, LBT women and women with disabilities, lack of reasonable accommodation (for women with disabilities) and language barriers (for migrant and ethnic minorities).

Women and girls with disabilities, particularly with psycho-social needs, face a number of barriers in accessing justice for sexual violence. The barriers include the lack of sufficient accessibility methods (including technical) to report violence to the authorities; absence of specific methodologies for interviewing vulnerable victims, particularly women with psycho-social needs; the practice of automatically excluding evidence of a person with mental disability based on medical expert examination of the person rather than the evidence itself; and the intersection of disability and gender-related prejudices throughout the process (for example, discriminatory perceptions that women with disabilities are prone to lying or unable to give reliable testimony). All perpetuate the culture of impunity for perpetrators.

Stigma associated with LBT women, being a root cause of violence and discrimination against them, stems from various factors, including belief in the need to maintain traditional family units and “traditional values”; the view that diverse sexual orientation and gender identity is abnormal; and rigid expectations about how women and men should look and behave.⁶ Stigma and prejudice hinder the development and employment of effective State measures to combat sexual violence against LBT women and fight intolerance and discrimination.

⁴ Administrative Penalties Code of Georgia, Article 1723.

⁵ Under Article 273 of the Criminal Code of Georgia, drug use and related offences constitute crimes.

⁶ Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity on his visit to Georgia. A/HRC/41/45/Add.1. 15 May 2019.

Recommendations

- Provide adequate special services for providing assistance to all victims of sexual violence, including those belonging to vulnerable groups, and ensure that victims are referred to such services regardless of whether they have been granted victim status.
- Make sure that **the motive of discrimination or bias** is properly investigated when sexual violence is committed against women and girls from vulnerable groups, ensuring that the discriminatory motive is treated as an aggravating circumstance (CCG Article 53¹);
- In taking awareness-raising measures to combat marital rape and sexual violence committed by intimate partners, ensure that the specific situations of vulnerable women, particularly LBT women and women with disabilities, is taken into account.
- Collect data, including statistical data, on sexual violence crimes against victims of vulnerable groups, disaggregated by sex, ethnic origin, disability, sexual orientation and gender identity, involvement in prostitution and other indicators of vulnerability;
- **Individual barriers**, such as reporting, legislative barriers or specific coercive circumstances, faced by vulnerable victims, should be examined and effective measures should be taken for their elimination in order for victims of sexual violence to access justice.

CHAPTER II - INTEGRATED POLICIES AND DATA COLLECTION

Article 11 - Data Collection and Research

► Challenge: Lack of effective mechanisms to collect and maintain data on cases of sexual violence

Currently, Georgia does not have a mechanism for maintaining statistics on cases of sexual abuse of children which makes it impossible to determine exactly how many cases of sexual abuse of children were reported to law enforcement agencies and how many cases were investigated.⁷ Data obtained about adult victims of sexual violence is also not consistent and is not disaggregated based on intersecting vulnerabilities, including sexual violence carried out in the context of domestic or intimate partner violence. Consistent and comprehensive data collection is needed to accurately assess the current situation of sexual violence, in particular sexual violence against children in the country, so that effective measures may be put into place to address the issue.

⁷ *Special Report Tbilisi 2021 The Administration of Justice on Crimes of Sexual Abuse and Sexual Exploitation of Children*, Public Defender of Georgia and UNICEF.

Recommendations

- Collect disaggregated statistical data on attrition rates of sexual violence, reports of sexual violence registered with the police, as well as rates of prosecutions, convictions, and penalties in such cases.
- Collect administrative data on sexual violence crimes, disaggregated based on the victim's and perpetrator's sex, age, race, ethnic origin, nationality, immigration status, disability, sexual orientation, gender identity, and involvement in prostitution.
- Collect disaggregated statistical data on whether the sexual violence was committed in the context of marriage, an intimate partner relationship, or any other relationship between the perpetrator(s) and the victim.
- Collect disaggregated statistical data on whether the sexual violence was linked to other forms of violence against women and girls, including but not limited to femicide, forced marriage including bride kidnapping, disappearance, forced pregnancy and the like.

CHAPTER III - PREVENTION

Article 15 - Training of professionals

► Challenge: All actors in the criminal justice system need to be trained on sexual violence and training programmes must be systematic and maintained

In 2021, the General Prosecutor's Office and Ministry of Interior, in collaboration with Equality Now, Council of Europe and UN Women, conducted training courses for investigators and prosecutors on sexual violence, as a result of which specialisation was granted to them in sexual violence. Eighty investigators and prosecutors from the Prosecutor's Office, as well as 127 investigators from the Ministry of Interior were trained. Through the end of 2021, up to 250 in total will have been trained from the Ministry of Interior. The trainings were based on Equality Now, UN Women & Council of Europe's manual, *Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, 2021*. The trainings covered many important areas to ensure access to justice for sexual violence. The Ministry of Interior has reported improvements made by investigators in practice as a result of the trainings.

Judges and other actors in the criminal justice system (such as victim and witness coordinators and managers at the Ministry of Interior and Prosecutor's Office) still need to receive specialisation training as they were not trained through this most recent process. The specialisation

trainings already conducted also need to have follow-up mechanisms to ensure that they have impact in practice and that this is maintained.

Recommendations

- Conduct trainings with judges on sexual violence in accordance with the Istanbul Convention and other human rights standards;
- Make sure that specialisation trainings of investigators and prosecutors have follow-up mechanisms to ensure their effectiveness and continuation in practice;
- Conduct trainings for the managers in law enforcement on sexual violence to make sure that they give instructions based on the Istanbul Convention, as well as trainings for other actors in the criminal justice system such as victim and witness coordinators.

CHAPTER IV - PROTECTION AND SUPPORT

Article 27 - Reporting

► **Challenge: Reporting rates of sexual violence are low and perpetrators are punished only in a small number of reported cases.**

In Georgia, sexual violence is prevalent, however largely underreported. According to the UN Women National Study on Violence against Women in Georgia (2017), over 26% of women have experienced sexual harassment or sexual violence in their lifetime. Additionally, 2.3% of women reported being victims of sexual violence committed by their intimate partner, 2.7% by a non-partner and 9% reported sexual abuse as a child.⁸

Despite the prevalence of sexual violence, reporting rates are low and perpetrators are brought to justice in only a small number of reported cases. For example, according to information from the General Prosecutor's Office, for a one year period between 2017 and 2018, investigations were launched in 123 cases involving sexual violence or attempts of sexual violence against adult women (under Articles 137-139 of the Criminal Code of Georgia); while only 20 cases resulted in convictions in this period; perpetrators were sentenced to imprisonment in just 15 cases; and investigation was terminated in 17 cases, while investigation into the other cases was still pending. Based on this, there is a high attrition rate of sexual violence crimes that are reported and the vast majority of these cases never reach court for a trial.

⁸ National Study on violence against Women in Georgia, 2017, UN Women.

Moreover, lack of reporting is the result of additional barriers and intersecting forms of discrimination for women from marginalised communities (such as women with disabilities, LBT women or women in prostitution). With LBT individuals, a study conducted by WISG shows that only 4.2% of persons who claimed to be victims of sexual violence crimes by their intimate partners reported to the police. Others chose to minimise the gravity of the incidents they experienced (61.9%), were afraid of being forced to “come out” to police officers and of the officers’ homophobic reactions.⁹

Recommendation

- Target the causes of the lack of reporting of sexual violence, including stigma related to sexual violence, lack of trust in the criminal justice system and lack of support services to victims of sexual violence.

CHAPTER V - SUBSTANTIVE LAW

Article 36 - Sexual violence, including rape

In Georgia, sexual violence is a serious violation of the rights of women and girls; the underlying cause of which lies within structural and systemic inequality, gender-based discrimination and power imbalance between women and men. Similar to other forms of gender-based violence, sexual violence is one of the crucial social mechanisms by which women are forced into a subordinate position to men.¹⁰ Justice for sexual violence is hard to come by since, compared to other forms of violence, sexual violence is considered taboo to discuss and survivors rarely come forward and report to law-enforcement. Even when cases have been reported, perpetrators are punished in extremely few situations. Frequently, the criminal justice system approaches these crimes with outdated (dating back to the time of Soviet Union) and often discriminatory methodology, creating one of the primary obstacles to accessing justice for sexual violence crimes.

It is noteworthy, however, that the above mentioned specialisation trainings (see information under Article 15) conducted with investigators and prosecutors, if implemented well in practice, have the potential to resolve some of the very important existing challenges. For the whole criminal justice system to operate in accordance with Istanbul Convention and other standards, judges and other criminal justice actors need also to be trained and there needs to be an effective follow-up mechanism for such trainings (see information under Article 15 above).

⁹ Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

¹⁰ See the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Preamble.

► **Challenge: The definitions of rape and other forms of sexual violence in the Criminal Code of Georgia are not consent-based and do not meet the standard set by the Istanbul Convention**

Rape (Criminal Code Article 137¹¹) and other sexual violence crimes (Criminal Code Articles 138 and 139¹²) are not based on **the lack of free and voluntary consent of the victim**, as provided by the Istanbul Convention.¹³ The definition of rape under Georgian law focuses on the use of force, threat of force and abusing the helplessness of the victim,¹⁴ rather than focusing on the absence of the free and voluntary consent to be assessed in the context of the surrounding circumstances.

Lack of criminalisation of non-consensual sexual acts leaves room for the possibility of certain acts of a sexual nature to go unpunished or classified as a crime of less gravity (under Article 139).

► **Challenge: The Criminal Code of Georgia does not treat all acts of rape as rape**

Georgian legislation currently allows for two different rape crimes,¹⁵ one of which calls for more serious penalties on conviction (Article 137) while the other, Article 139, is called coercion rather than rape and is defined as a light crime committed in circumstances other than with the use of force or threat of immediate force or helplessness. This reinforces the myth that rape always involves physical force.

A similar two-crime approach in Spanish law (which distinguished between sexual assault, including rape, and sexual abuse, including penetration) has been criticised by GREVIO,¹⁶ which

¹¹ Article 137 – Rape: Rape, that is any form of penetration of a sexual nature of the body of a person with any bodily part or object, committed with violence, under the threat of violence or by abusing a helpless condition of a person affected, – shall be punished by imprisonment for a term of six to eight years, with or without restriction of the rights regarding weapons.

¹² Article 138 – Another action of a sexual nature: *Another action of a sexual nature, which does not contain elements of crime under Article 137 of this Code, committed with violence, under the threat of violence or a helpless condition of a victim, – shall be punished by imprisonment for a term of four to six years, with or without restriction of the rights regarding weapons.*

Article 139 – Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature: *Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature, committed under the threat of damaging property, disclosing defamatory information, information representing private life or such information that may substantially affect the right of that person, and/or by abusing a helpless condition of a person affected, or material, official or other kind of dependence, – shall be punished by a fine or imprisonment for a term of up to three years, with or without restriction of the rights regarding weapons.*

¹³ Article 36 of the Istanbul Convention.

¹⁴ See footnote N5 above.

¹⁵ Discussion of these issues is provided in the *Equality Now, UN Women & Council of Europe's, Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, 2021*

¹⁶ [GREVIO Baseline Evaluation Report Spain.](#)

has stated that this approach illustrates an “improper understanding of the use of force and intimidation and the reactions this may trigger in victims of rape” (para. 220).

GREVIO welcomed the Supreme Court of Spain’s clarification, which now serves as guidance to lower courts, that the offence of rape “may apply not only to cases in which physical violence is used, but where other factors clearly indicate that the victim did not consent, such as intimidation” (para. 220). GREVIO also indicated its regret that cases involving sexual penetration were being qualified as a different offence (sexual abuse) to rape “where the surrounding circumstances clearly demonstrate intimidation”, and additionally noted that this decision expressly stated the need for a context-sensitive interpretation of the situation a rape victim would find herself in. (para. 220).

Despite the Supreme Court’s clarification, GREVIO noted that Spanish regional courts continued to apply “excessively formalistic interpretations to diminish the criminal liability of the perpetrator” (para. 221). In that light, it welcomed legislative efforts aimed at introducing a new offence to replace the existing provisions, which would send the message that “rape is rape”, and that any sexual act performed on a person without her freely given consent amounts to sexual violence, in accordance with Article 36 of the Istanbul Convention.

The above reasoning is clearly applicable and of relevance to the situation in Georgia. The issue is of particular concern because, among other things, Article 139 is also aimed at perpetrators who rape or commit any other non-penetrative act of sexual violence by abusing the victim’s material, official or other kind of dependence. As noted above, this can include a wide range of persons who, in context, hold positions of trust or authority over the victim, among them this includes but is not limited to: spouses or intimate partners; parents, step-parents, foster parents; baby-sitters or child-minders; priests, police officers; guards or other officials in detention or other state facilities; teachers; employers; supervisors; medical professionals; or care-givers to the elderly or infirm.

The public interest impacts heavily on both charging and sentencing decisions in these types of cases, particularly given the relationship of trust normally connected with dependent relationships.¹⁷ By their very nature, these cases, which involve the abuse and exploitation of the most vulnerable, warrant higher sentencing on conviction based on the aggravating circumstances.¹⁸ They should not be charged as or considered a “less serious” offence within the meaning of Article 139 by mere virtue of the fact that the victim suffered no physical injuries.

¹⁷ Crown Prosecution Service Guidelines, [Rape and Sexual Offences - Chapter 7: Key Legislation and Offences](#)

¹⁸ See Istanbul Convention, Article 46(a) and 46(b); Articles 137(2)(a),(e); 138(2)(b),(d),(f); 139(3)(e) Criminal Code of Georgia.

Recommendations

- Interpret provisions of the Criminal Code of Georgia in line with the requirements of the Istanbul Convention and European Court and do away with rigid and excessively formalistic approaches to what rape constitutes.
- Amend the definitions of rape and/or other acts of sexual nature (Criminal Code Article 137 and Article 138), in order for these definitions to be based on **free, genuine and voluntary** consent in accordance with international human rights standards.
- Remove **violence or use of force** from the definition of rape (Criminal Code Article 137) and the definition of other physical sexual violence (Criminal Code Article 138) and **define violence as an aggravating circumstance** for these articles.
- Treat acts under Article 139 of the Criminal Code as rape and charge them under Article 137. Therefore, abolish Article 139 and discontinue using it until it is abolished.
- Recognise that additional circumstances of coercion and exploitation apply in relation to minors, as compared to adults, as well as specific circumstances in relation to vulnerable persons; and properly assess them to qualify acts as rape.
- Ensure that criminal prosecution of all forms of violence provided in the sexual violence legislation is prioritised, including in cases where the perpetrator did not use physical force, and that convictions are not limited to cases where physical injuries or/and biological materials associated with a sexual act is available as evidence.

Article 37 – Forced marriage

In Georgia, the investigation of forced marriage is terminated in most cases and few cases are heard in courts.¹⁹ The criminal justice system's response and government policy against the rape of minors (Article 137.2.d of the Criminal Code) and statutory rape,²⁰ remain problematic. When rape is committed against a girl under the age of 16, law enforcement chooses to classify the crime as statutory rape (under Article 140 of the Criminal Code), rather than rape (under Article 137). This further stigmatises the child and sticks the label of "instigator" on the child in the eye of the public, rather than classifying her as the victim of violence.

► **Challenge: Sexual violence against adolescent girls, child marriages and bride kidnappings**

¹⁹ GYLA's study "Forced Marriage – Legislation and Practice", 2020. Available at: <https://bit.ly/3u1Ytx1>

²⁰ The commission of an offence which envisages sexual intercourse knowingly by an adult with a person who has not attained the age of 16, Article 140 of the CCG

Harmful practices, such as child and forced marriages (that often manifests in abduction for marriage), remain a serious problem in Georgia, while certain incidents of bride kidnappings also occur in some communities.²¹ Since 2017, the minimum age of marriage in Georgia is 18 years without any exceptions,²² though informal marriages of girls between the ages of 15-17, and of 13-15 years in some communities, still persist.²³

Sexual intercourse of an adult with a person under the age of 16 (statutory rape) is a criminal offence (Article 140 of Criminal Code). In many cases, prosecution for statutory rape only starts when, as a result of an informal marriage, a girl gives birth and the birth registry reports the incident to the police. Even though statutory rape is a serious crime under the Criminal Code envisaging imprisonment between 7 and 9 years, this punishment is never applied when it comes to statutory rape within “marriage” or committed with the purpose of entering “voluntarily” into marriage. Perpetrators are frequently only given fines and conditional sentences. Rape committed as a result of bride kidnapping is often not treated as rape if the victim had not physically resisted, as when there is no material evidence of physical resistance.

The authors of the report submit that the use of the criminal justice system is not and should never be used as the only measure for combating sexual violence in relation to child “marriages” and bride kidnappings. Comprehensive and multi-sectoral prevention and support programmes, including focusing on economic empowerment, need to also be put in place to holistically tackle this issue. However, the current criminal policy against perpetrators of sexual violence committed within a child “marriage” sets the scene for impunity, downgrades the criminal nature of these offences and fails to have any preventative effect.

Recommendations

- Take concrete steps towards ensuring a zero-tolerance policy for statutory rape committed as a result of child ‘marriage’ and ensure that the strict criminal policy is complemented with comprehensive and far-reaching prevention measures and support programmes for adolescent girls.
- Ensure continuous awareness-raising campaigns about the illegal and unacceptable nature of child “marriage” and bride kidnappings, as well as the legal measures in place.

²¹ See Exploring Harmful Practices of Early/Child Marriage and FGM/C in Georgia, Final Report, UNFPA, 2017. Available at: https://georgia.unfpa.org/sites/default/files/pub-pdf/Exploring%20Harmful%20Practices%20of%20EarlyChild%20Marriage%20and%20FGMC%20in%20Georgia_0.pdf

²² Civil Code of Georgia, Article 1108.

²³ See 2018 annual report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, pp. 117-118, available at: <http://www.ombudsman.ge/res/docs/2019101108583612469.pdf>
See Exploring Harmful Practices of Early/Child Marriage and FGM/C in Georgia, Final Report, UNFPA, 2017.

- Treat sexual acts committed against a woman or a girl abducted for marriage (bride kidnapping) as rape and do not require proof of physical resistance or injuries to make such a determination.

Article 45 – Sanctions and Measures

The low sentencing range under Article 139 places rape and other non-penetrative acts of sexual violence in the category of “less serious crimes”, defined in Article 12(2) of the Criminal Code. A person who admits committing a “less serious crime” may receive a conditional sentence leaving open the possibility that a perpetrator of rape receives a sanction that is neither effective, proportionate nor dissuasive, in breach of the Istanbul Convention.

► Challenge: Conditional sentences for perpetrators of sexual violence are not effective, proportionate or dissuasive

The sexual violence crimes provided under Article 139 of the Criminal Code are classified as less serious crimes and envisage disproportionately low punishments - the minimum punishment under Article 139 is a fine, while the maximum sentence is five years in prison. The authors of this submission report that imprisonment for this article in practice is applied in rare cases. Since the crime is designated as less serious pursuant to Article 12(2) of the Criminal Code, a conditional sentence can be applied if the perpetrator admits the crime and/or collaborates with the investigative authorities.²⁴ This leaves the possibility open that a perpetrator convicted of rape pursuant to Article 139 could receive a conditional sentence. Moreover, even though Articles 137 and 138 are termed serious crimes, the perpetrator is still able to receive a conditional sentence, or any other mild penalties not provided under these provisions, as a result of a plea agreement.²⁵

In particular, a conditional sentence for rape violates the requirements of the Istanbul Convention and other international human rights standards which call on States to take the necessary legislative or other measures to ensure that sanctions for sexual violence offences are “effective, proportionate and dissuasive.”²⁶ A lenient sentence implicitly condones this serious crime; diminishes protection for victims; and promotes a climate of impunity. All forms of rape,

²⁴ Under Article 63.3 of the Criminal Code of Georgia, *If the convicted person has committed a less serious crime or a crime of negligence and he/she admits it and/or collaborates with investigative authorities, the court may rule that the sentence imposed be considered as a conditional sentence, unless the convicted person had previous conviction for particularly serious or intentional serious crime in the past.*

²⁵ This is allowed under Article 55 (Imposing more lenient sentences than provided for by law) of the Criminal Code of Georgia, which provides that *The court may impose a sentence that is less than the lowest limit of the measure of a sentence provided for by an appropriate article of this Code, or other, more lenient sentence if a plea bargain is concluded between the parties.*

²⁶ Article 45 of the Istanbul Convention requires states to take the necessary legislative or other measures to ensure that sanctions for sexual violence offences are “effective, proportionate and dissuasive.”

whether with or without evidence of physical force, should be treated as equally serious by the courts.

In cases of statutory rape against a minor under 16 in connection to “marriage” with a minor, plea bargains (often in the form of imposing fines) are concluded, as a result of which perpetrators do not get prison sentences. This creates a perception that statutory rape is subjected to only fines, rather than being a criminal offence and does not have a deterrent impact for perpetrators.

Challenge: Mitigating circumstances applied in sexual violence cases enable impunity for perpetrators

General mitigating circumstances, provided by the Georgian Criminal Code and applicable for all crimes such as “compensating” the harm or “reconciling” with the victim (Art. 53.3), should not be used in sexual violence cases. They are contrary to international human rights standards and have a damaging effect in signalling that sexual violence and violence against women could be justified or mitigated in some circumstances.

In Georgia, factors such as gender-biased motive of the crime (e.g. jealousy, revenge, punishment, preserving public morals, ‘honour’, motives related to culture, religion, and traditions);²⁷ the defendant's character (e.g. being characterised as a good person);²⁸ prior history of positive behaviour and being a “first” offender (the first reported incident is seldom the first incident of gender based violence, particularly with domestic violence);²⁹ the defendant’s wish to compensate the harm; or the defendant’s reconciliation with the victim, by apology or marrying the victim,³⁰ are often considered to be mitigating factors, leading to lighter sentences and less accountability for perpetrators of sexual violence. The general circumstances under Article 53.3 of the Criminal Code should be examined with care and the factors previously mentioned should not be considered as mitigating factors.

Recommendations

- Take all necessary steps to ensure that all crimes of sexual violence (Articles 137-140 of the Criminal Code) are punished based on their gravity and remove the possibility of imposing low penalties such as fines and conditional sentences in law, including as a result of plea agreements (amending Articles 139, 53, 55 and 63.3 of the Criminal Code).

²⁷ 411

²⁸ 412

²⁹ 413

³⁰ 414

- Make sure that sanctions imposed for statutory rape are proportionate and have deterrent impact and discontinue using fines as a result of plea bargains, which fail to have a deterrent effect and lead to effective impunity of perpetrators.

CHAPTER VI - INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES

Article 50 - Immediate response, prevention and protection

► Challenge: Lack of physical injury evidence

In the overwhelming majority of cases, sexual violence crimes are prosecuted and perpetrators are being convicted only when physical injuries and biological materials associated with a sexual act are found. Such practice leaves the vast number of sexual violence acts envisaged under the law (Articles 137-140) to go unpunished because the authorities are solely investigating sexual violence crimes where the perpetrator used physical force and the victim physically resisted. The approach narrows further the narrow current definition of rape under the Georgian Penal Code and such practice is also one of the main causes of the high attrition rate of sexual violence crimes and the reason why a vast number of cases never reach the stage of prosecution. This is contrary to international human rights standards.

► Challenge: Corroboration Requirement

Prosecutors apply overly burdensome evidence requirements for bringing charges against perpetrators of sexual violence, while judges also apply overwhelmingly strict requirements to issue a judgment of conviction for these kinds of crimes. Such practice leaves many forms of sexual violence unpunished and runs contrary to the Istanbul Convention and international human rights standards, including the European Court of Human Rights which has suggested that any “rigid” approach to the prosecution of sexual offences “risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy.”³¹

In particular, rigid corroboration requirements pose a significant barrier to survivors in Georgia. Legislation is consistently interpreted as requiring two pieces of direct evidence on which to base a conviction (therefore, to issue an indictment that would have the prospect of conviction), with the whole testimony of an individual witness, even if it refers to a number of different

³¹ M.C. v. Bulgaria, para. 166; See also Explanatory Report of the Istanbul Convention, para. 191. See also: Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia, Equality Now, 2019, p.11

elements that could be used to prove the crime, considered to be only one “piece.” This strict requirement of “two pieces,” means that even if the evidence of women and girls who have been victims of sexual violence is credible and reliable, unless corroborated by another “piece” of direct evidence, it can never on its own form the basis for conviction. Being corroborated by indirect evidence is not considered as sufficient either. In these cases the “two pieces” threshold nullifies a determination on the merits because complaints by victims which have not been corroborated by various other pieces of evidence do not go to court.

► **Challenge: Gender stereotyping and discriminatory and traumatic procedures**

Negative gender stereotyping and certain discriminatory/traumatic procedures, applied by various actors in the criminal justice system, are prevalent in practice and many times constitute a significant barrier to justice for survivors of sexual violence. These include the victim being required to meet a number of different people and repeat the facts of her traumatic experiences several times during the investigation; examining the victim’s prior sexual history during investigation and, with most gravity, during trial by defence lawyers; examining the victim’s mental health to question her credibility and find out whether she is “prone to lying;” and lack of gender-sensitive questioning during the investigation and court proceedings. Victims of sexual violence further allege humiliating and ridiculing attitudes on the part of law enforcement officials, which, coupled with the lack of adequate infrastructure in police stations, deters victims’ participation in criminal investigation in a number of cases.

The “**investigative experiment**” is very often applied in sexual violence cases. Under the “experiment”, the victim has to enact the incident of the crime, which involves going to the place where the crime was committed, recalling the facts (or her statement previously given to the investigation is read aloud) and photos of the victim being taken while she points at various specific locations she was taken to when the crime was being committed. This procedure has a high risk of degrading the victim and of making discriminatory assumptions about rape. The “experiment” is very often routinely ordered in the course of the investigation without its evidentiary value or the traumatic impact it can have on the victim having been assessed.

The **questioning** of the victim during the investigation stage is often conducted in a common/shared space at the police station where other investigators, victims and even persons not connected to criminal proceedings are also present, and the victim’s story can be easily overheard by them. This causes additional fear and humiliation to the victims throughout the process. Victims and their lawyers report that investigative questions and comments made by investigators during questioning implicitly, and sometimes explicitly, judge the victim’s behaviour and are aimed at “sharing” the responsibility with the perpetrator for inducing the sexual violence.

Forensic medical examination of the bodies of the victims, conducted by the Levan Samkharauli National Forensic Bureau, the only public body authorised to conduct forensic examinations, is intrusive and often extremely traumatising. Such examinations, in practice, are

considered as an “obligatory” step to prove rape, although many times they are either unnecessary, do not have evidentiary value or give rise to discriminatory assumptions about whether sexual violence occurred (e.g. if there are no vaginal injuries, or if the hymen is intact). For victims, such forensic examinations are particularly traumatising since the majority of the experts are male, while the victims are predominantly female. Victims have reported long waiting periods (particularly if it is a weekend), and unethical and humiliating attitudes of the experts.

In case of minors, vaginal examinations are often ordered even when a minor is not testifying that penetration was committed. Such decisions and practices deny the autonomy and bodily integrity of minors and they should be discontinued unless in extremely exceptional situations. Protection of minors’ rights and physical and psychological integrity should always take precedence over determinations of whether the perpetrator should be charged with a penetrative (under Art. 137) or non-penetrative (Art. 138 or 141) sexual offence - which is the rationale behind ordering such examinations.

Stereotypes and drawing negative inferences from the **condition of the victim’s hymen** also proves to be a problem. In addition to the practice being discriminatory and degrading to women, lack of injuries on the hymen leads to unscientific conclusions that penetration or rape never happened. It also regularly leads to examining prior sexual history, rather than establishing injuries based on the allegations under review.

Forensic psychological examination is no less problematic. Ordering this examination is very often grounded in the stereotypical belief that women lie about rape and that the psychological examination has to show whether or not the victim is “prone to lying”. Moreover, in this process, victims are often met with bias and disbelief and are subjected to victim-blaming, unethical and sometimes humiliating questions and comments. Lack of evidence-based, gender sensitive protocols of psychological forensic examinations puts the practice in contravention of human rights standards.

During the **trial**, victims are always forced to come face-to-face with the perpetrators and perpetrators themselves can pose questions directly to the victims, which causes victims to feel confused, intimidated and embarrassed. The defendant’s lawyers often express a demeaning attitude toward the victim, which judges do little to prevent. Measures for questioning victims remotely or for avoiding their secondary victimisation are not applied.

Judges often treat sexual violence crimes with the same or more rigid and gender neutral standards that they use in relation to other crime and do not apply a heightened gendered approach or analysis for such cases. Prosecutors and judges often fail to uncover the **gendered nature** of sexual violence (as compared to the growing number of domestic violence cases for example) and/or investigate and charge for discriminatory motive.

Investigators and prosecutors handling sexual violence cases often suffer from a heavy workload. Investigators and prosecutors who received specialization in sexual violence in 2021

have to work on these cases in addition to all the other ongoing work they have, such as focusing on cases of theft or burglary. There is no sufficient human resources or thematic allocation of cases among criminal justice professionals to enable them to devote sufficient time to the crimes included in the Istanbul Convention (such as sexual and domestic violence, forced marriage, stalking, etc.). This reduces the effectiveness of the criminal justice response to such crimes and investigative measures are often conducted as just a “box ticking exercise,” instead of conducting a thorough and context-based investigation and prosecution and developing victim-centered approaches.

Finally, a 2020 study by the Public Defender of Georgia and Council of Europe³² examined cases of sexual violence during 2017-2019³³ and their research revealed that in none of the cases where the perpetrator was convicted was discriminatory motive confirmed. Furthermore, the cases suggest that the aggravating circumstances provided in the Istanbul Convention (Article 46) and the Georgian legislation in conformity with the Istanbul Convention (including those provided in CCG Article 531) have not been invoked and used in sentencing where applicable. By disregarding applicable aggravating circumstances in sentencing, the punishment imposed for the crimes cannot be proportionate to the actual nature and gravity of the crimes committed.

Recommendations

- Make sure that there is sufficient human resources among investigators and prosecutors focusing on the crimes under the Istanbul Convention (including sexual violence, domestic violence, stalking, forced marriage, etc), and make sure that their workload is such to allow for proper, rigorous investigation of the cases allocated to them;
- Make sure that all forms of sexual violence, including where the perpetrator did not use physical force, are prosecuted and do not limit prosecutions and convictions to cases where the perpetrator used physical force, the victim physically resisted and biological material of the perpetrator is found on the body of the victim.
- Remove burdensome evidentiary standards and corroboration requirements in relation to sexual violence crimes
- Make sure that all cases of sexual violence against women and girls are prosecuted and adjudicated from a gendered perspective, which, among others, should involve investigating discriminatory motive and applying it, if found, as an aggravating circumstance.

³² Public Defender of Georgia and Council of Europe. *Administration of Justice on Sexual Violence Crimes against Women in Georgia* (December 2020), chapter F, available at <https://rm.coe.int/sexual-violence-research-eng/1680a17b78>

³³ For the purposes of the research, sexual violence crimes refers to crimes listed in Articles 137 (rape), 138 (other acts of sexual nature) and 139 (coercion into intercourse or any another act of a sexual nature) of the Criminal Code of Georgia that were perpetrated, investigated, prosecuted and that resulted in a conviction, between 1 June 2017 and 1 May 2019

- Limit so-called “investigative experiments” unless strictly necessary and minimize the risk of secondary victimization in the process.
- Make sure that at the investigation stage of sexual violence, victims are able to give statements in a confidential manner, rather than in common spaces of police stations;
- Conduct forensic medical examinations on the body of the victim only when strictly necessary and make sure victims are treated with dignity (including by being examined by persons of the same sex) in this process; Avoid such examinations when a person, including a minor, is not testifying about penetration.
- Avoid adverse and unscientific inferences from a hymen’s condition for the purposes of proving penetration or rape;
- Ensure that psychological and psychiatric examinations are not used for the purposes of establishing victims’ reliability or questioning their credibility, which should be the remit of the judge, but rather to plan support services or inform investigative and interviewing strategies only, and that specific guiding methodology is put in place to guide mental health professionals;
- During direct and cross-examination of the victim during trial, put in place special measures to avoid her secondary victimisation (for instance, by providing for the possibility to question the victim remotely, ensuring avoidance of certain questions, use of gender stereotypes, sexual history, etc).

Article 55 – Ex parte and ex officio proceedings

► Challenge: investigation often discontinues when the victim “withdraws the complaint”

While the Georgian legislation provides for a pro-active role of the state and mandatory ex officio prosecution of crimes of sexual violence, research by the Public Defender of Georgia and Council of Europe³⁴ suggests that often the burden of bringing a perpetrator to justice rests on the victim rather than the state. Victims of sexual violence very seldom come forward and report rape -- they are often made to withdraw their complaint as a result of various pressures from their families, perpetrators or the community, or they are discouraged by unethical handling of the case by the criminal justice actors or lengthy proceedings. The case is very often closed without proper examination of why the victim withdrew, leading to misleading conclusions that rape did not happen.

³⁴ Public Defender of Georgia and Council of Europe. *Administration of Justice on Sexual Violence Crimes against Women in Georgia* (December 2020), chapter F, available at <https://rm.coe.int/sexual-violence-research-eng/1680a17b78>

Recommendation

- Ensure that investigation/prosecution of sexual violence crimes is not terminated solely based on the victim's rejection or change of statement, or inconsistent statements, or refusal to press charges against the perpetrator, or inability to testify for a particular reason, including due to the victim's physical or mental health.