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## Sex Crimes – Unpunished and Poorly Regulated Crimes in Georgia

Policy Brief

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### Summary

This policy brief focuses on the problem of regulations and implementation of the articles in regarding sex crimes. The rape legislation in Georgia is discriminatory, inadequate and is based on inherent gender stereotyping, which not only restricts the prosecution of rape, but negatively influences the perception of what constitutes rape by law enforcement officials, victims and perpetrators. The policy brief overviews the problem, assesses existing Georgian legislation, compares it to international standards, outlines problems in practice and, based on best practices, offers recommendations to improve the legislative framework, investigation and prosecution.



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### Introduction

According to the EU-Georgia Association Agenda 2021-2027 one of the short-term priorities for equal treatment is to "take further measures to strengthen the implementation of legislation against gender-based violence, including awareness-raising of both the general population and of specific professional groups, such as the police, and in particular in rural areas."<sup>1</sup> This policy brief focuses on sexual violence against women in Georgia, as it is one of the most serious, covert and unpunished forms of gender-based violence, caused by existing legislative, structural and systemic problems.<sup>2</sup> The underlying cause of sexual vio-

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lence lies within structural and systemic inequality, gender-based discrimination and power imbalance between women and men. Taboo, gender stereotyping and discriminatory investigation procedures applied in practice constitute a significant barrier to justice for survivors of sexual violence, as well as risking re-traumatisation and secondary victimisation. Georgian legislation continues to fall short of international standards with respect to its definition of rape and other crimes of sexual violence.<sup>3</sup>

In Georgia, sexual violence is prevalent, however largely underreported. According to UN Women's 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.<sup>4</sup>

Despite the prevalence of sexual violence, reporting rates and convictions are very low. According to information from the General Prosecutor's Office, over 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. Of those, only 20 cases resulted in convictions and only 15 cases resulted in the imprisonment of the perpetrators. These statistics demonstrate that 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.<sup>5</sup>

During last two years Georgian law enforcement agencies have taken steps to effectively combat sex crimes. For example, 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. Participants received a specialisation in sexual violence. In 2021 eighty investigators and prosecutors from the Prosecutor's Office and up to 250 policemen and investigators have been trained from the Ministry of Interior based Manual for Practitioners in Georgia on effectively investigating, prosecuting and adjudicating sex crimes. 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.<sup>6</sup>

Currently, in Autumn 2022 the Gender Equality Council and Human Rights Committee within the Georgian Parliament are working on developing amendments to the Criminal Code of Georgia to improve legislation on sex crimes.

<sup>1</sup> RECOMMENDATION No 1/2022 OF THE EU-GEORGIA ASSOCIATION COUNCIL on the EU-Georgia Association Agenda 2021-2027, 2022, Short and medium-term priorities of the Association Agenda 1.5., available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:22022D1422&from=EN>

<sup>2</sup> "GYLA's assessment of women's rights", GYLA, 2021. Available at: <https://bit.ly/3sEep6k>

<sup>3</sup> Articles 137-139 of the Criminal Code of Georgia.

<sup>4</sup> National Study on Violence against Women in Georgia, 2017, UN Women.

<sup>5</sup> Joint alternative report of Equality Now and 11 Georgian NGOs on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Georgia in respect of sexual violence, submitted to the GREVIO Committee in October 2021, p. 9. Available at: <https://bit.ly/3BpIEFO>

<sup>6</sup> *Ibid*, p. 8.

## International Standards on Sex Crimes

There is an international consensus, including among the European Court of Human Rights, the CEDAW Committee, the Istanbul Convention, the Inter-American Court, and the international criminal tribunals, that rape provisions require a consent-based definition.<sup>7</sup>

UN Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice urges states to take measures aimed at developing gender-sensitive approaches and ensuring that victims of violence are treated with dignity and respect, in order to avoid secondary victimisation.<sup>8</sup>

The Istanbul Convention and other international human rights standards call on States to take the necessary legislative or other measures to ensure that sanctions for sexual violence offences are “effective, proportionate and dissuasive.”<sup>9</sup>

## Overview of Georgian Legislation

Georgian legislation currently allows for two different rape crimes, 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. The establishment of rape and other acts of sexual violence are dependent not on the lack of voluntary and genuine victim consent, but on whether the act is ‘committed with violence, under the threat of violence or by abusing the helpless condition of a person affected.’ Therefore, violence is a constituent element of the definition, and not an aggravating factor. This definition creates a legislative gap, influenced by gender stereotypes, that leaves incidents of rape and other sexual violence unpunished.<sup>10</sup>

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 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 or other non-penetrative violent acts receives a sanction that is neither effective, proportionate nor dissuasive, in breach of the Istanbul Convention. This leaves the possi-

<sup>7</sup> *M.C. v Bulgaria*, no. 39272/98, para. 181; Article 36 of the Istanbul Convention; CEDAW Committee, General recommendation No. 35; *Vertido v Philippines*, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008; Prosecutor v Akayesu, case no. ICTR-96-4, court decision 02.09.1998, paras. 596-598. See also General Assembly Resolution A/RES/65/228 - Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, 2010. Article 14 (c)(iii) and (e). Available at: <https://bit.ly/3na2gFV>

<sup>8</sup> *Ibid*, para. 18(c)(e), para. 20(a)(c)(d) and para. 22(c).

<sup>9</sup> 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.”

<sup>10</sup> See further on limited definitions and interpretation of sexual violence crimes *The Administration of Justice on Sexual Violence Crimes Against Women in Georgia*, Public Defender’s Office and the Council of Europe, December 2020, pp. 14-15. Available at: <https://bit.ly/3FtqGcm>

bility 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.

In the 2016 report on her mission to Georgia, the UN Special Rapporteur on violence against women, its causes and consequences, criticised the inconsistent and fragmented legislative framework on violence against women for not being fully in line with the CEDAW and Istanbul Conventions. She also expressed concern about the poor implementation of those international instruments. During her visit, she recommended that the definition of rape be brought into compliance with these conventions which was endorsed by the Ministry of Justice.<sup>11</sup> During the seven years since that report, the definition of rape has remained unchanged.<sup>12</sup>

## Overview of Practice

An analysis of the information from the MIA and Prosecutors office requested by Sapari provides further evidence that victims of sexual offences face a number of barriers from the moment a crime is reported until the case reaches the court. As a result, at each stage, the number of cases of sexual violence is significantly reduced. In particular, 112 – the Emergency Response Centre - registered 660 reports of incidents of “sexual violence” and “sexual offences” in the period from 1 January 2018 to 31 December 2020.<sup>13</sup> However, out of these reports, an investigation was launched into only 420 cases.<sup>14</sup> Accordingly, reports made by 220 women that they were victims of sexual violence were not investigated.

The practice of Sapari shows that reluctance/delays in granting victims of sexual violence the legal status has remained a topical issue, denying the victims access to the case files and information over investigative actions, as well as undermining the effectiveness of the investigation.<sup>15</sup> Despite the fact that the legislation of Georgia does not require corroboration of the victim’s testimony or multiple sources of evidence on which to base charges or conviction, in sexual violence cases there is a widespread practice that charges are not brought (and consequently convictions not achieved) in those sexual violence cases that do not have the proof of forced penetration and biological materials of the perpetrator found on the body or clothes of the victim.<sup>16</sup> Accordingly, the overwhelming majority of sexual violence cases never reach the prosecution stage, resulting in widespread impunity of perpetrators.<sup>17</sup>

<sup>11</sup> Report of Dubravka Šimonović, United Nations Special Rapporteur on violence against women, its causes and consequences, 22 July 2016, A/HRC/32/42/Add.3, paras. 61-62 and 99. Available at: <https://bit.ly/3AhIde7>

<sup>12</sup> The CEDAW Committee has recently identified the issue as one of the focus areas of further dialogue with Georgia, requesting information on the measures taken by the State to amend the legal definition of rape on the basis of lack of consent rather than use or threat of force - CEDAW, List of issues and questions in relation to the sixth periodic report of Georgia, 16 July 2021, para. 10 (a)

<sup>13</sup> “Sexual violence” and “sexual offenses” of these types of incidents include any act of a sexual nature. Namely, violent sexual assault (rape) against a person of any age, as well as any other act of a sexual nature committed with violence or threat of violence. The letter #MIA 2 21 01897054 of the Ministry of Internal Affairs of Georgia, dated 20.07.2021. (Annex 30)

<sup>14</sup> *Ibid.*

<sup>15</sup> Equality Coalition, The Right to Non-discrimination in Practice for Various Groups in Georgia – 2021 Report, 2022, p. 43. Available at: <https://bit.ly/3xPrrTh>; See also 2022 press-conference of Sapari <https://bit.ly/3neooIA>

<sup>16</sup> Low rate of prosecutions for sexual violence due to burdensome requirements regarding evidence and corroboration has been included in the 2021 list of issues of the CEDAW Committee in relation to the sixth periodic report of Georgia - CEDAW Lol, Para. 10 (d).

<sup>17</sup> *Supra*, note 4, GREVIO, p. 17.

In practice, like other elements of the definition,<sup>18</sup> ‘helpless state’ is restrictively interpreted and not considered to apply to coercive circumstances<sup>19</sup> while there is no guidance on what constitutes coercive circumstances or freely given consent. Accordingly, in the overwhelming majority of cases physical injuries are required for criminal prosecution of rape.<sup>20</sup>

The absence of specific questioning methodology for sexual violence victims in criminal justice processes is a serious issue in Georgia. As documented by the Coalition for Equality in its international reports, police officers do not accurately/fully record the statements provided by victims, including in sexual violence crimes. Consequently, statements do not record the facts which reflect the presence of aggravating circumstances or which are crucial to identifying the discriminatory gender motive which results in the crime being considered less grave.<sup>21</sup> Besides, the defendant’s reconciliation with the victim, by apology or marrying the victim, is often considered to be mitigating factors, leading to lighter sentences and less accountability for perpetrators of sexual violence.<sup>22</sup>

Georgian NGOs have consistently denounced existing gender stereotyping and discriminatory and traumatic procedures in Georgia, which can be summarised as follows:

*‘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.’<sup>23</sup>*

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.

<sup>18</sup> ‘Violence’ is usually interpreted as physical and not psychological, and the violence and the ‘threat’ are interpreted as being immediate or coincident with the sexual act. Therefore, a non-consensual sexual act committed by coercion, psychological violence, or even prior violence is not classified as rape.

<sup>19</sup> *Supra*, note 18, PDO and CoE, p. 14.

<sup>20</sup> *Supra*, note 4, GREVIO, p. 17

<sup>21</sup> Shadow Report of the Coalition for Equality and Other NGOs to the Group of Experts on Action against Violence and Violence against Women and Domestic Violence (GREVIO), October 2021, pp. 32-33. Available at: <https://bit.ly/35KugdR>

<sup>22</sup> *Supra*, note 4, GREVIO, p. 16.

<sup>23</sup> *Ibid*, p. 18. See also Joint CEDAW submission of Equality Now and 15 Georgian NGOs on factors effectively denying access to justice for survivors of sexual violence in Georgia, submitted in June 2021, p. 5. Available at: <https://bit.ly/3anyvLD> Join submission of Equality Now and 16 Georgian NGOs on Access to Justice for Sexual Violence to the UN Universal Periodic Review, Thirty Seventh Session of the UPR Working Group of the Human Rights Council, 2 - 13 November 2020, para. 17. Available at: <https://bit.ly/3DhUy2F> See also *supra*, note 18, PDO and CoE, pp. 27-29.

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.

## Recommendations:

- Bring the definitions of rape and other sex crimes in the Criminal Code in line with the Istanbul Convention and other international standards; Namely, these definitions and their interpretation should be based on free, genuine and voluntary consent of the victim and violence should be considered an aggravating circumstance;
- Make sure that all forms of sexual violence, including where the perpetrator did not use physical force, are prosecuted; Prosecutions and convictions should not be confined 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;
- Take the necessary legislative or other measures to ensure that sanctions under Article 139 are effective, proportionate and dissuasive, as required by the Istanbul Convention and other international human rights standards;
- Avoid concluding plea bargain agreements in cases of statutory rape against a minor under 16;
- 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;
- In line with the so-called PEACE methodology,<sup>24</sup> develop a specific methodology for interviewing victims of sexual violence crimes and ensure its consistent implementation in practice;
- Conduct interviews in private locations and limit the number of persons present in the interview room to those who are critical to the interview process;
- Ensure verbatim recording of victim’s statements thereby avoiding summarising, cutting down or cutting out parts of the victim/witness information when recording interview in-

<sup>24</sup> On the PEACE methodology see Council of Europe, UN Women and Equality Now, *Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia*, September 2021, p. 64 et seq. Available at: <https://bit.ly/3xyGFwA>

formation; Minimise the number of interviews by conducting them only when strictly necessary to avoid re-traumatisation;

- Eliminate the practice of focusing on the credibility of a victim of sexual violence by, among other things, rejecting the evidence regarding sexual history of the victim.
- Ensure that in dealing with cases of sexual violence the victims are treated with dignity and respect and that a gender perspective is taken into account at all stages of the proceedings;
- Ensure that the gender-related motive is carefully investigated in all cases of violence against women, including sexual violence, and apply this motive as an aggravating circumstance when imposing punishment.