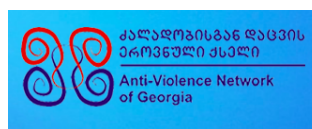




საბარათველოს ახალგაზრდა იურისტთა ასოციაცია  
კანონის უზენაესობა ხაზართლიანობისთვის



## GEORGIA

### Access to Justice for Sexual Violence

Submission to the UN Universal Periodic Review on

Thirty Seventh Session of the UPR Working Group of the Human Rights Council

2 - 13 November 2020

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**Introduction and summary**

1. This submission 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 in achieving substantive and transformative equality for women and girls in Georgia.
2. 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 Convention, as well as the 2<sup>nd</sup> cycle UPR recommendations<sup>i</sup> and Concluding Observations of the UN Committee on the Elimination of Discrimination against Women (CEDAW).<sup>ii</sup> However, substantial challenges remain in relation to reporting, prevention and the overall response by the criminal justice system to sexual violence. Georgian legislation continues to fall short of the requirements of the Istanbul Convention and international human rights standards with respect to its definition of rape and other crimes of sexual violence, which leaves certain sexual violence crimes unpunished and overall hinders prevention, protection and adjudication measures.
3. In Georgia, sexual violence is a serious, yet covert, form of violation of the rights of women and girls; the underlying cause of which lies within structural and systemic inequality, gender 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.<sup>iii</sup> Justice for sexual violence is hard to come by, since, compared to other forms of violence, sexual violence is more related to taboo 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.

4. During the previous UPR cycle, Georgia received 57 recommendations to strengthen and improve measures regarding women's rights protection. From these recommendations, two of them related to the need for taking measures to encouraging women to report acts of sexual violence, protecting the victims and ensuring the effective investigation, prosecution and punishment of perpetrators<sup>iv</sup> and establishing centres for victims of sexual abuse.<sup>v</sup>
5. This assessment covers the time elapsed since the last UPR review of Georgia in 2015. The information provided in this report is based on Equality Now's 2019 report, *Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia*,<sup>vi</sup> 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;<sup>vii</sup> and *Equality Now, UN Women & Council of Europe's, Sexual Violence Investigation and Prosecution in Georgia Manual (forthcoming)*,<sup>viii</sup> as well as the information and analysis provided by co-submitting organisations based on their expertise of working directly with survivors of sexual violence and providing recommendations on laws, policies and practices to combat sexual violence.

### **Prevalence and lack of reporting of sexual violence**

6. 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. 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>ix</sup>
7. Despite the prevalence of sexual violence, reporting rates are low and perpetrators are brought to justice in a small number of reported cases only. For example, according to information from the General Prosecutor's Office, for the one year period between 2017 and 2018, investigation was 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 and the vast majority of these cases never reach court for a trial.
8. 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, the 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 their homophobic reactions.<sup>x</sup>

9. Given the remaining challenges, the UPR recommendation that Georgia has to take measures to encourage women to come forward to report sexual violence<sup>xi</sup> has not fully been implemented and further measures need to be taken.

### **Definitions of sexual violence crimes and sentences are not compliant with international human rights standards**

10. Rape (Criminal Code Article 137<sup>xii</sup>) and other sexual violence crimes (Criminal Code Articles 138 and 139<sup>xiii</sup>) are not based on **the lack of free and voluntary consent of the victim**, as provided by international human rights standards, including the Istanbul Convention,<sup>xiv</sup> the European Court of Human Rights,<sup>xv</sup> the Committee on the Elimination of Discrimination against Women (CEDAW),<sup>xvi</sup> the International Criminal Court (ICC),<sup>xvii</sup> the Inter-American Court,<sup>xviii</sup> the International Criminal Tribunal for Rwanda (ICTR)<sup>xix</sup>, the International Criminal Tribunal for the Former Yugoslavia (ICTY),<sup>xx</sup> the Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI),<sup>xxi</sup> and the Declaration on Violence Against Women, Girls and Adolescents and their Sexual and Reproductive Rights.<sup>xxii</sup> UN Women guidelines also underscore that rape and sexual assault laws should not require evidence of additional force as rape itself is a violent act and that additional violence should be considered an aggravating factor.<sup>xxiii</sup>
11. The definition of rape under Georgian law focuses on the use of force, threat of force and abusing the helplessness of the victim,<sup>xxiv</sup> rather than focusing on the absence of the free and voluntary consent that could be assessed in the context of the surrounding circumstances. Additionally, the legislation does not provide a broad range of coercive circumstances through which sexual violence crimes can be committed.
12. 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, see para. 13). Examining the lack of consent is especially important for sexual violence committed within the context of a coercive environment where violence constitutes a pattern (including domestic violence and other relationships with a power imbalance such as the workplace, situations of conflict or detention), where even if the victim consents, the consent may not be free and voluntary, as indicated by the Istanbul Convention and other standards outlined above.
13. The sexual violence crimes provided under Article 139 of the Criminal Code are 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.<sup>xxv</sup> 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 serious crimes, the perpetrator can still receive a conditional sentence, or any other mild penalties not provided under these provisions, as a result of a plea agreement.<sup>xxvi</sup> Such possibilities violate 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.”<sup>xxvii</sup>

14. Given the above, Georgia has yet to amend its laws on sexual violence to ensure that investigation and prosecution is improved, in line with the UPR recommendation.<sup>xxviii</sup>

### **Burdensome evidence requirements to prove sexual violence**

15. Prosecutors apply overly burdensome evidence requirements for bringing charges against perpetrators of sexual violence, while overwhelmingly strict requirements are also applied by judges 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 UPR recommendation on improving investigation and prosecution (see para.4)<sup>xxix</sup>, the Istanbul Convention and international human rights standards, including the European Court of Human Rights suggesting 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.”<sup>xxx</sup>

16. In particular, in the overwhelming majority of cases, sexual violence crimes are prosecuted, and perpetrators are being convicted, only when physical injuries are found on the body of the victim, as well as biological materials associated with a sexual act. Such practice leaves the vast number of sexual violence acts envisaged under the law (Articles 137-140), to go unpunished in practice, because the authorities are solely investigating sexual violence crimes where the perpetrator used physical force and the victim physically resisted. 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.<sup>xxxi</sup>

### **Gender stereotyping and discriminatory investigation procedures**

17. Gender stereotyping and discriminatory investigation procedures applied in practice constitute a significant barrier to justice for survivors of sexual violence indicating that the UPR recommendation on improving investigation and prosecution has not been fully implemented (see para. 4)<sup>xxxii</sup>. These include, according to victims’ lawyers, the victim being required to repeat the facts of her traumatic experiences several times, examining the victim’s prior sexual history, examining her mental health to question her credibility, 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>xxxiii</sup>

18. Lawyers of the victims provide that the **“investigative experiment”**, systematically applied in sexual violence cases, constitutes a discriminatory and degrading practice. 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.
19. The **questioning** of the victim during the investigation stage is often conducted in a common/shared space at the police station where other investigators and victims 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.
20. Victims and their lawyers report that the **forensic medical examination** of their bodies, conducted by the Levan Samkharauli National Forensic Bureau, the only public body authorised to conduct forensic examinations, is intrusive and often extremely traumatising, especially when conducted by experts of the opposite sex (men constitute the majority of forensic experts while the victims are predominantly female). Stereotypes and drawing negative inferences from the **condition of the victim's hymen** also proves to be a problem, since it regularly leads to examining prior sexual history, rather than establishing injuries. **Forensic psychological examination** is no less problematic since 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.
21. 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.
22. Judges treat sexual violence crimes as any other crimes and, as compared to many domestic violence cases for example, fail to uncover their **gendered nature**. Judgements in sexual violence cases lack a gendered perspective and gendered analysis. Even though committing a crime on the basis of sex or gender is an aggravating circumstance under the law,<sup>xxxiv</sup> the rate of identifying the discriminatory gender motive still remains low (despite its recent increase) in relation to all forms of violence against women,<sup>xxxv</sup> in particular sexual violence. Since 2015, there has been just one judgment of conviction in relation to sexual violence that the authors of this submission are aware of (concerning Article 139

by the Tbilisi City Court, dated 25.07.2019) where the discriminatory motive of the perpetrator was examined and referred to in sentencing.

### **Sexual violence against adolescent girls, including in the context of harmful practices (child marriages and bride kidnappings)**

23. 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,<sup>xxxvi</sup> still remain problematic, indicating that the UPR recommendation on ensuring effective investigation, prosecution and punishment of sexual violence is not fully implemented (see para. 4)<sup>xxxvii</sup>. The authors of this submission note that many times, 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.
24. Harmful practices, such as child and forced marriages, remain a serious problem in Georgia, while certain incidents of bride kidnappings also occur in some communities.<sup>xxxviii</sup> Since 2017, the minimum age of marriage in Georgia is 18 years without any exceptions,<sup>xxxix</sup> though informal marriages of girls between the ages of 15-17, and of 13-15 years in some communities, still persist.<sup>xl</sup> In 2018 alone, 715 underage mothers and 23 underage fathers were registered.<sup>xli</sup>
25. 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 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 only given fines and conditional sentences.<sup>xlii</sup>
26. 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 crimes and fails to have any preventative effect.

### **Intersecting forms of discrimination against vulnerable women victims of sexual violence**

27. Women from vulnerable and marginalised groups experience intersecting forms of discrimination and serious barriers in accessing justice for sexual violence. In particular, women with disabilities, ethnic minority women, LBT, women in prostitution, 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,<sup>xliii</sup> repressive legislation on drug use<sup>xliiv</sup>), 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).

28. Women and girls with disabilities, particularly with psycho-social needs, face a number of barriers in accessing justice for different forms of violence, including domestic and sexual violence. The barriers include the lack of sufficient means (including technical) to report violence to the authorities; absence of guidelines on interviewing victims, particularly of vulnerable groups, for sexual violence which should be tailored to their specific situation; lack of knowledge of law enforcement on how to obtain witness statements from women with disabilities (particularly from women with psycho-social needs); and the intersection of disability and gender-related prejudices throughout the process (for example, discriminatory perceptions that women with disabilities are prone to lying), all perpetuate the culture of impunity for perpetrators.

29. Stigma associated with LBT women, being the root cause of violence and discrimination against them, stems from various factors, including beliefs 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.<sup>xlv</sup> Stigma and prejudice hinder the employment of effective state measures to combat sexual violence against LBT women and fight intolerance and discrimination.

## **Recommendations:**

### Legal change:

- Amend the definitions of rape and/or other acts of sexual nature (Criminal Code Article 137 and/or Article 138 and 139), in order for these definitions to be based on **free, genuine and voluntary** consent in accordance with international human rights standards;
- 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 the low penalties represented by fines and conditional sentences** in law, including as a result of plea agreements (amending Articles 139, 55 and 63.3 of the Criminal Code).

### Ensure criminal justice response from a gender perspective:

- Make sure that all cases of sexual violence against women and girls are prosecuted and adjudicated from a gendered perspective, which would involve uncovering any gendered nature of the crime, that is, by analysing relevant evidence in the context of gender inequality and structural discrimination against women; investigating any gender-based discriminatory motive of the perpetrator; and applying this motive as an aggravating circumstance in accordance with Article 53<sup>1</sup> of the Criminal Code.



#### Remove burdensome evidence requirements:

- 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.

#### Eliminate gender stereotypes and discriminatory procedures:

- Abolish the procedure of conducting investigative experiments, where the victim has to enact the incident of rape, or limit such procedures to situations only to where this is absolutely necessary;
- 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;
- Ensure forensic medical examinations of the body of the victim of sexual violence are conducted in strict compliance with ethical norms and in a survivor-friendly environment, by professionals of the same sex who are appropriately trained on the specific rules of conducting examination of victims of sexual violence;
- Make sure that genital injuries, including in relation to the hymen, can only ever be used to show injury to prove sexual violence and never to draw evidence of the victim's prior sexual history (which has no relevance to the crime) and undermine the gravity of the abuses the victim suffered;
- Ensure examinations of the victim's mental health are conducted only when relevant and necessary, that such examinations are not used for the purposes of establishing their reliability or questioning credibility 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, avoiding certain questions, use of gender stereotypes, sexual history, providing for the possibility to question the victim remotely, etc);
- 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.

#### Ensure adequate response to crimes related to child marriages:

- 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.

#### Remove barriers to vulnerable women:

- Remove legislative and other barriers that prevent vulnerable women from reporting sexual violence and accessing justice and provide support services based on their specific needs;
- 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 53<sup>1</sup>);
- 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, is taken into account.

#### Ensure data collection and training:

- Conduct regular trainings for investigators, prosecutors, judges, lawyers and forensic medical examiners on the specific nature of sexual violence crimes and interaction with survivors, with a specific focus on eliminating gender stereotypes and avoiding secondary victimisation;
- Collect administrative data on sexual violence crimes, disaggregated based on sex, age, ethnic origin, disability, sexual orientation and gender identity, involvement in prostitution and other indicators of vulnerability;
- Collect disaggregated data on the attrition rate of sexual violence crimes, which would involve researching the reasons why reported cases of sexual violence do not reach the stage of conviction.

<sup>i</sup> Ghana (rec. 116.15), Italy (rec. 116.16), Turkey (rec. 116.17) and the Netherlands (117.6).

<sup>ii</sup> Para. 20-21 of the Concluding Observations of CEDAW Committee, 2014, CEDAW/C/GEO/CO/4-5.

<sup>iii</sup> See the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), Preamble.

<sup>iv</sup> Slovenia (Rec. 117.60). The recommendation was supported by the Georgia.

<sup>v</sup> Honduras (Rec. 118.14). The recommendation was supported by the Georgia.

<sup>vi</sup> Available at: [https://www.equalitynow.org/roadblocks\\_to\\_justice](https://www.equalitynow.org/roadblocks_to_justice)

<sup>vii</sup> Available at: [https://www.equalitynow.org/covid\\_19\\_vawg\\_eurasia](https://www.equalitynow.org/covid_19_vawg_eurasia)

<sup>viii</sup> Available at: [https://www.equalitynow.org/equality\\_now\\_georgia\\_manual](https://www.equalitynow.org/equality_now_georgia_manual)

<sup>ix</sup> National Study on violence against Women in Georgia, 2017, UN Women.

<sup>x</sup> Aghdgomelashvili E., From Prejudice to Equality (part II): LGBT persons in Georgia, WISG, 2018.

<sup>xi</sup> Slovenia (Rec. 117.60).

<sup>xii</sup> 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

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years, with or without restriction of the rights regarding weapons.

<sup>xiii</sup> 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.*

<sup>xiv</sup> Article 36 of the Istanbul Convention.

<sup>xv</sup> M.C. v Bulgaria (No. 39272/98) para. 181

<sup>xvi</sup> CEDAW Committee, General recommendation No. 35. CEDAW Committee, Vertido v Philippines, Merits, Communication No. 18/2008, UN Doc CEDAW/C/46/D/18/2008 (2010); R.P.B. v Philippines, Communication No. 34/2011, UN Doc. CEDAW/C/57/D/34/2011 (2014).

<sup>xvii</sup> ICC Rules of Procedure and Evidence; Articles 7(2) and 8(2) of the ICC Elements of the Offences; Article 7 (1) (g)-1,

Elements of Crimes, International Criminal Court, 2011; Katanga ICC-01/04-01/07, Decision on the Confirmation of Charges,

30 September 2008, § 440; Bemba ICC-01/05-01/08-3343, 21 March 2016, §§ 105-106

<sup>xviii</sup> Case of Fernandez Ortega et al v Mexico, Judgment of May 15 2011, Interpretation of judgment on preliminary objection, merits, reparations and costs.

<sup>xix</sup> The Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Trial Chamber 1, 2 September 1998 7 Prosecutor v Kunarac, Kovac and Vukovic (No. IT-96-23& IT-96-23/1-A)

<sup>xx</sup> Prosecutor v Kunarac, Kovac and Vukovic (No. IT-96-23& IT-96-23/1-A), ICTY, 12 June 2002

<sup>xxi</sup> Second Hemispheric Report on the Implementation of the Belém do Pará Convention (Apr. 2012);

<sup>xxii</sup> OEA/Ser.L/11.710 MESECVI/CEVI/DEC.4/14 (19 Sept. 2014).

<sup>xxiii</sup> UN Women, 'Handbook for legislation on violence against women', 2012, p. 24

<sup>xxiv</sup> See footnote N5 above.

<sup>xxv</sup> 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.*

<sup>xxvi</sup> 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.*

<sup>xxvii</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>xxviii</sup> Slovenia (Rec. 117.60).

<sup>xxix</sup> Slovenia (Rec. 117.60).

<sup>xxx</sup> 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

<sup>xxxi</sup> See e.g. Article 36(1) of the Istanbul Convention

<sup>xxxii</sup> Slovenia (Rec. 117.60).

<sup>xxxiii</sup> See also Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 133-135. Available at: <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>

<sup>xxxiv</sup> Article 53<sup>1</sup> and Articles 109; 115; 117 of the Criminal Code of Georgia.

<sup>xxxv</sup> Annual Report of the Public Defender of Georgia on the Situation of Human Rights and Freedoms in Georgia, 2018, pp. 133-134. Available at: <http://www.ombudsman.ge/res/docs/2019042620571319466.pdf>

<sup>xxxvi</sup> 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

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<sup>xxxvii</sup> Slovenia (Rec. 117.60).

<sup>xxxviii</sup> 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](https://georgia.unfpa.org/sites/default/files/pub-pdf/Exploring%20Harmful%20Practices%20of%20EarlyChild%20Marriage%20and%20FGMC%20in%20Georgia_0.pdf)

<sup>xxxix</sup> Civil Code of Georgia, Article 1108.

<sup>xi</sup> 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;

<sup>xli</sup> See 2018 Public Defender report, referenced above.

<sup>xlii</sup> Report of the Prosecutor's Office available at: <http://femicide.ge/res/docs/140analizi.pdf>

See also See GYLA's research on Significant Issues of Domestic Violence and Violence against Women, 2019. Available at:

[https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/Significant%20Issues%20of%20Domestic%20Violence%20and%20Violence%20Against%20Women%20eng\\_full.pdf](https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/Significant%20Issues%20of%20Domestic%20Violence%20and%20Violence%20Against%20Women%20eng_full.pdf)

<sup>xliii</sup> Administrative Penalties Code of Georgia, Article 1723.

<sup>xliiv</sup> Under Article 273 of the Criminal Code of Georgia, drug use and related offences constitute crimes.

<sup>xliv</sup> 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.