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**Input for the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

**Info Submission**

**to the UN SRVAW**

**Submitted by**

**The National Human Rights Institution – Public Defender
(Ombudsman) of Georgia**

**May 2020**

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**Background**

The Public Defender (Ombudsman) of Georgia is a **constitutional institution** **(NHRI with “A” Status)**, which oversees the observance of human rights and freedoms within its jurisdiction on the territory of Georgia. It advises the government on human rights issues and scrutinizes the state’s laws, policies and practices, in compliance with international standards, and provides relevant recommendations. **It identifies human rights violations and contributes to the restoration of the violated rights and freedoms**. *The Constitution of Georgia*, *the Organic Law of Georgia on Public Defender of Georgia* and other legislative acts regulate the Public Defender’s status and competencies.

The Public Defender of Georgia studies the facts of human rights violations both on the basis of received applications and on its own initiative. The Public Defender studies the cases relating to:

* Decisions of public institutions;
* Violations of human rights and freedoms during the court proceedings;
* Violations of the rights of detainees, prisoners or individuals whose liberty had been otherwise restricted;
* Compliance of normative acts with the Second Chapter of the Constitution of Georgia;
* Constitutionality of the norms regulating the referendums and elections, as well as the elections (referendum) held or to be held on the basis of these norms.

Besides, the Public Defender is authorized to examine the cases of human rights violations guaranteed by the Georgian legislation and international treaties and agreements, to which Georgia is a party.

In order to ensure the protection of human rights and freedoms, the Public Defender of Georgia:

* Submits proposals, comments and recommendations concerning the Georgian legislation and draft laws to the Parliament of Georgia or other relevant bodies;
* Addresses the state agencies, local self-government bodies, public institutions and public officials with proposals and recommendations concerning the restoration of the violated human rights and freedoms;
* Addresses relevant investigative authorities with proposals to launch investigation and/or criminal persecution;
* Addresses relevant agencies with proposals concerning disciplinary or administrative responsibilities of the individuals, whose actions caused violations of human rights and freedoms;
* Performs the *amicus curiae* function at Common Courts and the Constitutional Court of Georgia;
* Submits constitutional claims to the Constitutional Court;
* Appeals to the President and Prime Minister in writing, if s/he considers that the means in disposal of the Public Defender are not sufficient;
* In special cases, appeals to the Parliament of Georgia to set up a temporary investigative commission and consider a specific issue.

**The Public Defender of Georgia performs function of the National Preventive Mechanism** under the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In this capacity, the Public Defender regularly checks the situation and treatment of the detainees, prisoners or individuals whose liberty had been otherwise restricted, convicts, as well as the inmates of psychiatric institutions, houses for older persons and orphanages.

Moreover, on 27 October 2014, the Public Defender of Georgia was named as the **structure for ensuring implementation, promotion and protection of the Convention on the Rights of Persons with Disabilities.**

Additionally, together with the *Organic Law of Georgia on Public Defender of Georgia*, the *Law of Georgia on Gender Equality* (Article 14(1)) **empowers the Public Defender to protect gender equality**, monitor the given field and respond to the violations of gender equality within the framework of its competencies. The Public Defender contributes to the elimination of gender inequality through effective and accountable management of cases and monitors the compliance of government and public institutions with national and international obligations on human rights and gender equality. Activities of the Public Defender in the field of gender equality cover both, internal institutional development, as well as contribution to the process of achieving gender equality. **Public Defender is also a Femicide Monitoring Watch in the country.**

The mandate of the Public Defender was further strengthened by the adoption of *the Law of Georgia on Elimination of All Forms of Discrimination* by the Parliament of Georgia on 2 May 2014 (hereinafter the “Anti-Discrimination Law”), which authorizes the Public Defender to supervise the implementation of the Anti-Discrimination Law and eliminate all forms of discrimination and ensure equality (Article 6). It also determined the Public Defender and courts of general jurisdiction as legal remedies for the right to equality. It is noteworthy that following recent legislative amendments the Public Defender is entitled to refer to the national courts and **demand the** **enforcement of the recommendations addressed to both - public authorities/institutions and legal persons of private law**, in discrimination cases where the perpetrator fails to take into consideration and fulfil the recommendation of the Public Defender.

**Call for submissions to the UN SRVAW thematic report on rape as a grave and systematic human rights violation and gender-based violence against women**

All submissions should be sent to vaw@ohchr.org by **20 May 2020**. Kindly indicate if you DO NOT wish your submission to be made public.

**Questionnaire on criminalization and prosecution of rape**

**Definition and scope of criminal law provisions**

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

Criminal code of Georgia; Article 137 – Rape

1. 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.

2. The same act:

a) committed by abusing the official position;

b) that caused a serious damage to the health of a person affected, or other serious consequence,

shall be punished by imprisonment for a term of eight to ten years, with or without restriction of the rights regarding weapons.

3. The same act committed:

a) repeatedly;

b) by a person who had previously committed any crime under Articles 138-141 of this Code;

c) by a group of persons;

d) knowingly by an offender against a minor, a person with disability or a pregnant woman;

e) against a person under the custodianship, guardianship or surveillance of an offender, –

shall be punished by imprisonment for a term of ten to thirteen years, with or without restriction of the rights regarding weapons.

4. The same act:

a) committed against a person affected or any other person with extreme cruelty;

b) that caused death of a person affected;

c) committed knowingly against a person that has not reached 14 years of age, –

shall be punished by imprisonment for a term of fifteen to twenty years, with or without restriction of the rights regarding weapons.

There are no specific articles for prosecuting rape cases in criminal procedure code of Georgia.

1. Based on the wording of those provisions, is the provided definition of rape:
	1. Gender specific, covering women only. YES/NO
	2. Gender neutral, covering all persons. YES/NO
	3. Based on the lack of consent of victim. YES / NO
	4. Based on the use of force or threat. YES /NO
	5. Some combination of the above. YES / NO. Please specify.
	6. Does it cover only vaginal rape? YES / NO
	7. Does it cover all forms of penetration? YES /NO Please specify.
	8. Is marital rape in this provision explicitly included? YES / NO
	9. Is the law silent on marital rape? YES /NO
	10. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES /NO
	11. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /NO
2. To what extent legislation in your country excludes criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit relevant articles with corresponding translations.

Georgian legislation doesn’t exclude criminalization of the perpetrator in such circumstances. Although Georgia has good legislative framework, there is still a stigma associated to this issue in practice. The society thinks, that if two people have a sexual relationship or they live together, there is no chance of marital rape. Because of this stigma, women often do not declare sexual violence from their partners and such cases remain undeclared and public services do not have full picture about the situation in the country.

1. What is the legal age for sexual consent?

Legal age for sexual consent is 16 years.

1. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

Yes, There is article 140 in criminal code of Georgia, which only criminalize penetration of a sexual nature into the body of a person below 16 years of age, committed knowingly by an adult. Sexual activity between peers is not criminalized. But it should be mentioned, that an investigation under this articles begins on the cases of early marriage, when an adult marries a minor. Also, this article has some flaws. For example, when two minors start a family and have a child this is not punishable. But, after a while, one of them is an adult and other one is still under 16 years, their relationship is already punishable by law. In practice, there is chance, that this adult will be punished for the penetration of a sexual nature into the body of a person below 16 years. And sanction for this crime is imprisonment for a term of seven to nine years.

1. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Sanctions are: 1. imprisonment for a term of six to eight years/ eight to ten years/ten to thirteen years/ fifteen to twenty years or imprisonment for life. And 2. Restriction of the rights regarding weapons;

1. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

A victim can sue the perpetrator for the moral damages according to the civil code of Georgia. During the study Public Defender’s office of Georgia requested information from Supreme court of Georgia on how many women (women over 18 years, also transgender women) victims of sexual violence appealed to the court on compensation for damage caused by a crime. According to the information provided by Supreme court of Georgia, such data is not collected in courts and there is no statistical information about how many women appealed to the court about the compensation.

After the ratification of the Istanbul convention, Georgia took a commitment that country will have a mechanism to collect such statistic information by 2022. However, working on this commitment has not begun yet.

**Aggravating and mitigating circumstances**

1. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
	1. Is rape by more than one perpetrator an aggravating circumstance? YES/NO
	2. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference) YES/NO
	3. Is rape by spouse or intimate partner an aggravating circumstance? YES/NO
2. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO If yes, please specify.

The article 53(3) of the Criminal Code of Georgia, states, that when imposing a sentence, the court shall take into consideration circumstances that mitigate or aggravate liability of the offender, in particular, the motive and goal of the crime, the unlawful intent demonstrated in the act, the character and degree of the breach of obligations, the modus operandi and unlawful consequence of the act, prior history of the offender, personal and financial circumstances, and conduct of the offender after the offence, in particular, the offender’s desire to indemnify the damage and reconcile with the victim. This record applies to sexual violence cases too. A study has shown that in the sexual violence cases the Court points to a number of mitigating circumstances, which may be appropriate for other types of crimes, but their use in sexual violence and gender-based violence crimes is discriminatory against women.

1. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?
	1. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

It should be mentioned, that Public Defender of Georgia considers that reconciliation between the victim and the perpetrator should not be allowed as part of a legal response in the cases of sexual violence.

1. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
	1. if the perpetrator marries the victim of rape? YES/ NO
	2. if the perpetrator loses his “socially dangerous” character or reconciles with the victim? YES/ NO

**Prosecution**

1. Is rape reported to the police prosecuted ex officio (public prosecution)? YES /NO
2. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/ NO
3. Is a plea bargain or “friendly settlement” of a case allowed in cases of rape of women? YES /NO
4. Is plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO
5. Please provide information on the statute of limitations for prosecuting rape. –

The statute of limitation for prosecuting rape is 20 years, unless it constitutes particularly serious crime. If there is committed particularly serious crime, statute of limitation is 30 years.

1. What are the provisions allowing a child who was the victim of rape to report it after reaching adulthood, if any?

There is no such provision in criminal code of Georgia.

1. Are there mandatory requirements for proof of rape, such as medical evidence or the need for witnesses? YES /NO If yes, please specify.

There are no mandatory requirements for proving a rape in criminal procedure code of Georgia. But Public Defender’s study on Prosecution of sexual violence crimes in Georgia has shown that in practice, prosecutor’s office of Georgia needs medical evidence to prove a rape. Prosecution and convictions are often carried out only in cases where there are physical injuries to the victim's body and / or the biological material of the offender which is characteristic of the sexual act.[[1]](#footnote-1)

1. To what extent are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman’s sexual history during trial?

There are no specific provisions in criminal procedure code of Georgia. But during quetioning a judge can recuse a question, which does not apply a case and exposes a woman’s sexual history. Also a study of Public defender’s office of Georgia has shown that In 22 of the 24 cases discussed, the victim was asked gender insensitive questions. Victims repeated their traumatic experience several times unnecessarily and defense lawyers examined the victim’s previous sexual life and in some cases defense attorney’s degrading attitude towards victims was also revealed.[[2]](#footnote-2)

1. What procedural criminal law provisions exist aimed to avoid re-victimizations during the prosecution and court hearings? Please specify.

There are some special measures of protection of participants in criminal proceedings, for example: taking measures preventing the location of participants in proceedings, changing the identity and issuing new documents, taking safety measures (personal protection, emergency call, etc.), changing temporarily or permanently the place of residence and removing (relocating) to another state. But Public Defender’s study on Prosecution of sexual violence crimes in Georgia has shown Prosecutor’s office of Georgia didn’t use any special measures in cases of sexual violence and victims at trial faced the defendants in all 24 cases, and often the perpetrators themselves questioned the victims, which was often confusing, irritating, and embarrassing for the victims.

The Public Defender of Georgia is studying cases of sexual violence. In those cases it was clear that the absence of special interrogation questionnaires for the victims and survivors of sexual violence has caused secondary victimization. Therefore, in December, 2018 Public Defender of Georgia issued a recommendation for Prosecutor’s office, to develop a special guideline for questioning women victims of sexual violence. Public Defender of Georgia also addressed MIA to sensitize police officers, investigating the cases of domestic violence and violence against women, about sexual violence issues. This recommendation still has not been fulfilled.

**War and/or conflict**

1. Is rape criminalized as a war crime or crime against humanity? YES/NO
2. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/ NO
3. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/ NO
4. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/ NO

**Data**

1. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

From June 1st 2017 to May 1st 2019 there were 361 calls about sexual violence at Public Security Management Center 112. During the same period, investigation was launched into 213 cases of sexual violence. According to the information provided by General prosecutor’s office of Georgia, in the same period, prosecution was initiated in 54 cases and prosecution was suspended in 17 criminal cases. According to the information provided by the Supreme Court of Georgia, from June 1st 2017 to May 1st 2019, the District (City) Courts of Georgia reviewed and rendered a verdict in 26 criminal cases.

**Other**

1. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

Vulnerable women (women with disabilities, LBT women, ethnic minorities, migrants, drug addict women) suffer from particular barriers in terms of access to justice. The cause is women repressive laws against prostitution, repressive law in relation to drug use), stigma towards women (especially sex workers, drug addicts, LGBT and persons with disabilities), migration status (if a person is not legally in the country), lack of reasonable use (for persons with disabilities) or language barriers for the migrants and ethnic minorities). During the Public Defender’s study a particular problem was discussed at the focus group meeting. The problem was the questioning of women with psychosocial needs and their mistrust because of their status. This could lead to impunity for the offender.

The case study revealed that despite the gender nature of sexual violence crimes, none of the cases revealed that the purpose of prosecuting the offender is to eliminate gender inequality and ensure equality between men and women. No sex or gender discrimination was identified in any of the cases. Also the judge or prosecutor did not point to the gender based discrimination in any documents.

1. Public Defender’s office of Georgia, with the support of the Council of Europe (The CoE Office of Georgia), has launched a study of justice on sexual violence cases in Georgia. The study covered the cases committed during the period of June 1st, 2017 to May 1st, 2019. The study analyzed verdicts and relevant case materials. The information, which is provided in this document is mostly based on the findings of the study. [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)