

**Rape as a grave and systematic human rights violation and gender-based violence**

**against women in Eurasia**

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Table of Contents

[Introduction 1](#_Toc41078763)

[Absence of consent-based definitions of rape 2](#_Toc41078764)

[Absence of ex officio prosecutions and impunity resulting from reconciliations 2](#_Toc41078765)

[Discriminatory procedures 3](#_Toc41078766)

[Marital Rape 4](#_Toc41078767)

[Adolescent girls and harmful practices 4](#_Toc41078768)

[Vulnerable women 4](#_Toc41078769)

[Key Recommendations 5](#_Toc41078770)

# Introduction

In Eurasia, sexual violence is a serious, yet still covert, form of violation of the rights of women and girls, where perpetrators enjoy widespread impunity and survivors are denied justice. Some of the key reasons for this are **inadequate definitions of sexual violence crimes,** the **failure to mandate ex officio/public prosecution** for sexual violence and **discriminatory procedures** falling short of the standards developed by international and regional human rights mechanisms. Ensuring effective criminal law mechanisms for the elimination of sexual violence is a fundamental step in achieving substantiveand transformative equality for women and girls in the region.

Based on the current legal and policy frameworks in the countries of Eurasia (Armenia, Azerbaijan, Georgia, Ukraine, Moldova, Russia, Belarus, Kyrgyzstan, Kazakhstan, Tajikistan, Uzbekistan and Turkmenistan), this document sets out the failures in laws and procedures in relation to rape and other forms of sexual violence. While the situation varies from country to country, most of the trends identified are similar throughout the region based on the analysis of the laws, procedures and practices in place.

Detailed assessment about these and other additional issues is to be found in Equality Now’s 2019 report, *Roadblocks to Justice: How the Law is Failing Survivors of Sexual Violence in Eurasia,*[[1]](#footnote-1)

and updates to the report as of 2020;[[2]](#footnote-2) submissions made by Equality Now and partners to the UN Treaty Bodies, UPR and other international bodies in relation to the focus countries;[[3]](#footnote-3) 3rd party interventions submitted by Equality Now and its partners at the European Court of Human Rights;[[4]](#footnote-4) 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[[5]](#footnote-5); and Equality Now, UN Women & Council of Europe’s, *Sexual Violence Investigation and Prosecution in Georgia Manual* (forthcoming),[[6]](#footnote-6)  as well as the information provided by lawyers working in the focus countries.

## Absence of consent-based definitions of rape

In all countries in the region, except Ukraine, the definition of rape or other forms of sexual violence is **not based on the lack of consent,** given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.[[7]](#footnote-7)

Instead, the provisions on rape focus on the requirement of ***force***, ***threat of force*** or ***helplessness of the victim.*** Other acts of sexual nature, defined as light crimes, are also limited, **failing to provide a broad range of coercive circumstances** through which sexual violence can be committed.

Lack of criminalization of non-consensual sexual acts leaves many crimes of sexual nature to go unpunished or, in rare cases, classified as crimes of less gravity, where perpetrators can go free based on variety of procedures, including conditional sentences, reduced punishments and procedural bargaining.

Lack of consent-based definitions of rape leads to the practice where rape is perceived as inherently physically violent act to which the victim physically resisted. As a result, sexual violence crimes are prosecuted and perpetrators convicted mostly when physical injuries are found on the body of the victim, together with biological materials of the perpetrator associated with a sexual act. This results in the high attrition rates of sexual violence crimes and the vast number of cases never reaches trial.

## Absence of ex officio prosecutions and impunity resulting from reconciliations

The absence of public, *ex officio* prosecution for sexual violence by the State in most of the countries in Eurasia (including Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan) makes it far more difficult for survivors to seek justice and leads to impunity of perpetrators.

Private and private-public prosecutions, instead of public, ex officio prosecutions, places the onus of initiating proceedings and securing convictions on the victim, failing to ensure that investigations and prosecution of sexual violence is the responsibility of the state and its authorities.[[8]](#footnote-8) Consequently rape is not prosecuted in many situations, including where women are not able or willing to file a complaint, including in situations when victims feel shame, helplessness or fear of the perpetrator.

Even though certain countries in the region (including Georgia, Armenia, Moldova) provide for ex officio prosecution of rape, overwhelmingly restrictive evidentiary requirements to prove the crime and discriminatory procedures often lead to impunity of perpetrators. In particular, prosecutors and judges apply burdensome evidence requirements for bringing charges against perpetrators of sexual violence, while disproportionately strict requirements are also applied by judges to issue a judgment of conviction for these kinds of crimes.

Reconciliation, under the laws in many countries of the region, which have no public prosecution of sexual violence (and additionally in Moldova), can be the basis for discontinuing the criminal proceedings and leaving perpetrators unpunished. In countries where reconciliation cannot be the basis for terminating the investigation, this still is informally practiced, since the victim often withdraws her evidence (based on various reasons, including pressure from the perpetrator to reconcile) and the investigation is terminated based on “the lack of evidence.”

## Discriminatory procedures

Throughout Eurasia, sexual violence is investigated and prosecuted with an outdated, Soviet-period methodology, failing to recognize the gendered nature and specific characteristics of the crime. Moreover, gender stereotyping and discriminatory investigation procedures are applied in practice, constituting a significant barrier to justice for survivors of sexual violence. Below are some examples that prove to be humiliating and often traumatizing for victims:

**“Investigative experiments**” are systematically conducted, where the victim has to enact the incident of the crime, which involves going to crime scene, recalling the facts (or her statement previously given to the investigation is read aloud) and photos of the victim are often taken while she points at various specific locations she was taken to when the crime was being committed.

The **questioning** of the victim during the investigation stage is often conducted with the lack of privacy, in a common/shared space at the police station where other investigators and victims are also present. Investigative questions and comments made by investigators during questioning implicitly, and sometimes explicitly, judge the victim’s behavior, and humiliate her aiming to “share” the responsibility with the perpetrator for inducing sexual violence.

**Forensic medical examinations** of the body of the victim, are intrusive and often extremely traumatizing, and are mostly conducted with the participation of experts of the opposite sex. **Examining the victim’s hymen/virginity**, while unnecessary for the investigation of the case, also proves to be a serious problem.

**Forensic psychological examinations** often implicitly or explicitly checks the credibility of the victim and being “prone to lying”, instead of assessing her trauma. Victims are often met with bias and disbelief and are subjected to victim-blaming, unethical and sometimes humiliating questions and comments.

**Confrontation** is the practice when, during the investigation of the crime, the investigator or a prosecutor “confronts” the victim and the defendant face to face, asking the questions with the purpose of “eliciting true information”, disregarding the trauma and discomfort of the victim.

During the **trial,** victims are always forced to come face-to-face with the perpetrators and perpetrators themselves can always ask questions directly to the victims, which causes victims to feel confused, intimidated and embarrassed. The lawyers of the defendant often express a demeaning attitude toward the victim. Measures for questioning victims remotely or for avoiding their secondary victimization in any other way are not applied.[[9]](#footnote-9)

Judgments in sexual violence cases lack a gender perspective, fail to uncover the **gendered nature** of such crimes and signs of **discriminatory motives** of the perpetrator.

## Marital Rape

Even though marital rape is not excluded as a crime under the general sexual violence provisions of the criminal codes, it is neither separately criminalized, nor considered as an aggravating factor[[10]](#footnote-10) of a crime in many places (including in Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Uzbekistan). Most importantly, marital rape is being systematically overlooked as a crime whatsoever by the law enforcement, who are reluctant to uncover and prosecute such a crime, while the victims are also discouraged to report.

## Adolescent girls and harmful practices

Investigation is not initiated at all, or reconciliation is very often practiced, formally or informally, in relation to statutory rape (consent age being 16) committed as a result of a **child marriage or a bride kidnapping.** Perpetrators are frequently not prosecuted or they are exempted from penalties (including through plea bargains) based on the reconciliation or perceived “consent” of the victim to stay with the perpetrator.

Moreover, Article 134 of the Criminal Code of Russia expressly provides that if an adult person (over the age of 18) marries a girl below 16 with whom he has had sexual relations with her supposed consent, he will not be punished for the statutory rape.

## Vulnerable women

Women made vulnerable and marginalized by specific circumstances experience intersecting forms of discrimination and serious barriers in accessing justice for sexual violence. Barriers include the existing legislative regulations preventing women from filing reports for fear of themselves being penalized for their activities (e.g. legislation penalizing women in prostitution and leaving “buyers” unpunished, and repressive legislation on drug use); stigma and discrimination within the law enforcement towards women in prostitution, drug users and LBT women and negation of their experiences; barriers of reporting and lack of reasonable accommodation for women with disabilities and lack of specific methodology to investigate crimes against women with psycho-social needs; as well as language barriers for migrants and ethnic minorities.

# Key Recommendations

* Amend the definitions of rape to ensure that it is based on the lack of **free, genuine and voluntary** consent in accordance to international human rights standards;
* Amend the criminal codes to ensure ***ex officio*,** public prosecution for rape and other forms of sexual violence;
* Abolish the possibility of exempting perpetrators based on their **reconciliation** with the victim, or on the basis of withdrawal of the complaint by the victim;
* Explicitly criminalize **marital rape** and define it as an aggravated crime;
* Remove **burdensome evidence requirements** and **discriminatory procedures**, which violate the dignity of survivors and lead to impunity of perpetrators;
* Ensure that prosecution of sexual violence committed in relation to **child marriages** and **bride kidnappings** is prioritized and that perpetrators receive deterrent sanctions;
* Remove legislative and other barriers that prevent **vulnerable women** from reporting sexual violence and accessing justice and put in place specific procedures for effective investigation of crimes against them, in particular for women with psychosocial needs.
1. Available at: <https://www.equalitynow.org/roadblocks_to_justice> [↑](#footnote-ref-1)
2. Available at: <https://www.equalitynow.org/overcoming_roadblocks_to_justice_across_eurasia> [↑](#footnote-ref-2)
3. Available at: <https://www.equalitynow.org/submissions> [↑](#footnote-ref-3)
4. Available at: <https://www.equalitynow.org/equality_now_the_equal_rights_trust_and_the_european_human_rights_advocacy_centre_jointly_intervene_in_tv_v_russia_ecthr> [↑](#footnote-ref-4)
5. Available at: <https://www.equalitynow.org/covid_19_vawg_eurasia> [↑](#footnote-ref-5)
6. Available at: <https://www.equalitynow.org/equality_now_georgia_manual> [↑](#footnote-ref-6)
7. As provided by international and regional human rights standards, including the Istanbul Convention, the European Court of Human Rights, the Committee on the Elimination of Discrimination against Women (CEDAW), International Criminal Court (ICC), Inter-American Court, International Criminal Tribunal for Rwanda (ICTR) and International Criminal Tribunal for the Former Yugoslavia (ICTY), Mechanism to Follow Up on the Implementation of the Convention on the Prevention, Punishment and Eradication of Violence against Women (MESECVI), Declaration on Violence Against Women, Girls and Adolescents and Their Sexual and Reproductive Rights. [↑](#footnote-ref-7)
8. See e.g. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) Article 55 and explanatory report to the Istanbul Convention, para. 279. [↑](#footnote-ref-8)
9. See e.g. Istanbul Convention, Article 56.1.g [↑](#footnote-ref-9)
10. See e.g. Istanbul Convention, Art. 46.a. [↑](#footnote-ref-10)