

## Responses of the Government of Georgia to the 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.

Georgia has adopted the Criminal Code on July 22, 1999, which entered into force on June 1, 2000. The Criminal Code of Georgia establishes grounds for criminal liability, defines which acts are criminal and determines an appropriate punishment or any other type of a penal sanction. The Criminal Code of Georgia complies with the Constitution of Georgia and with universally recognized principles and standards of international law. The paramount purpose of this Code is the prevention of criminal infringements and the protection of public order.

Chapter 22 of the Criminal Code of Georgia deals with crimes against sexual freedom and sexual inviolability. According to Para. 1 of the Article 137 of the Criminal Code of Georgia rape 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, and it shall be punished by imprisonment for a term of six to eight years, with or without restriction of the rights regarding weapons.

Chapter 22 of the Criminal Code of Georgia includes another forms of serious sexual violence that do not have a rape classification. For instance, Article 138 criminalizes 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, it shall be punished by imprisonment for a term of four to six years, with or without restriction of the rights regarding weapons.

Furthermore, Article 139 of the Criminal Code of Georgia criminalizes 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, and it 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.

In addition, Article 140 of the Criminal Code of Georgia criminalizes penetration of a sexual nature into the body of a person below 16 years of age committed knowingly by an adult, and it shall be punished by imprisonment for a term of seven to nine years.

Meanwhile, Article 141 of the Criminal Code of Georgia criminalizes a lewd act of an adult committed knowingly by an offender without violence against a person below 16 years of age, and it shall be punished by imprisonment for a term of five to seven years.

**2. Based on the wording of those provisions, is the provided definition of rape:**

**a. Gender specific, covering women only YES?NO**

Definition of rape is gender neutral. However, according to Para. 3 (d) of Article 137 of the Criminal Code of Georgia rape committed against pregnant woman is an aggravating circumstance.

**b. Gender neutral, covering all persons? YES?NO**

Yes. Definition of rape is gender neutral and covers all persons.

**c. Based on the lack of consent of victim YES?NO**

Yes.

**d. Based on the use of force or threat YES?NO**

Yes. Definition of rape is based on the use of force or threat and a helpless condition of a victim.

**e. Does it cover only vaginal rape? YES/NO**

No. Definition of rape covers any form of penetration of a sexual nature of the body of a person with any bodily part or object.

**f. Does it cover all forms of penetration? YES/NO. if yes, please specify.**

Yes. Definition of rape covers any form of penetration of a sexual nature of the body of a person with any bodily part or object.

**g. Is marital rape in this provision explicitly included? YES/NO**

Marital rape is criminalized under Georgian criminal legislation. In particular, the combination of Article 11<sup>1</sup> and Article 137 of Criminal Code of Georgia, gives the elements of marital rape. Article 11<sup>1</sup> of the Criminal Code of Georgia defines family member broadly and includes, *inter alia*, the spouse, former spouse and a person in an unregistered marriage (intimate partner). Thus, if a spouse/former spouse/intimate partner commits rape against his/her (former)

spouse/intimate partner, he/she will be punished under paragraph 3(e) of the Article 137 of Criminal Code of Georgia.

Beyond that, paragraph 3(e) of the Article 137 regulates the rape committed against a family member as an aggravated circumstance.

**h. Is the law silent on marital rape? YES/NO**

No. As mentioned above, it is covered under paragraph 3(e) of the Article 137 of the Criminal Code of Georgia. Marital rape is criminalized under Georgian criminal legislation. In particular, the combination of Article 11<sup>1</sup> and Article 137 of Criminal Code of Georgia, gives the elements of marital rape. Article 11<sup>1</sup> of the Criminal Code of Georgia defines family member broadly and includes, *inter alia*, the spouse, former spouse and a person in an unregistered marriage (intimate partner). Thus, if a spouse/former spouse/intimate partner commits rape against his/her (former) spouse/intimate partner, he/she will be punished under paragraph 3(e) of the Article 137 of Criminal Code of Georgia.

**i. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? YES/NO**

Yes. Please, refer to the question g and h.

**j. Is criminal rape excluded in the provisions, or is marital rape not considered as a crime? YES/NO**

No. Please, refer to the question g and h.

**3. Are there any provisions excluding 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 it with corresponding translations.**

According to Article 126<sup>1</sup> of the Criminal Code of Georgia violence, regular insult, blackmail, humiliation by one family member against another family member, which has resulted in physical pain or anguish and which has not entailed the consequences provided for by Articles 117, 118 or 120 of this Code shall be punished by community service from 80 to 150 hours or imprisonment for a term of up to two years, with or without restriction of the rights regarding weapons.

The same act committed:

- a) knowingly against a minor, a helpless person, a person with disability or a pregnant woman;
- b) in the presence of a minor against his/her family member;
- c) against two or more persons;
- d) by a group of persons;

e) repeatedly,

shall be punished by community service from 200 to 400 hours or with imprisonment for a term of one to three years, with or without restriction of the rights regarding weapons.

In addition, Article 11<sup>1</sup> of the Criminal Code of Georgia defines family member broadly and includes, *inter alia*, the spouse, former spouse and a person in an unregistered marriage (intimate partner).

**4. What is the legal age for sexual consent?**

Based on Article 140 of the Criminal Code of Georgia the legal age for sexual consent is 16 year.

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

No. there is no explicit provision in the Criminal Code of Georgia that differentiate sexual activity between peers.

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

Based on Article 137 of the Criminal Code of Georgia, sanctions for rape, including rape committed in an aggravating circumstances range from six to twenty years, or with life imprisonment, together with or without restriction of the rights regarding weapons.

As for another sexual violence that are not classified as a rape, criminal sanctions are the following:

- a. Under Article 138 of the Criminal Code of Georgia, another action of a sexual nature shall be punished by imprisonment for a term of four to six years, with or without restriction of the rights regarding weapons.
- b. According to Article 139 of the Criminal Code of Georgia, coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature 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.
- c. Pursuant to Article 140 of the Criminal Code of Georgia, penetration of a sexual nature into the body of a person below 16 years of age committed knowingly by an adult shall be punished by imprisonment for a term of seven to nine years.
- d. Under Article 141 of the Criminal Code of Georgia a lewd act of an adult committed knowingly by an offender without violence against a person below 16 years of age shall be punished by imprisonment for a term of five to seven years

7. **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?**

The LEPL - The agency of state care and assistance for the (statutory) victims of human trafficking (hereinafter - the State care agency) has been functioning under the state control of the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs of Georgia.

One of the aims of the State care agency includes: Protection, assistance and rehabilitation of the victims/statutory victims/alleged victims (both adults and minors) of human trafficking and/or domestic violence and/or violence against women and/or sexual abuse, regardless of the race, skin color, language, sex, age, religion or belief citizenship, origin, property or social status, place of residence, political or other opinions, national, ethnic or social affiliation, profession, marital status, health status, disability, sexual orientation, gender identity and expression, regardless of liturgical or other beliefs or other signs. The Georgian legislation prohibits any kind of discrimination in public and private spheres.

The State care agency provides victims/statutory victims/alleged victims of human trafficking and/or domestic violence and/or violence against women and/or sexual abuse with the following services within **the Shelters** and **the Crisis Centers**:

- Providing psychological-social assistance/rehabilitation;
- Organizing/receiving medical service;
- Providing Legal assistance (including legal representation in court and in law enforcement agencies);
- Translator service, if necessary;
- Promoting reintegration in a family and society and other services;
- Daily accommodation in the shelter (only for victim and/or statutory victim with his/her dependent(s)), including: nutrition, hygiene and other essentials;
- Daily accommodation in the crisis center (for alleged victim with his/her dependent(s)), including: nutrition, hygiene and other essentials;

There are 5 Shelters for victims/statutory victims/alleged victims of human trafficking and/or domestic violence and/or violence against women and/or sexual abuse: in Batumi, in Tbilisi, in Kutaisi, in Gori and in Kakheti (Sighnaghi) and 5 Crisis Centers - in Tbilisi, in Gori, in Kutaisi, in Ozurgeti and in Marneuli functioning under the State care agency.

**Hotline Service**

A 24-hour hotline for the victims of violence (including sexual abuse) is functioning at the State care agency. Anyone can call on the hotline: 116 006 (Euro number) and get professional consultations from qualified operators and information about the services of the State care agency. Since 2017, the consultations of the care agency hotline on the issues of domestic violence, violence against women, Human Trafficking, sexual violence have been available in 8 languages: in Georgian as well as in English, Russian, Azerbaijani, Turkish, Armenian, Arabic and Persian languages. The service is free and anonymous.

### Aggravating and mitigating circumstances

**8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

Yes. Criminal Code of Georgia foresees aggravating circumstances when sentencing rape cases. For this reason, different sanctions have been imposed on rape crimes committed under various aggravating circumstances. They are as follow:

- According to Para. 2 of the Article 137 of the Criminal Code of Georgia, rape:
  - 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.

- Based on Para. 3 of the Article 137 of the Criminal Code of Georgia, rape 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 or against a member of family of a person,

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

- Pursuant to Para. 4 of the Article 137 of the Criminal Code of Georgia, rape

- 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 minor,

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

**a. Is rape by more than one perpetrator an aggravating circumstance? YES/NO**

Yes. Rape committed by a group of persons is an aggravating circumstance.

**b. 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**

Yes. Rape committed knowingly by an offender against a minor, a person with disability or a pregnant woman, or committed by abusing the official position is an aggravating circumstance.

**c. Is rape spouse or intimate partner an aggravating circumstance?**

As mentioned above, paragraph 3(e) of the Article 137 regulates the rape committed against a family member as an aggravated circumstance. Article 11<sup>1</sup> of the Criminal Code of Georgia defines family member broadly and includes, *inter alia*, the spouse, former spouse and a person in an unregistered marriage (intimate partner). Thus, if a spouse/former spouse/intimate partner commits rape against his/her (former) spouse or intimate partner, he/she will be punished under paragraph 3(e) of the Article 137 of Criminal Code of Georgia.

**9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/NO if yes, please specify.**

Yes, chapter IX of the Criminal Code of Georgia deals with circumstances excluding and mitigating criminal liability. According to Article 33 of the Criminal Code of Georgia a person who has not attained 14 years of age at the time of the commission of an unlawful act provided for by this Code shall be considered to act without guilt.

Under Article 34 of the Criminal Code of Georgia any person who at the time of the commission of an unlawful act provided for by this Code is incapable of appreciating the actual nature or unlawfulness of his/her actions or controlling those actions due to his/her chronic mental illness, temporary mental disturbance, debility or other mental condition shall be considered to act without guilt. If a

sane person commits a crime and becomes mentally ill before his/her conviction, due to which he/she is unable to control or guide his/her acts, shall serve the sentence imposed by the court in the relevant medical institution until his/her recovery.

Based on Article 35 of the Criminal Code of Georgia an adult who at the time of committing a crime was in a state of diminished capacity, i.e. due to his/her mental illness was unable to fully appreciate the actual nature or unlawfulness of his/her acts or control those acts shall not be released from criminal liability. The court shall take into consideration the diminished capacity in imposing punishment.

**10. 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?**

NO

a. **Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?**

NO

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator?**

a. **If the perpetrator marries the victim of rape? YES/NO**

No. Criminal Code of Georgia does not cover provisions regarding non-prosecution of perpetrator who marries the victim of rape.

b. **If the perpetrator loses his “socially dangerous”, character or reconciles with the victim? YES/NO**

No. Criminal Code of Georgia does not include such provisions.

## Prosecution

**12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO**

Yes. The initiation of an investigation and the prosecution in the rape case is not dependent on the position of the victim; therefore, the aforementioned crime is always regarded as a public prosecution case. However, it should be noted that the Criminal Procedure Code does not deem any type of crime as a private prosecution case in which the decision to initiate an investigation or the prosecution depends on the position of the victim.

**13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO**  
NO

**14. Are plea bargain or “friendly settlement” of case allowed in cases of rape of women? YES/NO**

According to the legislation of Georgia, public criminal prosecution is carried out in the criminal case involving any type of crime and the legislation, itself, is not familiar with the rule of so-called "friendly settlement". After consulting with the victim, a plea deal can be reached in any criminal case with consideration of factual circumstances of the case and personal characteristics of the accused, except for certain types of crime not eligible for plea bargaining by the Criminal Procedure Code of Georgia. In particular, it is not allowed to completely release an accused/convicted from punishment only for crimes under Articles 144 1–144 3 of the Criminal Code of Georgia. Due to the above, a plea agreement for rape against women is still allowed by law, however, in practice, a plea agreement is rarely made for such crimes. In 2017-2019, there were 2 cases of rape committed against women having resulted in a plea deal.

**15. Are plea bargain or “friendly settlement” of a case allowed in cases of rape of children? YES/NO**

No. According to Para. 4 of Article 75 of the Child Rights Code of Georgia, no form of violence committed against a child by an adult is subject to judicial mediation and settlement.

**16. Please provide information on the statute of limitations for prosecuting rape.**

According to Sub-Para. C<sup>2</sup> of Article 71 of the Criminal Code of Georgia a statute of limitation is twenty years for crimes under Articles 137 (rape) -141 (another sexual violence) of the Criminal Code, unless they are considered a particularly serious crime;

A statute of limitation for a particular serious crime is thirty years.

**17. Which are the provisions allowing a child who was the victim of rape and to report it after reaching adulthood, if any? YES/NO**

There is no explicit provisions in the Criminal Code of Georgia in this matter. However, according to Article 77 of the Child Rights Code of Georgia, in case of sexual, economic, domestic violence or other forms of violence against a child, the statute of limitation for the right to appeal to the court for damages shall be suspended until the child reaches the age of adulthood or applies to the court during his/her juvenile period.

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO if yes, please specify.**

At each stage of the criminal proceedings, the Criminal Procedure Code of Georgia establishes a standard of proof necessary for bringing charges, transferring a case to a court for merits and passing a judgment of conviction, such as standards of probable cause, high probability and beyond reasonable doubt.

Accordingly, all possible evidence is obtained by the prosecution on the basis of the factual circumstances of the case and the specifics of the certain crime, which sets the standard for bringing charges and its subsequent approval in court. The prosecutor shall ensure that all necessary evidence is obtained by the investigator. When making a decision to prosecute, the prosecutor evaluates all the evidence needed to substantiate charges in terms of their adequacy. Requirement for mandatory collection and submission of any evidence proving charges in rape cases is not envisaged by Procedural Law.

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO**

Yes. According to Article 57 of the Criminal Procedure Code of Georgia a victim is entitled to request the prosecution to file a motion for closing, in part or in full, a court hearing for the purpose specified in Article 182(3) of the Criminal Procedure Code of Georgia. Under Para. 3 of Article 182 of the Criminal Procedure Code of Georgia a court may, upon motion of any of the parties or on its own initiative, make a decision to partially or fully close a session in order to defend the interests of a victim of sexual offence, trading in persons (trafficking) or domestic crime.

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/No. if yes, please specify**

Yes. On May 21, 2018, the Criminal Procedure Code of Georgia was amended and the Service of Coordinator of Witness and Victim was introduced. Pursuant to Article 58<sup>2</sup> of the Criminal Procedure Code of Georgia a coordinator of a witness and a victim shall:

- a) after a preliminary consultation with a prosecutor, provide a witness and a victim with the necessary information about the progress of the investigation and the court hearing;
- b) communicate to a witness and a victim, in the language understandable to them, their rights and duties, and explain to them the legal procedures for investigation and court hearing;
- c) during the investigation, be present at an investigative action and a procedural action carried out involving a witness and a victim, to provide emotional support to the witness/victim;

- d) during the court hearing, be present at the interrogation of a witness and a victim in the courtroom, and at the examination of evidence involving them, to provide emotional support to the witness/victim;
- e) provide a witness and a victim with information about the necessary legal, psychological, medical and/or other services and, when needed, assist in contacting an appropriate body/organization.

2. A coordinator of a witness and a victim may not, during an investigative action and a procedural action, ask questions to the witness and the victim or otherwise interfere in the evidence collection process.

3. A coordinator of a witness and a victim shall not disclose the case-related circumstances known to him/her.

The main purpose of the involvement of a coordinator of a witness and a victim in the case shall be to simplify the participation of the witness and the victim in the proceedings, mitigate the stress caused as a result of the crime, prevent re-victimisation and secondary victimisation, and to ensure their awareness at the investigation and court hearing stages.

## War and/or conflict

### 21. Is rape criminalized as a war crime or crime against humanity? YES/No

Yes, pursuant to Article 408 of the Criminal Code of Georgia rape and analogous forms of serious sexual violence are criminalized as a crime against humanity. The Article 408 reads as follow:

“Crime against humanity, i.e. any act committed in the form of a large-scale or systematic assaults on civilian population or persons, manifested in murder, mass extermination, serious health injury, deportation, illegal imprisonment, torture, **rape, sexual slavery, coercion of prostitution, forced pregnancy and sterilisation,** persecution of a group of persons based on political, racial, national, ethnic, cultural, religious, sexual and other signs, apartheid and other inhuman treatment, which substantially impair the physical and/or mental condition of a person, – shall be punished by imprisonment for a term of twelve to twenty years or with life imprisonment”.

### 22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

Yes. It is very important to define the category of crime in order to determine the statute of limitation. Article 12 of the Criminal Code of Georgia deals with the categories of crime. According to Para. 4 of abovementioned Article an intentional crime for the commission of which this Code provides for a sentence exceeding 10 years of imprisonment or life imprisonment shall constitute a particularly serious crime. Based on this provision crime against humanity is a particularly serious crime.

Having in mind all the above said consideration and under the provision of Sub-Para. d) of Article 71 of the Criminal Code of Georgia, which regulates a statute of limitations for crimes, a person shall be released from criminal liability if thirty years have passed after committing a particularly serious crime. Respectively, because crime against humanity is particularly serious crime, the statute of limitations for crimes under Article 408 is 30 years.

**23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO**

No

**24. Has the Rome Statute of the International Criminal Court (ICC) been ratified YES/NO**

Yes, Georgia have ratified Rome Statute of the International Criminal Court (ICC) on  
5 September 2003.

## Data

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

Ministry of Internal Affairs, annually publishes statistical data of registered crimes on the official website [www.police.ge](http://www.police.ge)

According to that, number of registered crimes under the article 137 (Rape) of the Criminal Code of Georgia are following:

In 2016 - 57;

In 2017 - 59;

In 2018 - 96;

In 2019 - 119;

In 2020 (January-March) - 27.

The rate of criminal prosecution initiated under Article 137 of the Criminal Code of Georgia:

In 2016 - criminal prosecution was instituted against 23 people;

In 2017 - against 16 people;

In 2018 - against 35 people;

In 2019 - against 46 people;

From January 1, 2020 to May 17, 2020 - against 11 persons.

#### Other:

- 26. 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.**

Revealing the cases of the rape is a challenge for the law enforcement. Rape as well as other relevant crimes against sexual dignity still has a Taboo in society. Those who have experienced sexual violence, have numerous barriers to report to the police, including: feelings of shame, feeling of self-blame, perceived negative consequences of reporting, not wanting family member or friends to be aware of the fact or not wanting family member or friend to be prosecuted etc.