EFFECTIVELY INVESTIGATING, PROSECUTING AND ADJUDICATING SEXUAL VIOLENCE CASES: A MANUAL FOR PRACTITIONERS IN GEORGIA - A SUMMARY
About Equality Now

Founded in 1992, Equality Now is an international human rights organisation that works to protect and promote the rights of all women and girls around the world. Our campaigns are centred on four programme areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Trafficking, with a cross-cutting focus on the unique needs of adolescent girls. Equality Now combines grassroots activism with international, regional and national legal advocacy to achieve legal and systemic change to benefit all women and girls, and works to ensure that governments enact and enforce laws and policies that uphold their rights.

Equality Now is a global organisation with partners and members all around the world.

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If you’d like to learn more about Equality Now’s work to end sexual violence around the world, including whether we can work together, get in touch:

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This document is a brief summary of Effectively Investigating, Prosecuting and Adjudicating Sexual Violence Cases: A Manual for Practitioners in Georgia, a manual prepared by Equality Now, in collaboration with Council of Europe, UN Women, the Ministry of Internal Affairs and General Prosecutor’s Office of Georgia and international and local experts, for practical application by investigators, prosecutors, and judges in Georgia.
“In Georgia, there had been no effective training tool and guidance for improving access to justice for sexual violence at all levels of criminal proceedings. Therefore, this manual, tailored to the Georgian context, was like a beacon.

It provides valuable guidance on how to investigate sexual violence in accordance with international human rights standards, victim-centered and gender-based approaches. We train investigators together with Equality Now using this manual, as a result of which the investigators are granted specialization in sexual violence crimes.

Since we see improvements in knowledge and change of attitudes after each training, I strongly believe that as a result of common justice gaps throughout the world, developing this kind of manual will also be extremely helpful for criminal justice actors in other countries”

- Iza Kasrelishvili, Ministry of Internal Affairs of Georgia
The manual is aimed at supporting the timely and effective handling of criminal cases to achieve the best possible outcomes and improving access to justice for victims of sexual violence in a safe and supportive environment. It is offered too as a resource for anyone working on improving access to justice for sexual violence crimes around the world.

The manual is a rights-based tool offering techniques and methodologies drawn from international human rights law and best practice for the investigation and prosecution of cases of rape and other acts of sexual violence against women in Georgia. It is a living document, guided by a gender perspective, and has been tailored, with local input, to the Georgian context.

Sexual violence, similar to other forms of gender-based violence, is a manifestation of historically unequal power relations between women and men, and a form of discrimination against women. Sexual violence is a social mechanism that keeps women in a subordinate position and is a significant barrier to substantive equality. While sexual violence can be committed against persons of any sex, it predominantly affects women and girls and is directed against them because they are women or girls. It is therefore a gender-based crime.

Although the manual focuses on acts of sexual violence committed against adult women over 18 years of age as opposed to minors (who are dealt with according to specific procedures beyond the scope of this manual), many elements are also applicable to specific situations of girl children. The manual focuses on crimes where the perpetrators are male and victims are female, while recognising that sexual violence can be committed against persons of any sex/gender.
DEFINING SEXUAL VIOLENCE IN THE LAW

In accordance with the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), sexual violence, including rape, is defined as:

- a) engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object;
- b) engaging in other non-consensual acts of a sexual nature with a person;
- c) causing another person to engage in non-consensual acts of a sexual nature with a third person.

Consent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.

In countries which have ratified the Istanbul Convention, this definition is binding and must be applied in criminal practice.

Similar standards have been developed by the European Court of Human Rights (ECtHR), the Committee on the Elimination of Discrimination against Women (CEDAW Committee), and other international and regional criminal justice and human rights mechanisms including jurisprudence from the Americas system and the ad hoc tribunals for rape in conflict. Perpetrators of any of the above acts must be held accountable for committing sexual violence.

The Explanatory Report of the Istanbul Convention provides that “prosecution of this offence will require a context-sensitive assessment of the evidence to establish on a case-by-case basis whether the victim has freely consented to the sexual act performed. Such an assessment must recognise the wide range of behavioural responses to sexual violence and rape which victims exhibit and shall not be based on assumptions of typical behaviour in such situations. It is equally important to ensure that interpretations of rape legislation and the prosecution of rape cases are not influenced by gender stereotypes and myths about male and female sexuality.”

The European Court of Human Rights jurisprudence, which interprets the European Convention on Human Rights (ECHR), is legally binding on Council of Europe member states, including Georgia. In M.C. v. Bulgaria (2003):

- the Court was “persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy”
- the Court noted that the obligations under the Convention “must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim”

The Court also noted that consent must be “given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances.”

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1 Istanbul Convention, Article 36.1.
2 Istanbul Convention, Article 36.2.
3 Explanatory Note to Istanbul Convention (Explanatory Report) para 192.
4 M.C. v. Bulgaria, App. no 39272/98, (ECHR, 4 December 2003), para 166.
6 M.C. v. Bulgaria, App. no 39272/98, (ECHR, 4 December 2003), paras. 102-107, 163.
Building better cases based on international law and jurisprudence

At present, the definition of rape in the Criminal Code of Georgia is not consent-based. However, in order to comply with the Istanbul Convention and other binding human rights instruments Georgian criminal practice must move away from a rigid and limited understanding of sexual violence and interpret Articles 137-139 of the Criminal Code of Georgia as committed based on the lack of consent of the victim, taking particular care to understand coercion and coercive circumstances. Until amendments are introduced to bring Georgian law into technical conformity with the Istanbul Convention and the other binding human rights standards, the full manual provides recommendations for ways in which to interpret the existing legislation of Georgia to do so. While legislative reform is important and will greatly help practitioners on the ground to transform their practices for full compliance, practitioners can apply the broad approach recommended by the ECtHR to build better cases even without legislative reform.

Understanding vulnerability and coercive circumstances

Women can be subjected to multiple and intersecting forms of discrimination, which have a cumulative negative impact in relation to sexual violence. The intersection of these vulnerabilities can make it easier for the perpetrator to create different coercive environments in which sexual violence is committed.

Victims’ experience of sexual violence should not be negated because of their belonging to various groups and the specific circumstances they are in. Rather, their specific vulnerabilities need to be fully considered when classifying and addressing sexual violence against them. The way in which the discriminations interact with one another underscores the need for context-based sexual violence investigations in each case.

The handling of cases involving these particularly vulnerable victims requires authorities to be especially diligent in applying a victim-centred approach.
INVESTIGATION AND PROSECUTION

Sexual violence must be effectively investigated and prosecuted from a gendered perspective, with a context-based and victim-centred approach.

A context-based investigation is one which takes into account the local dynamics concerning gender norms in terms of culture, religion and the social norms that impact how sexual violence is treated. This requires not only gathering evidence in relation to the violation itself but the context in which it was committed. Principles of Do No Harm, the right to informed consent and the right to information, as well the confidentiality of the victim should be protected throughout the process.

The investigation and prosecution of sexual violence should be conducted ex officio. This means the state has the obligation to investigate and prosecute, rather than placing the burden on the victim, and does not require a victim's complaint to open the case.

Investigators and prosecutors should understand that in the following cases, the evidence may also support charges of sexual violence:

- domestic violence is reported;
- pregnancy of an adolescent girl is reported;
- forced marriage, including bride kidnapping, is reported;
- physical or psychological violence against a woman in a vulnerable category is reported, including a woman with disability, in prostitution, or other women who are particularly vulnerable to discrimination based on other grounds, including sexual orientation and gender identity.

Evidence and corroboration

The absence of documentary, forensic, physical, medical, or digital evidence does not mean that justice for victims of sexual violence is not possible. In cases of rape and other acts of sexual violence, the victim's own evidence can establish that an act of sexual violence took place; the nature of the attack; the identification of the alleged perpetrator; the circumstances surrounding the act and the existence of coercive circumstances.

There should be no absolute requirement for the account of a victim of sexual violence to be otherwise corroborated for her evidence to be considered credible, reliable and sufficient as a basis for a conviction.

Combating stereotypes and rape myths

Victim-centred practices and procedures require the dignity and autonomy of the victim to be at the forefront of the investigation and prosecution. This requires a context-sensitive assessment of the evidence, and a recognition of the wide range of behavioural responses to sexual violence and rape which victims exhibit.

Crucially, in compliance with the jurisprudence of the European Court of Human Rights and other international standards, investigations and prosecutions should not be influenced by gender stereotypes and myths about male and female sexuality. No aspects of case handling or assessment of the evidence should be affected by any personal views about rape or other acts of sexual violence, gender or other bias or stereotyping against women generally and women in any of the vulnerable groups identified.

States' obligations under Articles 5 of CEDAW and 12.1 of the Istanbul Convention include combating prejudices and social and cultural patterns of behaviour predicated on gender-based stereotypes.

7 The Grand Chamber of the European Court of Human Rights in Konstantin Markin v. Russia (No. 30078/06), §142-3 recognised the importance of identifying and dismissing gender-based stereotypes.
8 Council of Europe, Preventing and Combating Domestic Violence against Women. A learning resource for training law enforcement and justice officers, January 2016. p.43.
In cases of violence against women “the application of preconceived and stereotyped notions of what constitutes gender-based violence against women, what women’s responses to such violence should be and the standard of proof required to substantiate its occurrence can affect women’s right to the enjoyment of equality before the law, fair trial and the right to an effective remedy.”

Moreover, “stereotyping affects women’s right to a fair and just trial and...the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim or a victim of gender-based violence, in general”.

For example, the idea that a woman lies about rape because she wants revenge against a man, especially if she has already had consensual sexual relations with him, or that having had sexual relations before makes her less traumatised by rape, are myths based in sexist stereotypes. It is also false to assume that reporting a rape is easy for a woman and she may abuse her right to complain by making false allegations. The idea that if a woman has had sex outside of marriage, then she always consents to sex is another rape myth.

**Focus on the perpetrator**

Credibility assessments should not be focused on victim behaviour. Focusing on victim behaviour overlooks the sexual violence and ignores the behaviour of the perpetrators.

Rather than focusing on the individual victim, the context-based investigation called for by the Istanbul Convention and other international criminal and human rights standards requires that criminal justice actors pay attention to the perpetrator himself, along with the social, political, cultural, and economic contexts in which he commits these acts of sexual aggression towards women. The full manual delineates practical instructions for overcoming some of the most common demonstrations of bias and stereotyping in sexual violence procedures that could ultimately otherwise result in the impunity of perpetrators.

Victim interviews are the most important part of sexual violence criminal procedures. Relying on PEACE methodology, the manual gives guidance on how to conduct interviews in compliance with ethical and human rights considerations.

To aid recovery from sexual violence, victims are entitled to all victim support and protection services. Police, prosecutors and judges share a responsibility for the protection of victims of sexual violence through all stages of the investigation and judicial process. This is done through a thorough risk assessment.

Sexual violence against women is a serious violation of human rights, irrespective of the situation in which it was committed. For all forms of sexual violence, where the case is otherwise made out on the evidence, it should be considered that the public interest test is almost always met. Therefore, when the evidentiary test is met, the prosecutor should on the whole be bringing charges. This also applies to cases where the victim has retracted her statement, reconciled with the perpetrator or when the perpetrator states that he admits and regrets his actions. Moreover, financial compensation provided by the perpetrator to the victim should not affect the decision to prosecute based on public interest.

Retraction or withdrawal of her statement by the victim is not a basis to terminate the investigation. The onus is on investigators and prosecutors to build a robust case by collecting evidence in addition to that of the victim which will work towards ensuring that the case can continue if the victim withdraws the complaint or is otherwise unavailable to testify. Investigators and prosecutors are required to make sure all the evidence has been gathered and consider other, alternative sources of evidence.
TRIALS

Judges have a particularly important role in addressing rape and other acts of sexual violence and promoting substantive equality for women. Their authority sends a message to the community about the state’s commitment to ending systemic inequalities and violence against women and ensuring their access to justice.

Confidentiality in sexual violence cases must be strictly observed. Cross examination should not be used as a means of intimidating or humiliating witnesses. Victims have a right to avoid contact with the defendant. Judges can avoid face to face confrontation in the courtroom and limit the prospects of re-traumatisation for the victim by providing a number of protective measures. International human rights standards call for judges applying measures in court to guard against stress, secondary victimisation and re-traumatisation of victims of crime.

Judgments in sexual violence cases should reflect individualised assessments of the evidence and the context in which the crime occurred; they should guard against perceptions of judicial bias and arbitrariness, show transparency, and contribute to establishing appropriate sentences for cases of violence against women that reflect the full gravity of the crimes.

Judges are required to consider aggravating circumstances in the determination of any penalty and reference them in judgments with an explanation as to how these factors influenced their findings. Omitting aggravating factors results in judgments that do not accurately reflect the severity of the crime. General mitigating circumstances, which have a discriminatory effect in relation to sexual violence crimes, should not be applied.

Plea bargains should not be concluded by the prosecutor and confirmed by the court if the imposed penalty downgrades the seriousness of the crime. The facts of the case and the public interest in showing that crimes of sexual violence will be dealt with seriously should be the determinants of any decision on plea bargains.

17 Criminal Procedure Code of Georgia, Article 273(2).
18 Trial International: Punishing Conflict-Related Sexual Violence, p. 55. See also Criminal Procedure Code of Georgia, Article 259(4).
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