

## Understanding the Legal and Policy Context Activity

Activity	Objective	Time	Resources required
Guest speaker on the legal and policy context	<ul style="list-style-type: none"> <li>• Know the legal and policy context, including health-care providers' legal obligations, with regards to the local and national response to violence against women.</li> <li>• To have a basic understanding of laws related to SV, IPV, CSA.</li> <li>• To identify legal requirements related to forensic evidence collection, medical certificates, reports admissible in court</li> </ul>	1-2 hours	Guest speaker Time to meet with the guest speaker and prepare the presentation

### Objectives:

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### Guest speaker

Invite a guest speaker to speak about the laws related to gender-based violence and the legal obligations of health care providers. Invited guest speakers can provide clarity on topics that may be beyond the expertise of the primary facilitators.

Look for:

- A legal expert or lawyer that has experience working in human rights, women's rights, and/or with experience related to sexual violence, intimate partner violence, child sexual abuse.
- A representative, human rights activist, case manager, social worker of a non-governmental organization (NGO), UN agencies, or women's organization that provides information to survivors about their rights and options for legal recourse or offer legal services to survivors
- A Ministry of Health official or other person knowledgeable about national, subnational and institutional policy to present on the local policy environment.

### Preparing with the guest speaker

Meet with the speaker before the presentation.

- **Provide** them with an overview of the Clinical Management of Rape and Intimate Partner Violence training, and share the power point presentation titled *What every Clinic Worker Should Know*. Invite the guest speaker to attend to the first section of the training *What every Clinic Worker Should Know* to observe.
- **Provide** the learning objectives and topics to be covered for the legal and policy context

session. The objectives can be found above, and the suggested topics include:

- **Laws related to sexual violence:** What types of sexual violence are considered crimes under national law? and what are not?
- **Laws related to abortion:** What are the laws and regulations regarding abortion? What, if any, are the circumstances under which abortion can be offered/provided? Is abortion legal when the pregnancy is the result of rape? To protect the physical or mental health and well-being of the woman?
- **Laws related to intimate partner violence, domestic violence, marriage, and divorce:** What types of violence are criminalized? Is marital rape a crime? What is the minimum age to marry? Is violence a reason to file a divorce? What protection laws exist? What proof is required? Is documentation of injuries required?
- **Child abuse and child sexual exploitation:** What is the country's definition of a child? (As per the U.N. Convention on the Rights of the Child, the definition of a child is any person 18 years old or younger). What are the categories and definitions of child sexual abuse? These may differ from definition of "rape" in different countries. What are the laws regarding age of consent for sex?
- **How the legal and justice system works:** How does the legal and justice system operate in practice? What information, support and protection is available for survivors? Are these protections accessible and functional? What are the barriers – including long legal proceedings, cost, lack of protection, corruption, lack of confidentiality? How can legal proceedings be harmful to the survivor?
- **Considerations when working with children**
  - What are the laws about children and consent for medical care?
  - Who provides consent?
  - At what age can a child provide consent?
  - Are there mechanisms for 3rd party consent where the legal guardian or parent is not available or is the suspected perpetrator?
  - What are the laws and protocols regarding mandatory reporting of abuse against children?
  - Who has to report?
  - Who do they report to?
  - What is reporting process?
  - What are possible/ likely outcomes of the reporting for the child?
  - What are the possible legal outcomes?
  - What are the possible psychosocial and physical outcomes? both positive and negative outcomes?
  - What are the risks to the child and their family if the provider reports?
  - How is best interest of the child determined?
  - What, if any, are restrictions on providing treatment based on the age of the survivor or type of treatment?
- **Mandatory Reporting:**
  - Is there a requirement of mandatory reporting by health providers to authorities of certain kinds of sexual violence? If so, for what kinds of cases? Is the obligation for the survivor or health care provider to report? What are

- the consequences of not reporting?
    - Is there any law obligating health providers to request a police report in order to provide health care to survivors of sexual violence? Is the government enforcing it?
    - For whom/when is it mandatory to report violence?
    - What laws and policies affect confidentiality, reporting obligations and who can provide care or perform specific procedures?
  - **Medico-Legal Evidence:**
    - What types of health care providers are legally allowed to complete medical certificates?
    - If completed by an unauthorized health care provider, will the documentation be admissible in a court?
    - What types of health care providers are allowed to testify to medico-legal evidence in court? This will have implications for who completes the medico-legal documentation.
    - What types of forensic evidence can be used? How is stored? Which health care providers can collect forensic evidence? Does it have to be a forensic pathologist?
    - What type of evidence is admissible in court? For example: DNA samples, clothing, medical file (or medical certificate, police report?
    - What are the most common reasons that stop survivors from being protected, or stops perpetrators from being prosecuted?
    - What are the risks, potentially negative consequences related to legal actions by survivors?
    - What samples and evidence can be stored and analysed and in what time frame?
    - What are the laws/policies regarding chain of custody of the samples?
    - Who can examine? (Any physician, nurse, forensic specialist?)
    - What is the minimum training required? Who can act as an expert witness in court?
    - What forms are required to document forensic evidence?
    - Who has these, or where are they kept?
    - Who can issue/sign a medico-legal certificate?
    - Who receives a copy of the certificate, and where are copies kept?
    - Which documentation form is used for cases of sexual assault including forensic examination?
  - Some of the listed topics may not be relevant/applicable for your context, these can be adapted as needed.
- **Share** the key messages to be reinforced in the training, including
  - It is not the health care provider's responsibility to determine whether or not someone has been raped.
  - A medical certificate that has the survivor's detailed description of the event and the physical findings are important can if the survivor chooses to initiate legal proceedings. The medical certificate constitutes an element of proof and is often the

- only material evidence available, apart from the survivor's own story.
- The medical certificate should not include a requirement or tick-box to indicate whether or not rape has occurred or whether or not the survivor is a "virgin".
- Virginity testing has no medical or scientific validity, is a harmful practice and not recommended.
- The autonomy, choice, self-determination of the survivor is central. The patient/survivor preferences and needs should guide the provision of all care. The survivor should have the right to make their own choices about whether or not report to the police, legal and justice system. Whenever possible, we trust the survivor to know what is best for herself and her situation. The role of the medical personal, is to have, up to date accurate and relevant information so to allow the survivor to make an informed choice.
- While mandatory reporting is often intended to protect survivors (particularly children), in some cases it may conflict with the guiding principles for working with survivors, violates on survivor's autonomy and ability to make their own decisions, may raise safety concerns as women may experience retaliation, fear losing custody of their children, or face legal consequences (e.g. in countries where extramarital sex is illegal). Health care providers must consider the impacts and potential harm of mandatory reporting to not cause further harm to survivors.
- **Explain** that the participants do not have a legal background and ask that they do not use language that is too technical and it is simplified for a non-legal audience.
- **Discuss** if there are any limitations of the legal framework that violate survivor-centred principles and ways to approach this.
- **Ask** that along with a powerpoint presentation, the facilitator ensures the training is participatory and interactive in order to help the participants to reflect on the information they are provided with and how this applies to their work, to engage participants in discussion and reflection. Encourage the facilitator to use **group work**. For example, the trainees could:
  - read prepared extracts of the country's law chosen from 3-4 topics, then present their understanding to the other groups
  - have a session of questions and answers with the lawyer
  - read prepared case studies on how the law applies to survivors, the role of the health care provider and how to promote survivor-centred principles within the existing legal framework.
- **Ask** that along with group work and Q&A session, they give a **short lecture using a power point presentation** that address some of the topics listed below that were not already addressed in the group work.
- **Request to have** a follow-up meeting to review the powerpoint presentation and group work. For example, review the extracts of the law that the lawyer selected for the group work. Check that the extracts of the law do not contain unnecessary material. If the law extracts are longer than wanted, consider asking the lawyer to highlight the more relevant parts.
- Regarding the power point presentation, you may want to:

- **Check** that its content goes in line with the survivor centered approach.
- **Check** that the presentation cover that intended topics and that length of the presentation is not too long.
- **Suggest** that words/concepts that are too technical for trainees to understand are simplify.
- **Ask** her/him what resources she/he will need for the presentation and ask if you could have a copy of the law extracts, she/he prepared to include them in the participant's handout material.