

BACKGROUND PAPER FOR **MEDICO-LEGAL** TOOLKIT



UNODC

United Nations Office on Drugs and Crime



STOP RAPE NOW
UN ACTION AGAINST SEXUAL VIOLENCE IN CONFLICT



**World Health
Organization**



Introduction

Sexual violence has been documented in conflict-affected settings around the world throughout history. In the past 20 years there has been increased attention to this issue, including through the efforts of the inter-agency United Nations Initiative, UN Action Against Sexual Violence in Conflict (UN Action) (1).

Much of the recent focus in the international community has been on ending impunity for the perpetrators of these crimes, through efforts in international criminal tribunals and courts, the United Nations Security Council and initiatives by governments, the United Nations and civil society. As part of the increased focus on ending impunity for conflict-related sexual violence, donors and international justice actors have identified a need to improve the collection and use of forensic or medico-legal evidence to support and enhance investigations and prosecutions in international and national courts.

The tendency has been to focus on single interventions, such as training of providers, or construction of DNA laboratories, rather than on improving the components of the justice, health and social sectors that make up the forensic or medico-legal system as a whole. Often, these interventions do not take into account the level of development and capacity in the conflict-affected setting. This approach has, therefore, not led to the development of coordinated or sustainable responses, and has created a lack of clarity among national and international actors.

The World Health Organization (WHO) and the United Nations Office on Drugs and Crime (UNODC)/ UN Action Project on Strengthening Medico-Legal Services for Sexual Violence Cases in Conflict-Affected Settings aims to support national capacity in conflict-affected countries by addressing key gaps in policy and practice related to the collection and use of forensic evidence of sexual violence in these settings. The project responds directly to requests for clarification of when and how it is appropriate to integrate collection of forensic evidence of sexual violence into relevant country-level health and justice systems and processes, and aims to develop tools to guide practitioners, countries, the United Nations and donors in this process. UN Action provided financial support for an expert meeting and tool/guidance development.



Sexual violence in conflict

Sexual violence is:

any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic a person's sexuality, using coercion, threats of harm or physical force, by any person regardless of relationship to the victim, in any setting, including but not limited to home and work . . . Sexual violence includes rape, defined as physically forced or otherwise coerced penetration – even if slight – of the vulva or anus, using a penis, other body parts or an object. The attempt to do so is known as attempted rape. Rape of a person by two or more perpetrators is known as gang rape. Sexual violence can include other forms of assault involving a sexual organ, including coerced contact between the mouth and penis, vulva or anus (2).

Sexual violence in conflict takes many forms, including rape, sexual slavery and/or trafficking, forced pregnancy, sexual harassment, sexual exploitation and/or abuse, and forced abortion.

Sexual violence may impact the physical and mental health and social well-being of the survivor in the short term and long term. While in many cases there may be no long-term physical consequences of rape, possible physical impacts of rape include pregnancy, sexually transmitted infections including HIV, infertility, pelvic pain, pelvic inflammatory disease, urinary tract infections, bruises and lacerations, genital injuries and traumatic fistula. Mental health consequences may include anxiety, sleep disturbances, post-traumatic stress disorder, depression, social phobias, increased and harmful substance use, and suicidal or other self-harming behaviour. A survivor of sexual violence may also face stigma and rejection from her/his community and family.

Although, all too often especially in conflict affected settings, these are lacking, health services that are accessed in time can provide critical time-sensitive interventions, such as post-exposure prophylaxis to prevent HIV infection (within 72 hours) and emergency contraception to prevent pregnancy (within 120 hours), as well as presumptive treatment of sexually transmitted infections. Health services should also provide the survivor of sexual violence with psychological first aid and referral to additional health, social and legal services (3). Even when accessed after 120 hours, health services can provide important care and referral services to survivors of sexual violence, all of which are components of the clinical management of rape. When appropriate, and with the consent of the survivor, health providers serve as an important part of, and an entry point to, the medico-legal system, through collection of evidence and linking to the other components of the system.

While health providers are an essential part of the medico-legal system, it is not their role to make a legal determination about whether or not an act of sexual violence has occurred.



Sexual violence as a crime

Definitions of what constitutes a crime differ between national jurisdictions. It is essential for all national and international actors working in conflict-affected settings to be aware of national laws.

Although sexual violence has been a feature of conflict since ancient times, it is only fairly recently that acts of sexual violence during conflict have been formally understood as something more than an insult to the honour and dignity of individual women or their families. Under the Rome Statute of the International Criminal Court (ICC) (4), rape and other forms of sexual violence may constitute a war crime, a crime against humanity or a constitutive act with respect to genocide.

International law recognizes that sexual violence may take many forms, including rape, sexual assault, sexual slavery, enforced prostitution, forced marriage, forced pregnancy and abortion, enforced sterilization, humiliating sexual acts, and persecution on account of gender. While the constituent elements of these crimes have received some attention, the way in which evidence of these forms of violence is to be collected is less well addressed. It is essential to collect evidence that is sufficient to demonstrate both that a person has suffered sexual violence, and that this was part of a deliberate targeting of civilians during conflict.

What constitutes evidence of sexual violence as a crime under the ICC remains to be established and there have been significant challenges to trying cases of sexual violence. The Women's Initiatives for Gender Justice, a nongovernmental organization (NGO) that has been tracking cases sexual violence cases at the ICC, has issued annual "report cards" for the court's handling of these crimes since 2005. According to this organization, "Charges for gender-based crimes, when they have been brought, have been particularly susceptible to being dropped" (5).

As the international community works to address these challenges, and because the ICC has only the capacity and mandate to try a limited number of cases, it is critical to also focus on national-level systems to ensure that they are able to provide justice to greater numbers of survivors of sexual violence, and to support the fight to end impunity for these crimes in conflict-affected settings.

Crises may expose existing weaknesses within national systems and may lead to disruptions in their functioning. Loss of personnel, barriers to access, destruction of physical infrastructure and loss of supplies and materials will further weaken capacity. In some settings, particularly those with long-standing crises, damage may include loss of institutional memory and knowledge.

The international community has a critical role to play in building national systems. The need for increased investment and support is recognized by the Security Council, in the United Nations Security Council Resolution 1820 (2008) on Women Peace and Security (6), which:

13. Urges all parties concerned, including Member States, United Nations entities and financial institutions, to support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and of local civil society networks in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations.



Forensic/medico-legal evidence

Forensic evidence essentially describes any evidence put before a court. The term “forensic evidence” is commonly used as shorthand for forensic scientific or medical evidence, which again is shorthand for the application of many different medical and scientific specialties to producing evidence for consideration by courts. These include pathology, toxicology, histology, anthropology, archaeology, odontology, genetics, entomology, psychiatry, serology, ballistics and others. Obtaining forensic evidence may require the examination of places, individuals, their tissue, documents and objects – indeed, any animate or inanimate entity that may be associated with an act in which a court may have an interest. Forensic specialists may collect samples of tissue, environments and objects, and take photographs for analysis and presentation as evidence. Each step – collection, analysis and presentation of evidence – must be carried out with great care, systematically, and records kept. This kind of work is more easily undertaken when resources are allocated for this purpose and underpinning systems are functioning. In the aftermath of conflict, and in low-resource settings, the collection of forensic evidence presents both a significant challenge and an opportunity for change.

Types of medico-legal evidence include documentation of allegations, reports of physical examinations by health providers, records of any injuries, and biological samples including blood and DNA evidence. The type of evidence that should be collected and used depends on the specifics of the incident and the amount of time that has passed since the attack, as well as the capacity that exists in the system for collection, storage, analysis and use of the evidence. What may be possible and appropriate in one case or in a specific setting may not be appropriate in another.

Although crimes of sexual violence are committed against men and boys, in most contexts these crimes are experienced disproportionately by women. This means that responses designed to address sexual violence as it is perpetrated during conflict must take account of the impact of gender and gender inequality. A key feature of strategies designed to collect forensic evidence of sexual violence must be the meaningful involvement of women and women’s organizations at every level.

For the task of evidence collection to succeed, centuries of established beliefs about who ought to bear the blame for sexual violence and how the situation should be handled when allegations are made, must be overcome. The transition required will be not only from war to peace, but from societies that tolerate sexual violence and gender inequality to societies that actively support survivors of sexual violence, condemn crimes of sexual violence, and strive to prevent them. Fortunately, there are examples of initiatives that are beginning to do so.

The safety of the survivor is the most important factor to consider, even when it outweighs the aims of the medico-legal system for evidence collection and use. Moreover, ethical standards must be adhered to by all those involved in the medico-legal system. These include respecting the wishes of the survivor. For more on the key ethical principles see job aid 5.



Key gaps in policy and practice related to the collection and use of forensic evidence

There is a great deal written on what must be done to reform law and practice in order to change how survivors of sexual violence are treated. Less attention has been given to the importance, collection and use of forensic evidence. What is required as a foundation for the collection and use of forensic evidence may be summarized as follows:

- cultural norms that recognize sexual violence as a crime;
- a clear statement in law of the elements of crimes of sexual violence;
- a sufficiently secure space for survivors of sexual violence, and those collecting evidence, for evidence collection to be carried out safely and in private;
- police, forensic, legal and health systems and personnel committed to addressing these crimes by providing informed, safe and supportive environments for survivors of sexual violence, enabling them to determine what they wish to do;
- systems to ensure that survivors of sexual violence who wish to provide evidence to tribunals of whatever kind are heard and are well protected.

With this in place, the following is then required for the collection of forensic evidence:

- a uniform appreciation of what counts as forensic evidence of sexual violence in a conflict-affected setting;
- shared knowledge about how this evidence is to be collected, in order for it to be admissible in a court or tribunal;
- a range of tools for evidence collection, suited to the circumstances in which they are to be applied, whether these are in settings with basic or more sophisticated resources. This may range from a form to be completed and photograph, to medical kits enabling the collection of samples;
- identification, training as necessary, and coordination of non-specialist and specialist personnel capable of working in concert to the extent that is feasible. (Evidence collection may be undertaken by individual survivors of sexual violence, family and friends, civil society groups, local police, lawyers and health practitioners, international NGOs, court-appointed investigators or United Nations agency personnel);
- places for safe and systematized storage of evidence.



Key stakeholders

Medico-legal evidence sits at the intersection of medical and justice processes, and appropriate implementation requires coordination between the range of service providers and sectors involved in prevention of, and response to, sexual violence, including health services, forensic medicine, forensic laboratory services, police, law, the judiciary and social services. An effective and efficient medico-legal system requires coordination between the various components.

The provision of coordinated and appropriate medico-legal services to victims/survivors of sexual violence requires the involvement of a range of systems and professions, as well as of the victims/survivors themselves. These key stakeholders should be included in the development and coordination of systems, in order to ensure that they are responsive and effective. Government entities are key stakeholders and have the primary responsibility to participate and bring others on board.

In settings affected by conflict, it is also important for national systems to engage with international actors such as the United Nations and international NGOs and, where relevant, international criminal tribunals.

The key stakeholders that should be included in any coordinated reform are listed in job aid 4. Their roles are complementary and have to be performed while keeping in mind the impact on the ability of other stakeholders to perform their specific roles.

It is important that stakeholders do not see their tasks as conflicting or competing and that evidence collection and successful prosecution can and should be aligned with and prioritize the health and well-being of victims.

The job aids in the toolkit provide practical guidance for each of these stakeholders on how to collect the evidence and provide services to victims in a way that responds to these concerns.



Communication, partnerships and coordination

In order to ensure that key stakeholders operate in alignment with each other, and provide the most effective and appropriate services to survivors of sexual violence, coordination at all levels is essential.

A lack of confidence in policing or legal responses may result in victims of sexual violence confining their search for assistance to the health system. Once their health needs have been addressed, they may choose to have no further involvement. Alternatively, their entry into the health service may be a unique opportunity to offer and facilitate an investigative or prosecutorial response.

An integrated model of investigative, therapeutic and legal services may enhance service delivery and facilitate access and use by victims. There are a number of different models of integrated service provision; services may be provided under the same roof (where investigators and legal personnel work within the health facility) or the health-care personnel may be able to provide information about the policing and legal options.

Even well-developed and sophisticated forensic services may require assistance at times when demand outstrips capacity. Such assistance may be accessible from within the national jurisdiction but generally this will need to be sought at an international level. Such support generally requires significant preparation and, on this basis, there is considerable value in developing relationships and agreements with other national and international jurisdictions before the need arises. This can be facilitated by international organizations.

Developing, building and maintaining networks with major international agencies are fundamental to the strengthening of capabilities. The development of organizational and cross-organizational relations might be facilitated through local bodies (health services, police, judicial system) or, alternatively, this process could be facilitated through an international organization.

Job aid 3 provides practical advice on coordination and cooperation.



National systems: level of system development

Support to these critical national systems must begin with a joint assessment (involving national and international actors) of existing capacity, and determination of the type and level of support necessary for effective system functioning. Depending on the level of existing capacity, this may include provision of training and equipment, as well as technical and financial support. An appropriate investment in relatively high-capacity settings, for example, introduction of sophisticated technologies, is likely to be inappropriate in very low-capacity settings, where personnel may lack basic training and materials.

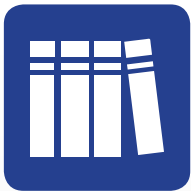
In many settings, there is likely to be a capacity imbalance between different components of the system, reflecting pre-existing national and donor priorities. A comprehensive system is integral to providing a health service to victims of sexual violence and is essential to ending impunity and achieving justice. In settings where some components of the medico-legal system are less developed than others, it is important to identify and support their building/rebuilding.



Conclusion

The end of a crisis provides an opportunity for donors and others to work on rebuilding and to support systems and institutions that are able to address key issues in a sustainable way. This requires long-term assistance to further develop the capacity to provide services and must be premised on coordination, assessment of the level of existing capacity, and support to appropriate interventions that can be expanded progressively as capacity is rebuilt.

The first step is raising awareness of the importance of medico-legal services and openly discussing the challenges, as set out in this paper. [The toolkit developed by WHO and UNODC for UN Action](#) aims to support national processes, through direct technical advice and support for establishing coordination among all key stakeholders.



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