

SEXUAL VIOLENCE AND MEDICO AND LEGAL LINKAGE

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National Regulatory Aspects

- Within a country, national laws, regulations, protocols and procedures apply
- Definitive expression of a member state to be bound by a signed treaty is done by a **ratification**, accession or acceptance (and eventually, in addition to above, other measure to implement said convention in law within a member state)
- Member state becomes **legally bound** by the provisions of the treaty

National Regulatory Aspects (cont'd)

- By means of the ratification, state's government undertakes to put into place **domestic measures** and **legislation** compatible with the treaty obligations and duties
- Articles defining the different forms of the sexual violence, recognized within a country, can be found in the civil and/or common laws and sanctioned by penal law (and/or other applicable law).

Violence Definition

- Violence (in general) against women and girls is the most widespread violation of human rights
- United Nations definition :
 - Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life

Violence Definition (cont'd)

- Violence may include:
 - Physical, sexual, psychological and economic abuse, regardless of age, race, culture, wealth and geography
 - Domestic and sexual violence, harmful practices, abuse during pregnancy, « honor killings » and other types of femicide

Sexual Violence Definition

- Terms like the sexual violence, sexual abuse, sexual assault and rape are used in common language synonymously and interchangeably

World Health Organization, Guidelines for medico-legal care of victims of sexual violence, 2003, p. 6.

- Term “sexual violence” includes wide range of acts, such as rape/forced sex, indecent assault and sexually-obsessive behavior

World Health Organization, Guidelines for medico-legal care for victims of sexual violence, 2003, p. 5.

Sexual Violence Definition (cont'd)

- Significant is that these terms as the legal definitions of sexual violence differ from the medical and social definitions and even can vary between countries and within countries
- Health-care professionals need the knowledge of the content of legal definitions of sexual violence in their country (jurisdiction) and related laws, rules and protocols

Sexual Violence Definition (cont'd)

- Definition of sexual violence (not legal definition): any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed against a person's sexuality, using coercion, by any person, regardless of their relationship to the victim, in any setting, including, but not limited to, home and work

Sexual Violence Definition (cont'd)

- Sexual violence includes:
 - Rape within marriage or dating relationship
 - Rape by strangers
 - Repeated rape during armed conflict
 - Unwanted sexual advances or sexual harassment, including demanding sex in return for favors
 - Sexual abuse of physically or mentally disabled people
 - Sexual abuse of children
 - Forced marriage or cohabitation, including child marriage

Sexual Violence Definition (cont'd)

- Denial for right to contraception or to take measures to protect against sexually transmitted diseases
- Forced abortion
- Forced prostitution and trafficking of people for sexual exploitation purpose
- Forced exposure to pornography
- Forced pregnancy
- Forced sterilization
- Female genital mutilation
- Virginitiy tests

World Health Organization. World report on violence and health, 2002, p. 150.

World Health Organization. Guidelines for medico-legal care for victims of sexual violence, 2003, p. 7.

Child Abuse Definition

- 1999 WHO Consultation on Child Abuse Prevention :
 - Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person.

World Health Organization. Report of the consultation on child abuse prevention, 1999 (document WHO/HSC/PVII/99.1).

Child Abuse Definition (cont'd)

- This may include, but is not limited to:
 - ✓ Inducement or coercion of a child to engage in any unlawful sexual activity
 - ✓ Exploitative use of a child in prostitution or other unlawful sexual practices
 - ✓ Exploitative use of children in pornographic performance and materials

World Health Organization, Guidelines for medico-legal care of victims of sexual violence, 2003, p. 75.

Sexual and Reproductive Rights

- Sexual and reproductive rights are most clearly defined in Programme of Action in the 1994 International Conference on Population and Development, Cairo, Egypt
- Programme of Action recognized the **link between the violence against women and reproductive health** and
- **Right-based approach** to the sexual and reproductive rights

Sexual and Reproductive Rights (cont'd)

- Programme of Action's sexual and reproductive rights include, among others
 - Voluntary, informed, and affordable family planning services
 - Pre-natal care and post-natal care, safe motherhood services, assisted childbirth from a trained attendant (e.g., a physician or midwife) and comprehensive infant health care
 - Prevention and treatment of sexually transmitted infections (STIs), including HIV/AIDS and cervical cancer

Sexual and Reproductive Rights (cont'd)

- Prevention and treatment of violence against women and girls
- Accessible and safe abortion operation (not legal in all countries) and the post-abortion care
- Sexual health information, education and counseling to support the personal relationships and quality of life

Sexual and Reproductive Rights (cont'd)

- Free reproductive decision-making, including voluntary choice to marry, family formation and determination of the number, timing and spacing of the children and the right to have access to the information and tools needed to exercise the voluntary choice
- Equality for men and women to allow individuals to make free choices in all areas of life, free from discrimination based on gender
- Sexual and reproductive security, including freedom from sexual violence and coercion, and the right to privacy

Initial Facts about Sexual Violence

- Violence against women, including intimate partner violence and sexual violence against women, is a significant public health problem
- 2005 WHO report shows that
 - Physical and/or sexual violence rate by an intimate partner ranged from 15% in Japan to approximately 70% in Ethiopia and Peru, with most sites reporting rates of between 29 and 62%

Initial Facts about Sexual Violence (cont'd)

- 2013 WHO report shows that
 - 35% of women worldwide have experienced either intimate partner violence or non-partner sexual violence during their lifetime
 - 7% of women worldwide have been sexually assaulted by someone other than her partner

World Health Organization. Multi-country Study on Women's Health and Domestic Violence, 2005, p. 28.

Initial Facts about Sexual Violence (cont'd)

- 2005 WHO study on women's health and domestic violence shows that
 - 13%-61% of women 15–49 years old report that an intimate partner has physically abused them at least once in their lifetime
 - 6%-59% of women report forced sexual intercourse, or an attempt at it, by an intimate partner in their lifetime
 - 1%-28% of women report they were physically abused during pregnancy, by an intimate partner

Sexual Violence against Men

- Strongly under-examined field of existing violence in the world
- Survey indicates that 3% of men have experienced the sexual violence

World Health Organization, Multi-country Study on Women's Health and Domestic Violence, 2005, p. 37.

- Survey within developed countries indicates that 5%-10% boys (as a child) have experienced the childhood sexual violence and in Namibia 3.6%, Tanzania 13.4% and Peru 20%

World Health Organization, World report on violence and health, 2002, p. 154.

Sexual Violence against Men (cont'd)

- Sexual violence against men occurs at home, schools, military, prison, police custody, armed conflicts
- Sexual violence can, for instance, be
 - Rape (such as a forced fellatio of a perpetrator or other victim, anal rape of the victim by perpetrator or with an object, rape of other victim)
 - Rape by a perpetrator him being a HIV positive
 - Forced pregnancy for a woman
 - Forced sterilization (for instance castration and mutilation)

Sexual Violence against Men (cont'd)

- Genital violence
- Forced nudity (mockery)
- Forced masturbation

Sandesh Sivakumaran, Sexual Violence against Men in Armed Conflict, The European Journal of International Law Vol. 18 no. 2 EJIL 2007.

Health-care Professionals

- Health-care professionals may, as the first person, meet women (and men) affected by the sexual violence
- Abused victims make extensive use of health-care resources
- Health-care professionals can, if a confidential relationship is established with the victim and under consent of the victim, facilitate the unveiling of the sexual violence and to offer appropriate support and referral to other resources and services

Health-care Professionals (cont'd)

- Training of the health-care professionals
- Referral to women's shelter, social aid and eventually police reporting and legal assistance

Medico-Legal Linkage

- Decision to Report - Adults
 - Health-care professionals need to be aware of the laws governing the reporting
 - Reporting to the police of a sexual violence, depending on the countries, may be optional or mandatory
- WHO Guidelines : Health-care professional's mandatory reporting to the police not recommended. Health-care professional should offer to report the incident, if the woman chooses.

Medico-Legal Linkage (cont'd)

- Decision to Report - Children
 - Health-care professionals need to be aware of the laws governing the reporting of child sexual abuse
- Country's laws instruct the health-care professionals how, and to whom, the child sexual abuse doubt report should be made
- Mandatory reporting is common and in many jurisdictions a failure to report a child sexual abuse constitutes a crime

Medico-Legal Linkage (cont'd)

- **Commonly, the country's law leaves the final determination, about whether or not the sexual abuse occurred, to the investigator, not the reporter**
- If there are not laws regarding the reporting, the health-care professionals need to decide what is the most effective course of action to try to protect the child from further abuse

Medico-Legal Linkage (cont'd)

- Consent for Forensic Examination
 - Crucial
 - Written and informed (signature or mark) consent (the use of a standard format document is advisable) of the patient to the forensic examination = give the explanation of all aspects of the consultation to the patient
 - ✓ Legal reasons 1) avoidance of the health-care professional of being charged with offences of assault, battery or trespass 2) results of a conducted forensic examination, in some jurisdictions, without consent, cannot be used in legal proceedings

Medico-Legal Linkage (cont'd)

- ✓ Patient has the feeling of controlling her/his body
- ✓ Patient has the feeling of being able to decide on the matters concerning her/him
- Place
 - ✓ Medical examination and legal related examination in the same clinic to reduce to the minimum the stress and the anxiety

Medico-Legal Linkage (cont'd)

- Disclosure of information and medical records
 - Explanation to the patient that in case of the legal proceedings in the future, any disclosed information during the of the examination may and/or medical record become part of the public record
 - Due care of the release of information to the authorities, such as the police

Medico-Legal Linkage (cont'd)

- If in your country's jurisdiction there is a mandatory reporting, make sure the patient understands this.

World Health Organization. Guidelines for medico-legal care of victims of sexual violence, 2003, p. 34-44.

Medico-Legal Linkage (cont'd)

- Objective of Forensic Examination
 - Collection of the evidence of a physical connection between the individuals and objects or places or the exclusion of the physical connection between the individuals and objects or places
 - In practice:
 - ✓ Identification and treatment of the injuries
 - ✓ Risk assessment of adverse consequences, such as pregnancy and STIs
 - ✓ Specimen collection

Medico-Legal Linkage (cont'd)

- ✓ Documentation (the history should be precise, accurate, without unnecessary information that may result in discrepancies with police reports)
 - ✓ Forensic examination
-
- Focus on the observations to attain the objective results of the forensic examination

Medico-Legal Linkage (cont'd)

- Improper medical records
 - ✓ No derogatory observations
 - ✓ No unsubstantiated observations
 - ✓ No sensitive observations
 - ✓ No irrelevant or non-essential observations
- May be harmful in the court proceedings - reliability suffers

Medico-Legal Linkage (cont'd)

- Standard protocols and documents
- Each consultation must be documented
- **Instantly** by complete **written notes (and/or electronic)** during the consultation to assure the full correctness of the notes (we forget fast the exact words used by the patient and what the health-care worker has exactly done and seen)
- Verbatim record of the victim statements, diagrams,

Medico-Legal Linkage (cont'd)

- Importance of the complete and precise forensic examination
 - Medical records may be used as evidence in the court
 - Enable the court's objective evaluation of the alleged sexual violence
 - Give information about the past sexual violence
 - Helps the court passing a justified and appropriate judgment

and also

Medico-Legal Linkage (cont'd)

- Comprehension by the health-care professional to enable the appropriate and sympathetic care
- Source of information to the administration/politicians about the prevalence and the resources necessities to deal with the sexual violence issue

World Health Organization. Guidelines for medico-legal care of victims of sexual violence, 2003, p. 94.

Medico-Legal Linkage (cont'd)

- Forensic expert / specialist interpretation necessary
- Rigorous and precise documentation
 - Avoidance of the false examination results
 - Avoidance of the unjust consequences for both the victim and the suspected/accused
 - Avoidance of the responsibility of the forensic expert

Medico-Legal Linkage (cont'd)

- Strict confidentiality
 - Privacy with a seeing protection and hearing protection
 - Patient's records and information are strictly confidential
 - Medical records and information are disclosed to those **directly** involved in the case or as **required** by a competent authority based on laws and regulations

Medico-Legal Linkage (cont'd)

- All patient records (and eventual specimens) must be stored safely
 - Storage for a very long time as the court proceedings may take years
 - See for the length of storage the rules of your country

Medico-Legal Linkage (cont'd)

- Philosopher John Locke (Essay Concerning Human Understanding):
 - Cautious in our claims to hold absolute truth
 - We have a very subjective impression of the truth, not the truth itself.
 - Highest probability, not to certainty/truth

Medico-Legal Linkage (cont'd)

- Court attendance and written evidence
 - Stay within your expertise
 - Plain language use, not medical jargon, if possible to assure the understanding
 - Tell what asked
 - Respect of legal professionals
 - Keep objectivity

Topics

- Sexual violence causes high costs for the countries, such as
 - Direct costs for health care services
 - Indirect costs, such as productivity losses
- Non-reporting of the sexual violence may be due to shame, feeling wrongly of guilt about the abuse, fear of being accused or blamed, pressure and threatening, dependence of the perpetrator, fear of revenge, scare of the consequences of reporting or scare of the burdensome and anxious causing police questioning and the trial at court.

Topics (cont'd)

- Widespread under-reporting of abuses
- Lack of belief and trust in authority
- Non-enforcement of laws, sanctions and remedies by the authorities

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Thank You !