

JOINT WORKSHOP REPORT ON MEDICO-LEGAL RESPONSES TO SEXUAL VIOLENCE

(SAFARI PARK HOTEL, NAIROBI KENYA JUNE 2-6, 2008)

Prepared by

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JOINT REPORT ON THE WORKSHOP ON MEDICO-LEGAL RESPONSES TO SEXUAL VIOLENCE HELD AT SAFARI PARK HOTEL, NAIROBI KENYA JUNE 2-6, 2008

Introduction

The workshop was a collaborative activity between Liverpool VCT Care & Treatment, Sexual Violence Research Initiative and Gender Based Violence Prevention Network with support from the Hewlett Foundation.

Participation from Uganda:

United Nations Population Fund sponsored 4 participants i.e. from Child and Family Protection Unit-Uganda Police Force, Directorate of Public Prosecutions, UNFPAGBV Gulu office and Justice Law and Order Sector Secretariat. There was also participation from Raising Voices (Civil Society Organisation), sponsored by Liverpool VCT Care & Treatment.

Participation from other countries:

The workshop was also attended by participants from diverse fields such as Medical, Legal, Police, Social Workers, Parliamentarians etc from Kenya, Malawi, Zambia, South Africa, Somalia, Sudan, Ethiopia, DRC and Tanzania.

Aim/ Objectives of the Workshop

The aim of the workshop was to strengthen the medico-legal response to sexual violence through multi-disciplinary collaboration among organisations and partners in Eastern, Central and Southern Africa. The objectives included

a) Share findings of the SVRI desk review, highlight regional innovation, share experiences, research findings and lessons learned in integrating medical and legal services in response to sexual violence.

- b) Identifying gaps and opportunities in research, policy and service delivery.
- c) Examining alternative measures for enhancing justice for victims of sexual violence;
- d) Providing a platform to promote the creation of regional research networks, and advocacy programmes on strengthening medico-legal responses to sexual violence.

Presentations

Presentations included an overview of research on sexual violence in the region, Legislation for sexual violence in Africa and considerations for preparing and delivering evidentiary requirements, public health approach to sexual violence, and the role of medical evidence within the existing legal frameworks, presentations on good practices from Kenya, Malawi, Zambia and South Africa. Participants were also required to make brief presentations on their country plans to tackle the problem of sexual violence.

Lessons Learnt.

1. There are jurisdictions with consolidated Sexual Offences Act(s) which have a broad definition for sexual violence offences which capture violations that happen in day today life which were/ are not captured in the scanty Penal Code provisions. Examples of such jurisdictions are Kenya, South Africa and Zambia etc. The elaborate provisions of these laws provide among other things for medical services for survivors of sexual violence, easier police reporting, and post conviction monitoring of repeat sexual offenders. We also noted that the Kenya Sexual Offences Act specifically provides for minimum sentences for sexual offences which was undertaken to curb abuse of discretionary powers of court in sentencing. In our view provision for minimum sentencing is not necessary in as there are some instances that would require the Courts to be left to exercise their discretion.

For effective implementation of the Sexual offences Act, there is a need for partnerships and coordination amongst all stakeholders such Justice Law and Order Sector institutions, Ministry of Education [for capture of dangers of Sexual

Violence (SV) in the curriculum], Ministry of Health [for medical evidence and treatment of survivors] as well as the Social Services.

As a way of enhancing preservation and protection of privacy of the survivors of SV within the Criminal Justice System, the Kenyan Sexual Offences Act has provided for camera proceedings, restrictions on publishing the identity of the victims and the use of intermediaries to assist the very young survivors in giving evidence in Court. Implementation of such provisions would go a long way in addressing the fears that victims and witnesses often have in regard to their participation in prosecutions/ Court proceedings.

2. Sexual Violence in the region is on the increase. Participants were informed that the UN has recognised Sexual Violence as a threat to global security because of its bizarre consequences on the physical and mental health of the victims/survivors as well as the community as a whole. Government therefore should spearhead the fight against SV and commit more resources towards prevention, care, treatment and rehabilitation of survivors and also offenders.

Government also needs to come up with policy guidelines for medical professionals, Judiciary, Police Officers, Prosecutors, Prisons and Social Services etc highlighting their respective roles in the prevention, care, treatment, prosecution and rehabilitation.

3. Whereas there is research done on SV in some jurisdiction such as South Africa, not much research was available in other jurisdictions yet it is necessary for flagging the dangers of SV, planning and advocacy. For example it was noted that there is no known research done on the effect of sentencing on the prevention of recurrence of sexual violence offences. Also noted was the absence of data/ research on medical evidence in cases taken to Court and its impact on the outcomes of the Criminal Justice System.
4. In some jurisdictions e.g. Kenya, the Ministry of Health has identified Healthy

facilities/centres that offer post SV care and treatment. In South Africa the PF3 is available in health centres as a way of easing access to treatment and obtaining evidence required in the Criminal Justice System. In Zambia, Police officers have been trained to offer Post Exposure Prophylaxis (PEP) and administer emergency contraceptives. In Uganda issues of SV are mostly treated as legal/police issues and not given the necessary medical attention. That aside, there is no uniform guidance on who should fill the PF3 or where a survivor should go first i.e. is it to Police or to Hospital. In Malawi, certified nurses and medical assistants are authorised to fill PF3 and tender evidence on PF3 in Court. This step was taken after recognition of the fact that there were very few medical doctors in the country which was posing serious challenges to obtaining medical evidence that could be used in Courts of Law. Adopting such practices that take care of both the legal/evidentiary issues and the health issues would go a long way in addressing some of the wide ranging concerns of the survivors of SV.

5. Medico-Legal response to sexual violence is an area that requires strengthening if the health and legal needs of the survivors are to be met. Having specialised units within the different stakeholders institutions and clear protocols and forms that outline linkages between police and health workers in regard to referral between facilities as well as forensic evidence collection is vital for strengthening Medico-Legal response to sexual violence. It was observed that access to DNA facilities is very expensive even in the countries where the DNA facilities exist. The need for preservation of all pieces of evidence (e.g. hair, nail scrapings, blood, semen, cloth etc) that are required to prove the occurrence of sexual violence cannot be over emphasised. Training of actors who respond to sexual violence on proper preservation, analysis and explanation of evidence as well as provision of the necessary tools and equipment is of equal importance. Also worth noting was the need to raise awareness on other (sexually) transmittable diseases other than the common STI and HIV such as Hepatitis B & C which are very life threatening.

6. In Kenya deliberate transmission of HIV is criminalised under the Sexual Offences Act, However we were unable to share views on how successful the implementation of these provisions has been considering the difficulty in proving the element of 'deliberate' and also the right not to test someone without his/her consent.

Overall there were lessons to learn from the different jurisdictions which would enrich Uganda's efforts towards streamlining laws regarding sexual offences.

Country plans on how to tackle the problem of sexual violence.

Participants from the different countries were required to prepare and present brief plans on how they envisioned their countries tackling the problem of Sexual Violence. The plan that was prepared by participants from Uganda took the form of Challenges that are currently experienced, planned interventions, action person/institution and the expected outcome.

The challenges that we (participants from Uganda) identified (which were quite similar to challenges faced in other jurisdictions), included (a) Lack of specific guidelines or acceptable norm on who is an expert, who can fill PF3 and who can give expert evidence and tender evidence on PF3 in Court. (b) Unavailability of PF3 at several Police Stations, particularly at the grassroots levels (c) Absence of specialised units and focal persons handling cases of sexual violence in the criminal justice system (d) Weak coordination channels/forum for stakeholders (e) Low levels of awareness by the communities about preservation of evidence + loss of evidence due to late reporting of incidents of sexual violence (f) Lack of standardised and coordinated training of stakeholders on management of sexual violence victims (g) Non-user friendly criminal justice institutions (h) Lack of statistical data to back advocacy for addressing sexual violence challenges e.g. on reported cases, length of investigations, medical evidence involved and availed, length of trials, analysis of judgments regarding sexual violence cases, convictions, sentences passed, record of reoffending etc (i) Absence of a specific Sexual Offences Act and (j) Absence of researched information on Unreported cases of Sexual Gender Based violence and their impact on the effectiveness of the interventions made in the Criminal Justice

System as well as the impact on sentences in cases of sexual violence on deterring commission of new acts of sexual violence.

Some of the possible interventions include:

- 1) Development of practice guidelines (possibly by the CJ) that will be used/ followed by all actors in the criminal justice system. The guidelines should provide clarity on the category of medical personnel who can fill PF3. The case of Malawi can be used as persuasive authority i.e. where Nurses, Medical Assistants, Clinical Officers with reasonable experience and Medical Doctors are recognised as persons who can fill PF3 and tender such evidence in Court. Ministry of Health would be consulted on what reasonable experience should be.
- 1) Creation of awareness on the new practice guidelines amongst all stakeholders i.e. Medical Personnel, Police Officers, Prosecutors, Private legal practitioners, Judicial Officers and the community etc.
- 1) Proper Capture the cost of production of PF3 in the Police Annual Budgets and avail the Forms to all Police Stations and Posts
- 1) Enhanced the supervisory function including impromptu visits.
- 1) Sensitisation of communities about the fact that it is a right to be availed with PF3 at no cost and devise/ put in place mechanisms for receiving feedback from the service users on the availability of and ease of access to PF3
- 1) Identification and mandating focal persons for handling SGBV issues
- 1) Commitment of budgets for continuous training of the identified focal persons and facilitation of expeditious handling of sexual violence cases
- 1) Restriction of transfer of the identified/ trained focal persons to allow acquisition of

experience and retention of skills.

- 1) Identification of all stakeholders in addressing Sexual Violence issues, strengthening coordination channels/forum for stakeholders and applying a participatory approach to handling sexual violence issues. Highlighting the role of each of the stakeholders to enhance appreciation of each stakeholder's contribution in the chain of justice and in addressing health issues of the survivors of sexual violence.
- 1) Massive sensitization about the rights and obligations of victims of sexual violence,
- 1) Standardised and coordinated training for all stakeholders.
- 1) Equipping institutions with the necessary tools e.g. registers, computers and relevant software, train data entrants and integration of management information systems of the different stakeholders to ensure that they communicate with each other.
- 1) Studying the Sexual Offences Acts of other jurisdictions such as Kenya and comparing notes with content of the Ugandan law on Sexual Offences. Advocating for inclusion of provisions that specifically relate to or seek to address challenges posed by our existing law.
- 1) Conducting research on unreported cases of Sexual Gender Based violence and their impact on the effectiveness of the interventions made in the Criminal Justice System as well as the impact on sentences in cases of sexual violence on deterring commission of new acts of sexual violence.

The details on Action persons/ institutions and expected outcomes are captured in the attached matrix.

The workshop materials can be downloaded from <http://www.svri.org/medicoworkshop.htm>

Appreciation

We thank UNFPA for facilitating our participation in the Medico-Legal convening on responses to Sexual violence. We equally thank our respective organisations for granting us permission to participate in the workshop. We thank the organisers for coordinating the workshop. We do thank the facilitators for the enlightening presentations. We established communication links with professionals from different jurisdictions for future exchange of ideas and information. We report that the objectives of the workshop were met. We will share the proposed plan within our organisations/sector with a view of having it enriched and also with a view of taking forward the proposed intervention.

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