British Red Cross

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Revictimised: The humanitarian consequences of mandatory reporting of sexual violence

A study on the mandatory reporting of sexual violence and its impacts on access to health care in armed conflict and other situations of violence: initial findings

Contents

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Overview: This paper presents the initial findings from research carried out on the requirement, in certain countries, to report sexual violence cases to law enforcement authorities, and the humanitarian impacts of such obligations in the context of armed conflicts and other situations of violence. The research established that mandatory reporting laws, policies and practices in these contexts, often impact negatively on access to health care for victims/survivors of sexual violence and may expose them to secondary violence and harm. The paper presents recommendations to States that have mandatory reporting requirements in place, and to donors and health-care actors on how to mitigate the consequences of mandatory reporting on the health, safety and well-being of victims/survivors.

1. Introduction

International humanitarian law and international human rights law prohibit rape and other forms of sexual violence in armed conflicts and other situations of violence.[1] Yet despite its clear prohibition, sexual violence continues to be used systematically and extensively against women, girls, boys and men as a tactic of war globally. During conflicts and other humanitarian crises, sexual and gender-based violence (SGBV) increases as a result a number of factors; including a rise in generalised violence, militarisation, displacement, changes to social norms, resource scarcity, and weakened services and infrastructure. The consequences of sexual violence for victims/survivors[2] are severe. It can cause long-term physical and psychological harm and lead to social stigmatisation and ostracisation by family members and the broader community. Those who seek assistance face significant challenges in accessing essential services, protection measures and judicial redress, and are often revictimised[3] by criminal justice procedures, law enforcement and health-care personnel. As a result, sexual violence is notoriously under-reported, as many victims/survivors are reluctant to come forward.

Certain States have introduced mandatory reporting laws, policies and practices, that oblige health-care personnel to report known or suspected cases of sexual violence to law enforcement authorities without requiring consent from the victim/survivor. In some cases, this is a precondition for accessing health care. While the introduction of mandatory reporting is generally well intentioned, the potential negative impact of such non-consensual reporting is not well understood. The British Red Cross and the International Committee of the Red Cross (ICRC) commissioned research into the humanitarian impacts of mandatory reporting on victims/survivors of sexual violence in four countries affected by conflict and other situations of violence.[4]

[1] Research was carried out in four countries affected by conflict and other situations of violence. Country names have not been shared in order to protect the anonymity of respondents and the operations of the International Red Cross and Red Crescent Movement. Interviews were conducted with law enforcement authorities, health-care personnel/authorities, legal experts, humanitarians, community volunteers, civil society actors, and victims/survivors of sexual violence.

[2] The term "victim/survivor" is used in the present report to describe a person who has been subjected to sexual violence. For legal purposes individuals may be identified as "victims" of criminal acts. Victim may also be used to acknowledge that harm has been caused or to refer to someone who didn't survive. However, the term "victim" may carry stigmatising or disempowering connotations for an individual in their context. The term "survivor" affirms the ability of someone to live beyond the traumatic event and their agency to recover. The term "victim/survivor" is used to acknowledge the complex relationship between violation, vulnerability and agency, to reflect intersectional experiences and to respect the individual choice of the affected person.

[3] The term "revictimisation" is used here to describe any act which makes a victim of someone again, or renews their sense of victimhood, as a result of the earlier abuse inflicted on them. Revictimisation can be caused by disempowering, humiliating or degrading treatment, further violence, re-traumatisation or psychological abuse, ostracisation, economic abuse and denial of rights, among other things.

[4] International humanitarian law (IHL) applies specifically in situations of armed conflict; the prohibition of sexual violence in armed conflict is a rule of customary IHL. See Rule 93 of the ICRC's Customary IHL Study, available online at **ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule93**. Sexual violence is prohibited in international human rights law (IHRL) by a number of treaty provisions including those that prohibit torture and other cruel, inhuman or degrading treatment. Sexual violence can be defined as an act of a sexual nature committed against any person by force, threat of force or coercion. Examples include but are not limited to rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilisation.

2. Mandatory reporting – the obligation to report

In many countries worldwide, health-care personnel and/or victims/survivors of sexual violence are subject to mandatory reporting obligations. This report uses the term "mandatory reporting" to refer to laws, policies or practices that require individuals to report known or suspected cases of criminal offences to law enforcement authorities, including cases of sexual violence, regardless of whether or not the victim/survivor consents to a report being made. Failing to report may give rise to criminal, civil and/or regulatory sanctions for health-care personnel. Some countries do not have formal legal requirements in place, however mandatory reporting still takes place as a matter of practice, often the result of widespread perceptions that such obligations exist. In one country, where there is no legal requirement, a humanitarian professional explained that, "in the heads of many medical professionals, reporting of sexual violence is mandatory. It is often the first reflex to send the victim to the police."

The mandatory reporting obligation for sexual violence is most commonly placed on health-care personnel, but may also include administrative health-care staff, other service providers, public officials, teachers or anyone with knowledge of the crime. In certain contexts, the obligation lies with the victim/survivor as a precondition for accessing care. The research found that the reporting requirement is sometimes deliberately shifted by health-care personnel onto the victim/survivor to avoid the obligation.

Mandatory reporting of criminal offences is commonly introduced by States to address impunity. It is intended to reduce crime, including incidence of sexual violence, and hold perpetrators to account, thus contributing to protection from further violence and respect for the victim/survivor's right to remedy. It was beyond the scope of this study to conclusively determine whether mandatory reporting serves these outcomes. However, evidence collected demonstrates that mandatory reporting can lead to negative humanitarian consequences and harm in armed conflict and other situations of violence.

3. Mandatory reporting and international standards for survivor care

> "The issue with [mandatory reporting] is that it risks exposing your story to many people and it delays your care."
>
> **humanitarian actor**

International standards recognise that victims/survivors of sexual violence require survivor-centred, holistic care to heal and recover. This includes clinical management, mental health-care, psycho-social support, safety and security, access to justice, and assistance for socio-economic recovery[5]. Standards call for access to health-care to be timely; with rape and other forms of sexual violence widely recognised as a medical emergency requiring treatment within the first 72 hours[6]. Confidential and survivor-centred approaches, which give priority to individual informed choice by victims/survivors, help to ensure that safety and security is considered and appropriate for each case. This allows victims/survivors to re-establish power and control over their lives and helps minimise the risk of revictimisation. Survivor-centred approaches were endorsed by the UN Security Council in 2019 (Resolution 2467), with States recognising the necessity to put the needs of survivors first.[7]

Mandatory reporting in cases of sexual violence can make it difficult to comply with these standards for the provision of timely, survivor-centred care to victims/survivors of sexual violence. It can undermine key case management principles for sexual violence, which draw from the field of social work and medical ethics, including informed consent, safety, privacy and confidentiality, and respect for the wishes, rights and dignity of the victim/survivor.

[5] International case management standards for responding to gender-based violence, including sexual violence, can be found in a number of guidance documents, including: GBV Information Management System, Inter-agency case management guidelines (2017), World Health Organisation (WHO), Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines, (2013) and, WHO/UNHCR, Clinical management of rape survivors: Developing protocols for use with refugees and internally displaced persons (2004)

[6] Medical response within the first 72 hours is critical to protect against HIV, prevent unwanted pregnancies, respond to physical injury and collect forensic evidence. In addition, IHL provides that persons in need of medical care must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones. See Rule 110 of the ICRC's Customary IHL Study, available online at **ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule110**.

[7] On survivor-centred or holistic care, see UN Security Council Resolution 2467 (2019), preambular para. 18 and operative para. 16; CEDAW, General Recommendation 35, UN Doc. CEDAW/C/CG/35, 14 July 2017, para. 31(a)(iii); UN Secretary General, Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence, June 2014, pp. 18-19.

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4. The humanitarian consequences of mandatory reporting

The humanitarian consequences of mandatory reporting can be divided into three main categories:

(i) Reduced health-seeking behaviour

(ii) Obstructed provision of health care

(iii) Secondary violence and harm.

(i) Reduced health-seeking behaviour

The research gathered credible evidence to demonstrate that mandatory reporting of sexual violence deters victims/survivors from seeking health care. This was particularly so in contexts where the provision of health care was conditional upon a visit to, and referral from, the police.

Many victims/survivors, especially in conflict and other situations of violence, do not wish to engage with law enforcement for reasons including: fear of retaliation from perpetrators and/or family members, stigmatisation in their communities, a lack of trust in the criminal justice process, invasive forensic examinations or the risk of prosecution in jurisdictions that criminalise adultery, homosexuality or sex work. Victims/survivors who lack civil documentation (a situation common among victims/survivors of human trafficking and sexual slavery as well as undocumented migrants, refugees, stateless persons and those with affiliation to armed groups) may also be deterred from reporting as this could lead to arrest and detention, and potential deportation.

As a result, victims/survivors often choose not to seek health care if they know or fear that their information will be shared with the police.

Research documented reports of victims/survivors abandoning the process of seeking care once they learned that a police report must be made.

> "When they [victims/survivors] are informed by the hospital of the reporting duty, many become afraid because they do not want the perpetrator to know that they were the ones to report or for their name to be made public. They fear reprisals and do not trust that they will be protected by the system. Often, they are living in the same areas as the perpetrator and there is little police presence. As a result, many women abandon the process and do not continue to seek care. At this point, we lose contact with many of them and we cannot really say how they then manage their health needs."
>
> **civil society actor.**

The negative impact of mandatory reporting on health-seeking behaviour was noted in all four countries, yet the relative importance of this barrier varied by country and by context. In one country, where health care was dependent upon a police report, mandatory reporting was described as the most significant barrier to

care. In another country, mandatory reporting was seen as one of many factors contributing to low health-seeking behaviour, with fear of retaliation, intimidation by perpetrators and lack of confidentiality in the health profession being of greater concern. Differences were also noted within countries, including a distinction between rural and urban contexts.[8]

> "The reason they don't come [to the hospital] is mandatory reporting." A doctor explained that when victims/survivors come to the emergency room the first thing they are told is to come back with proof of having filed a police report. "Not once did the survivor come back."
> **medical doctor.**

> "Many people do not seek medical attention because they are afraid that health personnel will notify the authorities."
> **humanitarian actor.**

(ii) Obstructed provision of health care services

Mandatory reporting can also delay or prevent the provision of emergency medical care to victims/survivors of sexual violence. In three out of the four countries, the requirement to provide a police report as a prerequisite for accessing health care resulted in some victims/survivors being denied treatment at hospitals. In addition, the procedure for obtaining a police report and referral to the hospital can be lengthy – in some contexts, a forensic examination needs to be ordered by a judge. This delay can prevent victims/survivors accessing care within the first critical 72 hours, exposing them to HIV, other sexually transmitted infections (STIs), and unwanted pregnancies.

> "No one will touch the patient unless they provide the hospital with the police paper."
> **medical doctor.**

In some contexts, mandatory reporting puts health-care personnel at risk of intimidation and/or violence by family members, perpetrators, and community members. This is particularly true in contexts where sexual violence is heavily stigmatised. It was reported that these risks result in health-care personnel refusing to treat victims/survivors or providing incomplete treatment, potentially limiting access to emergency contraception, HIV post-exposure prophylaxis (PEP) and treatment for other STI. The research indicated that such risks are elevated where the sexual violence is linked with an armed conflict; in cases where sexual violence is perpetrated by parties to conflict, mandatory reporting can be perceived to be an act of taking sides. This not only places health-care personnel at risk of retaliation attacks, but also jeopardises safe access to affected populations for organisations.

Beyond risks of violence, non-compliance with mandatory reporting obligations may also place health-care personnel at risk of penalties or sanctions by the government. In one of the countries studied, the law makes provisions for this by offering options for anonymous reporting in exceptional circumstances where health-care personnel, hospitals or victims/survivors are at risk.

[8] Further information is required on variations within countries. It was noted by several respondents that mandatory reporting may not be strictly adhered to in some rural contexts, while health-care facilities and law enforcement in those areas have lower capacity and are less likely to maintain confidentiality standards.

"Doctors are afraid to report sexual violence cases to the authorities because they fear reprisals from armed groups. We have documented cases where doctors were warned by armed actors about making a report, and cases where the paramilitary [actor] responsible for the rape would take the victim directly to the hospital afterwards [to intimidate] the doctor into not making a later report."

civil society actor.

"There is no protection available to medical actors and mandatory reporting puts them in danger. In all cases where health care is in danger, mandatory reporting will never work."

humanitarian actor.

The extent of these challenges and the capacity that health-care personnel and victims/survivors have to surmount them depends on the specific context; including: whether mandatory reporting is defined by law, policy or general practice, how strictly it is enforced, who the reporting obligation lies with, at what stage of the process reporting needs to happen, whether certain treatments or procedures are controlled by law and whether there are provisions in place for exceptional circumstances.

However, regardless of whether services can be provided, if communities perceive mandatory reporting to be the norm or they lack trust in the standard of confidentiality respected by health-care personnel, persuading survivors to come forward for care will remain a challenge.

(iii) Secondary violence and harm, and other consequences

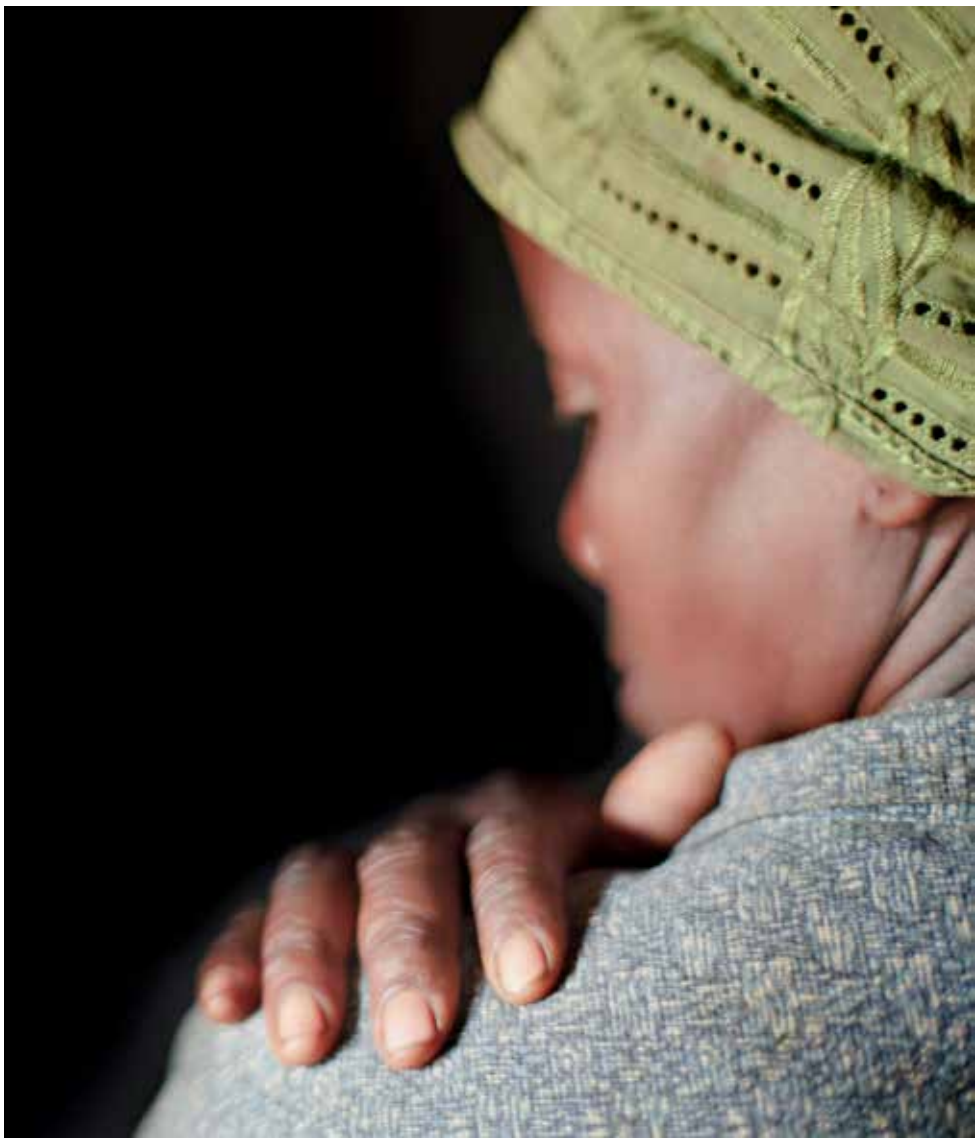
Without provisions that govern confidentiality and victim protection, mandatory reporting can lead to serious secondary violence or harm to the victim/survivor. For example, mandatory reporting that triggers a criminal investigation or that takes place in contexts where confidentiality structures are weak can expose victims/survivors to stigma, ostracisation and social isolation. This was an overwhelming concern in all four countries in which research was conducted. It is important not to underestimate the long-term impacts of ostracisation and abandonment, which can have significant economic and social impacts, including loss of liberty, home and livelihood for the survivor and their dependents.

"It is common that when you go, people will laugh at you, men will reject you. That behaviour will make someone not want to go to seek care or report to police."

community focus group participant.

Public exposure also places victims/survivors at risk of further physical, psychological or sexual violence, including so-called honour-based violence.[9] In certain contexts, reports of sexual violence can also result in forced marriage to the perpetrator.

[9] Honour-based violence or "honour" crime involves an act of violence against a person accused of bringing shame upon his/her family or community. Honour-based violence can include, but is not limited to, domestic violence, threats or acts of physical assault, sexual violence, psychological abuse, abduction, forced marriage or murder, i.e. "honour killing". Honour-based violence is not specific to any religion and takes place worldwide.



> "Many fear going to seek help, as the perpetrator is likely to find out that the victim went to the police."
> **humanitarian actor.**

> "When the perpetrator is a soldier, he will often threaten the victim into not reporting, threatening death on her or her family."
> **police officer.**

Finally, where mandatory reporting creates delays or barriers to accessing health care, victims/survivors risk unwanted pregnancies, STIs including HIV, untreated fistulas, and other injuries which can lead to chronic health problems, psychological harm and in certain circumstances, death.

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5. Mandatory reporting in weak criminal justice systems

A lack of trust in the legal system, combined with stigmatisation of victims/survivors and fears of retaliatory violence, contributes to widespread under-reporting of sexual violence in all contexts studied. For this reason, the research revealed that some legal and health-care professionals, as well as survivor groups and activists, support mandatory reporting as a mechanism to increase the accountability of the justice system for improved responses to sexual violence.

> "Without mandatory reporting, cases are under-registered and sexual violence becomes invisible. Mandatory reporting increases the awareness around the issue of sexual violence, otherwise this type of violence is legitimised and normalised. Mandatory reporting is a way of fighting against that."
> **victim/survivor.**

In addition to low reporting rates, a range of factors were also cited as to why criminal justice systems routinely fail to adequately respond to allegations of sexual violence. These factors included the lack of experience and training of the police and judiciary in SGBV cases, inadequate legislation, corruption, the lack of protective services for victims/survivors, and use of alternative tribal or traditional justice mechanisms and customs. As a result of these limitations, evidence from the research conducted suggests that prosecutions and conviction rates for sexual violence crimes remain low in all four countries, even with mandatory reporting laws, policies or practices in place.

Whilst in some contexts mandatory reporting is believed to place health-care personnel at risk of retaliatory violence, in others, mandatory reporting was said to provide certain protections. In these contexts, some health-care professionals supported mandatory reporting as they felt it reduced the risk of violence to health-care personnel, especially when the victim/survivor reported the crime or when reporting was perceived to be the obligation of the health-care facility, rather than a choice.

Health services are often the first or only point of contact between victims/survivors and service providers. If fewer survivors come forward to seek health care as a result of mandatory reporting, it may counterintuitively contribute to under-reporting of sexual violence incidences, including vital information on trends used to develop prevention and response activities. If victims/survivors do not come forward to seek professional care, they are also less likely to access information on and make informed decisions about their legal rights and protections. This study focussed on the impact of mandatory reporting on access to health care. More research is required on the impacts of mandatory reporting on the quantity and quality of reporting, prosecutions and convictions and reparations for victims/survivors of sexual violence in armed conflicts and other situations of violence.

"We have not seen any evidence that mandatory reporting leads to better outcomes, it is often the opposite. The victim is re-victimised by the criminal justice process and may be exposed to further risks, for example the risk of retaliation. Mandatory reporting does not work in [our] context, the justice system does not respond adequately to these cases, for example there are many issues around [the implementation of] a proper chain of custody."

humanitarian actor.

"It should be up to the victim/survivor to decide [to report], especially if the perpetrator is a member of the state security forces as this heightens the risk of reprisals. Some people might consider that mandatory reporting is good on paper, however there are issues with the criminal justice system: there are delays, it can be revictimising."

public official.

6. Conclusion

These initial findings provide a concerning account of the negative impacts of mandatory reporting obligations on access to health care for victims/survivors of sexual violence and increased risk of revictimisation in armed conflicts and other situations of violence. As a result of mandatory reporting laws, policies or practices, victims/survivors of sexual violence often avoided seeking health care. Those that did seek care risked being turned away by health-care providers or were exposed to secondary violence and harm at the hands of perpetrators, family or community. The negative impacts of mandatory reporting identified during this research were either linked to, or exacerbated by, specific contextual factors, including: the situation of armed conflict and violence, the high level of stigmatisation by communities, and the shortcomings within the criminal justice and health-care systems.

We recognise the critical need to increase reporting and end impunity for sexual violence, but caution that several risks to victims/survivors, as well as to health-care personnel, were identified as a direct or indirect result of mandatory reporting. Priority should be given to building an environment for safe, effective reporting which reduces the risk of revictimisation and secondary harm. Mandatory reporting requirements make it more difficult to comply with international standards for sexual violence case management designed to protect the safety, dignity and recovery of victims/survivors. Requirements that do not protect confidentiality and privacy are incompatible with survivor-centred approaches which promote individual victim/survivor choice in the determination of their own safety and recovery needs. Safe and dignified access to health care as part of a holistic response must be assured.

The initial findings conclude that reporting to law enforcement should not take place without the informed consent of the victim/survivor where measures are absent or incapable of guaranteeing their safety and dignity. Moreover, under no circumstances should access to emergency medical care and other services be dependent upon a police report first being made, which may obstruct access to critical assistance.

7. Recommendations

Recommendations for countries/States with mandatory reporting requirements

(i) Review mandatory reporting laws, policies and practices to understand whether they are having an adverse humanitarian impact and, if applicable, identify alternatives which promote fully informed voluntary reporting which protects the safety, privacy and dignity of victims/survivors.

(ii) Review and, if applicable, revise policy and practice, to ensure that access to health care for victims/survivors of sexual violence is not dependent upon a police report being made first. Train health personnel, law enforcement authorities and other relevant government personnel, on the importance of providing access to medical care for victims/survivors of sexual violence as a matter of emergency.

(iii) Provide the necessary resources and training to allow health-care personnel and actors in the criminal justice system (including police, prosecutors, and judges) to apply holistic survivor-centred approaches and guarantee privacy and confidentiality for victims/survivors of sexual violence.

(iv) Conduct an assessment of national case management procedures for sexual violence and, where relevant, incorporate ministries responsible for social welfare, women's rights or the equivalent into case management protocol and procedures.

(v) Ensure that the criminal justice system effectively protects and assists victims/survivors of sexual violence and ensures they are protected from further harm by providing victim/survivor support and removing obstacles to accessing protection programmes, including shelter.

Recommendations for bilateral and multilateral donors

(i) Highlight the humanitarian consequences of mandatory reporting in countries affected by armed conflict and other situations of violence, and invest in alternatives which promote fully informed voluntary reporting which protects the safety, privacy and dignity of victims/survivors.

(ii) Support governments to develop survivor-centred, holistic sexual violence service provision, through resourcing and training health/judiciary/law enforcement in order to promote privacy, confidentiality, informed decision-making and dignity.

(iii) Conduct further research on the impact of mandatory reporting and potential alternatives and develop model legislation and/or policies which facilitate safe and effective reporting.

Recommendations for humanitarian and health care actors

(i) Engage in dialogue with the government/national authorities of conflict-affected countries to illustrate the humanitarian consequences of mandatory reporting of sexual violence, including any impact on delivering humanitarian assistance.

(ii) Raise awareness among health-care personnel, judiciary, NGOs and local organisations on the importance of responding to sexual violence as a medical emergency, for which care is required within 72 hours.

(iii) Provide training on the importance and application of survivor-centred holistic approaches and victim/survivor rights to privacy and confidentiality in accordance with national laws and, where relevant, sensitise service providers and communities to the absence of any legal requirement for reporting.

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