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LEGAL FRAMEWORK FOR SERVICE PROVIDERS ADDRESSING GENDER-BASED VIOLENCE

What providers need to know in order to help victims

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At the Fourth World Conference on Women that took place in Beijing, China in September 1995, it was determined that “violence against women is an obstacle to the achievement of the objectives of equality, development and peace; and it is a matter of concern to all States and should be addressed.” “Violence against women” refers to all acts of violence based on gender that result in possible or real physical, sexual or psychological damage, including threats, coercion or arbitrary privation of liberty, in either public or private life. The 1994 Interamerican Convention to Prevent, Sanction and Eradicate Violence Against Women indicates that violence against women is a violation of human rights.

It is indispensable for service providers to be familiar with the legal situation and procedures when addressing cases of gender-based violence (GBV) in order to ensure sensitive and effective client treatment. Providers should know their legal obligations and limitations even if they will not be providing clients with legal consultations.

This guide is designed for personnel who provide care related to GBV, so that they will be equipped to provide the necessary legal orientation to women who are victims and to avoid errors and misunderstandings in the legal area. Becoming familiar with their country’s laws will help providers defend the rights of their clients.

This guide is still a work-in-progress and we welcome your questions and comments. We hope that the guide will be useful to you.

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Legal Guide for Service Providers

LAWS

Which laws protect women in cases of violence?
What types of protection do the laws afford?
Do the laws consider penal and/or civil-familial measures?

ORDERS OF PROTECTION

Orders of protection are orders dictated by the legal authorities (judge) to break the cycle of family violence and to prevent the continuation of aggression against the victim(s).

Who should request the orders of protection...(woman, minor, child, parent of minor, etc.)	
...when the victim is an adult woman?	
... when the victim is a minor/underage?	
Which are the main orders of protection, caution and immediate protection? Which are provided in your country's law? <i>(Please check all that apply)</i>	✓
Order to provide food upon request	
Refrain from bothering, intimidating or threatening the spouse, ex-spouse, live-in partner, ex-live-in-partner or consensual partner	
Refrain from interfering in the provisional or definitive custody agreed to under the law or a judicial order	
Request an order of protection or of police assistance	
The immediate departure of the offender from the common residence	
Prohibit the possession of arms in the common residence	

Prohibit alienating, disposing of, hiding or transferring the victim's assets or common assets	
Prohibit entrance into the residence of the spouse, ex-spouse, live-in partner, ex-live-in-partner or consensual partner	
Order to indemnify the victim of violence for the civil actions that take place, for legal expenses, medical treatment, professional counseling and orientation, housing and other similar expenses	
Inventory of assets and household furniture	
Where can the orders of protection be requested (provide address, name of courthouse, etc.)?	
When should the anticipated orders be requested? (is there a certain period of time after abuse takes place wherein the request must be made?)	
What is the procedure for requesting cautionary and immediate orders of protection?	
What evidence or proof must be provided?	

What is needed to complete a request for an order of protection? What should the request include?	YES	NO
a. name and surname of the person filing the report		
if yes, is their confidentiality protected?		
b. marital status		
c. occupation		
d. information about the offender (name and surname)		
e. exact address of the offender, for notification		
f. other (specify _____)		

Request for orders of protection and caution	YES	NO
Can they be requested by the person affected?		
Can they be requested by institutions?		
Can they be requested by providers of violence-related services?		
Must they be requested in person?		
Must they be requested in writing?		

How long do the orders of protection last?		
Can they be extended or requested again?	YES	NO
If so, what is the procedure?		
How many times?		
Can an organization's health care providers' exams and reports of women in situations of violence be accepted as proof/evidence of abuse?	YES	NO
How long does it take to implement the order of protection once the request for one has been made?		
What happens if the offender fails to comply with the legal orders of protection?		
Are there other remedies in addition to orders of protection that are available? Please give name and description of remedy.		

OBLIGATIONS OF THE SERVICE PROVIDERS

Are service providers required to report known cases of violence?	YES	NO
In which cases should service providers report violence?		
What happens when the victims are underage? Is there the same duty to report violence? Are the procedures for doing so the same or different? Please describe the procedure.		
Are there penal or civil sanctions for not reporting a case?		
What are they?		

When does intrafamily violence constitute a crime?
Where do you file a report of an intrafamily violence crime?
Before which court do you file a report?

SEXUAL CRIMES

How is rape identified as a crime? (criminal, petty or felony? Are civil penalties available as well?)		
Does it include:	YES	NO
a. anal rape?		
b. rape with objects?		
c. oral rape?		
What are the requirements for proving rape? And what is the penalty?		
What are aggravating factors? (Indicate the penalty)		
a. relationship between victim-offender		
b. age of the victim		
c. others		
Are other sexual crimes prosecuted, such as: corruption of minors, child prostitution, pornography, etc.? (Indicate the category/crime and the penalty)		
In the case of rape by a stranger or someone who is not specifically referred to in the law on intrafamily violence, where do you file a report?		
According to the law, what are the procedures that health care providers should follow in cases of sexual crimes?		
In what situations or circumstances is an organization or its personnel/staff obligated to report sexual aggressions?		
Can an organization's health care providers' forensic exams for sexual violence be accepted by the penal system?	YES	NO
Is abortion legal in cases of rape?	YES	NO
If abortions are legal in cases of rape, what procedures must be followed? (What are the documents necessary to prove the rape? Where does the woman have to go? etc.)		

Do adolescents have a right to keep their medical information confidential, including from their parents?	YES	NO
Does the clinic legally have to share medical records with parents?	YES	NO
Can parents sue to get access to these records?	YES	NO

DUTIES AND RIGHTS OF WOMEN IN THE FAMILY

Aspects related to family processes that service providers should be aware of		
1. Food allowance		
a. Who has the right to request it?		✓
wife		
live-in partner		
ex-wife		
ex-live-in partner		
children from the current marriage/union/relationship		
children outside the current marriage/union/relationship		
b. Where should the request be made?		
c. What should the request include? What is needed to request the allowance?		
d. Is it possible to take a paternity investigation to trial?	YES	NO
If yes, what is the procedure?		
Who decides?		
Is it possible to appeal the ruling?	YES	NO
2. Parental authority		

a. When does a mother lose the right to raise her children?
3. Divorce
a. What are the reasons for divorce that the law establishes?
b. What are the rights of women in divorce cases?
c. How is the separation of assets carried out?
d. If the woman leaves the common residence for any reason, what is the procedure for avoiding being accused of abandoning the home?