

**LEGAL FRAMEWORK ANALYSIS
FOR MANDATORY REPORTING ON
GENDER-BASED VIOLENCE
IN MOLDOVA**

INTRODUCTION

The Legal Framework Analysis for Mandatory Reporting on GBV in Moldova is part of the Gender-Based Violence Sub-Working Group (GBV SWG) Technical Guidance on the Prevention and Response to GBV in Humanitarian Settings, developed by the members of the GBV Sub-Working Group.

The Technical Guidance Document aims at supporting GBV and other humanitarian actors to coordinate and implement safe and accessible GBV response, risk mitigation and prevention interventions, in the framework of the response to refugees from Ukraine in Moldova.

The need for this analysis emerged from several discussions and interest from members of the GBV SWG, to create a better understanding of the legal framework related to GBV, especially mandatory reporting requirements and procedures.

On August 9, 2022, a Legal Analysis Team under the GBV SWG was established and tasked to complete the analysis on behalf of the members of the GBV SWG. The analysis team included representatives from UNFPA, UNHCR, ActionAid, Intersos, UN Women and UNICEF and was facilitated by UNFPA.

The content of the analysis was developed and discussed in two working sessions bringing the members of the Legal Analysis Team and on September 8, 2022, the document was presented, discussed and approved by the Legal Analysis Team.

Later, on September 22 and during a dedicated workshop to roll out the Technical Guidance on the Prevention and Response to GBV in Humanitarian Settings the analysis was presented to the wider GBV SWG members and was approved to be included in the Technical Guidance document.

DOMESTIC LEGISLATION

National normative acts in the field of prevention and combating domestic and gender-based violence are:

- Constitution of the Republic of Moldova;
- Law no. 121 of 25.05.2012 regarding ensuring equality;
- Health Protection Law no. 411 of 28.03.1995;
- Law no. 338 of 15.12.1994 regarding the rights of the child;
- Family code no. 1316 of 26.10.2000;
- Law no. 140 of 14.06.2013 regarding the special protection of children;
- at risk and of children separated from their parents;
- Law no. 45 of 01.03.2007 regarding the prevention and combating of domestic violence;
- Law 144 of 2021 on the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence;
- Convention on the Rights of Persons with Disabilities no. 320 of 03-30-2007
- Civil Procedure Code;
- Criminal Procedure Code;
- Contravention Code;
- Criminal Code;

Law no. 45 of 01.03.2007 regarding the prevention and combating of domestic violence[1] establishes the fundamental norms “on preventing and combating domestic violence in the Republic of Moldova”.

The concept of violence related to acts perpetrated in the family ‘domestic’ context and refers to the following notions of: “domestic violence, physical violence, sexual violence, psychological violence, spiritual violence, economic violence” as specified in art. 2 of this law. The only incident type outside of a family aggressor refers to sexual violence perpetuated in “other interpersonal relationships”, thus other situations of intimate partner violence. Along with the law that protects victims of trafficking in human beings[2], are the two categories of survivors protected by law in the Republic of Moldova, i.e., survivors of domestic violence (and other forms of intimate partner violence) and victims of trafficking in human beings (including for the purposes of sexual exploitation).

[1] LP45/2007 (legis.md)

[2] LP137/2016 (legis.md)

It is important to specify that art. 6 determines the scope of the law, which “applies equally to the citizens of the Republic of Moldova, foreign nationals and stateless persons living on its territory”.

The Criminal Code of the Republic of Moldova, COD Nr. 985 18.04.2002[3], outlines wider definitions of sexual violence in chapter IV. on ‘Sexual Offences’. Rape (Art. 171) is defined as “sexual intercourse committed by physical or mental coercion of the person or taking advantage of her/his impossibility to defend himself or to express her/his will”, thus is not based on consent for the intercourse but on coercion. “Homosexuality” “committed by physical or mental coercion of the person or taking advantage of his impossibility to defend himself or to express his will” is outlined in Art. 172 thus same-sex rape seems to be defined separately. Sexual harassment in Art.173 is defined as physical, verbal, or nonverbal behavior with the intention of having sexual intercourse or other undesirable sexual acts. and once again is referenced committed by threat, coercion, blackmail on not based on lack of consent.

Various forms of physical violence are outlined in the Criminal Code Chapter II (Crimes against a person's life and health), as well as in Chapter III (Crimes against the freedom, honesty, and dignity of the person) which includes deprivation of liberty, physical and psychological torture. These incidents are not defined as GBV specifically but in a wider context of harmful acts.

Core requirements in terms of assistance for survivors by the authorities are described in art. 8 of Law no. 45 including free 24/7 hotline services, cooperation between the sections / directions of social assistance and family protection and the police in the activity of identifying persons prone to committing acts of domestic violence; referral of cases to the specialists from the assistance / protection centers / services; the aggressor's access to the rehabilitation programs; establishment of centers / services for assistance and protection of victims of domestic violence and their children.

In addition, response mechanisms for survivors of GBV are also outlined by law no. 137 of 29.07.2016 on the rehabilitation of victims of crime[4].

According to art. 2, services for survivors include “a) informational counseling of the victims of crimes regarding their rights and the services they can benefit from; b) psychological counseling; c) legal assistance guaranteed by the state; d) financial compensation by the state for the damage caused by the crime. Further clarity is required concerning the process of financial compensation. By art. 3 are designated the competent subjects in providing services, being the Ministry of Health, Labor and Social Protection, “in cooperation with the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance, the General Prosecutor's Office, the National Council for State Guaranteed Legal Aid, the territorial subdivisions of social assistance, other central and local public administration authorities, as well as in cooperation with representatives of civil society”.

[3] LP137/2016 (legis.md)

[4] CP985/2002 (legis.md)

MANDATORY REPORTING

Survivors must be informed immediately upon disclosing an incident of the mandatory reporting procedures in place.

Each service provider should train staff to:

- Inform survivors about the staff's duty to report certain GBV incidents in accordance with laws or policies.
- Explain the reporting mechanism to the survivor; and
- Explain what the survivor can expect after the report is made.

In the Republic of Moldova, law no. 45 on preventing and combating domestic violence[5] indicates that in the case of adult survivors “responsible persons, other persons who know that there is a danger to the life and health of a potential victim must communicate this to the competent authorities with functions of preventing and combating domestic violence. In other cases, reporting will only be done with the consent of the victim.” At the same time, the legislator provided that the reporting of cases of violence against children, including reasonable suspicion of violence against children, is mandatory and does not need to be done with the consent of the victim[6]. In addition, law no. 137 on the rehabilitation of victims of crime which applies also to civil society service providers, indicates that service providers “have the obligation to notify the police if, from the conversation with the victim, they deduce that they are in danger”[7].

It is against best practice to require survivors to report to the police before accessing health care. It is strongly recommended that GBV and health care actors coordinate with the police to ensure survivors can access health care first and then choose whether to report GBV incidents to the police.

Mandatory reporting procedures that require survivors to first report to the police delay or obstruct survivors from seeking potentially life-saving medical care. Health care services are the first priority and must be provided regardless of the reporting circumstances.

GBV Standing Operating Procedures and referral pathways among health, police and GBV programme actors must uphold a survivor's right to choose where and when to report, and facilitate timely access to health care.

Interagency GBV Minimum Standards, p. 28.

[5] LP45/2007 (legis.md) article 12 (4)

[6] Article 12 (41) Law no. 45 on preventing and combating domestic violence
https://www.legis.md/cautare/getResults?doc_id=122822&lang=ro#

[7] https://www.legis.md/cautare/getResults?doc_id=110484&lang=ro

According to point 22 of the Instruction regarding the intersectoral cooperation mechanism in cases of family violence, "in cases of domestic violence with a high degree of risk to the life and/or physical and/or mental integrity of the victim, the specialists who identified/assisted the victim are obliged to immediately inform the Police and the territorial social assistance structure about the case and, as the case, Public Health Institution[8]". In other cases, the consent of the adult victim is required for reporting. If the victim does not give his/her consent, then the victim is informed about his rights.

If the victim gives his/her consent, then the case is reported to other authorities.

If the victim goes to the doctor/ reaches to the hospital, after the intervention/providing medical aid, the medical staff must report the case to the territorial police bodies in the following situations:

- 1) child-victims of any form of violence, without their consent;
- 2) acts of violence in the family that endanger the life or health of the victim or the existence of the imminent danger of such acts of violence occurring, without the consent of the victim;
- 3) persons with medium or serious bodily injuries caused as a result of a crime against them;
- 4) at the express request of the victim. In other cases, the case is reported to the police only with the consent of the victim.

Referring to persons with disabilities, the Instruction regarding the intersectoral cooperation mechanism in cases of family violence provides for at point 34, 3), (c) that if it is known that the victim of domestic violence or the aggressor is a person with mental and behavioural disorders, the police employee shall ensure the referral of the case and, if necessary, the accompaniment of the person to the community mental health centre, including the territorial social assistance subdivisions (TSAS)/community assistant, and in cases of psychiatric emergencies, the National Single Call Centre Service 112 shall be requested, with admission to a specialised hospital in accordance with the normative acts. Moreover, the point 34, 6) stipulates that if it is presumed that one or both of the subjects of domestic violence are persons with mental and behavioural disorders, they may be hospitalized in the psychiatric hospital, with or without free consent, with the stipulation of specific conditions.

The following provisions of the national legislation serve as the basis for the mandatory reporting of the case to the Police:

- Law no. 45/2007 on the prevention and combating of family violence (art. 12 par. (4) and (41)): Persons in positions of responsibility and professionals who are required to ensure confidentiality are obliged to report to the competent authorities about acts of domestic violence that endanger the life or health of the victim or about the imminent danger of such acts of violence occurring. In other cases, reporting will only be done with the consent of the victim.

[8] https://moldova.unwomen.org/sites/default/files/2022-08/Instructiuni%20mecanism%20intersectorial%20de%20interventie_25.05.%202022.pdf

- Reporting cases of violence against children, including reasonable suspicion of violence against children, is mandatory and does not need to be done with the consent of the victim. At the same time, the law stipulates that the victim's consent is not required in cases of medium or serious injury to body integrity or health, in cases of use of a weapon, in cases where victims are particularly vulnerable due to disability or reduced intellectual capacity.
- Law no. 263/2005 regarding the rights and responsibilities of the patient (art. 12 para. (4) letter e)): The presentation of confidential information without the consent of the patient or his legal representative (close relative) is admitted if there is reason to believe that the damage caused to the person's health is the result of illegal or criminal actions, the information to be presented, in this case, to the competent legal authorities.
- Law no. 264/2005 regarding the exercise of the medical profession (art. 13 para. (4) letter e)): The presentation of information that constitutes a professional secret to other persons without the consent of the patient or his legal representative is admitted in the case of certain circumstances in on the basis of which it can be assumed that the damage caused to the person's health is the consequence of an illegal action.
- Joint order of the Ministry of Health and the Ministry of Internal Affairs no. 369/145 of 20.05.2016 regarding the measures to improve cooperation between the Ministry of Health and the Ministry of Internal Affairs: The staff of medical and sanitary institutions, regardless of affiliation and legal form of organization, is obliged to immediately inform the territorial police subdivisions about the fact of granting medical aid to persons with medium or serious bodily injuries committed as a result of a crime against them.
- The instructions regarding the intersectoral cooperation mechanism for the identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking (Government Decision no. 270/2014): Representatives of medical and sanitary institutions, regardless of legal form of their organization, are obliged to immediately inform the local guardianship authority^[9] by phone, and within 24 hours to send them the notification form of the suspected case of violence, neglect, exploitation, child trafficking and, additionally, to inform the territorial inspectorate by the police/prosecutor's office - if they know or suspect that a child is a victim of a crime/contravention and the emergency medical assistance service - if the notification contains information regarding the existence of imminent danger to the child's life or health, of attempts to suicide by children.

Reporting the case to the police bodies is done by filling in and sending the Domestic Violence Case Reporting/Reporting Form from the Instruction regarding the intervention of medical and sanitary institutions in cases of domestic violence approved by Order of the Ministry of Health, Labor and Social Protection no. 1167 from October 15, 2019. If reporting to the police is not mandatory, and the victim does not express her consent for reporting, the medical worker must inform her about the existing risks in order to reduce their level.

[9] The mayors of villages (communes) and cities are considered local guardian authorities, and in the municipalities of Chisinau and Bălți - the sections/directorates of social assistance and family protection/the municipal directorate for child protection.

In humanitarian settings, all organizations are mandated to have protocols in place for the protection against sexual exploitation and abuse by humanitarian workers (see also Section 5 on Protection from Sexual Exploitation and Abuse). Organizations need to be clear on the reporting protocol and inform the survivor as to whom the case would be reported, what information would be shared, and what the expectations would be regarding the survivor's involvement.