



Physicians for  
Human Rights



## **Submission from Physicians for Human Rights and the Cardozo Law Institute in Holocaust and Human Rights in response to the International Criminal Court Office of the Prosecutor's Call for Updates of the 2014 Policy Paper on Sexual and Gender-Based Crimes**

**June 19, 2023**

Physicians for Human Rights (PHR)<sup>1</sup> and the Cardozo Law Institute in Holocaust and Human Rights (CLIHHR)<sup>2</sup> are pleased to provide this submission in response to the International Criminal Court (ICC) Office of the Prosecutor's (OTP) Call for Updates of the OTP 2014 Policy Paper on Sexual and Gender-Based Crimes (2014 Policy Paper).

The 2014 Policy Paper was a groundbreaking step forward in articulating the commitment of the OTP to prioritize redress for sexual and gender-based crimes (SGBC) and address barriers to achievement of this vision. This, along with the 2022 Policy on the Crime of Gender Persecution, establishes the commitment of the OTP to adopt a gender-competent perspective and to prioritize accountability for SGBC.

As an organization committed to addressing SGBC, PHR and CLIHHR offer this submission to suggest how the 2014 Policy Paper can be updated and further developed to articulate key principles in addressing SGBC occurring during and outside of conflict.

This submission will outline eight foundational principles that can guide the development and framing of the updated policy paper, and then will highlight practical tools, international standards, and reference materials to aid in implementing these principles in practice at all stages of accountability, including in investigations and victim and witness support.

### **A. Foundational principles for the updated policy**

Below, we outline several foundational principles based on the latest research on sexual and gender-based violence, its physical, social, psychological, behavioral, and societal impacts, and particularly how these impacts are manifested through sexual and gendered lenses. These principles are meant to establish frameworks for expected processes and practices that drive

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<sup>1</sup> Physicians for Human Rights is a US-based not-for-profit human rights NGO that uses medicine and science to document and advocate against mass atrocities and severe human rights violations around the world. PHR headquarters are in New York City, with offices in Boston and Washington, D.C

<sup>2</sup> Through innovative clinical law practice, groundbreaking scholarship, and close collaboration with local partners, CLIHHR works to protect human rights, prevent identity-based violence, and secure justice for survivors and communities in the wake of atrocity crimes.

programmatic and strategic design, as well as policy- and decision-making, to inform the OTP in all facets of its work, especially in investigations and prosecutions.

**1. Use a comprehensive trauma-informed approach at the institutional level and at all stages of the justice process.**

The 2014 Policy contains some references about the impact of trauma on victims/survivors and mentions efforts to minimize re-traumatization, both of which are elements of a trauma-informed approach. In the update, there is an opportunity to further explicitly and intentionally discuss this holistic approach, which has become the preferred practice (often the norm) in any/all sectors intersecting with traumatized clients or staff, including the Judicial system. A trauma-informed approach is founded on the principles of safety, trust, transparency, peer-support, collaboration, and mutuality of all engaged actors, with a focus on the empowerment, elevation of the voice and choice of the survivor or victim. It is also based on a foundational recognition of the importance of cultural, historical and gender issues in context.

All justice system stakeholders (e.g., interviewers, investigators, prosecutors, judges, defense counsel, etc.) should: expect the presence of trauma in all affected individuals; be trained to avoid replicating trauma (re-traumatization); and understand that trauma may affect survivors and/or witnesses' feelings, behaviors, abilities to recall and engage meaningfully with the proceedings, as well as may impact rehabilitation after legal proceedings end.<sup>3</sup>

A trauma-informed approach should be implemented in all stages and phases of the justice process, including investigation, interviewing, physical examination, communication, courtroom procedures, witness testimonies, perpetrator questioning, safety assessment, sentencing, and post-sentencing follow-ups and referrals, as well as redress mechanisms.

A trauma-informed approach requires a comprehensive assessment that would serve as the basis for an individualized management plan for each survivor or witness. It would also consider the trauma responses that may be experienced by all engaged staff and experts (e.g., vicarious trauma).

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<sup>3</sup> Substance Abuse and Mental Health Services Administration, SAMHSA's National Center on Trauma-Informed Care and SAMHSA's National GAINS Center for Behavioral Health and Justice: Essential Components of Trauma-Informed Judicial Practice. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013. [https://www.nasmhpd.org/sites/default/files/DRAFT\\_Essential\\_Components\\_of\\_Trauma\\_Informed\\_Judicial\\_Practice.pdf](https://www.nasmhpd.org/sites/default/files/DRAFT_Essential_Components_of_Trauma_Informed_Judicial_Practice.pdf); Griffin G, Germain EJ, Wilkerson RG. Using a Trauma-Informed Approach in Juvenile Justice Institutions. *Journ Child Adol Trauma*. 2012;5(3):271-283. doi:10.1080/19361521.2012.697100; Menschner C, Maul A. Key Ingredients for Successful Trauma-Informed Care Implementation. Center for Health Care Strategies Brief. 2016. <https://www.chcs.org/media/Brief-Key-Ingredients-for-TIC-Implementation.pdf>; Substance Abuse and Mental Health Services Administration. SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach. HHS Publication No. (SMA) 14-4884. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014. [https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA\\_Trauma.pdf](https://ncsacw.acf.hhs.gov/userfiles/files/SAMHSA_Trauma.pdf); National Judicial Taskforce to Examine State Court's Response to Mental Illness. State Court Leadership Brief. Trauma and Trauma-Informed Responses. June 2022. [https://www.ncsc.org/data/assets/pdf\\_file/0034/77677/Trauma-and-Trauma-Informed-Responses.pdf](https://www.ncsc.org/data/assets/pdf_file/0034/77677/Trauma-and-Trauma-Informed-Responses.pdf)

A trauma-informed institution would create standard operating procedures (SOPs) to train staff to communicate effectively and empathetically with affected individuals; eliminate or modify judicial or court procedures that could be perceived as intimidating or threatening; adjust the physical environment to create a more welcoming setting and enhance the sense of safety; and create processes to address and respond to occupational vicarious trauma.<sup>4</sup>

## **2. Use a survivor-centered approach to reinforce a justice-oriented response.**

The hallmark of any programming and response related to SGBC should be a survivor-centered approach. In alignment with a trauma-informed approach, a survivor-centered approach promotes survivors' empowerment, dignity, and agency, and prioritizes their rights, needs, and wishes. A survivor-centered approach highlights principles of confidentiality, safety, respect, and non-discrimination, and promotes healing, and recovery. An explicit and deliberate acknowledgement of the importance of centering the victim/survivor throughout the justice process would strengthen the update to the 2014 Policy. At the institutional level, this foundational approach is implemented and operationalized through organizational policies and structures, staff training, and attitudinal and cultural change.<sup>5</sup>

## **3. Adopt a rights-based approach in any justice process.**

Adopting a human rights-based approach means that individuals must be fully informed of their rights to participate in the processes and decisions that affect them, and that those in positions of power and authority may need support in strengthening their capacity to meet their obligations to respect, protect, and fulfill human rights.<sup>6</sup> The human rights-based approach centers those who are most marginalized, excluded, or face discrimination. This approach requires consideration of gender norms, different forms of discrimination and power imbalances to ensure that interventions reach the most marginalized segments of the population. Eight principles underlie a human rights-based approach: universality, indivisibility, equality and non-discrimination, participation, and accountability.<sup>7</sup>

The 2014 Policy Paper recognizes the obligation under Article 21(3) of the Rome Statute mandating the application and interpretation of the Rome Statute to be consistent with internationally recognized human rights principles and commits to considering acts of violence

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<sup>4</sup> *Id.*

<sup>5</sup> How can a survivor-centered approach address sexual violence? OpenGlobalRights. Accessed June 6, 2023. <https://www.openglobalrights.org/how-can-a-survivor-centered-approach-address-sexual-violence/>; Survivor-centred approach. Accessed June 6, 2023. <https://www.endvawnow.org/en/articles/1499-survivor-centred-approach.html>; UNICEF and Women's Refugee Commission. Caring for Survivors: A Principles Approach. <https://www.unicef.org/eca/media/15831/file/Module%202.pdf>; Gardsbane D, Majumdar P, Lanham M, Emick G. USAID. How to implement a survivor-centered approach in GBV programming. <https://makingcents.com/wp-content/uploads/2021/01/CARE-GBV-03-Survivor-centered-v9-508c.pdf>

<sup>6</sup> The Human Rights-Based Approach. United Nations Population Fund. Accessed June 8, 2023. <https://www.unfpa.org/human-rights-based-approach>

<sup>7</sup> UNSDG | Human Rights-Based Approach. Accessed June 8, 2023. <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>, <https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>

that pertain to sex as well as socially constructed gender roles.<sup>8</sup> The update of this policy provides the OTP with an opportunity to affirm its recognition of SGBC as potentially impacting a broad set of rights for survivors and victims, including the rights to life; health; non-discrimination and equality; privacy; freedom from torture and other cruel, inhuman, and degrading treatment; and personal security and physical, sexual, and psychological integrity.<sup>9</sup>

The OTP should also adopt a human rights-based approach more holistically, with the dual aims of supporting the empowerment of survivors through participation in the investigative and prosecutorial process and supporting capacity development across a wide range of OTP and national or community-based stakeholders to promote trauma-informed, survivor-centered documentation, investigation, and justice processes. This approach requires prioritizing the participation of survivors, including by supporting community and civil society efforts to address barriers to participation in accountability and justice processes, such as gender stereotypes and stigma around sexual or gender-based violence.<sup>10</sup>

A critical measure toward this end would be if the OTP, as part of its work articulating and implementing the updated policy paper, can promote local capacity to provide trauma-informed, survivor-centered care across referral pathways. This effort would build on the commitment in paragraphs 21 and 22 of the 2014 Policy Paper to provide more specific guidance or tools. For example, while the 2014 Policy Paper discusses consent in the context of elements of crimes, the new policy paper could also affirm and provide guidance on what constitutes free and informed consent for survivors. Such tools can also underscore the importance for all actors in the justice process to respect the survivors' privacy and confidentiality and to understand the role of gender stereotypes. Further, a human rights-based approach would ensure the participation of survivors and members of affected communities in the development of the OTP's SGBC policies.

#### **4. Recognize the myriad forms of sexual and gender-based violence.**

Research with survivors and by medical and social-science experts has expanded our understanding of what acts constitute sexual and gender-based violence, and how they differ based on the survivor or victim's gender, sexual orientation and gender identity, as well as cultural contexts.

With regards to sexual violence, this broadened understanding is captured, in part, by the 2019 Hague Principles on Sexual Violence.<sup>11</sup> Similarly, it is essential to continue to strengthen the

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<sup>8</sup> Office of the Prosecutor, Policy on Sexual and Gender Based Crimes, paras. 26-27.

<sup>9</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN Doc. CEDAW/C/GC/35.

<sup>10</sup> As the General Recommendation of the CEDAW Committee affirms, respect for human rights would "ensure that all legal proceedings, protective and support measures and services concerning victims/survivors respect and strengthen their autonomy. They should be accessible to all women, in particular those affected by intersecting forms of discrimination, take into account any specific needs of their children and other dependents,[] be available throughout the State party and be provided irrespective of residency status or ability or willingness to cooperate in legal proceedings against the alleged perpetrator."

<sup>11</sup> Women's Initiatives for Gender Justice. The Hague Principles on Sexual Violence. 2023. The Hague Principles. Accessed June 8, 2023. <https://thehagueprinciples.org/>

understanding of gender-based violence, including building recognition of reproductive crimes as a form of gender-based violence and augment the capacity to document, investigate, and prosecute such crimes specifically.

It is critical to remain flexible and nimble in our understanding of such acts (or psychological acts, i.e., exercise of control) and ensure that, as our knowledge expands, we have processes in place to consider some of them also as elements of international crimes, whether or not those crimes have been specifically identified as SGBC, as all international crimes can be gendered in their perpetration. For instance, enslaved children who are groomed to be raped in the course of their enslavement have experienced SGBV harms, whether or not they have been caused to engage in an act of a sexual nature.<sup>12</sup> Additionally, being more specific about certain acts (e.g., forced witnessing) that would fit under the Rome Statute’s Article 7(g) “any other form of sexual violence of comparable gravity,” or Article 7(k) “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health” is a way of incorporating a survivor-centered approach that could assist in identifying trends, aid in discerning culpability, acknowledge and fully account for the physical and mental human suffering, and support healing processes.

Finally, in line with the 2014 Policy commitment in Article 21 to “apply a gender analysis to all of the crimes within its jurisdiction,” the updated policy could commit to surfacing the gender dimensions of general crimes in investigations and prosecutions. For example, attacks on health can have a specific and distinct gendered impact, as documented in PHR’s report *She Pays the Highest Price: The Toll of Conflict on Sexual and Reproductive Health in Northwest Syria*.<sup>13</sup>

## **5. Center inclusion and intersectionality as core concepts.**

The principle of inclusion emphasizes a process that ensures individuals from diverse backgrounds – including the most marginalized ones, such as children<sup>14</sup> – are integrated into, and are central to, the development of policies, activities, and programs.

Inclusion is complementary to, and should be emphasized along with, intersectionality. Intersectionality recognizes that individuals face varying degrees of structural power imbalances due to the interconnectedness of their gender, socio-economic, religious, and/or cultural identities, among other factors. Such power imbalances may contribute to a heightened and/or differentiated

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<sup>12</sup> See Jocelyn Getgen Kestenbaum et al., Amici Curiae Observations on Sexual- and Gender-Based Crimes, Particularly Sexual Slavery, and on Cumulative Convictions in *The Prosecutor v. Ongwen*, pp. 8-12, ICC-02/04-01/15-1934 (Dec. 22, 2021).

<sup>13</sup> Another compelling example of a gendered analysis of the international crime of genocide is the Global Justice Center’s Report, *Beyond Killing: Gender, Genocide & Obligations under International Law* (Dec. 2018), <https://globaljusticecenter.net/files/Gender-and-Genocide-Whitepaper-FINAL.pdf>. Further, slavery crimes are sexualized and gendered in their perpetration as effective ways of exercising powers attaching to the right of ownership over persons. See Patricia Viseur Sellers & Jocelyn Getgen Kestenbaum, *The International Crimes of Slavery and the Slave Trade: A Feminist Critique*, in *GENDER AND INTERNATIONAL CRIMINAL LAW* (Rosenthal et al. eds., 2022).

<sup>14</sup> We acknowledge and laud the OTP’s parallel effort to revisit the Child policy and are proud to have submitted recommendations.

risk for SGBC and may affect access to care and treatment as well as justice and accountability processes.

The adoption and implementation of inclusive and intersectional policies and programs requires consideration of overlapping and compounding forms of marginalization at every stage of the justice process.

Gender, sexual and gender-identities should be considered when assessing the implications of actions, programs, policies, and legal processes, particularly when it relates to structural discrimination against people of diverse sexual orientations, gender identities, gender expressions and sex characteristics (SOGIESC) individuals and groups.

## **6. Use updated language and gender terms in the policy.**

Reflecting both international human rights law as well as the 2022 OTP Policy on the Crime of Gender Persecution, the updated SGBC policy should use inclusive definitions of gender.

Article 7(3) of the Rome Statute defines “gender” as referring to “the two sexes, male and female, within the context of society.” In the 2014 Policy Paper on Sexual and Gender-Based Crimes (2014 Policy Paper), the OTP established that this definition “acknowledges the social construction of gender and the accompanying roles, behaviours, activities, and attributes assigned to women and men, and girls and boys.”<sup>15</sup> The 2014 Policy Paper recognizes that “the Office considers gender-based crimes as those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles.”<sup>16</sup> Importantly, the 2014 Policy Paper distinguishes between “gender” and “sex,” defining the latter to refer “to the biological and physiological characteristics that define men and women.”<sup>17</sup>

PHR and CLIHHR urge the OTP to reaffirm the recognition of gender as a social construct and the plurality of gender in line with international human rights law and the findings of medical and public health experts and organizations. Numerous human rights bodies and experts have clarified that gender is a social construct that is used to justify inequality and that gender should not be conflated with sex.<sup>18</sup> The International Law Commission has called on States to be guided by the recognition of gender as a social construct by several international authorities and international criminal courts.<sup>19</sup> The legal understanding of gender adopted by the OTP in the 2014 Policy Paper,

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<sup>15</sup> The Office of the Prosecutor of the ICC, Policy Paper on Sexual and Gender-based Crimes, 3 (2014), <https://www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> See, e.g., Special Rapporteur on extrajudicial, summary, and arbitrary execution, et al., Letter to the International Law Commission re: Comments on the Crimes Against Humanity Convention (30 Nov. 2018), <https://www.ohchr.org/Documents/Issues/Executions/LetterGender.pdf>; CAT Gen. Comm. No. 2 (2007), para. 21; see also Valerie Oosterveld, The Definition of “Gender” in the Rome Statute of the International Criminal Court: A Step Forward or Back for International Criminal Justice?, 64 HARV. HUM. RTS. J. 55, 67 (2005) (citing Comm’n on Hum. Rts. Report of the Expert Group Meeting on the Development of Guidelines for the Integration of Gender Perspectives into U.N. Human Rights Activities and Programmes ¶ 13, U.N. Doc. E/CN.4/1996/105 (Nov. 20, 1995)).

<sup>19</sup>Report of the International Law Commission, ‘Seventy-first session (29 April – 7 June and 8 July – 9 August 2019)’ (UN 2019) UN Doc A/74/10, 45 [42].

the International Law Commission, and in international human rights law is consistent with the approach to gender articulated by leading medical and public health experts and organizations.<sup>20</sup>

Further, PHR and CLIHHR recommend the OTP to define gender-based crimes to include persons of diverse SOGIESC. PHR's research affirms the vulnerability of persons of diverse SOGIESC to sexual and gender-based violence, and the need for an inclusive definition of gender-based crimes to ensure accountability for all forms of sexual violence.<sup>21</sup>

The Policy Paper can play a critical role in promoting recognition that SGBC can occur across genders, not just to women. The update should affirm the commitment in the Gender Persecution Policy to ensure that there is no bias on the basis of gender in investigating and charging SGBC. Further, adjustments in language should be applied across all aspects of the justice process, including in all translations and interpretation (when linguistically possible).

### **7. Recognize the value of forensic medical evaluations and clinical documentation.**

Forensic medical evaluations – in the form of physical and mental health assessments, well beyond the use of DNA -- have a significant value as part of the justice process concerning international crimes, even when the evaluations are conducted weeks or months after the alleged criminal acts were carried out. Often, the forensic documentation of mental health harms experienced by the survivor is the only evidence available to show the presence of ongoing trauma and other psychological injuries.

Physical and mental health documentation of SGBC can be critical for evidence of perpetration, and important in identifying patterns of perpetration, which may be helpful in demonstrating criminal intent, common purpose, command or superior responsibility, or if crimes are assessed to be widespread or systematic. SGBC documentation can also be critical to document harm faced by individuals who experience sexual violence as part of a broader attack on civilians (e.g., where there is a broader attack, and sexual violence in an individual case is part of this incident), and consider what measures are necessary to promote reparation. Beyond the retributive justice process, forensic documentation has a critical role to play in transitional justice mechanisms. For example, health care workers' documentation of SGBC might be important in supporting reparations. Medical records can show which communities have faced

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<sup>20</sup> For example, the World Health Organization (WHO) defines gender as the “socially constructed characteristics of women and men – such as norms, roles and relations of and between groups of women and men.”<sup>6</sup> The WHO further affirms the critical impact that gender norms have on health, stating that “when individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices or social exclusion – all of which adversely affect health.” Multiple medical associations have echoed that gender is socially constructed and nonbinary; these organizations have called for the recognition that a person's gender identity may not align with sex assigned at birth.

<sup>21</sup> For example, in PHR's report *Sexual Violence, Trauma, and Neglect: Physicians for Human Rights Observations of Health Care Providers Treating Rohingya Survivors in Refugee Camps in Bangladesh*, health workers provided accounts of the distinct vulnerabilities and experiences of sexual violence faced by individuals who identified as transgender or gender fluid. The report further documented how binary and gendered understandings of sexual violence as only occurring to women and girls led to gaps in services to support men, boys, and transgender people in accessing services.

attacks, what the impact of such crimes may have been, and what type of care, including ongoing treatment and support, may be needed as part of reparations.

## **8. Develop and implement policy and practices through a consultative process and involve partners from affected communities.**

Policy developers should seek affected communities' input in designing and adopting any formal processes. Consultations would allow members of affected communities, including survivor groups, community leaders, local justice experts, local and international NGOs, to identify and articulate concerns, enable them to contribute their own suggestions. The consultative processes should be carried out, as much as possible, in the field and should be integrated in all stages of the justice process.

### **B. Best Practices**

In the following section, we provide a few examples of best practices and resources that are considered essential for ethical and trauma-informed justice processes involving sexual and gender-based crimes.

#### **1. Use evidence-informed, peer-reviewed, and standardized forms and protocols.**

The Policy Paper will be further improved through incorporating good practices from international standards and national legal contexts.

Use of standardized documentation tools and procedures, including standardized medico-legal forms for forensic medical evaluations, is critical to ensure that evidence collected from survivors of sexual violence crimes is probative and collected in a manner that can be admissible for justice processes. Use of standardized documentation of sexual violence has been shown to lead to better adjudication outcomes for survivors.<sup>22</sup>

Existing evidence-based international standards and practices should be cited and referenced whenever possible within the Policy Paper, as well as explicitly promoted in its implementation.

A number of international standards and protocols have been recently developed or updated with specific attention to the needs of survivors and centered on trauma-informed practices that can be applied throughout the justice process.<sup>23</sup> These standards and protocols include the revised Manual

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<sup>22</sup> Rachel Jewkes et al., *Medico-Legal Findings, Legal Case Progression, and Outcomes in South African Rape Cases: Retrospective Review*, 6 PLOS Medicine e1000164 (2009); Margaret J. McGregor et al., *Sexual assault forensic medical examination: is evidence related to successful prosecution?*, 39 Annals Of Emergency Medicine 639–647 (2002); Kelly Gray-Eurom et al., *The prosecution of sexual assault cases: correlation with forensic evidence*, 39 Annals of Emergency Medicine 39–46 (2002); Mette Louise B. G. Kjørulff et al., *The significance of the forensic clinical examination on the judicial assessment of rape complaints - developments and trends*, 297 Forensic Science International 90–99 (2019)

<sup>23</sup> Debra Komar et al., *A comparison of the international protocols for the forensic assessment of conflict-related sexual violence victims*, 66 JOURNAL OF FORENSIC SCIENCES 1520–1523 (2021); Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition), <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-0> (last visited Mar 15, 2023); Murad Code, Global Code of Conduct for Gathering and



on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (the Murad Code).<sup>24</sup> Additional sources for guidance and standards related to documentation/investigations, medical/forensic examinations, and legal/judicial processes regarding vulnerable populations include guidance published by the World Health Organization (WHO),<sup>25</sup> the Preventing Sexual Violence in Conflict Initiative (PSVI),<sup>26</sup> and the National Institute for Child Health and Development (NICHD).<sup>27</sup>

OTP investigators and clinicians should be trained to adhere to these standards, including, but not limited to, how to seek meaningful informed consent, a core concept of rights-based, survivor-centered, and trauma-informed practices.

## **2. Strengthen multisectoral trainings and networks.**

Multisectoral training recognizes the inherent benefits of coordination and collaboration among stakeholders of different disciplines and from different sectors. It seeks to improve the collection, documentation, preservation, use, reporting, and transfer of forensic evidence in cases of sexual violence within and among medical, law enforcement, legal sectors.

Physicians for Human Rights' Multisectoral Training on the Collection, Documentation, and Use of Forensic Evidence of Sexual Violence aspires to enhance the capacity of national medical, law enforcement, and legal professionals; and develop greater multisectoral collaboration among those professionals, to strengthen their own technical skills and capacities for gathering evidence and interfacing with survivors, but also working with each other collaboratively toward the overarching goals of establishing the facts concerning the crimes that occurred, holding those accountable for their offenses, and achieving justice for survivors and victims.

The trainings highlight the importance of the multisectoral response to sexual violence, and build skills to carry out forensic medical evaluations and interviewing techniques, evidence collection, and the presentation of evidence in trial, among other areas. While not a replacement for

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Using Information about Systematic and Conflict-Related Sexual Violence (2022), [https://static1.squarespace.com/static/5eba1018487928493de323e7/t/6255fdf29113fa3f4be3add5/1649802738451/20413\\_Murad\\_Code\\_EN.pdf](https://static1.squarespace.com/static/5eba1018487928493de323e7/t/6255fdf29113fa3f4be3add5/1649802738451/20413_Murad_Code_EN.pdf) (last visited Mar 15, 2023)

<sup>24</sup> OHCHR; MURAD CODE

<sup>25</sup> Guidelines For Medico-Legal Care For Victims Of Sexual Violence, <https://apps.who.int/iris/bitstream/handle/10665/42788/924154628X.pdf?sequence=1&isAllowed=y> (last visited Mar 17, 2023); WHO ETHICAL AND SAFETY RECOMMENDATIONS FOR RESEARCHING, DOCUMENTING AND MONITORING SEXUAL VIOLENCE IN EMERGENCIES, <https://www.who.int/publications-detail-redirect/9789241595681> (last visited Mar 17, 2023)

<sup>26</sup> International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law (Second Edition), [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf) (last visited Mar 17, 2023)

<sup>27</sup> Michael E. Lamb et al., *A structured forensic interview protocol improves the quality and informativeness of investigative interviews with children: a review of research using the NICHD Investigative Interview Protocol*, 31 *Child Abuse & Neglect* 1201–1231 (2007)

specialized training, multisectoral trainings equip service providers to collaborate with each other to pursue a survivor-centered process for prosecuting sexual violence crimes.

PHR's training is an evidence-based approach that, independent evaluations have shown, can a) improve coordination among sectors, b) enhance survivor-centered care; c) increase standardization of forensic practices within medical, legal, and law enforcement communities; and d) result in higher quality evidence collection.<sup>28</sup> Training participants in both the Democratic Republic of the Congo and Kenya have demonstrated increases in forensic knowledge after exposure to PHR's multisectoral trainings.<sup>29</sup>

There is a critical need to strengthen awareness and sensitize all members of the OTP team working on investigations and prosecution by training them on how to support survivors of gender persecution. For example, ICC investigators and prosecutors must be equipped to understand and recognize where crimes are rooted in regulation of gender norms, including in diverse cultural and social contexts.

### **3. Provide training to non-forensic clinicians.**

Because many cases fail due to lack of evidence or poor evidence, the presence of forensic medical evaluations may be critical for obtaining evidence of SGBC and may increase the likelihood of survivors in accessing justice. In some countries, only board-certified forensic specialists are authorized to conduct forensic medical evaluations as part of judicial processes. However, the high number of sexual and gender-based violence cases in current and previous conflicts that are being considered for prosecution by the ICC, coupled with the shortage of forensic physicians in those settings, make that restriction a fundamental impediment to a rights-based response to sexual and gender crimes. Governments and regulatory bodies should be urged to loosen such restrictions to expand the pool of those capable of conducting forensic medical examinations, partner with organizations and clinicians of different specialties, and facilitate their training.<sup>30</sup>

### **C. Conclusion**

A new Policy Paper on SGBC should reflect the latest legal, medical, and rights-based developments, evidence and guidelines related to the way all stakeholders engage with survivors, victims, and witnesses of SGBC throughout the justice process. Such guidelines and protocols reinforce the need to uphold the highest judicial, human-rights based practices as well as ethical standards.

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<sup>28</sup> Olson, Rose McKeon, Nelson, Brett D. Mike, Anastario Ulibarri, Billy J., Naimer, Karen, Johnson, Katy, McHale, Thomas, Mishori, Ranit, Macias-Konstantopoulos, Wendy L., Assessing Knowledge and Acceptability of a Trauma-Informed Training Model to Strengthen Response to Conflict and Gender-Based Violence in the Democratic Republic of Congo Violence and Victims 37(6): 739-767, Dec 2022, DOI :10.1891/VV-2021-0032

<sup>29</sup> Albezreh, S., Anastario, M., Ulibarri, B. J., Naimer, K., Johnson, K., McHale, T., Mishori, R., Macias-Konstantopoulos, W. L., Olson, R., & Nelson, B. D. (2022). Multiyear, Multisectoral Training Program in Kenya to Enhance Medical-Legal Processes in Response to Sexual and Gender-Based Violence. *Violence against women*, 28(14), 3311–3330. <https://doi.org/10.1177/10778012221099984>

<sup>30</sup> Mishori R, Naimer K, McHale T, Johnson K, Fateen D, Gillette-Pierce Z. To confront sexual violence, we must train non-forensic experts to perform medico-legal evaluations. *Med Sci Law*. 2022;62(2):149-153. doi:[10.1177/00258024211029075](https://doi.org/10.1177/00258024211029075)

The new Policy Paper will serve as an essential and valuable contribution in setting updated standards within the ICC as well as globally regarding effective and ethical ways to engage with survivors of SGBC during all phases of the justice process. In so doing, the new Policy Paper will provide an authoritative articulation of: the myriad ways in which SGBC are defined and manifested; the need to include men/boys, LGBTQI+ individuals' and communities' risk and violence burden and the corresponding use of more updated and inclusive language and terminology; the imperative to engage in the justice process via 'do no harm' principles, facilitating meaningful informed consent and survivor/witness empowerment; the benefits of standardizing documentation and of the importance of forensic medical evaluations, training all stakeholders in trauma-informed approaches; and the need to carry out multisectoral training so that medical, law enforcement and legal professionals engage with SGBC victims/survivors/witnesses in a manner that enhances inter- and intra-sectoral communications, operations, practices, and, ultimately, strengthens ethical—and lessens harmful—justice processes.

To enhance sustainability, efforts are needed to enhance local capacity to adopt these practices and adapt them to the unique setting in which they are practiced. The OTP should invest in and promote local capacity building centering these standards and approaches to ensure the sustainability of such efforts and to bolster longer-term transformative justice measures and proceedings.