SHORTCOMINGS IN ROMANIAN POLICIES AND LEGISLATION ADDRESSING SEXUAL VIOLENCE:

Sexual violence referral centres as best practice

BREAKING THE SILENCE ON SEXUAL VIOLENCE

2016

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1. BACKGROUND: SEXUAL VIOLENCE IN ROMANIA – STATISTICS, SHORTCOMINGS AND SOLUTIONS

Almost **28.5% of women** (3 million women) **in Romania are victims of physical and/or sexual violence** throughout their lives, and **6% of women** (600,000 women) fall victim to **sexual violence.**[1] Thus, sexual violence constitutes a matter of national public health which requires urgent action. Moreover, **sexual violence is one of the least reported and sanctioned crimes**. In 2014, the Romanian Police recorded 875 cases of rape,[2] while the Office of the Public Prosecutor indicted 469 individuals on charges of rape.[3] A comparison of the data recorded by the Police with the data collected during the aforementioned survey reveals that **less than half of the cases of sexual violence are reported**. This conclusion raises questions regarding the vulnerability of victims and their access to justice, specifically the process of collecting evidence in cases of sexual violence.

In Romania, social services for victims of domestic violence and sexual violence are profoundly underdeveloped and fall significantly behind the European average, in that, for instance, **there is no national helpline for victims of sexual violence** and **71% of necessary shelter places for women are missing**, according to the European standards which recommend one shelter place for 10,000 inhabitants.[4] Furthermore, **Romania lacks emergency sexual assault referral centres or specialized units within the emergency hospitals**. Additionally, according to Law No. 217/2003 on preventing and combating domestic violence, the access to shelters is guaranteed only to women who are victims of domestic violence. Consequently, the victims of sexual violence cannot be

[1] European Union Agency for Fundamental Rights, *Violence against Women. An EU-wide survey*, 2014, available at: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf
[2] Romanian Police (in Romanian) - http://www.politiaromana.ro/ro/utile/statistici-evaluari/statistici
[3] Ministry of Internal Affairs, the Office of the Public Prosecutor at the High Court of Cassation and Justice, Activity Report, 2014.
[4] Council of Europe, Combating violence against women: minimum standards for support services, 2008; WAVE, *Country Report Romania*, 2013, http://fileserver.wave-network.org/researchreports/COUNTRY_REPORT_2014.pdf .

accommodated in these centres unless the abuse was perpetrated by a family member. Additionally, victims of sexual abuse cannot request protection orders against perpetrators unless the abuse takes place in the family. The criminal investigation is also conditioned upon the submission of a complaint, which on many occasions exposes the victim to the risk of secondary victimisation and to acts of intimidation and harassment by the perpetrators, their family, or even by the community, who often blame the victim for the abuse.

Romania lacks a national policy concerning reproductive health, as well as a national strategy to prevent and combat sexual violence. The services afforded to victims of sexual violence are regulated by three different domestic legislative instruments and the European Victims' Directive, which is not properly transposed into domestic legislation. In practice, the fact that these instruments are not properly coordinated **increases the victims' burden in accessing services and justice**. In order to report abuses and benefit from specialized services (which in reality may not even exist), victims must fill out multiple forms and give numerous declarations describing and reliving the trauma, submit documentation proving the abuse, be familiar with the provisions of the three legislative instruments, and contact at least four different institutions. For instance, within 24 hours of the abuse and before removing the forensic evidence from the body, victims must reach a forensic unit. It is thus obvious that victims do not have access to integrated and adequate services, or to measures of special protection. Additionally, victims are treated disrespectfully, their allegations are treated as lacking credibility, and overall victims do not have effective access to justice. The reasons most often invoked by victims for not submitting complaints or for withdrawing their complaints refer to: feelings of shame and guilt, which may be aggravated by the authorities and medical personnel dealing with the victims; complicated procedures; harassment and intimidation inflicted upon the victims by perpetrators and their families; and the risk of repercussions, in the cases where the perpetrator is a member of the victim's family or a person with a certain degree of authority in relation to the victim.

The failure to intervene rapidly, adequately and with no cost for the victims has very serious consequences not only for the victim but for society in general. In addition to psychological stress (post-traumatic stress, anxiety, fear, depression, low self-esteem, suicidal thoughts, etc.), victims' health may become aggravated (infections, sexually transmitted diseases, including HIV/AIDS, unwanted pregnancies, etc.). This situation incurs additional health costs on public authorities and insufficient contributions to the labour market. Furthermore, the fact that cases of abuse remain largely unreported and the procedures for collecting evidence become more complicated creates a climate of impunity where the perpetrators go unsanctioned and the social danger of such abuses remains present.

Consequently, to provide victims of sexual violence with immediate, coordinated and integrated services, the establishment of **sexual violence referral centres** is imperative. These centres would provide the following services: emergency medical care, forensic assistance, psychological assistance, legal support, as well as information and referral of victims to medium- and long-term assistance services.

2. VICTIMS' INTERINSTITUTIONAL PATH: OBSTACLES TO ACCESS JUSTICE AND SUPPORT SERVICES

Victims of sexual violence must pay attention to extremely complicated procedures in order to denounce abuses and obtain support. These procedures encompass the following steps:

I. Emergency Reception Centres: In emergency situations, victims may call the **emergency help line 112**. The emergency reception centres can provide immediate medical care, counselling and emergency contraception. They can also contact the police in the event that the victim is a minor.

II. Hospital/Medical Unit: Victims must go to the hospital in order to receive medical care, which may include caring for wounds, emergency contraception, treatment for sexually transmitted diseases and infections, short duration psychological assistance and support. Victims must request medical exams and documents bearing the official insignia of the institution and the doctor's signature and stamp.

III. The Forensics Institute: Victims must go to a forensics unit to undergo a sexual assault forensic exam and obtain a certificate attesting the assault. The certificate is issued a maximum of 7 days from the day of the exam or the day the doctors submitted the medical exam results (Order 1134/2000). The sexual assault forensic exam is meant to collect evidence in relation to the following aspects: the occurrence of the sexual act; the constraint exercised on the victim (physical injuries, medical and toxicology screening, psychological exam); the gravity of the injuries suffered; identification of the perpetrator. Conducting a sexual assault forensic exam requires a detailed procedure. DNA evidence must be collected in maximum 24 hours after the assault, if possible, without an attempt by the victim to remove the evidence in any way. In the case of sexually transmitted infections, the victim must undergo periodic examinations, because some infections do not produce symptoms immediately. The issuance of the forensic exam certificate costs 100 RON, according to information available on the website of the Ministry of Health.[5]

IV. Filing a criminal complaint: A criminal complaint can be submitted either at a police station or at the Office of the Public Prosecutor. The Police investigates the complaint, collects evidence about the alleged facts, records the declarations of victims, identifies and questions the suspects, prepares the files to be submitted to the Public Prosecutor, and facilitates victims' access to emergency medical services and forensic services. According to numerous studies and testimonials, victims of sexual violence are treated with disbelief or are blamed for the aggression they had suffered; as a consequence, the complaints are not recorded or the investigations are summarized. This attitude is based on perceptions that only certain categories of women are raped (promiscuous women) or that victims are responsible for the occurrence of rape given their clothing or behaviour. It is also based on stereotypes regarding victims. Such stereotypes imply that all women react in the same way to rape: victims should shout and show signs of resistance. This attitude is detrimental to victims, in that victims need to feel safe, not judged or blamed, to be in a space where confidentiality is respected.

V. Following the submission of the criminal complaint, police require the forensic certificate and then **issue a criminal file.**

[5] http://www.ms.ro/documente/Tarife%20ML%201_1041_2098.pdf

VI. Victims may make requests for **psychological counselling.** The request must contain: the date, place and circumstances of the assault, the date when the criminal complaint was submitted, evidence and documentation (Order 211/2004). In practice, psychological counselling services are rarely available. Victims usually appeal to psychiatric clinics or private psychological services.

VII. Victims can file requests for **legal aid and financial compensation** only upon having first reported the facts to the police, public prosecutor or judge a maximum 60 days from the date of the assault.

VIII. In the case of **underage victims**, the social assistance and psychological assistance services are provided by the local General Direction for Social Assistance and Child Protection.

IX. Victims of human trafficking who suffered sexual violence are offered evaluation and assistance services by personnel within the Regional Anti-trafficking Centres.

Non-governmental organisations in Cluj, Sibiu and Targu-Mures offer assistance services to victims of sexual violence:

Asociatia pentru Libertate si Egalitate de Gen – A.L.E.G. (Association for Liberty and Equality of Gender) launched in 2014 a **pilot centre of online counselling for victims of sexual violence**. Currently, it is the only free of charge service in Romania dedicated especially to victims of sexual violence.

Centrul de Actiune pentru Egalitate si Drepturile Omului – ACTEDO (Equality and Human Rights Action Centre - ACTEDO) offers victims of sexual violence **pro bono legal services and counselling to facilitate victims' access to justice.**

Although sexual violence constitutes a serious problem in Romania, there is no public or private institution to act as a focal point at the local or the national level, with the exception of the **informal Network on Breaking the Silence on Sexual Violence**. Thus, there is no mechanism to monitor and evaluate inter-institutional responses to sexual violence.

3. SEXUAL VIOLENCE: DEFINITIONS AND CLASSIFICATION

Sexual violence against women constitutes a grave violation of human rights, which affects women's dignity and integrity, as well as a form of discrimination against women, as this form of violence affects women for being women (See: Convention on the Elimination of Discrimination against Women and the corresponding General Recommendation No. 19). This form of violence derives from certain beliefs, such as social and cultural norms, which tolerate the use of violence as a form of human sexuality.

Some forms of sexual violence are more obvious, in that they involve physical violence and are committed by strangers, while other forms of sexual violence remain hidden, as oftentimes they involve persons close to the victims (family members, friends, teachers, acquaintances).

The most frequent forms of sexual violence are:

- Rape, including marital rape: Non-consensual acts, involving vaginal, anal or oral penetration of a sexual nature, irrespective of whether penetration takes place with a body part or an object.

- Sexual aggression: Unwanted physical conduct that a person must tolerate or is forced to perform, as well as sexual stimulation behaviour that a person must tolerate or is forced to perform.

- Sexual harassment: Unwanted repeated requests of a sexual nature.

- Forced prostitution/human trafficking with the purpose of sexual exploitation: Causing persons to engage in sexual acts with one or more persons in exchange for financial compensation.

- Constraining persons to perform unprotected intercourse and/or forbidding contraception

- Forced sterilization or forced pregnancy

Many of these forms of sexual violence are criminalized in the Criminal Code as crimes against freedom and sexual integrity and are sanctioned with detention. When such crimes occur, **criminal investigations are prompted by the criminal complaint filed by the victims. Crimes of a sexual nature are not investigated *ex officio*, and this fact often results in the perpetrators' impunity.**

4. LEGISLATIVE FRAMEWORK REGARDING SEXUAL VIOLENCE

1.1. In Romania

- **Law 211/2004** on the protection of victims of crimes.

- **Law 217/2003** on preventing and combating domestic violence, provided that sexual violence occurs in the context of the family. In this case, victims of sexual violence benefit from emergency shelters. The number of shelters for women is, nonetheless, insufficient.

- **Law 678/2001** on preventing and combating human trafficking if the victim of sexual violence is also a victim of human trafficking.

According to legislation currently in place in Romania, victims of sexual violence are entitled to the following:

- Right to information from judges, prosecutors, police agents (Art. 4 Law 211/2004).

- Psychological counselling provided by Probation Services (Art. 8 – 10 Law 211/2004). In practice, however, these services are not available. The information regarding the mandate

of the National Direction for Probation does not include psychological services for victims of sexual violence.[6]

- Legal aid, provided that the victim reported the assault within 60 days from the date of the assault to the police, public prosecutor or local court (Art. 14 – 16 Law 211/2004).

- Financial compensation if the victim reported the assault to the police, public prosecutor or local court (compensation covers medical expenses, material damage, loss of profit; compensation amounts to the maximum value of 10 minimum wages) (Art. 21 – 23 Law 211/2004).

1.2. In the European Union and at international level

- **Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)**. Romania signed the Convention on 27 June 2014; the Government approved the legislative project ratifying the Convention on 23 September 2015. The Convention does not produce as of yet legal effects in Romania.
  - Article 25 of the Convention prescribes the establishment of **sexual assault referral centres** that are easily accessible to victims and in sufficient number in order to facilitate forensic medical examinations, post-traumatic assistance and counselling for victims.

- **European Union Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime**:

  - **Effective access to justice**, which implies that victims are able to provide evidence and detailed accounts of the circumstance of the assault.

  - **Specialist support services** for victims of sexual violence and **special protection** of victims, because of the high risk of secondary and repeated victimization as well as the risk of intimidation and retaliation associated with this form of violence (Art. 17).

  - **Special protection measures**, provided that the assault occurred in a close relationship or by a family member (Art. 18).

  - Specialist support services should be based on an **integrated and targeted approach** and to take into account victims' special needs, the severity of the harm suffered as well as of the relationship between victims, the offenders, children and their wider social environment (Art.38).

  - **Specialist support services** include shelter and safe accommodation, immediate medical support, referral to medical and forensic examinations in the case of rape or sexual assault, short- and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct and indirect victims (Art. 38).

[6] http://www.just.ro/MinisterulJusti%C8%9Biei/Organizare/Direc%C5%A3iileMJ/Serviciideproba%C8%9Biune/tabid/2931/Default.aspx

- **Informing** victims in relation to their rights as prescribed in this Directive.

Unlike the national instruments (in particular Law 211/2004), the Directive 2012/29/EU mentions that **the provision of support to victims of sexual violence should not depend on victims' submission of criminal complaints to the competent authorities** (Art. 40).

5. SOLUTIONS: SEXUAL VIOLENCE REFERRAL CENTRES

WHAT?

Sexual assault referral centres are emergency reception units for victims of sexual violence, which provide integrated adequate support services free of charge. Victims benefit from short-term shelter, medical, forensic, psychological and legal assistance as well as from information regarding the legal procedures to which they have access.

The organizations associated with the informal Network on *Breaking the Silence on Sexual Violence* propose the following model for the establishment of sexual assault referral centres.

HOW?

An adequate support for victims implies an immediate, coordinated and integrated response in the framework of emergency reception units. These units should:

- Offer **emergency medical care**, including emergency contraception, treatment of injuries, and treatment of sexually transmitted diseases, including, but not limited to, HIV.
- **Inform** victims of the procedures they are undergoing and potential risks. Specialized medical personnel should treat victims with respect, professionalism and understanding of the trauma of sexual violence.
- Offer support for the **medical forensic examination** within 24 hours. The medical unit should be adequately equipped with rape kits and the medical personnel should be trained to identify injuries and collect DNA evidence in a sensitive and empathetic manner.
- Contact the police if victims wish to file **criminal complaints** and to offer victims assistance in this sense.
- Offer **immediate psychological counselling** and refer the victims to other long-term services (psychological counselling, support groups etc.) on the basis of a clear referral system and protocols to assist and care for victims.
- Offer **practical assistance**, such as clean clothing (in case victims' clothing is used as evidence); essential products, including water, food; reassurance that children benefit from protection and care; and transportation to the victims' homes or other safe place following the treatment.

The response unit should also ensure victims' confidentiality, respect their privacy and ensure their safety. The emergency reception centres should also increase the number of women staff and ensure that all members of staff involved in responses to sexual assault are familiar with the principles of victims' protection.

Ideally, **helplines** should be made available at national level 24/7. Helplines would ensure that victims of rape would receive emergency counselling free of charge. These helplines could also be served by volunteers.

The sexual assault referral centres could also function as a centre of victims' referral to other services.

WHERE?

The sexual assault referral centres could be initially integrated in the **emergency reception units of medical units and hospitals**. The following reasons justify this recommendation:

1. Doctors and medical personnel are most frequently contacted in the case of sexual violence, as confirmed by a study undertaken by the European Union Agency for Fundamental Rights.[7] Thus, medical facilities are most likely to identify the cases of sexual violence, inform the police, collect DNA evidence, and initiate the intervention process to support victims.
2. First of all, victims of sexual violence require medical care due to the physical injuries suffered, the potential risks of sexually transmitted diseases, and the risk of an unwanted pregnancy.
3. From a legal perspective, the collection of DNA evidence is time sensitive. Such evidence must be collected within 24 hours from the assault and before the victim removes the evidence from the body.

Although we consider hospitals as the ideal institutions to establish the sexual assault referral centres, the Network does not exclude the possibility that these centres could function in the framework of social services.

WHO?

The sexual assault referral centres require the following staff, as a minimum:

- **1 case manager**, who has the first contact with the victim, informs her of the procedures at the centre and guides the victim towards the necessary medical procedures
- **1 doctor**, who offers the emergency medical assistance, including screening of sexually transmitted diseases and corresponding treatment, care for physical injuries, and emergency contraception, among other services.
- **1 psychologist**
- **1 social assistant**
- **1 forensic specialist**
- **1 legal counsellor**

WHY?

The **sexual assault referral centres** constitute the best solution for victims, because:

[7] European Union Agency for Fundamental Rights, *Violence against Women: an EU: wide survey*, 2014, available here: http://fra.europa.eu/sites/default/files/fra-2014-vaw-survey-main-results-apr14_en.pdf

- ✓ They integrate multiple sectors (medical, psycho-social and legal) in order to provide an efficient response to sexual violence.
- ✓ They offer emergency shelter and confidentiality for victims to discuss and address the assault.
- ✓ They reduce the number of procedures that victims must currently undertake with different institutions in a decentralized manner.
- ✓ They gather specialists in a single institution; as a result, the risk of secondary victimisation is reduced.
- ✓ They provide immediate support.

6. CONCLUSIONS AND RECOMMENDATIONS

Considering the needs of victims of sexual violence and the Romanian state's obligation to protect victims, provide them support services and adopt concrete measures to prevent and sanction violence against women, including sexual violence, the informal Network *Breaking the Silence on Sexual Violence* presents the following recommendations, which will improve victims' situation and benefit the whole society.

- Establish **sexual violence referral centres** for victims of sexual violence in the framework of emergency reception units in order to provide victims an immediate and coordinated response, in accordance with Art. 25 of the Istanbul Convention and the provisions of Directive 2012/29/EU.
- **Respect international treaties and instruments** regulating responses to sexual violence and the effective implementation of the Istanbul Convention and the Directive 2012/29/EU.
- Establish a **protocol regulating multi-sectoral collaboration** in order to provide integrated support services to victims.
- Ensure the sexual violence referral centres are adequately financed.
- Ensure, within these centres, adequate services necessary for victims of sexual violence (emergency medical treatment, forensic exams, psychological counselling, legal counselling, etc.) and the implementation of minimum standards, in accordance with the standards imposed by the Council of Europe
- Institute and implement procedures and protocols guiding interventions in situations of sexual violence, and integrate them in the training of specialized personnel (emergency medical personnel, police, psychological services, and legal assistance).
- Pursue the offenders' criminal responsibility, imposing concrete sanctions proportional to the severity of the offense, and protect victims during legal investigations and proceedings.
- Develop a system of training of specialized personnel
- Define and implement a strategy of prevention for sexual violence and gender-based violence targeted at different groups (educational programmes for children, the general public, mass-media, and professionals, etc.).

The informal Network *Breaking the Silence on Sexual Violence* is composed of the Centrul de Actiune pentru Egalitate si Drepturile Omului – ACTEDO (Equality and Human Rights Action Centre - ACTEDO) (coordinator), Asociatia pentru Libertate si Egalitate de Gen- A.L.E.G. (Association for Liberty and Gender Equality), Centrul FILIA (FILIA Centre), Asociatia Front, Asociatiapentru Promovarea Drepturilor Femeilor Rome E-Romnja (Association for the Promotion of the Rights of Romani Women E-Romnja), Institutul Est European pentru Sănătatea Reproducerii (East European Institute for Reproductive Health), Asociația Femeilor Împotriva Violenței AFIV -Artemis (Association of Women against Violence AFIV -Artemis), CPE – Centrul Parteneriat pentru Egalitate (Equality Partenership Centre), Societatea de Analize Feministe AnA (Society of Feminist Studies AnA), Grupul QUANTIC (QUANTIC Group), Asociația Pas Alternativ (Association Alternative Step), Asociația Psihosfera (Association Psihosphera), Centrul de Mediere și Securitate Comunitară (Centre for Mediation and Community Safety), Asociația VIVAD (Association VIVAD), Asociația Atena Delphi (Association Atena Delphi), Asociația Transcena (Association Transcena), Asociația Anais (Association Anais), Centrul Euroregional pentru Inițiative Publice (Euroregional Centre for Public Initiatives), Grupul informal "NU Înseamnă NU" (informal Group "NO Means NO").

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Contact: Alexandra Columban (ACTEDO), alexandra.columban@actedo.org

For further information, visit: www.violentadegen.ro

Promoter:

ACTEDO
Centrul de Acțiune pentru Egalitate și Drepturile Omului

Partners:

Members:

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