



Physicians for
Human Rights

dr. Denis
Mukwege Foundation



**MINISTÈRE
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STRENGTHENING FORENSIC DOCUMENTATION OF TORTURE AND CONFLICT-RELATED SEXUAL VIOLENCE IN UKRAINE

Technical Assessment and Key Recommendations

May 2024

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EXECUTIVE SUMMARY

In the years since the full-scale invasion of Ukraine by the Russian Federation, evidence has mounted of systematic and widespread torture and incidents of rape and sexual violence that also constitute war crimes.¹ According to the Ukrainian Prosecutor General's Office, since the beginning of the full-scale Russian aggression, as of February 2024, prosecutors have recorded 270 cases of conflict-related sexual violence,² though these are widely believed to under-estimate the true prevalence of conflict-related sexual violence and torture.³ Since 24 February 2022, OHCHR has documented 169 cases of sexual violence (101 men, 63 women, 4 girls, 1 boy) perpetrated by members of the Russian armed forces, law enforcement officials or penitentiary staff. Of these cases, 135 occurred within the context of detention, affecting 56 civilians (37 men, 18 women, 1 boy) and 79 prisoners of war (POWs) (63 men, 16 women).⁴ The Independent International Commission of Inquiry concluded that "in the context of their full-scale invasion of Ukraine, Russian authorities have committed a wide array of violations of international human rights law and international humanitarian law, as well as war crimes... of torture, wilful killing, rape and sexual violence [...]. The evidence gathered reinforced the Commission's previous findings that Russian authorities had used torture in a widespread and systematic way."⁵

From November 28 to December 6, 2023, Physicians for Human Rights (PHR), with the support of the Dr. Denis Mukwege Foundation, undertook an assessment of the clinical, legal, and technological capacity in Ukraine to conduct forensic medical documentation of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment cases, encompassing trauma-informed and survivor-centered approaches and patient privacy protections. Our assessment and analysis, based on 21 in-person and remote interviews as well as desk research, has revealed several promising opportunities for strengthening of the forensic documentation system.

This assessment maps the specific and persisting challenges survivors and medical and legal professionals are experiencing in Ukraine in implementing survivor-centered and trauma-informed practices for documenting forensic evidence of sexual violence and torture. It also identifies short-term and longer-term recommendations for action for government officials in Ukraine as well as international justice sector actors. Drawing on international standards and evidence-based protocols⁶ for forensic documentation that have been developed and enhanced in recent years as well as country-specific research and interviews, this report assesses opportunities to strengthen medical-legal documentation of these human rights violations through capacity development, legal and policy reform, and the introduction of new low- and high-tech interventions.

1 Human Rights Council, Report of the Independent International Commission of Inquiry on Ukraine, U.N. A/HRC/55/66, March 18, 2024, para. 86, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/a-hrc-55-66-aev.pdf>

2 Report of the Prosecutor General's Office on CRSV cases as of February 1, 2024, on file. Since the beginning of the full-scale invasion, prosecutors have recorded 270 facts of CRSV (men – 97, women – 173, 13 of them are minors – 12 girls and 1 boy [other type of sexual violence not related to rape], among them there are such types as rape, mutilation or violence to genitals, forced nudity, threats and attempts to rape, forcing to watch sexual abuse of a family member, etc. Currently, the highest number of cases of sexual violence has been recorded in Kherson region – 79, Kyiv region – 53, Donetsk region – 73, Kharkiv region – 27, Zaporizhzhia region – 17, Chernihiv region – 6, Luhansk region – 3, Mykolaiv region – 10, and Sumy region – 2.

3 The UN estimates that the number of survivors of sexual violence during the war may be 10 to 20 times higher than the official figures. "Mobile Survivor Relief Centres launched in Ukraine to support people affected by war," UNFPA, https://ukraine.unfpa.org/en/launch_Mobile_SRC_ENG; Human Rights Watch cite stigma, shame, and fear of reprisals as barriers that prevent survivors from seeking help. World Report 2024, Ukraine, Human Rights Watch, <https://www.hrw.org/world-report/2024/country-chapters/ukraine#9f5023>

4 Report on the human rights situation in Ukraine, OHCHR, August 1, 2023 – November 2023, <https://www.ohchr.org/sites/default/files/2023-12/23-12-12-OHCHR-37th-periodic-report-ukraine-en.pdf>

5 Report of the Independent International Commission of Inquiry on Ukraine, A/HRC/55/66, March 18, 2024, <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/a-hrc-55-66-aev.pdf>

6 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Istanbul Protocol") HR/P/PT/8/Rev. 2, available at: https://www.ohchr.org/sites/default/files/documents/publications/2002-06-29/Istanbul-Protocol_Rev2_EN.pdf. United Kingdom: Foreign and Commonwealth Office, International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, June 2014, available at: <https://www.refworld.org/docid/53f2fed34.html>

The study focused on assessing workforce capacity to conduct forensic medical evaluations, including skills, training, staffing, multisectoral collaboration and systemic challenges, enabling legal and regulatory environment, standardization of forensic documentation, survivor access to reporting, resources and support, and technology readiness, capacity and infrastructure.

Since the start of the full-scale invasion of the country in February 2022, Ukrainian authorities have implemented several positive reforms, including, for example, the establishment of a new, specialized unit within the Prosecutor General's Office to investigate cases of conflict-related sexual violence as well as a Coordination Center for Victim and Witness Support. That said, the assessment also revealed several significant barriers hindering effective response to conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment cases. These included the absence of standardized documentation forms essential for capturing comprehensive information and probative evidence, along with a lack of coordination among investigative, medical, and legal professionals. Additionally, existing legal, regulatory, and policy limitations restrict the pool of experts qualified to conduct forensic documentation. Furthermore, there is a notable deficit in high-quality, multisectoral, and standardized capacity-development and training opportunities aimed at enhancing the skills of medical, law enforcement, and legal professionals, and fostering trauma-informed, survivor-centered approaches to forensic documentation, as well as promoting collaboration across sectors.

With current momentum in Ukraine to ensure that sexual violence and torture are appropriately legislated as international crimes, proposals to strengthen the legal framework for investigations and comprehensive policy reform within the forensic sector are especially timely. Elements for reform should include:

- integrating non-forensic experts into the forensic documentation process;
- sensitizing all relevant medical and legal stakeholders of the merits of forensic medical evaluations;
- standardizing medical-legal forms;
- training clinicians and forensic experts across sectors;
- undertaking legal reforms to facilitate the acceptance of evaluations from both domestic clinicians and international experts, ensuring accessible and uniform documentation nationwide; and
- adopting legislation to facilitate investigation and prosecution of conflict-related sexual violence by harmonizing the criminal code with international criminal law concerning sexual violence.

These potential reforms may create a more receptive environment to explore the possibility of integrating digital solutions such as MediCapt, PHR's mobile application for forensic documentation, which can only be adopted after the strengthening of multisectoral collaboration to undertake quality forensic examinations as well as the adoption of tools such as a standardized forensic documentation form.

Taken together, these reforms hold immense potential to support the Ukrainian government in its goal to support survivors in their access to justice and to pursue accountability for these violations of international law.

I. INTRODUCTION

From November 28 to December 6, 2023, Physicians for Human Rights, with the support of the Dr. Denis Mukwege Foundation, undertook an assessment of various aspects of Ukraine's forensic capacity and pathways, including the clinical capacity in Ukraine to conduct forensic medical documentation of conflict-related sexual violence and torture, cruel, inhuman, or degrading treatment or punishment cases, encompassing trauma-informed and survivor-centered approaches. Our assessment and analysis, based on 21 in-person and remote interviews as well as desk research, has revealed several opportunities for strengthening forensic documentation.

Since the start of the full-scale invasion of the country in February 2022, Ukrainian authorities have implemented several positive reforms, including, for example, the establishment of a new, specialized unit within the Prosecutor General's Office to investigate cases of conflict-related sexual violence as well as a Coordination Center for Victim and Witness Support.

Recent National Initiatives to Strengthen Investigations of Conflict-Related Sexual Violence

In 2022, the Prosecutor General's Office established a specialized unit dedicated to investigating crimes of sexual violence in conflict.

The strategic approaches prioritizing the needs of victims and witnesses in handling such cases were integrated into the Prosecutor General's Office Development Strategy for 2021-2023 and are now routinely employed by specialized prosecutors.

In April 2023, the Prosecutor General approved the Concept of Implementation of the mechanism of support for victims and witnesses of war and other international crimes, which is aimed at strengthening protection for victims and witnesses, their trust in law enforcement agencies, and improving the quality of pretrial investigations.

Furthermore, in June 2023, the Prosecutor General endorsed a Strategic Plan for the prosecution of conflict-related sexual violence cases, introducing novel strategies to safeguard the interests of victims and witnesses.

Additionally, reflecting its commitment to a victim-centered approach to investigations, the Prosecutor General's Office established the Coordination Center for Victim and Witness Support in mid-2023.

The Ministry of Health also initiated a reform of forensic medical evaluations in 2023. The war has substantially heightened the workload of forensic medical experts, especially in frontline regions and areas examining deceased military personnel and civilians. According to the Ukrainian Prosecutor General's Office, since the beginning of the full-scale Russian aggression, as of February 2024, prosecutors have recorded 270 cases of conflict-related sexual violence,⁷ though these are widely believed to under-estimate the true prevalence of conflict-related sexual violence and torture.⁸ This surge in caseloads poses fresh challenges, such as identifying victims and accurately documenting war crimes cases, necessary for investigations in national and international courts. The reform will attempt to centralize the system at the level of the Head Bureau of Forensic Medical Expertise to facilitate these efforts.⁹ In September 2023, the Action Plan for the implementation of the transformation of the system of forensic medical evaluation of Ukraine was approved by the Ministry.¹⁰ In addition, in 2023, the Ministry of Health called for implementation of training on the Istanbul Protocol – international guidelines for the documentation of medical evidence of torture and its consequences – into the curriculum as part of the educational program "Health Care" at higher education institutions.¹¹

Despite these efforts, there continues to be widespread recognition that survivors are facing significant barriers to coming forward. This report aims to address one such barrier – the need to support the development of survivor-centered and trauma-informed pathways for those affected – by mapping the forensic documentation pathway and identifying recommendations for action.

This report considers the mass scale and broad scope of atrocities that have been committed, particularly since the full-scale invasion in February 2022, and puts forward recommendations that are aligned with the goal of launching and strengthening investigations of conflict-related sexual violence and torture and providing legal and holistic support to survivors.

7 See footnote 2.

8. See footnote 3.

9 "The Government has allocated a subvention for the functioning of forensic services during the transitional period of their reform," Cabinet of Ministers of Ukraine, June 27, 2023, <https://www.kmu.gov.ua/news/uriad-vydilyv-subventsiiu-na-funktsionuvannia-sudovo-medychnykh-sluzhb-pid-chas-perekhidnoho-periodu-ikh-reformuvannia>

10 Order of the Ministry of Health of Ukraine dated 29.09.2023 No. 1712 "On Approval of the Action Plan for the Transformation of the Forensic Medicine System of Ukraine", <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-29092023-1712-pro-zatverdzhennja-planu-zahodiv-z-realizacii-transformacii-sistemi-sudovo-medichnoi-ekspertizi-ukraini>

11 Report of the Ministry of Health of Ukraine on the implementation in 2022 of the Action Plan for the implementation of the National Human Rights Strategy for 2021-2023, approved by the Order of the Cabinet of Ministers of Ukraine No. 756-r dated June 23, 2021, https://moz.gov.ua/uploads/8/44409-dokument_no118_o_70_23_id3934000.pdf

a. Project Background and Purpose

Physicians for Human Rights brings medical, law enforcement, and legal professionals together to gather and preserve forensic medical evidence of conflict-related sexual violence and torture and cruel, inhuman, and degrading treatment or punishment in survivor-centered, trauma-informed ways to support accountability processes. For over a decade, PHR has worked in conflict and post-conflict settings to design and implement a suite of tools and strategies that have allowed forensic medical evidence of sexual violence to support legal accountability. Since Russia's full-scale invasion of Ukraine in February 2022, PHR has worked with partners to monitor and document attacks on Ukraine's health care system, support efforts to document torture, cruel, inhuman, and degrading treatment or punishment, and develop educational materials to support harm mitigation, preparedness, and documentation of mass casualty events.

Soon after the full-scale invasion of Ukraine, the Dr. Denis Mukwege Foundation conducted scoping missions to Ukraine to confirm the need to build capacity within the country's legal and medical sectors to comprehensively document forensic evidence of conflict-related sexual violence. The Mukwege Foundation approached PHR to conduct an assessment

of the forensic documentation pathway for conflict-related sexual violence as well as the possible utility of PHR's mobile application MediCapt. Since then, in conversations concerning collecting and preserving forensic medical evidence held by both PHR and the Mukwege Foundation, key stakeholders in Ukraine have consistently expressed interest in partnering to strengthen forensic medical documentation of crimes of sexual violence in conflict, including exploring use of PHR's award-winning mobile application, MediCapt.

PHR's experience shows that successful forensic documentation and accountability efforts – both “low tech” and digital (for example, MediCapt) – for sexual violence and torture, cruel, inhuman and degrading treatment or punishment require an enabling environment where medical and legal systems work together to prioritize high-quality forensic documentation.

MediCapt: PHR's Mobile Application for Forensic Documentation of Sexual Violence

MediCapt, co-created with partners in the Democratic Republic of the Congo (DRC) and Kenya, can be used by medical professionals to collect, securely store, and safely share forensic medical evidence with legal and law enforcement officials in sexual violence cases while maintaining chain of custody, safeguarding patient privacy, protecting witness identities, and preventing destruction or loss of vital information.

The app was developed on the assumption that increasing the quantity, improving the quality, and ensuring the security and integrity of forensic medical evidence would support effective investigations and prosecutions of sexual violence crimes. The app converts a standardized medical intake form for forensic documentation to a digital platform and combines it with a secure mobile camera to facilitate forensic photography. By combining these components, MediCapt can preserve critical forensic medical evidence of atrocities, including sexual violence, for use in courts. Once digitized, these forms can be analyzed to discern patterns of perpetration and harm, providing critical evidence for accountability and justice.

With this in mind, PHR conducted a study in November and December 2023 to get a better understanding of the needs and capacities of medical, investigative, and legal groups in Ukraine to effectively document and investigate conflict-related sexual violence as well as torture, cruel, inhuman, and degrading treatment or punishment related to the Russian full-scale invasion. Building on these findings, this report provides recommendations for strengthening trauma-informed, survivor-centered approaches to working on these cases, and developing high-quality medical-legal documentation of these human rights abuses. The feasibility of introducing the digital app MediCapt to assist clinicians in documenting forensic medical findings was also assessed.

The assessment focused on the following key lines of inquiry:

1. **Clinical capacity:** Do crucial medical professionals have the knowledge and skills to conduct forensic medical documentation of patients' sexual violence injuries and psycho-social status in survivor-centered, trauma-informed ways? Are there protections in place to enhance patient privacy, trauma-informed care, and safeguard patient records?
2. **Standardized documentation form:** Is there a standard way to uniformly across health settings capture comprehensive information, probative evidence, and forensic documentation in every case involving conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment or punishment? How do current protocols for clinical management of domestic violence need to be adapted to reflect conflict? Do these documents meet the standards necessary for utilization in accountability processes for international crimes? Do they comport with best practices in trauma-informed documentation?
3. **Multisectoral coordination:** To what degree do investigative and medical professionals collaborate to support survivors and collect and preserve forensic evidence that lawyers and judges understand and can use in cases of conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment – including those involving children? What procedural obstacles hinder collaboration? Do existing referral pathways reflect a trauma-informed and survivor centered approach? How can multisectoral coordination be strengthened?
4. **Enabling law and policy environment:** What are current national policies and protocols concerning forensic documentation across the medical, law enforcement, and legal sectors? Do policies empower survivors and support collaboration among medical, law enforcement, and legal sectors? Who is enabled under the legal and policy framework to conduct forensic medical documentation? What evidence is considered probative under national laws to support convictions of conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment or punishment?
5. **Technological capacity and infrastructure:** Do key professionals in the medical-legal process have access to technology and the ability to transmit information concerning cases that protect survivor identities and maintain chain of custody? What limitations has the conflict imposed on technical capacity (for example, access to the internet, electricity)? Does MediCapt need to be interoperable with other local electronic health systems or other systems? Where would data need to be stored? Does Ukraine have any guidance for technical documentation and standards of admissibility that need to be adhered to?

b. Approach

This assessment employed a gap analysis approach, evaluating the current state of forensic medical, investigative, and legal capabilities regarding the documentation and investigation of conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment or punishment in Ukraine, specifically in the context of the Russian invasion, and suggest areas which can be improved. In its study, PHR was guided by internationally recognized standards and principles in the Istanbul Protocol,¹² the Murad Code¹³ and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.¹⁴

The assessment was carried out in the following stages:

- **Desk Research:** Analyzing the Ukrainian legal, policy, and regulatory framework for medical-legal documentation of sexual violence and torture, cruel, inhuman, and degrading treatment or punishment, focusing on national legal framework, policies, protocols for clinical management, workforce regulations, and data storage regulations.
- **Key Stakeholder Mapping:** Identifying stakeholders such as health facility administrators, civil society/human rights organizations, legal experts, law enforcement, and government agencies/lawmakers.
- **In-country Interviews (November–December 2023):** Conducting 21 semi-structured interviews with stakeholders in Kyiv and Lviv, including health facility representatives, civil society organizations, survivors' groups, legal experts, law enforcement, and government agencies. Several interviews involved multiple participants or departments and were conducted uninterruptedly and are thus counted as one interview. Interviews aimed to understand current practices, infrastructure, and procedures related to medical-legal documentation, using tailored interview guides and interpreters when needed. Some interviews were conducted remotely. Please see Annex 2 for the tools.

c. Limitations and Challenges

These recommendations are based on site visits and interviews with stakeholders from multiple sectors and areas of expertise. However, colleagues were largely based in only two geographic areas, namely Kyiv and Lviv. While the two cities are major centers for internally displaced persons (Kyiv hosts about 400,000 IDPs, Lviv hosts about 100,000 IDPs), the assessment does not include other hubs that are likely to receive survivors of conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment or punishment crimes, such as areas closer to the Eastern and Southern borders, territories occupied by Russian forces, and countries hosting displaced Ukrainians.

¹² Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <https://www.ohchr.org/en/publications/policy-and-methodological-publications/istanbul-protocol-manual-effective-o>

¹³ Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence, https://static1.squarespace.com/static/5eba1018487928493de323e7/t/6255fdf29113fa3f4be3add5/1649802738451/220413_Murad_Code_EN.pdf

¹⁴ International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, [https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International Protocol 2017 2nd Edition.pdf](https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report-international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International%20Protocol%202017%202nd%20Edition.pdf)

II. FINDINGS

This report summarizes our findings in three key domains: Capacity for Conducting High-Quality Forensic Medical Evaluation, Survivor Access to Resources and Support, and Technology Readiness and Acceptability for the Incorporation of MediCapt.

1. Capacity for Conducting High-Quality Forensic Medical Evaluations

The forensic medical evaluation is an important aspect of any conflict-related atrocity documentation. It is a systematic medical and psychological evaluation of victims and survivors of violence, including conflict-related sexual violence or torture cruel, inhuman, and degrading treatment or punishment. International human rights law recognizes the obligation of states to strengthen the capacity of law enforcement, medical and judicial personnel to collect and preserve forensic evidence related to sexual violence in conflict and post-conflict contexts.

Also known as a medical-legal evaluation, a forensic medical evaluation involves a trained health professional collecting a narrative history from the survivor about the incident(s), performing a physical examination and documenting any scars or other injuries, performing a mental health examination and documenting psychological findings, collecting biological samples such as blood or semen as feasible, and corroborating the narrative description with the other findings.

Forensic medical evaluations are a critical tool for collecting evidence to corroborate accounts of sexual violence, torture, cruel, inhuman, and degrading treatment or punishment, and other human rights violations. Having an affidavit based on a forensic medical evaluation can significantly increase the likelihood that survivors can obtain justice. Cases often fail due to poor quality or lack of evidence. While affidavits created following a forensic medical evaluation are primarily used for criminal procedures, such documentation may also be helpful for a range of other accountability efforts, including civil claims, reparations, and other transitional justice mechanisms.

Global standards and benchmarks for forensic medical evaluations for conflict-related sexual violence and torture, cruel, inhuman, and degrading treatment or punishment have been developed through robust international consultations and peer-reviewed evidence. Manuals such as the updated 2022 *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (which PHR helped develop) and the 2017 *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict* are widely considered the global reference for the medical-legal evaluation of survivors and have been used in conflict settings throughout the world.

PHR's site visits and interviews with local stakeholders highlighted the following areas of success, challenges, and opportunities in documenting forensic evidence of sexual violence and cruel, inhuman, and degrading treatment or punishment to support accountability efforts.

a. Legal and Regulatory Landscape

Current legal and regulatory frameworks in Ukraine pose challenges and obstacles to collecting and expanding the capacity to collect forensic medical evidence to support case building and accountability efforts. Additional discussion of the legal and regulatory landscape is presented in Annex 3.

Lack of specific protocols on forensic evaluation of conflict-related sexual violence leads to reliance on domestic violence laws, protocols, and Standard Operating Procedures that impede documentation.

Ukraine's criminal code includes several articles prohibiting sexual violence generally, including rape, sexual violence, coercion into sexual intercourse, and acts of a sexual nature with a person under the age of 16.¹⁵ In addition, sexual violence is recognized as a form of domestic violence, which is recognized as an administrative offense as well as a criminal offense, and is further regulated under the 2018 Law on Preventing and Combatting Domestic Violence.¹⁶ Crimes of conflict-related sexual violence are classified under Article 438 of the Criminal Code, which concerns violations of the laws and customs of war. In 2019, the Ukrainian government also implemented several important reforms to bring the provisions on sexual violence as a war crime into alignment with international law, including by adopting the International Criminal Court's definition of rape.¹⁷

While these reforms have been welcome, civil society organizations and stakeholders have noted that there remain gaps in the legal framework. First, there is a need to continue to strengthen the prohibition on conflict-related sexual violence by introducing reforms to align to international legal standards, including to explicitly include the full spectrum of acts that can constitute this crime¹⁸ and amending the law to include crimes against humanity (of which sexual violence should be explicitly recognized as a possible form).

Second, while sexual violence is criminalized, there is a need for specific protocols on evidence collection, reporting, and documentation on sexual violence generally as well as conflict-related sexual violence specifically. In the absence of these protocols, interviewees reported that the Ukrainian domestic violence laws are being utilized as the grounding legal framework for engagement with survivors of conflict-related sexual violence. However, while valuable in peacetime and familial contexts, these laws are not wholly inclusive of the internationally accepted good practices and standardized documentation needs for conflict-related sexual violence. For example, current legislative acts concerning the documentation of domestic violence do not apply to cases of conflict-related sexual violence.¹⁹

15 Section IV Criminal offenses against sexual freedom and sexual inviolability of a person of the Criminal Code of Ukraine, <https://zakon.rada.gov.ua/laws/show/2341-14#n976>.

16 According to the Law of Ukraine 2229-VIII "On Prevention and Counteraction of Domestic Violence" from December 7, 2017, sexual violence is a form of domestic violence that includes any acts of a sexual nature committed against an adult without his or her consent or against a child regardless of his or her consent or in the presence of a child, coercion to a sexual act with a third party, as well as other offenses against sexual freedom or sexual inviolability of a person, including those committed against a child or in his or her presence. See <https://zakon.rada.gov.ua/laws/show/2229-19#top>.

17 Rape is now defined in the Criminal Code as "committing acts of a sexual nature, involving vaginal, anal or oral penetration of the body of another person using the genitals or any other object, without the victim's voluntary consent", and consent is considered "voluntary, if it is the result of a person's free will, taking into account the accompanying circumstances."

18 Kateryna Busol, "Conflict-Related Sexual Violence in Ukraine: An Opportunity for Gender-Sensitive Policymaking?," Chatham House, August 18, 2020, <https://www.chathamhouse.org/2020/08/conflict-related-sexual-violence-ukraine-opportunity-gender-sensitive-policymaking>

19 On Approval of the Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Allegedly Affected by Domestic Violence and Providing Medical Care to Them, Order from 01 February 2019 № 278, <https://zakon.rada.gov.ua/laws/show/20262-19#Text>

Ukraine's National Police and Security Service of Ukraine are tasked with investigating conflict-related sexual violence.²⁰ In practice, however, such cases are transferred to the National Police, which is overseen by the Prosecutor General's office.

Yet, doctors, police, and legal stakeholders who engage with survivors noted that many professionals are not trained in documenting important elements of conflict-related sexual violence; the focus of their training has been on protocols for domestic violence. This is an important distinction as documenters will need training based on the legal, medical, and psychosocial considerations, including documentation of injuries, type of questions to ask during an interview with a survivor, and ways to navigate post-conflict justice systems. All of this is unique to the conflict-related sexual violence context and not typically covered in training related to domestic violence.

Among the medical experts that PHR interviewed, there was a consensus that the domestic violence framework of clinical and reporting protocols created confusion when encountering conflict-related sexual violence survivors, especially given mandatory reporting rules that require clinicians to report domestic violence to law enforcement. Interviewees noted that domestic violence reporting laws for physicians have historically hindered people from reporting domestic violence to their health care providers.

Health care facilities are obliged to notify the authorized divisions of the National Police of Ukraine, guided by Orders No. 278 and No. 612/679, in the case of persons contacting them in connection with:

- causing bodily harm of a criminal nature (potentially, sexual violence could be inferred within the scope of the Order No.612/679); and
- sexual violence as a form of domestic violence.

At the same time, at the level of legislation, there is no obligation for health care workers to report about patient appeals regarding sexual violence in the broad sense (criminal offenses provided for by Chapter IV of the Criminal Code of Ukraine "Criminal offenses against sexual freedom and sexual integrity of a person") in the cases of absence of physical injuries.

Furthermore, domestic violence documentation legislation in Ukraine requires evidence of physical harm. This means that if the incident did not result in physical harm, or if signs and symptoms of physical harm have resolved, a case involving sexual violence might not be identified by doctors as conflict-related sexual violence. For example, forced nudity may not result in physical injury to a survivor despite the fact that international law recognizes this as a form of sexual violence. The Prosecutor General's Office has developed new guidelines for identification of various forms of conflict-related sexual violence, but this information is not immediately available to clinicians.

²⁰ "SSU identifies three russian servicemen who raped Ukrainian woman a year ago," Security Service of Ukraine, April 4, 2023, <https://ssu.gov.ua/en/novyny/sbu-vstanovyla-trokh-rosiiskiykh-viiskovykh-yaki-rik-tomu-zgvaltuvaly-ukrainsku-zhinku>; "National Police: Over 50 cases of Russian sexual violence under investigation," Kyiv Independent, October 10, 2023, <https://kyivindependent.com/national-police-over-50-cases-of-russian-sexual-violence-under-investigation/>

Laws and regulations limit who is qualified to conduct a forensic medical evaluation, and only allow evaluations done by those qualified to be admissible despite relevant evidence from other health professionals

According to the Istanbul Protocol and evidence-based practices established globally, any licensed clinician can be trained to carry out such evaluations. The Istanbul Protocol notes (para 303): “Conducting evaluations in accordance with the Istanbul Protocol does not require certification as a forensic expert, even though this may be the normative practice in some States and is sometimes used to intentionally exclude the testimony of independent clinicians from court proceedings.”

Similarly, World Health Organization’s guidelines for medical-legal care for victims of sexual violence explicitly states that beyond doctors and nurses with forensic training, “district medical officers, police surgeons, gynaecologists, emergency room physicians and nurses, general practitioners, and mental health professionals” should be able to carry out such evaluations.²¹

International experience underscores that only allowing forensic doctors to conduct evaluations can pose an almost insurmountable barrier for most sexual violence victims, particularly in resource-strained environments where clinics lack diverse medical personnel.²² However, Ukrainian laws currently allow only state-certified²³ Ukrainian forensic medical doctors to interview and sign off on evaluations of conflict-related sexual violence or torture, cruel, inhuman, and degrading treatment or punishment survivors intended for medical-legal purposes.²⁴ This is aligned with Article 7 of the Law of Ukraine “On Forensic Examination,” which stipulates that forensic activities that are part of a criminal, medical, or psychiatric forensic examination are carried out exclusively by specialized governmental agencies, including by forensic medical experts. In addition, psychological evaluations can also be carried out by other experts who are not necessarily part of state agencies but still have to be registered in the State Register of Certified Forensic Experts.²⁵

Forensic examinations in most cases are carried out by a network of governmental forensic agencies (part 2 of Article 7 of the Law of Ukraine “On Forensic Examination”). Nonforensic experts are not allowed to conduct independent forensic examinations according to Article 7. The scope of what these certified forensic experts can do in their medical evaluations appears to be limited: for example, they do not perform genital examinations. PHR’s team heard that on many occasions, nonforensic clinicians were asked by forensic experts to perform a physical evaluation (for example, a genital exam) for a justice process or that forensic experts sometimes supervise examinations by nonforensic clinicians by being present in the room, but their medical assessment is not admissible on its own.

21 Guidelines for medico-legal care for victims of sexual violence, World Health Organization, p. 3, 2003, <https://iris.who.int/handle/10665/42788>

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

23 The state forensic expert institutions are: scientific research institutions of forensic examinations of the Ministry of Justice of Ukraine (Scientific Research Institutes of Forensic Examinations); scientific research institutions of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine (Forensic Medical Examination Bureau of the Ministry of Health); expert institutions of the Ministry of Internal Affairs, the Ministry of Defense, the Security Service of Ukraine and the State Border Service of Ukraine.

24 Only certified experts from state expert institutions are authorized to conduct forensic medical evaluations. These experts must have undergone certification and appropriate training at state specialized institutions under the Ministry of Justice of Ukraine, as stipulated in Parts 3, 4 of Article 10 and Article 16 of the Law of Ukraine “On Forensic Examination.” Additionally, forensic experts from state specialized institutions must possess relevant higher education, with an educational and qualification level no lower than a specialist and have completed specialized training to qualify as forensic experts in their respective specialties, in accordance with Article 10 of the Law of Ukraine “On Forensic Examination.”

25 “On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Studies and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Examinations and Expert Studies,” Order of the Ministry of Justice from October 8, 1998 № 53/5: 1.12. Experts who are not employees of state specialized institutions and who carry out forensic activities on a professional basis shall ensure that examinations and studies are carried out in accordance with the requirements of the instruction on the peculiarities of forensic activities by certified forensic experts who do not work in state specialized expert institutions, approved by the Order of the Ministry of Justice of Ukraine No. 3505/5 of December 12, 2011. In certain instances, peoples not listed in the register may be engaged, typically when an examination necessitates specialized knowledge not found among registered experts.

Instructions on conducting a forensic medical evaluation are set out in the Ministry of Health's Order no. No. 6 from 1995²⁶ but according to a ministry official, it is an "outdated 1995 regulation, and much has changed, and now it is advisable to change both the structure of the forensic service and the regulations." A working group has been set up and a draft has been developed to replace the regulation.

Instructions on Conducting a Forensic Medical Examination²⁷

The Ministry of Health has developed instructions defining the organizational features of forensic medical evaluations in Ukraine. Among the types of evaluations that can be carried out by authorized entities, specifically experts of specialized state expert institutions, including the Main Bureau of Forensic Medical Examination of the Ministry of Health of Ukraine, Republican Bureau of Forensic Medical Examination (Autonomous Republic of Crimea), Bureau of Forensic Medical Examination of Health Care Departments of Regional Executive Committees, are the following (1.4.1 - 1.4.5):

- Examination of corpses in cases of violent death;
- Examination of corpses in case of suspicion of violence or from other circumstances that determine the need for such an examination;
- Examination of victims, accused and other persons;
- Examination of physical evidence; and
- Examination of criminal and civil materials cases.

Also, professors and teachers in departments of forensic medicine and specialists of health care institutions may be invited to participate in forensic medical evaluations as experts (1.5). If it is necessary to solve issues that require special knowledge of forensic medicine and other fields of science and technology, a comprehensive examination is performed by a forensic medical expert and other specialists (2.5).

According to clause 2.10, when performing evaluations in which there is a need to address special issues that are not within the competence of a forensic medical expert, and consultation of a specialist in the relevant field of medicine is required, or in the event of a need to conduct an examination of a person undergoing a forensic medical examination with a specialist doctor working in another health care institution, the forensic medical expert, in agreement with the person who appointed the examination, has the right to engage this specialist to conduct all necessary research to solve the issues raised before the evaluation. However, the responsibility for the opinion provided rests with the expert who was originally engaged to conduct the evaluation.

²⁶ Instructions on conducting a forensic medical examination, approved by Order of the Ministry of Health No. 6 of January 17, 1995, <https://zakon.rada.gov.ua/laws/show/z0254-95#Text>

²⁷ Ibid.

Among the challenges that should be highlighted is the list of persons provided for in the Instructions who may be present during the evaluation. In particular, it is provided (2.13) that during the forensic medical evaluation there may be present: investigator (with the exception of conducting an examination of a person of the opposite sex, when it is accompanied by her exposure); the accused and another person (only with permission investigator); doctors of medical and preventive institutions with the permission of the investigator.

It is necessary to obtain consent from all subjects involved in the evaluation, including the expert who conducts the evaluation, as well as the person for whom such an evaluation may be conducted (for example, the victim as well as close relatives in the event of a person's death). The possibility of participation of the accused can be traumatic and violate the confidentiality requirements stipulated by international standards.

Only reports authored and signed by forensic experts are admissible; other clinicians' reports can be attached to an official report. This need for a referral also prolongs the process, which can be burdensome to the survivor, subject them to multiple evaluations, and result in them dropping from the process.

Officials in the Prosecutor General's Office confirmed that "forensic experts' report are more important than other medical documentation in the court of law. But if other documentation exists, we attach it to the conclusion of the experts." This was confirmed in interviews with multilateral and civil society organizations: "The procedure for collecting medical evidence is reflected in the Order of the Ministry of Health,²⁹ but as we know from consultation with lawyers, if medical evidence is collected by a medical professional, and not by the forensic expert, the injured person may have problems using this evidence in the future in a lawsuit."

Instructions on the Appointment and Conduct of Forensic Evaluations and Expert Studies and Scientific and Methodological Recommendations on the Preparation and Appointment of Forensic Evaluations and Expert Studies²⁸

- This national regulation outlines organizational procedures for conducting various types of forensic evaluations.
- It is applicable and mandatory to all forensic experts.
- Specifically addressing forensic medical evaluations, it includes a list of recommended questions to be answered during the evaluation.
- Throughout the expert investigation, it is imperative for the expert to provide responses to these questions, documenting them in the expert's report.

²⁸ Order of the Ministry of Justice on Approval of the Instruction on Appointment and Conduct of Forensic Evaluations and Expert Studies and Scientific and Methodological Recommendations on Preparation and Appointment of Forensic Evaluations and Expert Studies dated 10 August 1998 No. 53/5, <https://zakon.rada.gov.ua/laws/show/z0705-98#Text>

²⁹ Order of the Ministry of Health No. 278, https://zakononline.com.ua/documents/show/383189_383254. On approval of the procedure for conducting and documenting the results of medical examination of victims of domestic violence or persons likely to have suffered from domestic violence and providing them with medical assistance. This document applies only to cases of domestic violence.

Additionally, an official request for an examination must be obtained prior to any assessment. Officials from the Ministry of Health noted that forensic experts have functions that are “not typical of conventional doctors”: “if a patient comes to a doctor for help, the doctor must provide it. A forensic expert cannot act without an investigator who instructs him or her to conduct an examination.”

According to the data from the State Register of Certified Forensic Experts, there are currently 1,610 experts specialized in “forensic medical expertise,” 203 experts in “forensic psychiatric expertise,” and 143 experts in “forensic psychological expertise” or “psychological expertise”, most of them from regional bureaus of forensic expertise or Main Bureau under the Ministry of Health.³⁰ Local forensic and investigatory institutions have very limited staffing and capacity to document violations, despite Ukraine having accepted the EU and global assistance for forensic technology. Assistance from NGOs and foreign experts on forensic documentation is restricted by the legal framework with a few exceptions, such as a bilateral agreement with the Ukrainian government authorizing international forensic expert documentation or where the state specialized institution consents to establishing an expert commission with the participation of foreign experts.

Experts and officials confirmed that engaging foreign experts “is an issue legally” and that the Prosecutor General’s Office would not automatically accept materials or affidavits from nongovernmental organizations.³¹ Any documentation provided by nongovernmental organizations must be reviewed and reinvestigated. Where they deem it necessary, the heads of the state specialized institutions conducting forensic evaluations may include leading experts from other states in the expert commissions, with the consent of the body or person who appointed the forensic evaluation. Such joint expert commissions conduct forensic evaluations in accordance with the procedural legislation of Ukraine.

However, the scarcity of forensic physicians presents a fundamental obstacle to a patient-centric response to sexual violence and torture, especially when only state-certified forensic specialists are allowed to conduct these evaluations. The dearth of forensic physicians underscores two important needs. First, there is a need to involve other medical practitioners, particularly in frontline care settings like emergency departments, primary care practices, and pediatric clinics where forensic specialists are often absent. Second, there is a need to support training in forensic evaluation for such frontline clinicians to fill this gap and provide comprehensive support to survivors. While these frontline clinicians are skilled in clinical care, they typically lack the specific forensic training required by legal standards. Further, academic literature and medical-legal experts emphasize the necessity of a multidisciplinary approach involving specially trained medical legal examiners to ensure survivors receive comprehensive support addressing physical, mental, social, and legal aspects of trauma. Additional training for various health care professionals is needed to enhance the collective response to sexual violence and bridge gaps in integrated care for survivors.³²

³⁰ The data was obtained from the data set from the open data of the Ministry of Justice of Ukraine, Identification number of the data set - register no. 18 (according to the order of the Ministry of Justice 897/5 of March 28, 2016); date and time of the first publication of the data set: April 19, 2016; date and time of the last changes to the dataset: March 11, 2024, <https://nais.gov.ua/m/derjavnyi-reestr-atestovanih-sudovih-ekspertiv-189>. Duplicates and errors have been removed to the best of our abilities

³¹ The Law of Ukraine “On Forensic Expertise,” Article 23, <https://zakon.rada.gov.ua/laws/show/4038-12#Text>

³² Mishori, R., Naimer, K., McHale, T., Johnson, K., Fateen, D., & Gillette-Pierce, Z. (2022). To confront sexual violence, we must train non-forensic experts to perform medico-legal evaluations. *Med Sci Law*, 62(2), 149-153. <https://doi.org/10.1177/00258024211029075>

Fragmentation of services resulting from regulations on forensic services

Several interviewees noted challenges relating to the fragmentation of various types of forensic services. In Ukraine, only the state forensic institutions can carry out forensic expert activities and these are separate and limited to unique domains: forensic postmortem, forensic medical, forensic psychiatric examination, and forensic psychological examination. This fragmentation is also evident by the fact that there are six distinct state forensic institutions under various ministries and agencies, including the Ministry of Justice, Ministry of Health, Ministry of Internal Affairs, Ministry of Defense, the Security Service of Ukraine, and the State Border Service of Ukraine. Forensic medical and psychiatric evaluations are concentrated under the Ministry of Health (Main Bureau of Forensic Expertise and regional bureaus), while psychological evaluations can be carried out by other experts or agencies.³³ This gives rise to challenges to coordination, particularly from a survivor perspective. The choice of which agency is assigned is a matter of access and workload.

One international expert, commenting on the need to integrate these disciplines as part of a holistic approach, said, “We understand that we need to combine these disciplines. We need both socio-psychological and psychiatric analysis.”

Confusion and lack of consensus about the need for a forensic medical evaluation due to legal framework

The Criminal Procedure Code of Ukraine specifies and provides a list³⁴ of cases where a forensic examination is always mandatory to “establish ... the severity and nature of bodily injuries,” which can be applicable to cases of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment, particularly in the immediate period after the incident. Failure to conduct such an examination is grounds for recognizing the court's decision as improper. However, in our interviews, there was confusion among some respondents as to when it was necessary to produce a forensic medical evaluation. Some stakeholders noted that they want to have an evaluation “in every case.” Others noted that “it's not necessary to have in every case because it can be traumatizing” for the survivor. The corresponding Criminal Code article might be restricting for investigators who should have the discretion to choose the most appropriate methods for collecting evidence based on the circumstances of each case. This discretion is especially important in cases of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment, especially in the immediate aftermath of the incident and where access to services for initiating criminal proceedings may be challenging.

Officials in the Prosecutor General's Office also highlighted the issue that forensic medical evaluations are not conducted on a routine basis and noted that these examinations are usually not considered valuable if conducted several months after the purported crime has happened. This, in effect, nearly guarantees that survivors who often take weeks or months to come forward or who may not have immediate access to law enforcement will not be interviewed by forensic experts or have their cases reviewed seriously due to the perception by both physicians and survivors that little

³³ Each party has the prerogative to appoint such an expert for the evaluation; however, in case of a survivor it is not straightforward: in cases where they seek independent engagement, the materials may be annexed as documentary evidence rather than a formal expert opinion, subject to the discretion of the court.

³⁴ Part 2 of Art. 242 of the CPC. The grounds for mandatory examination: 1) establishing the causes of death; 2) establishing the severity and nature of bodily injuries; 3) determination of the mental state of the suspect in the presence of information that raises doubts about his/her/their sanity, limited sanity; 4) establishing the age of a person, if it is necessary to resolve the issue of the possibility of bringing him/her/them to criminal responsibility, and it is impossible to obtain this information in another way; 5) determination of the amount of material damages, if the victim cannot determine them and has not provided a document confirming the amount of such damage, the amount of non-property damage, damage to the environment caused by a criminal offense.

can be gained medically from an evaluation in the post-acute phase. Additionally, the requirement to “establish the severity and nature of bodily injuries” may hinder people from engaging in the process if their injuries are not severe or have already healed.

Not having an evaluation can lead to a survivor’s case being dismissed. Some interviewees noted it was unclear if having an evaluation is required by law, but noted that “judges often want it, judges won’t listen if there’s no evaluation, the case is falling apart, especially if there’s no other sources of evidence [apart from the testimony].”

b. Awareness, Skills, and Training

While awareness of concepts around survivor-centeredness and trauma are high, specialized training in interviewing and examination techniques, evidence collection, documentation, chain of custody, analysis of findings, and report writing are necessary to ensure comprehensiveness and high quality, as well as admissibility of the evidence.

Awareness of importance of survivor-centeredness and trauma-informed approaches is high

Most of the interviewees had a high awareness of the importance of providing trauma-informed care. These included both medical and social service staff and representatives of investigative teams in nongovernmental organizations.

However, it is unclear what form of training they received and whether such training with a focus on trauma related to conflict-related sexual violence, torture, cruel, inhuman and degrading treatment or punishment, and other war-related violations is widely available. It appears that social workers and psychology experts have had Trauma-Informed Care training as a matter of course. The extent of such training among physicians, including forensic medical experts, is less clear. While several interviewees mentioned that some Trauma-Informed Care training was provided to them, it is unclear how frequently members of other sectors such as law enforcement and the justice system received such training and whether it is part of their routine training. As a Prosecutor General’s Office official said, “The biggest challenge is not to traumatize even more – but prosecutors are not ready to change after [one] training.”

While the important goal of avoiding re-traumatization was mentioned frequently by many of the officials and nongovernmental organizations’ staff we met, it was often invoked as a reason to not interview or engage with survivors at all.

Specialized training concerning war-related crimes has been sporadic and multi-sectoral training is nonexistent. Non-forensic doctors are not trained in documentation.

There was an overall recognition of the benefit of following international standards, such as the Istanbul Protocol on documenting torture, cruel, inhuman and degrading treatment or punishment. However, due to the legal restrictions concerning admissibility of forensic evidence in Ukraine, non-forensic experts are not trained to conduct evaluations that comply with international medical-legal standards even for domestic violence that involves sexual violence.

When a referral to a medical specialist was produced by a forensic expert for a specific examination of injuries not commonly carried out by forensic experts (for example, genital or urological), such experts expressed frustration about the quality of the clinical documentation provided by first responder clinicians such as family doctors, or by specialists such as gynecologists to whom they refer cases.

There were disagreements about who should train non-forensic experts. An official from the health care sector noted that “every single medical worker who may deal with a victim of conflict-related sexual violence or torture, cruel, inhuman and degrading treatment or punishment should understand the importance of recording bodily injuries, and this is the responsibility of the Department of Medical Services, not the Bureau [of Forensic Medical Expertise], because it directly relates to changing the forms of primary medical records.” Some suggested training through medical education programs or during residency training (“medical specialization”), but agreed that those pre-service approaches do not cover doctors who have been in practice for some time.

There was broad agreement that such forensic training is important. One official noted: “in the future, we need to make this course mandatory for all doctors. We have continuing education points, all of which are arbitrary and do not require mandatory courses. So, the national protocol to be developed should be defined as mandatory for doctors to study, as a system of postgraduate education for doctors.”

Academic and forensic experts noted that survivors often go to front-line physicians first and added: “we need to introduce a separate protocol so that doctors have the right to take photos and video” and that “doctors should be able to record sexual abuse, physical abuse, psychological abuse.” There was a sense that such training would be helpful not only to document evidence of possible war crimes, but also to address the prevalence of sexual violence committed by an intimate partner.

Officials from local organizations confirmed the lack of training of frontline clinicians and the reluctance of first-responder physicians to carry out such evaluations (whether due to lack of training or lack of time or other system-based issues): “Since this service is very centralized, how many family doctors in Ukraine can perform gynecological examinations? They are not trained. Without a specific referral, doctors do not do this Family doctors do not want to do this.”

An obstetrician who also served in the army teaching tactical medicine believes that “regular doctors should be involved in documenting and training. What if I am a combat medic, for instance, and I see crimes, when police arrive at the scene of crimes, what if forensic experts are not available, what then?”

Clinicians in Lviv who work at Regional Clinical Perinatal Center confirmed that they do not routinely do any forensic documentation and do not have the necessary skills to conduct forensic examinations but would be open to such training. State officials in the Ministry of Health noted that the Ministry “needs to implement these standards and training programs. We should be ready to create trainings and internships for doctors to collect information and evidence.”

Forensic experts also noted that “the biggest problem for me as a forensic expert is that [non-forensic] doctors do not describe injuries well.” Forensic experts are often also employed in other sectors of health care or academia, and health care workers from these sectors can also become forensic experts, with some training and certification.

Silos between forensic, medical, legal, and other sectors lead to challenges in documentation and utilization of evidence

Forensic medical experts and officials interviewed noted that there are already positive developments in terms of cooperation, and “we have been approached by representatives of law enforcement agencies regarding changes to the criminal procedure legislation to more accurately determine the severity of bodily injuries in cases of gender-based violence, sexual and gender-based violence ... in accordance with international standards.”

The Ministry of Health indicated that it is preparing a new version of the order regulating the activities of the forensic service “because it is a very outdated 1995 regulation.” They noted that there may be a willingness and a readiness to reform the systems. As one Ministry official stated, “much has changed and now it is advisable to change both the structure of the forensic service and the regulations.” The official added that “a working group has been set up, and a draft has been developed to replace the outdated Order No. 6 on the activities and improvement of the forensic medical service of Ukraine.”

However, according to desk research and several interviews, the issue of how restricted the forensic medical system is came up multiple times. For example, the division between forensic medical experts and clinicians who can undertake comprehensive documentation can lead to gaps in evidence. Interviewees note that forensic medical laboratories are under the Ministry of Health, and any clinical documents that have not gone through the official forensic medical laboratories will not be considered “forensic” and cannot serve as evidence on their own. Yet, the forensic expert is often not able to do a comprehensive examination, for example, to document clinical findings on the reproductive system, and will need to refer the survivor to a medical examination. This can introduce a delay that may have clinical consequences (for example, injuries heal and affect the ability to document severity) and prolongs the legal process. It is also not a survivor-centered approach as it does not ensure continuity and consistency in communication to survivors, violates the do-no-harm principle, and does not ensure proper coordination to lessen the risk of re-traumatization of survivors.³⁵

Similarly, the lack of shared understanding of roles in forensic documentation and familiarity with basic definitions and principles has also impeded medical-legal collaboration and accountability. Forensic experts noted that questions from the prosecutors “are not always very good,” creating challenges in their ability to produce the necessary information. Experts are often asked questions by prosecutors that are beyond their expertise, incorrectly formulated, or arranged illogically, making their work more difficult and impacting the quality of the evaluation negatively. According to one official from a forensic facility, a forensic expert may be asked by an investigator: “Is it typical for rape?” whereas the forensic expert has not personally conducted the sexual/reproductive evaluation. Such a question also underlines that there are misconceptions on the investigators’ part about what constitutes sexual violence (not just rape) and the fact that each case may be unique.

Interviews with civil society organizations and international organizations also noted challenges with the current forensic documentation system. In the words of one interlocutor: “Forensic experts are frustrated. They cannot produce comprehensive reports. They are not happy with the questions

³⁵ “Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence,” p.9, https://static1.squarespace.com/static/5eba1018487928493de323e7/t/6255fd29113fa3f4be3add5/1649802738451/220413_Murad_Code_EN.pdf; “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict,” p.93, [https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International Protocol 2017 2nd Edition.pdf](https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/06/report/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict/International%20Protocol%202017%202nd%20Edition.pdf)

they are asked, the questions they cannot answer. With domestic violence it was different; with conflict-related sexual violence, questions are different. They are not able to send victims to medical experts sometimes. Forensic experts don't have equipment."

A meeting with the National School of Judges, a state institution with a key role in judicial capacity development and support, confirmed that judges have received training recently on sexual violence and domestic violence, but that the training does not involve any other sectors, nor does it include prosecutors. The limited training that has occurred focused on educating judges on how to engage with forensic experts: "There are special experts who teach them to speak the same language." While this is a positive step, the sentiment overall was that judges would welcome additional training that is specifically designed to include professionals from other sectors.

Lack of a comprehensive standardized forensic documentation form

Officials from the Ministry of Health, Prosecutor General's Office, and forensic facilities were all supportive of standardization, and most are aware of evidence-informed international protocols such as the Istanbul Protocol but note that training and adoption is lacking. During meetings with the Ministry of Health, officials explained that "Istanbul Protocol adaptation has been problematic." Some interviewees were unaware of the Istanbul Protocol entirely; others confused it with the Istanbul Convention on gender-based violence. Even those who were familiar with the Istanbul Protocol noted that it has not been adopted into training curricula on forensic medical evaluations.

According to several Ministry of Health officials, there are efforts underway to create documents that can be applied across sectors uniformly and reflected in all protocols guiding documentation of conflict-related sexual violence. A new form for documentation of bodily injuries has been in preparation at the Ministry of Health in recent months based on the Istanbul Protocol, but these forms are not available yet across the health system for survivors presenting to community-based and first-responder clinicians. Forensic experts have reportedly "worked on the card [certificate] of documentation of injuries at the request of Prosecutor General's Office in 2019 which is now being adopted by Ministry of Health. This document is based on the Istanbul Protocol." More on this card, also referred to as the certificate for the documentation of bodily injuries, is included in the box below.

Certificate For the Documentation of Bodily Injuries

Recently, the Ministry of Health adopted a new form to document bodily injuries³⁶ that is reportedly based on the Istanbul Protocol and would be made available to all clinicians, not just forensic experts. This would be a major improvement. The form, however, contains provisions that still need to be strengthened. The following recommendations have been provided by PHR to the Ministry:

- The medical-legal documentation form requires significant enhancements to ensure comprehensive and survivor-centered documentation. First, it should incorporate a section addressing patient informed consent at the outset, aligning with ethical principles and

³⁶ Order of the Ministry of Health no. 316 from 23 February 2024 "On Amendments to the Order of the Ministry of Health of Ukraine dated February 02, 2024 No. 186", <https://zakon.rada.gov.ua/laws/show/z0279-24#Text>

legal requirements. Additionally, to facilitate a thorough understanding of the patient's history, the form should include a dedicated section describing the circumstances of the assault or encounter. This would allow health care professionals to gather pertinent information before proceeding to the physical examination, ensuring a holistic approach to documentation. To streamline the documentation process and accommodate multiple examinations, it is essential to include fields capturing both the examination date and the certificate date. This would align with trauma-informed practices, recognizing that victims may require breaks during examinations. Also, by adding an "Other" category under the "Gender" section, the form can better accommodate diverse patient populations. Similarly, asking for "Nationality" would allow to document wider groups of the population.

- Expanding the form to encompass psychological assessments and behavioral observations is imperative. This expansion would enable health care professionals to document not only physical health complaints but also the psychological impact of the assault or encounter. Additionally, incorporating fields for recording the circumstances of injuries, description of perpetrators, and injury context is crucial to align with international protocols and ensure thorough documentation.
- To adhere to best practices outlined in the Istanbul Protocol, it is recommended to relocate the "Diagnosis" section to the end of the form and redefine it as an "Assessment." This adjustment would underscore the evaluative nature of the documentation, rather than prematurely assigning diagnoses. Furthermore, leaving descriptions of bruises and abrasions open-ended, rather than restricting them to specific categories, would prevent errors and enhance accuracy in documentation.
- Explicitly mentioning pregnancy and STI tests in the form's additional tests and examinations section is vital to ensure comprehensive health care provision for survivors. Similarly, considering the inclusion of a children-specific chart would cater to the unique needs of pediatric patients, enhancing the form's applicability across diverse demographics. Furthermore, incorporating sections for referrals and treatment/therapy plans would promote continuity of care and facilitate collaboration among health care providers.

Order #278, which regulates the documentation of domestic violence,³⁷ was welcomed by experts when it was adopted in 2019 as “a big step for Ukraine” as it serves as a significant framework for documentation. Yet adaptations are necessary to respond to the full-scale invasion in 2022. Additionally, Ukraine has since ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence, also known as “the Istanbul Convention,” which requires parties to develop laws, policies, and support services to end violence against women and domestic violence. As one international development expert put it, Order #278 established “the foundation for building a system of assistance to victims of the conflict.” At the same time, the procedure currently only applies to cases of domestic violence.

³⁷ Order 278 “On Approval of the Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Allegedly Affected by Domestic Violence and Providing Medical Care to Them,” February 1, 2019, <https://zakon.rada.gov.ua/laws/show/z0262-19#Text>

Order #278 - Procedure for Conducting and Documenting the Results of Medical Examination of Victims of Domestic Violence or Persons Who Are Likely to Be Victims of Domestic Violence and Providing Them with Medical Care³⁸

This Procedure defines the mechanism for conducting and documenting the results of medical examination of survivors of domestic violence or persons who are likely to be survivors of domestic violence, gender-based violence, and outlines the provision of medical care to help combat domestic violence and promote the rights of survivors.

When survivors or their legal representatives seek medical care, health care workers must record their complaints, document the patient's medical history, conduct a medical examination to assess their condition and, if necessary, carry out additional instrumental and laboratory examination and measures to mitigate the consequences of sexual violence. The reports are recorded in the hospital's register of domestic and gender-based violence cases.

Health care workers inform the survivor and/or their legal representative (if such representative is not the perpetrator) about the rights, measures, available treatments, and social services that they can use. The health care facility informs the authorized units of the National Police of Ukraine within one day with restricted access, and in case of injuries to a child, also the service for children. The consent form allows for different levels of consent (undergo a medical examination, receive medical care, collect samples, report to the authorities).

The order provides the description of clinical conditions that are typical in the case of possible domestic violence, including psychological impacts, and peculiarities of providing medical care to victims or persons who are likely to be victims of domestic violence.

However, the documentation form (medical certificate) does not allow for any details of the examination. For example, there is no space to describe the injuries, use pictograms, or include detailed descriptions of the type of injuries. The form prompts clinicians to fill in only basic information about the incident (i.e., date and place of the incident) and limited information about the perpetrator. The form does not provide a plan for referrals. The form contains a question about pregnancy but does not provide account for STIs, nor does it contain information about referrals. Therefore, while the domestic violence documentation framework is helpful for the conflict-related sexual violence context, it is incomplete, and this protocol cannot be adapted as is to document cases of sexual violence in conflict.

International experts in Ukraine recommended amendments to Order #278 to clarify the need for voluntary informed consent for victim registration, define immediate notification protocols for child or incapacitated victims, implement a coded system for data transmission to safeguard confidentiality, and develop a separate national protocol for managing cases of rape and intimate partner violence based on WHO guidelines. There was broad agreement that forms should be reviewed and updated, and a Ministry of Health official added that "they need to have forms that will allow them to properly document bodily injuries in a simplified but complete form. Possible model templates include forms from the Istanbul Protocol, schematic images of the localization of injuries, unified terminology, how to correctly name the injury, color, etc."

³⁸ Ibid.

Demand for training on vicarious trauma

Beyond training on forensic documentation itself, among staff members of civil society organizations, another training need identified was on Vicarious Trauma to develop skills to identify and respond to such trauma.

c. Workforce, Staffing, and Health System Challenges

The scope and scale of violations have stretched the capacity of stakeholders in responding to the situation.

Our assessment revealed a clear sense of staffing challenges, including shortages, across all sectors. One official shared that with the growing caseload due to the war, cases requiring a forensic medical evaluation are not prioritized. Such staffing issues cause “delays in forensic medical evaluations of 3-6 months.” Additionally, the complexity of war-related cases presents a challenge. As one interlocutor put it, “Before the war, evaluations were straightforward. Now, cases are complicated because of the international nature of the crimes.”

A family physician working as a first responder noted that in the Ukrainian system, all practice regulations come from the government. Practitioners cannot deviate from the Ministry of Health instructions, which limits the time they have with each patient (reportedly around 12-15 minutes per patient).³⁹ There is currently no option to extend the clinical encounter in order to perform documentation for a medical-legal purpose. An evaluator could do a rudimentary physical exam but would only have about 13 minutes per patient and no blocked time for any specialized patient encounters. If asked to do a forensic-like exam based on international standards, they would only be able to do it if the system were to change based on instructions from the Ministry of Health.

³⁹ The procedure for providing primary medical care, updated in 2018, approved by the order of the Ministry of Health, does not provide for standards for the time of patient reception by a primary care doctor <https://zakon.rada.gov.ua/laws/show/z0348-18#Text>. This statement, however, is supported by practice-based studies, for example, like the one carried out by the National Health Service of Ukraine in 2020, which showed that the average appointment lasts 13 minutes. However, this is not defined by law: <https://umj.com.ua/uk/novyna-181159-yak-zminilasya-robota-pervinki-za-ostanni-roki>

2. Survivor Access to Reporting, Resources, and Support

A holistic, survivor-centered approach for survivors of atrocity crimes must include reliable and accessible referral pathways to medical and psychological care, legal aid, other psycho-social support, and reporting to authorities if desired.

The section below outlines key challenges and opportunities for reporting of sexual violence and torture, cruel, inhuman and degrading treatment or punishment in unoccupied areas of Ukraine. However, it is important to note that many other survivors face even greater barriers. Multiple people noted that scores of victims and survivors have fled the country and are abroad. Living as refugees elsewhere, many survivors are reportedly reluctant to go to local physicians, they don't speak the language so "a lot of evidence is lost." Barriers also exist for survivors still in Russian-occupied areas, where referrals in general, and specifically for medical-legal purposes are effectively nonexistent. This is partly due to a paucity of clinicians as well as fear among clinicians for their safety and the safety of the survivors should they attempt to record injuries for legal processes. A gynecologist-obstetrician noted that in Ukraine-controlled territories, "hospitals, police are functional, so documenting conflict-related sexual violence is not so difficult. But in the occupied territories, the situation is drastic, population lives in terror. When these territories are liberated, we will be frightened by all these crimes."

a. Survivor Pathway to Justice Processes

Barriers to reporting that are common around the world also apply in the Ukraine context, both now and historically, including stigma, fear of reprisals, lack of knowledge of the process, and lack of recognition of what happened to them as constituting an international/domestic crime. Such issues are compounded for men and boys, following globally known trends in under-reporting and a misunderstanding of some situations as sexualized crimes or conflict-related sexual violence. Interviews confirmed that while there are systems in place for where and when to report cases of torture, cruel, inhuman and degrading treatment or punishment and conflict-related sexual violence, there is confusion among different stakeholders (including survivors, health professionals, and law enforcement) on how to formally report these cases in practice.

Several organizations have aimed to create clearer and more efficient pathways for survivors to access justice. Our interviews with and site visits to well-established civil society organizations (for example, La Strada, Zmina, and others) suggested that they have what appear to be organized and efficient processes to refer survivors to legal aid as well as for psychosocial support. Some of these organizations cooperate with the Prosecutor General's Office and law enforcement, although this process is often not coordinated or standardized. One Ukrainian civil society organization we met with operates separate hotlines for adults and for minors that provide referrals to various resources, including legal aid, for those who are interested. Referrals can be made by clinicians in the

community or clinicians in hospitals via the civil society organization who then may refer survivors to legal aid organizations.⁴⁰

However, interviewees did not identify any existing Standard Operating Procedures establishing a clear referral pathway and outlining how survivors should report cases, when a forensic examination is necessary, and survivors' rights to refuse such examinations if they prefer. Interviewees identified several pathways for survivors to access forensic examinations. One pathway is for survivors to go to "clinicians who report to Prosecutor General's Office who then refer to clinicians." Another pathway is where survivors directly approach prosecutors who request an examination through the courts. Where survivors are interested in reporting the violations they faced, physician leaders note that there are often significant delays. One physician said, "It took three months between when victim reported to the doctor and then the report went to the forensic expert." However, in their experience, most survivors refuse to undergo a forensic evaluation with a forensic expert. Further research with survivors is required to understand survivors' motives for refusing a forensic evaluation.

Beyond these concerns, some civil society interviewees noted that referral pathways seem to be clearer for civilians and prisoners of war released from Russian illegal custody and detention facilities. These survivors seem to experience more structured processes of intake and debriefing during their reintegration, and generally have access to information and resources, including legal and other services. Further, released prisoners of war have greater access to rehabilitative and financial support than civilians. This is because civilians' benefits are limited in duration or one-time-only, and there are no volunteer or veteran communities to assist with rehabilitation as there are for prisoners of war in the military.

b. Availability of and Access to Holistic Resources

Globally, "one stop centers" or centers for holistic support to survivors are recognized as a best practice for sexual violence survivors. In Ukraine, one notable initiative highlighted by people we interviewed was the specialized unit called the Coordination Center for Victim Support,⁴¹ established recently within the Prosecutor General's Office. This new unit is in the process of creating pathways throughout the legal process to "accompany" survivors along the journey and offer referrals to medical, social, and prevention services, among others. The Coordination Center helps to strengthen coordination among the various units within the Office and the survivors/victims themselves. The Coordination Center's staff include social workers, lawyers, psychologists who have been trained on victim support standards and practices consistent with approaches used at the International Criminal Court, and those laid out in international guidelines, including the Istanbul Protocol and the Murad Code. The Coordination Center will also maintain the registry of victims.

Interviewees also noted special holistic and comprehensive services for children in the form of "green rooms" as a positive innovation. Green rooms serve as "one stop" resources for case management, medical care, psychological support as well as legal aid, and include staff specifically trained to work with children.

⁴⁰ Some legal aid organizations assist not only with litigation but also with claims for disability and other issues affecting internally displaced Ukrainians.

⁴¹ Focus on the Victims' Rights, EUAM Ukraine, November 2, 2023, <https://www.euam-ukraine.eu/news/focus-on-the-victims-rights/>

Another national initiative discussed was a pilot project of the Register of Psychologists launched by the Coordination Center for Legal Aid.⁴² The Register provides information about psychologists who may be supporting cases under the criminal procedural legislation of Ukraine. Currently, the project is being piloted only for cases involving minors.

Psychological assistance, legal advice and other specialized support are also available for cases of conflict-related sexual violence in survivor relief centers started on the initiative of the Ukrainian Government with the support of UNFPA and European governments.⁴³ Centers are located in several big cities, particularly with large concentrations of internally displaced persons, and provide comprehensive social and psychological support in one place.

c. Availability of and Access to Medical Services

Most of the survivors in the Kyiv and Lviv regions are internally displaced persons from areas currently or formerly occupied by Russian forces. Some of them have medical needs that could not be addressed and require referral to local hospitals, rehabilitation centers, and specialists.

According to one service-providing organization, “We do a lot of work all over Ukraine. We have crisis rooms, special centers, shelters, mobile groups, psychiatrists, but the referral system to medical institutions is very low.” Another service-providing organization has staff both in the shelter and in the public hospital which includes physicians, nurses, OBGYN, psychologists, neurologists, urologists, and other specialists. One service-providing organization which had psychologists on staff did mention that “not only we refer to doctors, but also doctors refer to us (which is important for many patients, when doctors refer to psychologists).”

Legal experts from a nongovernmental organization mentioned that a lot of victims who are abroad are reluctant to go to physicians there as they might not speak the language of the receiving country. Another organization that works with prisoners of war and detained civilians stated that prisoners of war undergo obligatory checks with doctors, while civilians might be in poorer health because they are not subject to those checks.

A representative of a survivor-led organization talked about reproductive health services and resources. According to her, women of reproductive age in captivity are experiencing loss of reproductive function, and no reproductive aid is available to them, and the same lack of support applies to male survivors of conflict-related sexual violence, as electrocution can also affect reproductive function. In the formerly occupied territories, women may hesitate to seek immediate medical assistance due to fear of reprisals and stigma, compounded by the inconsistent availability of medical aid.

Additionally, when referrals and medical follow ups do occur, there is no unified system to link the documentation generated from such encounters (with consent) to the criminal justice system and it is unclear whether any of the medical care/services/documentation that take place ever finds its way as evidentiary summaries in medical-legal cases. As one service-providing organization put it, “Medical documentation we submit to law enforcement is not structured, very short, about their mental state, physical state. We submit it upon request, either to beneficiary, lawyer, or to prosecutor, police. Medical information is added in the national e-health system.

⁴² Register of Psychologists, Free Legal Aid, <https://legalaids.gov.ua/publikatsiyi/rejestr-psyhologiv/>

⁴³ “Survivor Relief Centres provide lifesaving social and psychological assistance to those affected by the war,” UNFPA, <https://ukraine.unfpa.org/en/survivor-relief-centres>

d. Standardization, Resources and Equipment, Training, and Coordination Among Police and Other Law Enforcement Forces

Interviewees highlighted several successes and challenges concerning survivors' access to and engagement with law enforcement that impact reporting and documentation. First, several interviewees highlighted that there was a lack of standardization of training or procedures for investigation of sexual violence between the different oblasts. Police curricula and training may be different in different settings (for instance, geographic, specific units).

Interviewees also mentioned that coordination between on-site investigation services, from first responders of the Police Patrol to the National Police and the Security Service is not very effective. The procedure for transmitting evidence already collected is not very well identified. A risk assessment grid system for victims of domestic violence is being tested as an application for centralized coordination of gender-based violence cases; but these tools remain linked to case management and not to better care.

Some experts mentioned challenges with implementing trauma-informed approaches. Apart from the “green rooms”⁴⁴ mentioned above, the assessment team did not encounter other techniques for a victim-centered approach or a trauma-informed approach that have been put in place within police structures or included across training modalities. Investigators who would like to refer victims to other stakeholders for holistic care in their district are faced with several challenges, including a lack of knowledge of the relevant actors or resources, a shortage of psychologists and social workers (due, in part, to war-related displacement, and financial issues making the professions less attractive).

Further, experts noted serious resource and equipment challenges due to the war. For example, in areas that have been seriously affected by the war, police officers work in their vehicles, without electricity or internet connection. As noted by one of the police department heads, in an area near the frontline, there are difficulties reaching out to and interacting with sexual violence survivors because parts of the region are still occupied and there is daily shelling, so safety concerns also inhibit reporting and support services. It was noted that courts in those areas had been closed until June 2023, so cases were tried in Odesa and Dnipro which led to delays. The gender-based violence shelter was shelled in Kherson. They continue to register calls from victims/survivors from Russian-occupied areas but cannot do much more than provide some advice and consultation over the phone. Remote forensic documentation has not been established. A noted successful intervention to address this challenge was the establishment of mobile justice teams⁴⁵ by Global Rights Compliance, a nongovernmental organization and a law firm, to carry out investigations, provide prevention and response and promote access to justice; however, movement is challenging in areas near the frontline due to military restrictions.

⁴⁴ UNDP Ukraine, “New format for working with children: Police units in eastern Ukraine now have “green rooms” thanks to EU and UN,” Medium, July 20, 2020m <https://undpukraine.medium.com/new-format-for-working-with-children-police-units-in-eastern-ukraine-now-have-green-rooms-fb1c825eb9eb>

⁴⁵ “GRC’s Mobile Justice Team assists prosecutors in working with victims and witnesses of international crimes in Mykolaiv region,” Global Rights Compliance, February 1, 2024, <https://globalrightscalpliance.com/2024/02/01/grcs-mobile-justice-team-assists-prosecutors-in-working-with-victims-and-witnesses-of-international-crimes-in-mykolaiv-region/>

Finally, some interviewees expressed a general mistrust in the police and low confidence in their work. One representative of the survivor-led organization said: “Police should not push. There is no trust. The person has to take their own time. There should not be two investigators in a room (it looks like cross-examination) and I should be able to choose their gender. I should be able to choose a venue for the interview. They should also understand that I have the right to have a lawyer, or a psychologist, or in fact any other person for support with me – they don’t understand this for now.” This is partly due to historical factors involving the Ukrainian law enforcement and security forces, linked to cases of intimidation, violence, corruption, and lack of accountability. These factors represent a barrier for victims to report cases of violence of any kind. Other factors contributing to under-reporting to the police of cases of sexual violence (gender-based violence, intimate-partner violence, or conflict-related sexual violence) include the perception that the police would mismanage the case, that sensitive information would become public, stigmatization, and fear of reprisals.

3. Technology Readiness and Acceptability for the Incorporation of MediCapt into Medical-Legal Processes

One of the primary elements of this assessment was to understand the feasibility of adapting mobile technology to support forensic documentation efforts in Ukraine. For the past decade, PHR has been developing and piloting MediCapt, an open source, Android-based application that facilitates the collection and preservation of forensic medical evidence to inform investigations and prosecutions of sexual offenses. The app has been codesigned with clinicians from Kenya and the Democratic Republic of the Congo. MediCapt allows for data collection remotely on mobile devices such as a smart phone or a tablet and provides a solution for yielding stronger evidence, preserving chain of custody, and improving data security and privacy while minimizing the chances of loss, tampering, or theft of medical evidence. Ultimately, it is a tool that seeks to strengthen accountability for sexual offenses by increasing survivors' access to medical care as well as stronger documentation of forensic medical evidence.

To understand the feasibility of adapting MediCapt to the Ukrainian context, we assessed end-user digital and technological literacy, presence of sufficient forensic capacity and referral pathways to support standardized documentation, interest in piloting MediCapt, and the suitability of existing technological digital infrastructure for adoption of the application.

a. End-User Digital Technological Literacy

Our interviews confirmed that Ukrainian clinicians have high tech literacy and have been using electronic medical records consistently for several years. Smartphones are commonly used in Ukraine, and people throughout the country have a highly sophisticated facility with mobile technology which is used in all commerce, communications, transportation platforms.

b. Technological and Digital Infrastructure in the Health System

Ukraine has a highly sophisticated National Electronic Health Care System, which was launched throughout the country in 2017. The electronic medical record system allows for digital interactivity with patients via mobile digital means (primarily smartphones), but clinicians use it via desktop computers. Clinicians do not use mobile documentation technology as part of their routine clinical encounters.

At some of our meetings with government officials at the Ministry of Health and Ministry of Digital Transformation, questions were raised about the ability to integrate MediCapt itself (as an external

product) into the government-owned and centralized electronic medical record system and/or whether interoperability was possible from the technological and legal/regulatory perspectives. For example, government officials noted that all medical forms created for the electronic medical record system come from and must be created by the Ministry of Health. “Any medical action is regulated by a clinical guideline, which is a standard of care. The procedure for developing these documents is provided for in the Order of the Ministry of Health No. 751.⁴⁶ Any document that tells a doctor what to do and how to do it must be developed in accordance with this order and approved by the Ministry of Health.”⁴⁷

c. Data Protection and Data Ownership

In many discussions, including with the Ministry of Digital Transformation, the issues of data ownership and protection came up repeatedly. Interviewees noted that Ukraine will be following the more stringent European standards for data protection,⁴⁸ which also provide the patient with the ability to decide to remove all their personal data. Digital documentation of conflict-related sexual violence with tools like MediCapt ensures data integrity and confidentiality. However, unlike standard electronic medical record databases, finalized records in the app cannot be redacted. That said, forensic records in MediCapt are secure and tamper-proof, accessible only to clinicians and survivors, thereby guaranteeing privacy and reliability for legal purposes and regional statistics.

Stakeholders pointed out that it is likely the Ukrainian Government will have to own the data collected in MediCapt and several questions were raised about the legal terms of owning the data. In addition, the Ukrainian Government will require that PHR share the source code for use by State agents or public employees.

d. Opportunities for Utilization of MediCapt

After a short demonstration of the app for civil society and government stakeholders, several stakeholders indicated that MediCapt was “very well designed.” Stakeholders expressed interest in MediCapt from a practical perspective as an app that both uses standardized forms and one that can serve as an educational tool that prompts clinicians to enter specific data. All stakeholders conveyed the need to adapt it to the local setting. “We have familiarized ourselves with MediCapt, and technically it is very well designed. But technically, the internet and communication need to be adapted to Ukrainian realities,” said a representative of one of forensic bureaus.

Government officials asserted that they would have to review the actual algorithms and the safety/security/data protection protocols and algorithms.

⁴⁶ “On the creation and implementation of medical and technological documents on standardization of medical care in the system of the Ministry of Health of Ukraine,” Order of the Ministry of Health No. 751, September 28, 2012, <https://zakon.rada.gov.ua/laws/show/z2001-12#Text>

⁴⁷ “On the creation and implementation of medical and technological documents on the standardization of medical care in the system of the Ministry of Health of Ukraine,” Order no. 751 of the Ministry of Health from September 28, 2012, <https://zakon.rada.gov.ua/laws/show/z2001-12#Text>

⁴⁸ General Data Protection Regulation (GDPR) Compliance Guidelines: <https://gdpr.eu/>

III. CONCLUSION AND RECOMMENDATIONS

The recommendations below are organized thematically, in the same three domains as the assessment: (1) capacity for conducting high-quality forensic medical evaluation, (2) survivor access to resources and support, and (3) technology readiness and acceptability for the incorporation of MediCapt into medical-legal processes.

1. Capacity for Conducting High-Quality Forensic Medical Evaluation

In Ukraine, the limitation on who is authorized to conduct and sign off on a forensic medical evaluation, the lack of standardized protocols, and the paucity of training, especially multi-sectoral training, present fundamental impediments to the comprehensive documentation of atrocities and the collection of evidence of human rights violations, including physical and psychological injuries, in the context of the war.

Given these findings, PHR proposes the recommendations below.

The Government of Ukraine should:

- Pass legislation to facilitate investigation and prosecution of conflict-related sexual violence as an international crime by harmonizing the criminal code with international law on atrocity crimes with specific reference to conflict-related sexual violence.
- Take measures to allow forensic medical evaluation from trained clinicians beyond state-affiliated forensic experts, including international non-Ukrainian experts, to be admissible in conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment cases brought by the Prosecutor General's Office or other domestic or hybrid mechanisms.
- Clarify that investigators have discretion to determine when forensic medical evaluations are necessary, including but not limited by the crimes listed in the Criminal Procedure Code of Ukraine.
- Develop, adopt, and roll out comprehensive standardized forensic documentation to support clinicians to document conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment in a trauma-informed and survivor-centered manner, including the Certificate for the Documentation of Bodily Injuries with the recommendations made by PHR.

- Prioritize capacity-building for all clinicians, including non-forensics experts, on survivor-centered, trauma-informed forensic documentation of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment in line with international standards and national regulations, including through immediate training programs to respond to current cases as well as adoption of such training into pre-service training for all clinicians.
- Support survivor-centered referral pathways by conducting multisectoral trainings, including on forensic examination, with the goal of strengthening collaboration, coordination, and capacity to effectively collect and interpret forensic evidence.

The international community and civil society actors should provide technical and financial resources to support the national efforts outlined above, as well as:

- Support efforts to strengthen multisectoral collaboration (including amongst the Ministry of Health, Ministry of Justice, Prosecutor General's Office, National Police, Security Service, representatives of the judicial system, forensic and medical representatives) to create, adopt, and implement standardized operating protocols for a pathway to justice for survivors that details all the touchpoints and communication flows.
- Support the introduction and dissemination of standardized forms for forensic documentation of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment that align to international best practices and national regulations.
- Support multisectoral and advanced specialized trainings to introduce standardized forensic documentation forms, build skills in high quality forensic documentation and how to interpret such evidence, and promote collaboration, cooperation, and clarity concerning roles and protocols.
- Introduce training for clinicians, social workers, and other providers across the system on vicarious trauma, as well as ensure the necessary resources for ongoing support.

2. Survivor Access to Resources and Support

Civil society and social service organizations have created a good system of referrals to psycho-social support survivors, but referrals to legal-aid organizations for the purpose of justice and accountability are less consistent and survivors need additional support to understand entry points into the referral pathways.

The government of Ukraine, civil society actors, and international partners should:

- Develop, implement, and raise awareness of comprehensive standard operating procedures for referral pathways for survivors of conflict-related sexual violence and torture, cruel, inhuman and degrading treatment or punishment, ensuring access to complete medical treatment and rehabilitation services.
- Build capacity amongst multisectoral professionals along the referral pathway for survivor-centered and trauma-informed care and support.
- Establish protocols to integrate medical documentation obtained during survivor intake into evidentiary summaries for use in medical-legal cases.
- Create an awareness and advocacy campaign (social media, TV, flyers) – in conjunction with the Prosecutor General's Office and/or law enforcement – raising awareness among internally displaced persons and survivors about what it means to report such crimes, to whom, why, and how.
- Create programs to identify and reach out to survivors outside of Ukraine for remote documentation or to arrange documentation by international experts.

3. Technology Readiness and Acceptability for the incorporation of MediCapt into Medical-legal Processes

There is significant enthusiasm for the utilization of digital solutions, including MediCapt specifically, to support survivors' access to justice, so piloting and scaling of MediCapt in Ukraine will require efforts to strengthen forensic capacity and introduced standardized forms for documentation as well as several multisectoral, high-level conversations to align on security, compatibility with existing systems, and adaptation of the software to the country context.

The government of Ukraine, civil society actors, and international partners should:

- Convene high-level meetings with stakeholders from the Ministry of Health, Ministry of Justice, Ministry of Digital Transformation, relevant civil society stakeholders, and PHR's MediCapt development and technology team to:
- Align on parameters related to data safety, security, and protection arising from digital documentation of forensic medical evidence.
- Assess compatibility of MediCapt with existing local electronic medical records systems.
- Articulate the conditions required to ensure forensic medical evidence collected with MediCapt or other technology tools would be admissible in national justice processes.
- Cultivate collaboration with medical, law enforcement, and legal professionals to explore building capacity across sectors to adapt and implement tech tools to strengthen the collection, documentation, and preservation of forensic medical evidence to support accountability.
- Work with public and private donors to mobilize resources to support this initiative.

ANNEX 1

List of all Stakeholders/Organizations Interviewed

- UN Team of Experts on Rule of Law and Sexual Violence in Conflict, Giorgia Tortora, Judicial Affairs Officer (online)
- Prosecutor General's Office
 - War Crimes Unit
 - CRSV Unit
 - Coordination Center for Victim Support
- Global Right Compliance
- Ministry of Health
 - Department of Digital Transformation
 - Department of Medical Services
 - Forensic Medical Expertise unit of the Department of High-Tech Medical Care and Innovation
 - Head Bureau of Forensic Medical Expertise
- UNFPA (a coordination meeting)
 - UNFPA experts, experts of other UN agencies
 - International experts
 - Forensic experts (Bogomolets National Medical University, Kyiv City Clinical Bureau of Forensic Medicine)
 - Clinicians
- Office of the Gender Commissioner for Government Equality Policy
- IOM Rehabilitation Center
- La Strada
- Ministry of Digital Transformation, Directorate for Functional Development of Digitalization
- Institute of Pediatrics, Obstetrics and Gynecology, Dr. Alisa Lymanska, Dr. Yulia Davydova
- Media Initiative for Human Rights
- Police Training Assistance Project (PTAP), Tracy Hardy, Senior Police advisor
- ZMINA
- SEMA
- Lviv Regional Branch of the National School of Judges,
- Lviv Regional Clinical Perinatal Center, Dr. Natalia Veresniuk
- JurFem
- UNFPA Survivor Relief Center
- Ms. Iryna Gloviuk, Professor at the Department of Criminal Law Disciplines of the Law Faculty, Lviv State University of Internal Affairs
- Rokada
- Dr. Andriy Berbets, Obstetrician-gynecologist, Chernivtsi Regional Perinatal Center, Professor at Bukovynskyi State Medical University (online)

ANNEX 2

Semi-structured Interview Guide

I. Process:

Interviewers: Uliana Poltavets, Ranit Mishori, Georges Kuzma, Kateryna Shunevych.

Interpreters: XXX

Interviews will be recorded and transcribed/translated into English

Time: Will try to spend no more than one hour per interview

Interviewees: from different sectors as below. Lists of names/titles/roles will be provided ahead of time with a short summary describing the person's relevance to this project. Some interviews will be conducted via Zoom/phone ahead of the trip.

Dates: November 28 – December 7, 2023

Overarching Goals:

To assess the capacity of certain key sectors to perform medical-legal forensic evaluations of sexual and gender-based violence and torture and cruel, inhuman and degrading treatment, produce high-quality documentation, streamline the processes, and enhance cross-sectoral collaboration. This assessment seeks to improve the collection of forensic medical evidence for domestic and international accountability and justice mechanisms. Additionally, to assess the feasibility of incorporating MediCapt into the existing (or future) processes, SOPs, and institutional protocols.

Key broad questions:

- a. What is currently being done?
- b. What are the main barriers?
- c. What facilitates good practices/processes?
- d. What solutions can you identify to address the barriers?
- e. What technical assistance might you need?
- f. Who are internal key champions in each sector to advocate for reform?

CONSENT FOR INTERVIEW

Oral Consent Form

A PHR team member will go over this form with you and an interpreter and mark your answers to the questions below.

Introduction

We are interviewing you for purposes of a report being prepared by PHR, with support from the Mukwege Foundation, regarding the process of performing forensic investigations related to alleged torture or conflict-related sexual violence as part of the Russian invasion of Ukraine, and the feasibility of collecting some data and evidence via a mobile application (app).

The project is being carried out by Physicians for Human Rights. PHR is an organization that does work around the world to fight for human rights and justice using science. PHR is not connected to a government or a company.

We want to speak with you because in your role as a XXXX, you are XXXX. We think that talking with you will take about an hour.

Information from this interview will be used to write a report that will be shared internally at PHR, with our funding partner The Mukwege Foundation, as well as with XXXX.

This interview is voluntary. This means that whether or not you talk with us is totally up to you. Please know that, even after you start, you can stop this interview at any time. You can also choose not to answer any questions you don't want to. We will not use your name and identity unless you want us to. If you don't want to speak with us, that's okay.

Are you comfortable speaking with me today?

☐ Yes ☐ No

If so, would you like us to keep your identity a secret or use your real name?

☐ Real Name and title ☐ Just title ☐ Just general sector

Are you okay with an interviewer typing notes while we talk? The notes are to make sure we get the information and quotes right. These notes will not be made public.

☐ Yes ☐ No

Are you okay with an interviewer taping the interview? The recording will be transcribed to make sure we get the information and quotes right. The transcription will not be made public.

☐ Yes ☐ No

Do you have any questions about anything I have said so far?

☐ Yes ☐ No

If you have questions later, you may contact PHR's Ukraine Coordinator Uliana Poltavets at _____ or Dr. Ranit Mishori at _____. Thank you for speaking to us.

Name of Interviewee: _____

Date: _____

General Questions regarding Attacks on health care:

- What can you tell us about instances of attacks on health care facilities (hospitals, clinics, ambulances) or personnel? (Type, number, frequency, location?)
- What has the impact been of these attacks? (On patients? On personnel? On the health care system? On the public's health?)
- Can you specifically address the impact on the delivery of Maternal and Child Health services?
- Were there any other attacks as part of Russia's aggression that have impacted the health of the public, but were not directly related to health care facilities? (for example, dam, electric system, food distribution, and so on).
- What is being done for the prevention of such attacks? Of the impact of such attacks?
- What is being done for Preparedness? of the staff? Patients? Of the built environment?
- Is anyone documenting instances of attacks on health care/their impact?
- What data collection methods do you have? Where is the data being kept?
- What will the data be used for? Reports? Litigation?
- Barriers/Facilitators for data collection
- Barriers/facilitators for reporting

SUGGESTED QUESTIONS PER SECTOR

A. Health Professionals

– Who are we interviewing? Name/role/specialty/location

– Questions:

Domain	Suggested Questions
Workforce Issues	<ul style="list-style-type: none"> • What kind of patients do you see? Do you encounter survivors of conflict-related sexual violence/torture? • Do you, or anyone you know, conduct forensic medical evaluations? If so, who does the evaluations? (What specialties, experiences, licensing, what locations?) • What kind of training did they get? • How has the conflict impacted the ability to conduct forensic medical evaluations, if at all? • What is done if someone comes in for an exam and a forensic expert isn't available?
Legal or regulatory	<ul style="list-style-type: none"> • Are there any limitations on who can perform forensic medical evaluations? Why? • Is anyone working on changing the regulatory landscape?
Processes and protocols	<ul style="list-style-type: none"> • Describe survivor access to forensic medical evaluations, clinic navigation and flow (e.g., locations, specialized clinics, privacy, staffing). • Describe what kinds of protocols exist to document and respond to SGBV (standardization, sources, forensic documentation, post-rape protocols) • Describe the consent process • Describe the lab capacity and lab procedures (e.g., location, availability of tests) • Describe the use of photography • Describe where/how you store the forensic medical evaluations; How/to whom the information gets transferred • Is there a quality assurance process for these encounters/evaluations/reports? • What kind of data is recorded? By whom? How many cases per week/month?

Domain	Suggested Questions
Tech infrastructure; digital literacy	<ul style="list-style-type: none"> • What electronic medical record system is used? Where? Who uses it? • Does anyone use mobile health platforms and hardware? What kind? • How would you assess clinicians' general tech literacy? Specific to mobile technology? • What is the technological infrastructure you have (wi-fi, broadband, etc.) • What are the privacy/confidentiality issues you foresee using mobile health tech?
Training	<ul style="list-style-type: none"> • Does your staff get any training on trauma informed care? How to interact with survivors? Vicarious trauma? • What general training/capacity building programs exist?
Services/Resources	<ul style="list-style-type: none"> • What are some referral pathways and services available for survivors?
Misc.	<ul style="list-style-type: none"> • Are you aware of any initiatives to improve medical-legal collaboration and strengthen forensic documentation of CRSV/ torture (e.g. the SOPs, etc.)? If they mention an initiative, it would be understood if they find it promising and what they would see as next steps • Can you discuss the challenges/impact/involvement of specific groups of survivors: men, children, pregnant people, ethnic minorities, etc.

Health Officials

- Who are we interviewing?
- Questions:

Domain	Suggested Questions
Workforce issues	<ul style="list-style-type: none"> • Who does the forensic medical evaluations? (specialties, experiences, licensing, locations) • What kind of training is available in the Ukraine? • What kind of accreditation is necessary? • What is the size of the workforce accredited to conduct forensic medical evaluations? • Do you allow foreign experts to conduct forensic medical evaluations? • How has the conflict impacted the ability to conduct forensic medical evaluations, if at all? • What is done if someone comes in for an exam and a forensic expert isn't available?
Legal or regulatory	<ul style="list-style-type: none"> • Are there any limitations on who can perform forensic medical evaluations? Why? • Is anyone working on changing the regulatory landscape?
Processes and protocols	<ul style="list-style-type: none"> • Do clinicians use standardized forms? What kind? Adapted from where? • Are there standardized processes for collaboration between the stakeholders/sectors? • What kinds of multi-sectoral engagement exist currently?
Tech infrastructure; digital literacy	<ul style="list-style-type: none"> • Can you describe the medical record keeping technological infrastructure? (e.g., EMR, training, broadband, hardware, software used). • Is mobile health technology utilized in the health care setting? • What is the technological infrastructure you have (wi-fi, broadband, etc.)? • What are the privacy/confidentiality issues you foresee using mobile health tech?
Training	<ul style="list-style-type: none"> • Does your staff get any training on trauma informed care? How to interact with survivors? Vicarious trauma? • Does any training include: consent, photography, psychological evidence, pediatric examinations, familiarity with Istanbul Protocol or International Protocol/trauma-informed and survivor-centered methodologies, etc.?
Services/Resources	<ul style="list-style-type: none"> • What are some referral pathways and services available for survivors?

Domain	Suggested Questions
Misc.	<ul style="list-style-type: none"> • Are you aware of any initiatives to improve medical-legal collaboration and strengthen forensic documentation of CRSV/ torture (e.g. the SOPs, etc.)? If they mention an initiative, it would be understood if they find it promising and what they would see as next steps. • Can you discuss the challenges/impact/involvement of specific groups of survivors: men, children, pregnant people, ethnic minorities, etc.

Prosecutors

- Who are we interviewing
- Questions

Domain	Suggested Questions
Workforce issues	<ul style="list-style-type: none"> • Who do you accept forensic medical evaluation evidence from? Why? • Only State sanctioned? Outside experts? • Who would you NOT accept forensic medical evaluation evidence from? Why?
Legal or regulatory	<ul style="list-style-type: none"> • What format/kind of evidence is preferable? • What about evidence obtained/processed in digital form? • What do you consider “good” evidence? (history/physical/ photos/DNA/ Psychological, evidence about perpetrators)?
Processes and protocols	<ul style="list-style-type: none"> • Have you seen the use of standardized forms for forensic medical evaluation? • Do you think those would be helpful? • What is the biggest barrier to prosecuting SGBV? Torture? • What would make the system work better?
Tech infrastructure; digital literacy	<ul style="list-style-type: none"> • Can you describe the record keeping technological infrastructure? (e.g., training, broadband, hardware, software used). • The use of mobile technology? • The familiarity of staff with mobile health technology? • What is the technological infrastructure you have (wi-fi, broadband, etc.) • What are the privacy/confidentiality issues you foresee using mobile health tech?

Domain	Suggested Questions
Training	<ul style="list-style-type: none"> • Does your staff get any training on trauma informed care? How to interact with survivors? Vicarious trauma? • examinations, familiarity with Istanbul Protocol or International Protocol/trauma-informed and survivor-centered methodologies etc.?
Services/Resources	<ul style="list-style-type: none"> • Are there any referrals to holistic services for survivors? • Are there any support services available on site? • Who is present during interviews? How many interviews are there during a case?
Misc.	<ul style="list-style-type: none"> • Are you aware of any initiatives to improve medical-legal collaboration and strengthen forensic documentation of CRSV/torture (for example, the SOPs, etc.)? If they mention an initiative, it would be understood if they find it promising and what they would see as next steps • Can you discuss the challenges/impact/involvement of specific groups of survivors: men, children, pregnant people, ethnic minorities, etc.

Lawyers/Legal Aid Groups

- Who are we interviewing
- Questions:

Domain	Suggested Questions
Workforce issues	
Legal or regulatory	<ul style="list-style-type: none"> • Are there any legal challenges impeding effective documentation?
Processes and protocols	<ul style="list-style-type: none"> • How do survivors get to you? Seek/receive representation? • How soon after an incident does a survivor reach out? • What are common barriers to accessing your services? (e.g., staffing, payment, stigma, etc.). • What are common barriers to reporting to Law Enforcement? (e.g., staffing, payment, stigma, etc.); finding partners in the health system? Submitting to justice mechanisms?

Domain	Suggested Questions
Tech infrastructure; digital literacy	<ul style="list-style-type: none"> • Can you describe the record keeping technological infrastructure? (e.g., training, broadband, hardware, software used). • The use of mobile technology in your work? sector? • The familiarity of staff with the use of mobile technology? • What is the technological infrastructure you have (wi-fi, broadband, etc.) • What are the privacy/confidentiality issues you foresee using mobile health tech?
Training	<ul style="list-style-type: none"> • Does your staff get any training on trauma informed care? How to interact with survivors? Vicarious trauma? • examinations, familiarity with Istanbul Protocol or Int'l Protocol// trauma-informed and survivor-centered methodologies etc.?
Services/Resources	
Misc.	<ul style="list-style-type: none"> • Are you aware of any initiatives to improve medical-legal collaboration and strengthen forensic documentation of CRSV/ torture (e.g. the SOPs, etc.)? If they mention an initiative, it would be understood if they find it promising and what they would see as next steps • Can you discuss the challenges/impact/involvement of specific groups of survivors: men, children, pregnant people, ethnic minorities, etc.

Law Enforcement

- Who are we interviewing
- Questions:

Domain	Suggested Questions
Workforce issues	<ul style="list-style-type: none"> • Can you tell us about your service? • Do you have an organigram chart to share? • Is your service unique or is it present throughout the country? • What is your main mission? • How many people work in the department? • What is the initial training of the staff? • What is the continuous training of staff? • How long will staff be assigned? • What is the salary of the staff? • What is the staff leave scheme? • What are the career prospects of the staff? • What is the gender distribution in the service? And at the national level? • What is the distribution of premises within your department? • How many people work together on the premises? • Do you have an antenna located outside the service?
Legal or regulatory	<ul style="list-style-type: none"> • What are the main legal texts that govern your activity? • Do you have professional regulations and procedure manuals? • Do you have regulations on the administration of evidence?
Processes and protocols	<ul style="list-style-type: none"> • How do you know about cases? • In general, how much time elapses between the facts and the judicial referral? • What is the complainant's path within your department? • What are the different mandatory steps in the process? • What support is available to the complainant at each stage? • Do you have waiting rooms reserved for complainants? • Do you have separate entrances and exits for complainants? • Do you have rooms set up for interview complainants? • How are the interview rooms arranged? • What is the dress code for those in charge of interviews? • How many investigators oversee the interviews? • How many investigators will participate in the interview? • Who attends the interviews? • Do you have a gender policy for interviews? • Who supports victims during the interview? • How is note-taking done? • On what medium is note-taking done? • How does an interview take place? • Do you have a formality to respect? • What are the legal obligations of the interview? • Do you have a standardized document?

Domain	Suggested Questions
Processes and protocols	<ul style="list-style-type: none"> • Have you been trained in interviewing victims of sexual violence/torture? • Do you have an investigation aid manual for victims of sexual violence/torture? • When a victim shows you an injury, do you take pictures? • If you are in the presence of a minor, what is the procedure? • Do you provide information on the procedure to be followed by the victim? • Do you refer the victim to support structures? • Do you provide your contact details to the complainant? • Typically, how many interviews are required? • Do you practice confrontation between the victim and the alleged aggressor? • How do you store interview reports? • After the interview, what is the procedure for the investigators? • Who should you report your investigations to? Within what time frame? • Are you carrying out a crime scene investigation? • If so, do you have training and suitable equipment? • If not, who is responsible for these technical investigations? • Can you show us visually what a procedure is? • Do you know the other sectors (medical, psychological, legal aid, forensic, justice, NGO)? • How do you collaborate with other sectors (medical, psychological, legal aid, forensic, justice, NGOs)? • In general, what is the duration of a procedure between the complaint and the judgment? • Do you know the outcome of court decisions? • In your opinion, is your department informed of all cases of sexual violence/torture? If not, can you explain the barriers the victim encounters? What are your suggestions for improving this percentage? • What are common barriers to reporting to Law Enforcement? (e.g., staffing, payment, stigma, etc.); finding partners in the health system? Submitting to justice mechanisms? • How does the current conflict impact your work? Has it increased the number of cases of sexual violence/torture? If so, at what level?

Domain	Suggested Questions
Tech infrastructure; digital literacy	<ul style="list-style-type: none"> • Can you describe the record keeping technological infrastructure? (e.g., training, hardware, software used). • How commonly do people use mobile technology as part of their day-to-day work? What kind? • What is the technological infrastructure you have (wi-fi, broadband, etc.)
Training	<ul style="list-style-type: none"> • Does your staff get any training on trauma informed care? How to interact with survivors? Vicarious trauma? • examinations, familiarity with Istanbul Protocol or Int'l Protocol//trauma-informed and survivor-centered methodologies etc.?
Services/Resources	
Misc.	<ul style="list-style-type: none"> • Are you aware of any initiatives to improve medical-legal collaboration and strengthen forensic documentation of CRSV/ torture (e.g. the SOPs, etc.)? If they mention an initiative, it would be understood if they find it promising and what they would see as next steps • Can you discuss the challenges/impact/involvement of specific groups of survivors: men, children, pregnant people, ethnic minorities, etc.

ANNEX 3. LEGAL ANALYSIS

Forensic Medical Evidence in Ukrainian Criminal Procedure

1. Current Ukrainian laws and regulations on forensic medical evidence (summary)

Peculiarities of the use of the forensic medical examination opinion in criminal proceedings are determined by the Criminal Procedure Code of Ukraine:

- Art. 69 of the CPC regulates the legal status of an expert (an expert is a person who: a) possesses scientific, technical or other special knowledge; b) has the right in accordance with the Law of Ukraine "On Forensic Examination" to conduct an examination; c) which is entrusted with conducting a study of objects, phenomena and processes containing information about the circumstances of the commission of a criminal offense, and giving a conclusion on issues that arise during criminal proceedings and relate to the field of its knowledge).
- Art. 101 – 103 of the CPC define the requirements for such a source of evidence as an "expert opinion."
- Art. 242 of the CPC defines the subjects of the examination (expert institution; expert or experts), as well as the subjects authorized to engage an expert to conduct the examination (parties of criminal proceedings, and in cases provided for by law - the investigating judge).
- Part 2 of Art. 242 of the CPC among the grounds for mandatory examination is defined, but not only for determining the causes of death, determining the severity and nature of bodily injuries.

The organizational aspects of forensic expert activity are defined in:

- The Law of Ukraine "On Forensic Expertise," in particular Art. 7 defines the subjects of forensic expert activity: state specialized institutions, their territorial branches, expert institutions of communal ownership, as well as forensic experts who are not employees of the specified institutions, and other specialists (experts) from the relevant fields. Art. 10 regulates the requirements for a person who can be a court expert.
- Instructions on the appointment and conduct of forensic examinations and expert studies, approved by the Order of the Ministry of Justice of Ukraine dated October 8, 1998 No. 53/5.
- Instructions on conducting a forensic medical examination, approved by the order of the Ministry of Health of Ukraine dated 17.01. 1995 №6

2. Who is enabled under the legal and policy framework to conduct forensic medical evaluations and what legal constraints are there for non-forensic workforce (summary)

According to Art. 7 of the Law of Ukraine "On Forensic Expertise" establishes that only the state forensic institutions carry out forensic expert activities related to conducting forensic, forensic medical and forensic psychiatric examinations. The state forensic expert institutions are: scientific research institutions of forensic examinations of the Ministry of Justice of Ukraine (they are the Scientific Research Institutes of Forensic Examinations); scientific research institutions of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine (Forensic Medical Examination Bureau of the Ministry of Health); expert institutions of the Ministry of Internal Affairs, the Ministry of Defense, the Security Service of Ukraine and the State Border Service of Ukraine.

According to the Instructions on conducting a forensic medical examination, approved by the order of the Ministry of Health of Ukraine dated 17.01. 1995 No. 6 (clause 1.3) the system of the forensic medical service of Ukraine consists of: the main bureau of forensic medical examination of the Ministry of Health of Ukraine; Republican Bureau of Forensic Medical Examination (Autonomous Republic of Crimea); bureau of forensic medical examination of health care departments of regional executive committees. Accordingly, the forensic medical examination is carried out by specialists of state institutions of forensic medical examinations of the Ministry of Health of Ukraine.

3. Main gaps and challenges in corresponding legislation for documentation of conflict-related sexual violence and torture and cruel, inhuman and degrading treatment (summary)

Documenting the results of the medical examination consists of the medical worker entering information about the detection of injuries, examining patients, and providing them with medical assistance to the forms of primary accounting documentation approved by the orders of the Ministry of Health of Ukraine. Conducting a medical examination/examination by a doctor and drawing up the last document on the results of such an examination at the request of the victim is not a forensic examination act, since the basis for conducting an examination in accordance with current legislation is a procedural document (resolution) on the appointment of an examination drawn up by an authorized person (body), or a written appeal of the party defending the criminal proceedings, which must include details, a list of questions put to the expert, as well as objects to be investigated.

As for legislative gaps, it is worth paying attention to some of them, presented below.

- A. The legislation provides for obstacles to the exercise of the victim's right to independently engage an expert: in accordance with Part 3 of Article 93 of the Criminal Procedure Code of Ukraine, the victim collects evidence by demanding and receiving it from state authorities, local self-government bodies, enterprises, institutions, organizations, official and physical persons, things, copies of documents, information, expert opinions:

- Clause 3, Part 1 of Art. 56 of the Criminal Procedure Code, clause 3, part 2 of Article 56 of the Criminal Procedure Code provides that the victim has the right to submit evidence in support of their statement about the committed criminal offense to the investigator, prosecutor, investigating judge, court. The victim's right to collect evidence in Art. 56 of the CPC is absent.

- Special rules of the Criminal Procedure Code, which provide for the procedure of involving an expert to carry out an examination at the stage of pre-trial investigation (Article 242), deprive the victim of such an opportunity.

- The victim or their lawyer can turn to the expert in "private order," but the received document will not acquire such a procedural status as a source of evidence as an expert's opinion.

B. Lack of access to the objects of expert research, which must be provided to the expert in order to conduct such expert research: the issue of sample selection in the proper procedural order and access to them by the victim: in the event that the case is a case of public prosecution (Article 477 of the Criminal Procedure Code of Ukraine, for example, part 2-part 6 of article 152 of the Criminal Code of Ukraine "Rape"):

- The victim is not a party to the criminal proceedings and, accordingly, does not have the right to select samples for examination of the latter for forensic medical examination.

- The selection of samples should be carried out after the opening of criminal proceedings to avoid later recognition of the evidence (forensic examination conclusion) obtained as a result of the analysis of such samples as inadmissible.

- Questions arise as to whether the samples will be "appropriate" for the study if the subject carrying out the examination –the expert – did not select such samples.

- Samples received for examination are not independent evidence; such data can only be used based on the results of the examination (they are not material evidence in advance).

- The concept of "biological samples" is absent at the legislative level.

C. Order of the Ministry of Health "On approval of the Procedure for conducting and documenting the results of the medical examination of victims of domestic violence or persons who are likely to have suffered from domestic violence, and providing them with medical assistance" No. 278 of February 1, 2019: issues of obligation mandatory informing/reporting by doctors to pre-trial investigation bodies:

- The Resolution of the CMU No. 658 states that the transfer of information about the victim's appeal to other responsible persons, including the police, must be carried out with the informed voluntary consent of the victim (consent is not required if the victim is a child or a person with a disability, or if it is about physical injuries of a criminal nature), but there is no such statement in the Order of the Ministry of Health No. 278.

- Such notification will not result in the opening of criminal proceedings in the case of Art. 126 of the Criminal Code "Domestic violence," 152 of the Criminal Code "Rape," 153 of the Criminal Code "Sexual violence" since such cases are cases of private prosecution and can be initiated only at the request of the victim.

4. A summary of upcoming proposed legislation/SOPs:

- Amend Part 1 of Article 242 of the Criminal Procedure Code of Ukraine, providing the survivor with the possibility to conduct a forensic medical evaluation without delay at their request or the request of their representative or legal advisor (draft law 10420 from January 22, 2024, adopted as a basis on May 22, 2024).
- Amend clauses 1 and 2 of part 1 of Article 243 of the Criminal Code of Ukraine, giving the right, in addition to the defense, to the victim, to apply to the investigating judge in the presence of the circumstances provided for in Part 1 of Article 243 of the Criminal Code of Ukraine to include the victim among the subjects who can independently collect samples, as well as petition the investigator, investigating judge for the collection of biological samples. (e.g., the draft Law of Ukraine "On Amendments to Criminal Procedure of the Code of Ukraine (regarding the improvement of certain provisions), reg. No. 3168 dated September 3, 2013).

5. Current protocols for clinical management of conflict-related sexual violence and TCIDT (summary)

The procedure for conducting a medical examination of victims of gender-based violence, documenting the results of the examination and providing medical assistance to the victims is regulated by Order of the Ministry of Health No. 278 of February 1, 2019, which was developed to implement the Law of Ukraine "On Prevention and Combating Domestic Violence."

In Ukraine, there is no separate medical protocol or standard for providing medical care to victims of rape or intimate partner violence.

6. Standards on digital evidence and evidence captured through a mobile app and either digitally transmitted or printed from the app, standards of confidentiality, admissibility in courts (summary)

The Criminal Procedure Code of Ukraine does not provide for an electronic form of recording of evidence. Accordingly, electronic evidence must be submitted for evaluation by the court together with a physical medium through which such evidence can be viewed. According to its status, such electronic evidence will acquire, as a rule, the status of a document as a procedural source of evidence. At the same time, given the lack of regulation of this issue in the Criminal Procedure Code of Ukraine, the question of the possibility of attaching such evidence will be decided by the court in each case, and there is no uniform judicial practice on this issue.