

Types of Mandatory Reporting

What is mandatory reporting?

Mandatory reporting refers to “legislation passed by some countries or states that requires individuals or designated individuals such as health-care providers to report (usually to the police or legal system) any incident of known or suspected domestic violence or intimate partner violence. In many countries mandatory reporting applies primarily to child abuse and maltreatment of minors, but in others it has been extended to the reporting of intimate partner violence.”¹

Within humanitarian settings, mandatory reporting generally fall into two categories: 1) **state laws and policies** which mandate certain agencies and/or persons in helping professions (teachers, social workers, health staff, etc.) to report actual or suspected forms of interpersonal violence (e.g., physical, sexual, neglect, emotional and psychological abuse, unlawful sexual intercourse); or 2) reporting of **Sexual Exploitation and Abuse (SEA)** perpetrated by humanitarian actors.² In humanitarian settings, all organizations are mandated to have protocols in place for responding to sexual exploitation and abuse by humanitarian workers. This should include detailed guidance on how such policies are explained to survivors, when the caseworker should inform a supervisor, the responsibility of the supervisor, to whom (other than the supervisor) a report will be made, and what information will be needed if a report to an external entity is necessary.

How does mandatory reporting work?

All actors, particularly case management actors, need to understand the laws and their obligations on mandatory reporting as they relate to GBV cases. In addition, it is critical that GBV service providers understand the mandatory reporting requirements including the reporting mechanisms and investigation procedures related to GBV or child abuse. Laws may require reporting the existence of abuse to authorities, making it necessary for case workers to understand what is likely to happen if they make such a report. These requirements need to be explained to all survivors at the beginning, prior to proceeding with case management, when mandatory reporting is discussed during the process to obtain informed consent.³ All service providers should be trained on how to inform survivors about the duty to report certain incidents in accordance with laws or policies, to explain the reporting mechanism to the survivor and what they can expect after the report is made.

The *Caring for Child Survivors of Sexual Abuse Guidelines*, which provide comprehensive guidance for service providers on mandatory reporting requirements that can be applied to both adults and children, recommends that to appropriately comply with mandatory reporting laws, service providers must have a thorough understanding of the mandatory reporting laws in their setting. The elements of mandatory reporting that actors should agree upon to create the safest and most effective reporting mechanisms include first answering the question: Does a mandatory reporting law or policy exist in my setting? If yes, actors should establish procedures based on answering these key questions:

- Who is required to report cases of child abuse?
- Who are the officials designated to receive such reports?
- When is the obligation to report triggered (i.e., with suspicion of abuse? Report of abuse?)
- What information needs to be shared?
- What are the reporting regulations regarding timing and other procedures?
- How is confidentiality protected?
- What are the legal implications of not reporting?

For SEA, the UN Secretary General's Bulletin for Prevention of Sexual Exploitation and Abuse stipulates that reporting of SEA is mandatory for all UN staff. All reporting must be confidential, and reporting should be made through the in-country PSEA focal point, who is assigned by the Head of Mission within each UN Country Team. Managers and human resource staff are responsible for ensuring that all UN staff are trained in PSEA, that mechanisms are in place for reporting and that staff understand their individual responsibilities to report any suspected incidents and have signed a code of conduct. While GBV staff can play a role in advocating for PSEA measures, the coordination of inter-agency processes to address SEA is not within the purview of the GBV sub-cluster or working group but is a role for the United Nations Country Team-assigned PSEA focal point. This is also important to ensure the independence, integrity and confidentiality of SEA mandatory reporting mechanisms and investigation processes.⁴

Things to watch out for:

In humanitarian settings, following mandatory reporting procedures may be hampered:

- if the government staff (police or other mandated agency to receive reports) are not trained to confidentially and safely deal with reports including child sexual abuse, rape or other forms of GBV that fall under mandatory reporting requirements;
- if government actors are party to the conflict and may have been involved in abuse;
- if systems for reporting, documenting, investigating and follow up are not understood, clear, trusted or confidential; or

- if it is unsafe (for service providers or survivors) to report abuse and a high likelihood that it will cause more harm.

Mandatory reporting requirements can create dilemmas because of the potential for conflict with the guiding principles of respect for confidentiality, dignity and rights of survivors. While mandatory reporting is often intended to protect survivors (particularly children), in some cases following mandatory reporting procedures conflicts with the guiding principles for working with survivors, including confidentiality and self-determination. It can also result in actions that are not in the best interest of the survivor. For example, mandatory reporting of cases of sexual violence or intimate partner violence to the police can put the survivor at great risk of harm from the perpetrator, family members or community members. Every organization must decide how they are going to handle mandatory reporting when it is not in the best interest of the survivor.⁵

The best interest of the child should always be the primary consideration when taking actions on behalf of children, even in the context of mandatory reporting laws. Service providers are advised to follow these steps for determining the best course of action:

- Step 1: Use these questions to guide decision-making:
 - Will reporting increase risk of harm for the child?
 - What are the positive and negative impacts of reporting?
 - What are the legal implications of not reporting?
- Step 2: Consult with the program case management supervisor and/or manager to make a decision and develop an action plan.
- Step 3: Document with a supervisor or manager the reasons to report the case; otherwise, document the safety and protection issues that rule out making a report.

The best interest of the survivor should always come first, and it may not always be recommended to follow mandatory reporting procedures in some situations.

Mandatory reporting laws may require health service providers to report if a survivor presents for post-rape care, which may limit access to life saving, timely and confidential health treatment, delay care or force the survivor to pursue legal redress. Health services to survivors should be the first priority and be unconditional to any mandatory reporting policies or procedures. The decision by the survivor to refrain from taking legal action should not have negative repercussions for their access to health services. The needs, wishes and best interest of the survivor should take precedence over any mandatory reporting. However, in many contexts, health services providers are hesitant to provide clinical management of rape (CMR) and respond to other health needs of GBV survivors if there is ambiguity surrounding mandatory reporting requirements. Therefore, it is vital that the case management agency is familiar with reporting requirements, engages in advocacy to

eliminate any barriers that would impede survivors' access to confidential and lifesaving care and works closely with health service providers to ensure minimum services are available.

*"WHO does not recommend laws that require health-care providers to report cases of partner violence and sexual violence to the police without the woman's consent. They do recommend, however, that health-care providers inform women of their legal rights and offer to report to the police, should the woman want this."*⁶

For SEA, the focus is often on organizational accountability and efforts among humanitarian agencies to ensure their personnel do not abuse. Efforts often concentrate on reporting and investigating staff as part of these accountability processes. Victim assistance may not always take priority. Additionally, maintaining confidentiality and safety once a SEA case has been reported cannot always be guaranteed. In SEA cases, investigating the perpetrator is as much a concern as providing services to the survivor.

Multiple Choice Quiz⁷

1. You must report all types of GBV to the relevant authorities regardless of your clients wishes
 - a. Yes
 - b. No
 - c. Case workers explain mandatory reporting requirements prior to survivor giving informed consent so she can decide whether to disclose GBV or not.
2. If you receive a case of SEA, you must immediately report the case to the PSEA focal point with details of the client (name, address etc.)
 - a. Yes
 - b. No
3. You must explain mandatory reporting requirements and limits to confidentiality and ensure they are fully understood by the client (and/or caregiver) prior to obtaining informed consent to begin case management
 - a. Yes
 - b. No
4. Are humanitarian actors required to have a PSEA protocol in place?
 - a. Yes
 - b. No

5. Child survivor: When mandatory reporting applies in your context and you have a conflict between mandatory reporting and what is in the best interests of the child which should be the overriding and determining factor?
- a. Best interest of the child
 - b. Mandatory reporting



¹ WHO (2017:127) Strengthening health systems to respond to women subjected to intimate partner violence or sexual violence. A manual for health managers

² IASC (2016:18) Protection from Sexual Exploitation and Abuse (PSEA) Inter-agency cooperation in community-based complaint mechanisms - Global Standard Operating Procedures Mandatory Reporting. "In recognition of the UN's zero-tolerance policy for SEA, the Secretary General's Bulletin on SEA and related agency/organizational policies oblige UN staff and implementing partners to promptly report all concerns or suspicions of SEA by fellow workers via established reporting mechanisms, whether or not the alleged perpetrator is from the same agency."

³ IRC and UNICEF (2011) Caring for Child Survivors of Sexual Abuse

⁴ UNFPA (2016:82) Minimum Standards for Prevention and Response to Gender-Based Violence in Emergencies

⁵ (2017) Interagency GBV Case management Guidelines

⁶ WHO (2017:64) Strengthening health systems to respond to women subjected to intimate partner violence or sexual violence. A manual for health managers

⁷ Case workers explain mandatory reporting requirements prior to survivor giving informed consent so she can decide whether to disclose GBV or not; Yes; Yes; Yes; Best Interest of the Child