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Original communication

Challenges experienced by service providers in the delivery of medico-legal services to survivors of sexual violence in Kenya

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ABSTRACT

While much discussion has been devoted to defining the standards of care required when offering services to survivors of sexual violence, much less attention has been given to procedures for evidence collection to allow the successful prosecution of perpetrators. In Kenya there are no comprehensive guidelines that outline the roles of the survivor, the community, health care workers, and the police with regard to the handling of forensic evidence, a deficit that contributes to delays in prosecuting, or even a failure to prosecute sex offenders. This study examines some of the obstacles in Kenya to the adequate handling of forensic evidence in sexual violence cases. It was based on in-depth interviews with respondents drawn from health facilities, police stations, civil society organizations and with the Government Chemist in three Kenyan provinces. The study's objective was to examine the existing policy requirements regarding the maintenance of an evidence chain by the health and criminal justice systems, and how effectively they are being implemented. The findings indicate that the quality of the evidence obtained by the health care workers was often deficient, depending on the time elapsed before the rape survivor reports to the health facility; the equipment available at the health facility; the age of the survivor; and the level of knowledge of the service provider regarding the types of evidence to be collected from survivors of sexual violence.

1. Introduction

Sexual Violence (SV) is a serious societal problem that creates significant challenges to local communities in their attempt to create an overall plan for meeting the medical, emotional, physical safety and legal needs of survivors'.[1] Issues of SV cannot be addressed in a vacuum by concentrating solely on the medical and psychological needs of the victim, important as this is; it is also imperative to understand and recognize the links between the health sector and the criminal justice system.[2] Appropriate management of survivors requires a standardized clinical evaluation and an effective interface with law enforcement for the handling of forensic evidence and coordination of the continuum of care.

The process of obtaining, preserving and conveying evidence through accountable tracking mechanisms from the health facility to the police has been called a "chain of evidence."[3] It encompasses mechanisms put in place to ensure that the collected evidence is air dried, sealed in separate containers to avoid cross contamination, labelled, signed and dated by the person(s) who collected it from either the health facility and/or police.[4] Maintaining a chain of evidence is as important as collecting the right evidence at the outset, since without rigorous documentation the collected evidence is usually considered inadmissible in court.

The role of medico-legal services in the management of survivors of SV is well documented.[5] Medical evidence is essential to confirm or disprove a link between the alleged perpetrator and the assault.[6] It is the bridge that links the health and criminal justice systems in the care and management of survivors. An efficient system requires a chain of evidence that allows forensic (medico-legal) evidence collected from the health facility to proceed to a forensic laboratory for analysis and hence to the police for action.[7,8] Research indicates that the training of service providers does not necessarily increase their ability to collect the required specimen and maintain the evidence chain. Studies show that health care providers often deviate from the standardized service delivery protocols depending on the case at hand. Studies have also shown that there is a tendency for such forensic evidence to be poorly collected and poor

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communication between police, forensic analysts, and medical personnel serves to inhibit the effectiveness of the whole process.[9]

Kenya has scant literature detailing the requirements of maintaining the evidence chain with established linkages between the health services, the police and the community. Although the police follow a standard procedure in SV cases, it appears to be a matter of convention rather than written rule as there are no documented protocols to be observed. Within the health facilities, evidence gathering from survivors by the examining health care worker does not always produce enough details to provide corroborative evidence, due to the lack of utilization of the proper documentation. In rural communities, the existence of parallel justice systems in the form of traditional courts further increases survivors' vulnerability. Medical attention is not given priority in such systems and perpetrators are often asked to pay fines. Sexual violence is often viewed as an individual and/or private act. This customary framework puts blame on individual survivors (and individual abusers), thus keeping these violations out of the public eye and beyond the boundaries of collective action and responsibility.[10] The role of community interventions has hitherto largely been ignored, yet SV often occurs within the physical environment of the community where community members are potential witnesses.

Maintenance of the evidence chain is the most critical interface between medical and legal sectors and it is clear that it has been neglected. Little attention has been given to examination and documentation of SV, especially handling of evidence by officers of the criminal justice system, clinical and laboratory staff.[11] The absence of national minimum standards on the maintenance of the evidence chain compounds this problem. The effects of the lack of a forensic medicine system in Kenya are worsened by legal requirements that only doctors can give evidence, in an environment where there is a dire shortage of doctors across the range of public health facilities.

Through the Post Rape Care (PRC) services offered to survivors in the public health and legal sectors concerns have emerged over the existing linkages between the criminal justice system and the health care facilities in Kenya. Survivors have complained about delays in, or lack of prosecution, and the dismissal of their cases by the courts when the latter pronounce evidence presented by the police (who in Kenya also play the role of prosecutors) inadmissible.[12] This article reports on a study aimed at establishing the existing and required practical policy requirements of maintaining an evidence chain by the health and the criminal justice systems in the context of PRC in Kenya. The current practices and gaps in the collection, storage, analysis, documentation and transportation of evidence collected from survivors at the hospitals are described.

2. Methodology

Liverpool VCT, Care and Treatment (a Kenyan non-governmental organisation) conducted an operations research study in government run health facilities in three provinces: Nyanza, Eastern and Nairobi. The facilities were intentionally selected due to their collaboration with the district police administration in the selected regions, and because they had functioning laboratories and PRC services. The health care workers were trained in physical examination of survivors and documentation procedures in evidence collection, and police officers in these regions had been sensitized on various aspects of SV.

The study participants were selected so as to include respondents who were involved in the provision of medical, psychosocial and legal support to survivors of SV. Snowballing (a sampling procedure where one respondent who is successfully recruited into the study suggests others known to him/her who might similarly be eligible) was used to identify potential respondents.

Table 1
Respondents by designation.

Study Location	Designation	Male	Female	Number of Respondents
Nyanza	Clinical Officers	2	1	3
	Medical Officer	1		1
	Counsellor/Nurse		1	1
	Nurse In Charge	1		1
	Laboratory Officers	1	1	2
	Police Officer		1	1
	Police Constable	1		1
Eastern	Clinical Officers	3		3
	Medical Superintendent	1		1
	Nurse		2	2
	Laboratory Officers	1	1	2
	Police Officer	2		2
Nairobi	Counsellor/Social Worker		3	3
	Laboratory Analyst	1	1	2
	Legal Officer	1	3	4
Total		15	14	29

In-depth interviews were conducted to capture the participants' experiences in the delivery of PRC services with a focus on evidence retrieval from survivors. The interviews were taped upon receiving oral and written consent from the respondents.[c] Data was collected during September 2007 from two district hospitals, two police stations, three civil society organizations, and the national Government Chemist. It was not possible to interview all the health care workers in the study sites who had been trained on the delivery of services to survivors of SV. Some of the respondents who were eligible to participate in the study were not recruited as they had not been actively involved in the delivery of PRC services, but were stationed at service delivery points where PRC services were being offered. Table 1 below shows the respondents by designation.

Data was thematically coded using NVIVO7, a qualitative data analysis software. The main themes documented were: the evidence collected; the storage of specimens; the type of analysis done; the place where analysis was performed; how the process was documented, and how specimens were transported to the Government Chemist.

3. Findings

From a study of the respondents' replies to the questions raised in the interviews, four issues can be identified that negatively affect the evidence chain and consequently the ability of the Kenyan criminal justice system to respond effectively to the scourge of sexual violence: lack of clarity and uniformity in practitioners' definition of sexual violence, flawed evidence collection, difficulties in collecting samples, and bottlenecks caused by the shortage of doctors. These are dealt with in succession below.

3.1. Disparate definitions of sexual violence

The Kenya Sexual Offences Act (SOA), which has been in force since 2006, provides clear definitions of the various types of sexual

[c] Ethical approval for the study was granted by the Kenyatta National Hospital Review Board. Permission to recruit the participants was obtained from the relevant authorities in the health sector, police and the civil society organizations. The participants' names were not recorded or indicated in the transcripts, and they were free to terminate their participation at any point in the study. All the research assistants followed standard research etiquette and procedures, such as keeping the tapes, transcripts and field notes under lock and key.