INTERNATIONAL NUREMBERG PRINCIPLES ACADEMY

SYNERGY for JUSTICE

Foreign, Commonwealth & Development Office

CARSV STIGMA TOOLKIT FOR JUSTICE

PILOT VERSION

TOOLKIT FOR ASSESSING AND TACKLING STIGMA, MYTHS, STEREOTYPES AND MISCONCEPTIONS ABOUT CONFLICT AND ATROCITY RELATED SEXUAL VIOLENCE IN CRIMINAL JUSTICE SYSTEMS AND COURTS

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"CARSV Stigma Toolkit for Justice"

PILOT VERSION

CONFIDENTIAL

"How often are rape victims failed by the criminal justice system? The answer is deeply upsetting: nearly always."

UK END-TO-END RAPE REVIEW 2021

"Justice outcomes are fogged by failures to recognize and understand [...] sexual violence, distorted by mislabelling or deprioritizing, and blinded by prejudice and 'rape myths' in relation to all genders [...] Investigators, prosecutors, defence counsel and judges are not above or immune from this prejudice, stigma and unconscious bias. Instead, these attitudes seep into decisions and outcomes in our criminal justice systems, international or national, reinforcing their institutionalisation in many of our laws."

ELLIOTT, KIVLAHAN, AND RAHHAL, 2020

"One of the most overlooked problems within criminal proceedings is the wide-spread effect of rape myths and stereotypical role models. It is an established fact in psychological research that legal judgments are systematically influenced by prejudice, which is particularly a problem in cases of sexual violence. The legal regulations for victim protection do not change the influence of underlying concepts of gender stereotypes and rape myths on criminal proceedings. All too regularly, their effects may even lead to secondary victimisation. The problem is exacerbated when the victim is the only witness, which raises the importance of the questioning of the victim and heightened susceptibility to stereotypes and misconception."

WOLD AND WERNER, 2021

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KEY CONCEPTS AND TERMINOLOGY

CARSV: Given the Toolkit's focus, Conflict and Atrocity Related Sexual Violence is specifically defined in international criminal law terms to refer to sexual violence as a war crime (i.e. with a connection to an armed conflict), crime against humanity (i.e. as part of a widespread or systematic attack on a civilian population), act of genocide (with the intention to destroy a protected group in whole or part) or other serious violation of international criminal, human rights or humanitarian law.[1]

Survivor(s): We have chosen to use the term 'survivor' as it is more often seen as an empowering expression which recognises the strength and resilience of those who have been subjected sexual violence and then choose to seek their rights and justice.[2] We recognise that within justice systems, 'victim' is a defined term which describes an individual who has been subjected to a crime and thus provides legal status or standing to claim remedy, redress and justice under the law.[3] However, 'victim' can also imply passivity and lack of agency. We believe that this term can reinforce stigma within justice systems which are struggling to provide survivor-centred, safe processes. We also recognise that the terms 'victims' and 'survivors' take on different meanings in different settings and languages, and those who have experienced violence may prefer one term over the other, or may prefer a different term altogether. People who have suffered violence have the right to self-identify and their choices of identity should be respected and reflected by those around them. We also recognise that some victims do not survive the violence. 'Survivor' includes people of all ages, including adult and child survivors (defined by the UN Convention on the Rights of the Child as a person under the age of 18 years old), and all sexes, genders and other aspects of identities.

Stigma: Stigmatisation is a social construct which devalues, judges and marginalises individuals or groups based on a particular characteristic or experience that the society perceives as different from, or non-conforming with, its values or expectations. Stigma manifests in individuals through 1) false beliefs, misconceptions and stereotypes (cognition or 'knowledge'), 2) prejudices or emotional reactions (attitudes), and 3) in behaviour or conduct, usually as discrimination towards others (practice). Sexual violence stigma includes 'prejudicial, stereotyped or false beliefs' and attitudes about sexual violence, characteristics and responses of survivors, and perpetrators. It is rooted in harmful social expectations around gender roles, sexual behaviour and power. Stigma appears at different levels within society: 1) structural stigma in which beliefs, attitudes and discrimination are institutionalised into laws, structures and processes; 2) community stigma, through collective attitudes and values within society or groups; 3) interpersonal stigma in the interactions between members of society and stigmatised individuals, including shaming, blaming, disbelief and disregard, negative judgments, discrimination, exclusion and ostracisation; and 4) internal stigma at the individual level, where stigmatised people internalise the negative attitudes and values against themselves through self-blame, shame, isolation, anticipated negative interactions and perceived inter-personal stigma. This Toolkit adopts a wide understanding and definition of 'stigma' which includes all of these forms (knowledge, attitude and practice) and levels (structural, community, interpersonal and internalised).

1 Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017), Chapter Two.

2 Sexual Assault Kit Initiative, Victim or Survivor: Terminology from Investigation Through Prosecution, 1.

3 *Ibid*.

Shame: "*Shame is an integral part of stigma. Shame is a judgement about who a person is: a bad person, an immoral person, one who is not pure or chaste, thereby devalued or deviating from expected values. It can be community or interpersonally imposed, and it is often perceived and internalised by people (self-shame). Shame is associated with avoidance, silence and invisibility. It strongly inhibits disclosure to others; preventing and barring access to support, services, justice and pathways to recovery for many survivors.*"[4]

Victim-blaming: "*Victim-blaming is an extremely common phenomenon within sexual violence stigma, and the extent of it also results in internalisation of blame. For example, survivors often ask themselves (or are asked), 'what could I (you) have done differently?' This moves the blame on to the survivor and removes the responsibility, culpability, and prevention from the perpetrator.*"[5]

Rape myths: "*[P]rejudicial, stereotyped and false beliefs about sexual assaults, rapists and rape victims*" as a manifestation of stigma.[6] "*Studies have attributed the discontinuation of criminal prosecutions for rape and declining conviction rates to the pervasive beliefs of myths about rape.*"[7]

Intersectionality: Recognises that there are multiple human dimensions with which we identify and that intersect to make us who we are. The term was originally developed by US lawyer Kimberlé Crenshaw as a tool to understand intersections of discrimination, for example gender and race. 'Intersectional factors' overlap in layers of discrimination and inequalities, including, for example, age (including level of maturity, evolving capacities), sex and gender (including gender identity and expression (including transgender, non-binary and non-gender conforming), sexual orientation, sex characteristics (including intersex)), race, religion, national or social origin, ethnicity (including indigenous groups, culture and traditions), disability, family situation or status, status of birth, socio-economic class, caste or status, health condition or status, citizenship, status as a refugee, migrant or other residential status, education and literacy, legal status, political beliefs, opinions or affiliation, and other intersecting characteristics, attributes and identities. Note: this list is not exhaustive.[8]

Gender: "*[R]efers to the socially constructed identities, attributes and roles of persons in relation to their sex and the social and cultural meanings attached to biological differences based on sex. The meaning of such socially constructed identities, attributes and roles varies across societies, communities and groups and over time.*"[9] Gender should not be conflated with or reduced to just women and girls, although the historical and structural discrimination and violence against women and girls means that harmful gender narratives and CARSV disproportionately affect women and girls, as well as compound the harm of gendered stigma towards survivors. Harmful gender narratives also affect men and boys, and people of diverse sexual orientation, gender identity and expression, and sex characteristics (SOGIESC).

SOGIESC: 'Sexual Orientation, Gender Identity and Expression, and Sex Characteristics', a term developed as an inclusive expression to recognise diversity in all persons across the distinct aspects of sexual orientation, gender identities and expressions and (biological) sex characteristics.

4 Synergy for Justice & LDHR, Knowledge and Attitudes and Stigma Surrounding CRSV in Syria (2019).

5 *Ibid*.

6 Burt, 'Cultural myths and supports for rape,' (1980) *Journal of Personality and Social Psychology* 38(2), 217–230.

7 Bohner *et al*, 'Rape myth acceptance: Cognitive, affective and behavioural effects of beliefs that blame the victim and exonerate the perpetrator', in Horvath & Brown (eds.), *Rape: Challenging contemporary thinking* (2009), 17–45.

8 For an example list of discriminatory factors, see Letter of Nov. 30, 2018 from U.N. Special Rapporteurs to the Int'l Law Comm'n, Re: Persecutory Grounds in the Draft Crimes Against Humanity Convention, 30 Nov. 20.

9 OHCHR, Integrating a Gender Perspective into Human Rights Investigations (2018).

LGBTQI+: While the acronym LGBTQI+ is inclusive of a broad range of people, it is not exhaustive, nor is it the universally standard acronym.

Heteronormative: The social notion that heterosexuality is the only normal mode of sexual orientation. It derives from the binary classification of gender into two distinct, opposite forms (masculine and feminine), and posits that sexual relations should occur exclusively between members of two distinct genders (men and women). Heteronormative attitudes often lead to the stigmatisation or marginalisation of those who do not conform to those expectations.

Trauma-informed approach: "*A program, organisation or system that is trauma-informed realises the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist retraumatisation.*"[10]

Survivor-Centred Approach (SCA): is an approach which puts the rights, needs and wishes of survivors first. It includes central elements of autonomy and agency, do no harm and safety, confidentiality and privacy, non-discrimination and accessible, holistic and coordinated support.[11]

First Responder Services: Include any service or justice function which is a point of first reporting or first contact with CARSV survivors. This can include support services, case managers, police, community-based organisations, 'documenters', civil society organisations (CSOs), caseworkers, social workers, etc.

Retraumatisation/secondary victimisation: "*Retraumatisation, also known as secondary victimisation, describes the experience of survivors who encounter 'victim-blaming attitudes, behaviours, and practices' from service providers and institutions 'which result in additional trauma.' In other words, retraumatisation refers to additional traumatisation during a survivor's interactions with professionals and processes in the justice system and other fields (medical, behavioural health, and even services designed for victims).*"[12]

Gender stereotype: "*A gender stereotype is a generalised view or preconception about attributes or characteristics, or the roles that are or ought to be possessed by, or performed by, women and men. A gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and/or make choices about their lives. […] Gender stereotyping refers to the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. Gender stereotyping is wrongful when it results in a violation or violations of human rights and fundamental freedoms. Examples include: Not criminalizing marital rape, perceiving that women are the sexual property of men; and failing to investigate, prosecute and sentence sexual violence against women, believing that victims of sexual violence agreed to sexual acts, as they were not dressing and behaving 'modestly'.* "[13]

10 SAMHSA, Concept of Trauma and Guidance for a Trauma-Informed Approach (2014).

11 OHCHR, Protection of Victims of Sexual Violence Lessons Learned (2019).

12 Katirai, 'Retraumatised in Court' (2020) Arizona Law Review 62(81), quoting Campbell, 'What Really Happened? Violence and Victims' (2005).

13 OHCHR, Integrating a Gender Perspective into Human Rights Investigations (2018).

ACRONYMS AND ABBREVIATIONS

ACHPHR: African Commission on Human and People's Rights

BME: Black and Minority Ethnicities (term used predominantly in the UK)

CARSV: Conflict and Atrocity-Related Sexual Violence

CEDAW: Convention on the Elimination of Discrimination against Women

CPD: Continuing Professional Development

CoE: Council of Europe

CPD: Continuing Professional Development

CSOs: Civil Society Organisations

DEI: Diversity, Equity and Inclusion

ECCC: Extraordinary Chambers in the Courts of Cambodia

ECHR: European Court of Human Rights

FME: Forensic Medical Examinations

IACHR: Inter-American Court of Human RIghts

IACommHR: Inter-American Commission of Human Rights

ICC: International Criminal Court

ICJ: International Commission of Jurists

ICL: International Criminal Law

ICTY: International Criminal Tribunal for the former Yugoslavia

ICTR: International Criminal Tribunal for Rwanda

IP2: International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a Crime or Violation of International Law

KAP: Knowledge, Attitude, Practice

KPI: Key Performance Indicators

KSC: Kosovo Specialist Chambers

LGBTQI+: Lesbian, gay, bisexual, transgender, queer, intersex and other sexuality, sex and gender diverse people

MHPSS: Mental Health and Psychosocial Support

MoU: Memorandum of Understanding

OTP: Office of The Prosecutor

PTSD: Post-Traumatic Stress Disorder

SCA: Survivor-Centred Approaches

SOGIESC: Sexual orientation, gender identity, gender expression and sex characteristics

SOP: Standard Operating Procedures

STL: Special Tribunal for Lebanon

SV: Sexual Violence

UN: United Nations

UN DPKO: United Nations Department of Peacekeeping Operations

UNSC: United Nations Security Council

UN SRSG SVC: United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict

INTRODUCTION

> *"As international justice practitioners we must engage in honest dialogue about why CRSV presents such an accountability challenge and how we can improve the situation. We cannot simply rest on the success we managed to secure in the past — we must continue to insist on more effective strategies for the future."*[14]

The call to end impunity for conflict and atrocity-related sexual violence (CARSV) has grown stronger and louder over the past decade.[15] So too has the recognition that our current criminal justice systems seem to be ineffective in delivering justice for CARSV while so often revictimising its survivors.[16] UN Security Council Resolution 2467 (2019) started by "*recognizing that the consistent and rigorous prosecution of sexual violence crimes is central to deterrence and prevention, as is challenging the perceptions that sexual violence in armed conflict is a cultural phenomenon or an inevitable consequence of war or a lesser crime. Recalling the responsibilities of States to end impunity and to prosecute those responsible for crimes of genocide, crimes against humanity, and war crimes, perpetrated against civilians and, in this regard, noting with concern that only very limited numbers of perpetrators of sexual violence have been brought to justice, while recognizing that in conflict and in post-conflict situations national justice systems may be significantly weakened*".

In national courts dealing with broader forms of sexual violence, despite considerable legal reform efforts, attrition rates for these cases remain disastrously high. Estimates of underreporting indicate that only between 6-20% of sexual offences are reported,[17] and the conviction rates for those cases that are reported are documented to be as low as 1-6% including in well-resourced, well-developed criminal justice systems.[18] For example, a recent review of sexual violence prosecutions in England and Wales found convictions so low that sexual violence had been essentially 'de facto decriminalised'.[19]

14 Brammertz & Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (2016).

15 From the UN through a long series of Security Council resolutions from 1325 onwards; from governments, including the G8, UK; from Nobel Peace Prize winners such as Nadia Murad and Dennis Mugweke.

16 *E.g.* Schulz & Kreft, 'Accountability for CRSV' (2022) *Oxford Research Encyclopaedias* (International Studies), 12-15.

17 *E.g.* in England and Wales only 6-18% of survivors are estimated to report the crime to the police; Sir Gillen, Gillen Review Report into the Law and Procedures in Serious Sexual Offences in Northern Ireland (2019); Hohl & Stanko, 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', (2015) European Journal of Criminology 12(3); UK Ministry of Justice, Policy Paper: The End-to-End Rape Review Report on Findings and Actions (England and Wales) (2021). In the US 9-22% are estimated to report to the police: Wentz & Keimig, 'Arrest and Referral Decisions in Sexual Assault Cases: Influence of Police Discretion on Case Attrition' (2019) *Social Sciences* 8. In Hungary 0.24% estimated to report: Parti & Robinson, 'What Hinders Victims from Reporting Sexual Violence: Qualitative Study with Police Officers, Prosecutors and Judges in Hungary', (2021) *IJCJSD* 10(3). A five country study of Western states found a 14% average reporting rate: Daly, *Conventional and innovative justice responses to sexual violence* (2010). In Thailand the 2009-2013 reporting estimate was as low as 13%; Skinnider *et al*, *UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam* (2017), 13.

18 *E.g.* a five-country study found only 6.5% conviction for original charged offence: Daly (2010), *ibid*. For Guyana, in 2004 there was a 0.6% conviction rate: GHRA, 'Without Conviction: SV Cases in The Guyana Justice Process' (2005). In England & Wales, latest figures show 1.6% of reported cases even being charged. In the USA, 0.9% of cases are even referred for prosecution: Wentz & Keimig, *ibid*. The trend appears to be downwards. See also Mansfield, 'Prosecuting Sexual Violence in the Eastern Democratic Republic of the Congo: Obstacles for Survivors on the Road to Justice', (2009) *African Human Rights Law Journal* 9(2), 378 (of 2288 reported cases reported to a DRC NGO in 2008 only 152 referred to a tribunal, representing only 7% of perpetrators); Swemmer, 'Justice Denied? Prosecutors and Presiding Officers' Reliance on Evidence of Previous Sexual History in South African Rape Trials', (2021) *South African Crime Quarterly* 69, 47 (in one South Africa medical centre study of reported rape cases 65% referred to prosecution, 18.5% went to trial, 8.6% resulted in guilty verdict); Dignity Alliance International & Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors* (2021), 41 (conviction rates in Sri Lanka 3.8%, Bangladesh 3%, India 27.12%).

19 UK Victims Commissioner, 2020/21 Annual Report Victims' Commissioner for England and Wales (2021).

Impact of Institutionalised Stigma on Attrition Rates

Stigma, myths and misconceptions about sexual violence are a key reason for these attrition rates and poor outcomes.[20] Stigma can harm the effectiveness and outcomes of justice processes, perpetuating impunity and facilitating the continuation of CARSV. Indeed, stigma, stereotypes, sexual violence myths and misconceptions have been found to impact every step of the criminal justice process; driving under-reporting, withdrawal of survivors from the process due to the harmful attitudes and conduct towards them, disempowerment of survivors in the process, lack of recognition or mischaracterisation of SV, inadequate investigations based on assessments and decisions coloured by such misassumptions, which then flow through to and are compounded by similar issues during prosecution, trial management and processes, judicial assessments and adjudications. "*It has been widely recognized that false assumptions about rape and sexual assault are dangerous in the legal context as they have the potential to influence decision-making.*"[21] The stigma, myths and misconceptions about sexual violence that plague broader forms of accountability also affect CARSV processes in national, hybrid and international courts.[22]

It is not surprising that attitudes infused with stigma, myths and misconceptions permeate our processes to adjudicate accountability for international crimes.[23] After all, accountability for international crimes involves justice actors from the same cultures and communities, with the same training, often using the same principles, processes and approach, with the same attitudes towards sexual violence, its survivors and its perpetrators driven by similar underlying harmful gender narratives and intersectional discriminatory misconceptions.

One older, well-known example, which has been a driver for change was the experience of a CARSV survivor at the International Criminal Tribunal for Rwanda who faced over one thousand questions from multiple defence counsel, many coloured by stigma. "*One of the more offensive questions put by [the] defence lawyer [...] included reference to the fact that the witness had not taken a bath, and the implication that she could not have been raped because she smelled. Other questions asked were, "Did you touch the accused's penis?*", "*How was it introduced into your vagina?*" and "*Were you injured in the process of being raped by nine men?*" The survivor also reported that during this questioning the judges had laughed. When this survivor returned home, she faced catastrophic consequences in her community: "*When I returned, everyone knew I had testified. My fiancé refused to marry me once he knew I had been raped. He said, you went to Arusha and told everyone that you were raped. Today I would not accept to testify, to be traumatised for a second time. No one apologised to me. [...] When you return you get threatened. My house was attacked. My fiancé has left me. In any case, I'm already dead.*"[24]

20 Pattavina *et al*, 'Pathways to Sexual Assault Case Attrition: Culture, Context and Case Clearance', (2021) *Victims & Offenders*, with further works cited. *See also* Studzinsky & Kather, 'Will Universal Jurisdiction Advance Accountability for Sexualised and Gender-Based Crimes? A View from Within on Progress and Challenges in Germany' (2021) *German Law Journa*l 22(5); Schulz & Kreft, *ibid*.

21 Temkin *et al*, 'Different Functions of Rape Myth Use in Court: Findings From a Trial Observation Study', (2018) *Feminist Criminology* 13(2); Temkin& Krahé, *Sexual Assault and the Justice Gap: A Question of Attitude* (Bloomsbury 2008).

22 'Stigma in Justice' below for examples of these impacts; Studzinsky & Kather, *ibid*; Schulz & Kreft, *ibid*.

23 Nowrojee, "'Your Justice is Too Slow: Will the ICTR Fail Rwanda's Rape Victims?', UNRISD (2005), 26.

24 Nowrojee, *ibid*.

A more recent example includes the **Prosecutor v. Mladic** ICTY Trial Judgement in 2017 which addressed crimes from 1992-1995 in Bosnia, including extensive CARSV. Yet, CARSV is almost entirely invisible in the judgement. Despite extending to over 2,500 pages, there are no headings specific to CASRV, and only one paragraph which details the entire facts of CARSV.[25] Another example comes from recent German criminal proceedings based on universal jurisdiction against two Syrian intelligence officers for crimes committed against detainees in Syrian detention centres. Initially charges for sexual violence were based on the domestic crimes within the German Penal Code, rather than international crimes in its Code of Crimes Against International Law. Sexual violence was the only violence charged in this limited way, the only one decontextualised and isolated from the conflict and not recognised as an international crime.[26] This may have stemmed from the often-constrained focus of opportunistic universal jurisdiction based on the presence of a specific accused within the jurisdiction and lack of evidence specific to that accused. However, these charges do not recognise and acknowledge the integral nature and use of sexual violence in the Syrian conflict as means to suppress political opposition and terrorise the civilian population. Had this not be corrected, the official court record would have relegated sexual violence, separate and different from all other forms of violence and torture, as a less serious offence, not deserving of international attention, response or categorisation as an international crime.

Impact of Institutionalised Stigma on Survivors

Stigma, myths and misconceptions also significantly harm survivors, creating barriers to reporting and justice, and inflicting secondary victimisation for those who brave the justice process. One survivor explained the lasting impact of justice proceedings: "*You're made to feel as though you're the one that has done this. And that is hard because you've already been through the whole guilt stage, like trying to […] like this is all my fault, maybe I shouldn't have said that, maybe I shouldn't have done that. Should have, would I, could I? […] When I came out of court, I was, I was so like […] I was done, I couldn't sort of function, as it were. I had to go to the doctor's and he put me on medication and stuff like that, and that's the first time in the whole process where I had to be, and it was after court. It's not as though I had to when it happened because I was, like, okay. It wasn't until after court.*"[27]

Stigma, and its harmful consequences for survivors and justice outcomes, is institutionalised into all of our criminal justice systems and influences decision-making and discretion of most justice actors.[28] The result is discriminatory. It is a universal and persistent problem in every justice system and court. Each State is obligated under international law to tackle it.[29] This obligation has been confirmed by international treaty bodies and regional human rights courts. The Committee on the Elimination of Discrimination against Women in Vertido v. The Philippines found that the Convention (CEDAW) requires that "*all legal procedures in cases involving crimes of rape and other sexual offenses must be impartial and fair, and not affected by prejudices or stereotypical gender notions.*"[30] The Inter-American Commission on Human Rights

25 *Prosecutor v. Mladic*, ICTY-09-92, Trial Judgement (22/11/2017). See also ICC *Prosecutor v. Bemba* in ***Indicator LF7*** below.

26 Studzinsky & Kather, *ibid*., (referring to Oberlandesgericht Koblenz (Higher Regional Court), StE 9/19 (10 March 2020)).

27 Brooks-Hay *et al*., Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault (2019), 22-23; UNFPA, Stigma Against Survivors of CRSV in Bosnia: Research Summary (2015), 8 (survivor in Bosnia: "*Even in the court when you talk, the lawyers are looking at you as less valuable woman*".)

28 E.g, at the ICTY OTP: "*We have all been, and remain, susceptible to these misconceptions [……] even while developing the material for this book, we have confronted our own continuing tendency to unwittingly apply a different approach to our analysis of sexual violence crimes than to other crime categories*". Jarvis & Vigneswaran, 'Challenges to Successful Outcomes in Sexual Violence Cases', in Brammertz & Jarvis (eds.), *ibid,* 35.

29 Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, CEDAW.

30 *Vertido v. The Philippines*, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc CEDAW/C/46/D/18/2008.

has likewise found that "*police, prosecutors, judges, lawyers and others involved in law enforcement and the administration of justice are influenced by stereotypes, practices, and assumptions, which detracts from the importance that acts of sexual violence deserve. For example, they may examine a case involving sexual violence by focusing on the woman's sexual history and life, the implication being that the victim may have somehow provoked or invited the acts committed against her, and the fact that she is not a virgin. […] allowing these stereotypes inside the judicial branch serves to legitimise and aids and abets impunity.*"[31]

It is time to recognise the pervasive and deeply destructive effect of stigma, and to work together systematically to rid CARSV justice of its influence.

> *"It is therefore imperative that international criminal justice actors commence an honest and well-informed discussion about the misconceptions and seriousness of CRSV. These misconceptions are a reality that any prosecution office in the future will have to grapple with. One of the most fundamental lessons learned by the [Office of the Prosecutor] is that dismantling misconceptions […] is key to improving accountability outcomes for this category of crime."*[32]

31 IACommHR, Report on Access to Justice by Women Victims of SV in Mesoamerica, 9 December 2011, para.49.

32 Jarvis & Vigneswaran, *ibid.*

How the Toolkit Can Help

This Toolkit has been developed to help identify and systematically dismantle CARSV misconceptions and structural stigma within our justice systems. It is a change tool aimed at tackling organisational culture and root causes of stigma, and improving CARSV competencies and justice outcomes. CARSV can be adjudicated in national courts where the crimes took place, but these processes are also conducted in international courts, hybrid courts and in national courts in countries remote from the crimes and survivors. This Toolkit has been designed for use in all these settings, regardless of the extent of adversarial or inquisitorial features in each system, regardless of whether a justice system is in a conflict, post-conflict or peace-time environment.

Note: The Toolkit's main focus is on systems or courts where the adjudication of CARSV is expected or necessary with some frequency; for example, an international, hybrid or specialist national court which has jurisdiction over CARSV. There may be national systems which do not regularly address international crimes or CARSV, and only occasionally exercise extra-territorial jurisdiction in ad hoc cases. While universal jurisdiction cases are increasingly common and there may be dedicated investigative and prosecution teams, these cases may be heard by individual judges who have never and will never again hear ICL cases. If the Toolkit is being used in such circumstances for national functions with only a very small potential case-load and no dedicated function, some of the mainstreaming recommendations may be most valuable if focused on gender, cultural, trauma and broader SV competencies, rather than CARSV specifically.

The Toolkit provides a framework to assess three critical aspects of criminal justice processes and institutions where stigma, myths and misconceptions have the biggest effect across each function/justice agency and each step of the process:

1. Organisational culture and leadership: Organisational culture within justice functions and agencies can replicate social culture in their surrounding communities. This brings in societal norms, including harmful, deeply engrained gender narratives, unconscious bias and stigma, misconceptions and myths about sexual violence, its survivors and perpetrators. Without leadership and systemic responses, it is hard to change attitudes and behaviours within an institution and even harder to address the organisational culture which might resist these changes. This Toolkit also supports the organisational leadership and culture change necessary to reduce or eliminate the influence of stigma and myth in justice work.

2. Survivor engagement with justice: Stigma (including fear of stigmatised reactions and lack of trust/confidence in the system) is a major initial barrier for survivors to report, as demonstrated by non-reporting levels of 80% or more.[33] For the very small proportion of survivors who do report or have their cases reported, stigma also presents a next set of challenges as they decide to participate in and engage with justice processes. Stigmatised responses and lack of survivor-centred, trauma-informed approaches often lead to survivors withdrawing from justice processes. The systematic response to reporting and the manner in which justice actors engage with survivors are critical factors for survivor wellbeing and the avoidance of secondary victimisation by the justice process. When survivors are in environments designed to enable them to give their best evidence, better justice outcomes follow.

33 See fn17.

Survivor cooperation influences investigation and prosecution decisions to pursue cases.[34] In justice systems which traditionally consider survivors only as witnesses — as opposed to central rights holders and participants in justice — calls for more survivor-centred justice have been met with resistance from justice actors due to assumptions that this approach is at odds with the rights of the accused. Using comparative research and reforms across many jurisdictions, this Toolkit aims to assist justice actors to find a better balance between the rights of the survivors, the rights of the accused and just outcomes.

> *"It is my firm conviction that victims and survivors deserve justice close to home; justice that involves and includes them; justice that empowers rather than sacrifices them; justice that honours their courage and respects their needs as a core consideration; justice that uplifts them rather than further victimises them; justice that paves the path for other victims to come forward; and justice that is accessible, tangible, visible, and transformative."*
>
> UN SRSG on Sexual Violence in Conflict[35]

3. Technical understanding and competency: There are many technical manuals and guidelines on how to investigate, document and prosecute CARSV. The focus of this Toolkit is on ensuring professional and technical competency across the system, and that the use of discretion and decision-making across functions and processes are not influenced by stigma, myths and misunderstandings about CARSV, its survivors and perpetrators. It does not address basic functional competencies and capacities for accountability for international crimes, which can be assessed or built using existing tools.[36]

While CARSV disproportionately affects women and girls, other persons, genders, ages and groups are also survivors of sexual violence, and may face different or more specific manifestations of stigma, sexual violence myths and misconceptions which relate to their gender, age or other intersectional dimensions. For example, "*[i]t is important to understand how such myths, rooted in harmful, deeply ingrained gender norms, manifest in justice processes differently for male and female survivors. If justice outcomes for CRSV are to improve, it is critical to tackle the root causes and uncover biases for all survivors and the intersectional discrimination they face. For example, experts have noted gender biases in the system and process which lead to a disproportionate lack of female witnesses testifying before international or hybrid courts, as well as alarming credibility challenges that appear to arise against women. For male survivors, there is a dearth of research and analysis around male survivor testimony, perhaps because so few male survivors have testified in court. It is interesting to note that denialism and accusations of lying may also arise in some settings from disclosure of male rape.*"[37] The Toolkit seeks to address intersectional stigma and its impacts.

34 Spohn *et al*, 'Prosecutorial Justifications for Sexual Assault Case Rejection: Guarding the "*Gateway to Justice*"' (2001) *Social Problems* 48(2); St. George & Spohn, 'Liberating Discretion: The Effect of Rape Myth Factors on Prosecutors' Decisions to Charge Suspects in Penetrative and Non-Penetrative Sex Offenses', (2018) *Justice Quarterly*.

35 Foreword to UN Model Legislative Provisions, *ibid.*

36 *E.g.* Ribeiro & van der Straten Ponthoz/FCO, *ibid.*

37 Elliott, Kivlahan & Rahhal, 'Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice and Accountability' (2020) *JICJ* 18.

STIGMA IN JUSTICE

This chapter explores stigma and its effects so that those using the assessment framework and tools can recognise stigma and how it manifests within our justice systems and impacts survivors' access to and experience of justice.

What is Stigma?

Stigmatisation is a social construct which devalues, judges and marginalises individuals or groups based on a particular characteristic or experience that the society perceives as different or non-conforming with its values or expectations.[38] As such, stigma is inherently linked to and shaped by the power structures and dynamics, including gender narratives and expectations of the social and cultural context that it occurs in. The process of stigmatisation leads to behaviour which labels, stereotypes or judges certain characteristics as undesirable, and discriminatorily excludes those labelled from the social, economic and political spheres.[39]

Stigma manifests in individuals, in terms of a) beliefs and stereotypes (cognition or 'knowledge'), b) prejudices or emotional reactions (attitudes), and c) in behaviour or conduct, usually manifesting in discrimination towards others (practice).

Stigma acts at different levels within society: 1) **structural stigma** in which beliefs, attitudes and discrimination are institutionalised into laws, structures and processes; 2) **community stigma**, through collective attitudes and values within society or groups; 3) **interpersonal stigma** in the interactions between members of society and stigmatised individuals, including shaming, blaming, disbelief and disregard, negative judgments, discrimination, exclusion and ostracisation; and 4) **internal stigma** at the individual level, where stigmatised people internalise the negative attitudes and values against themselves through self-blame, shame, isolation, anticipated negative interactions and perceived interpersonal stigma.

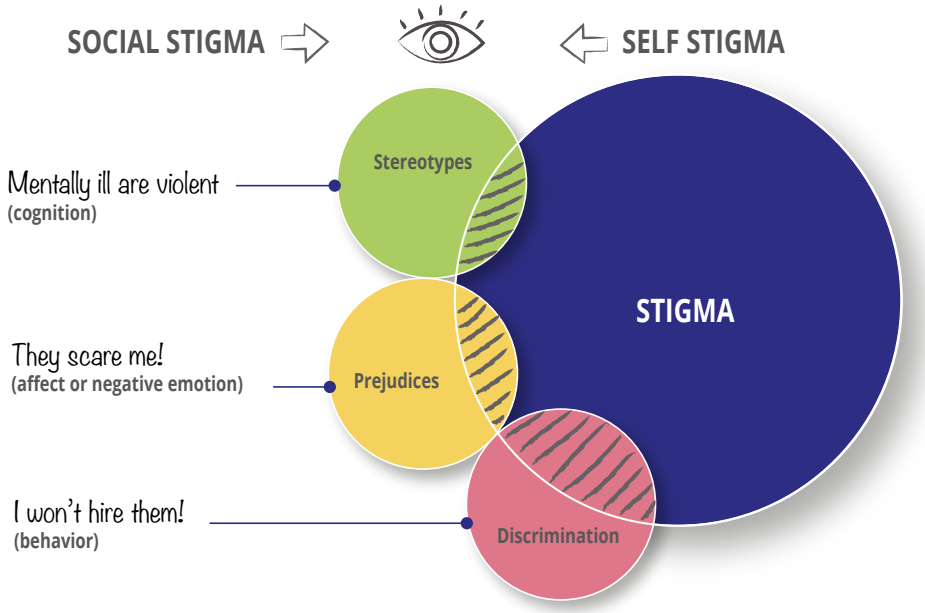
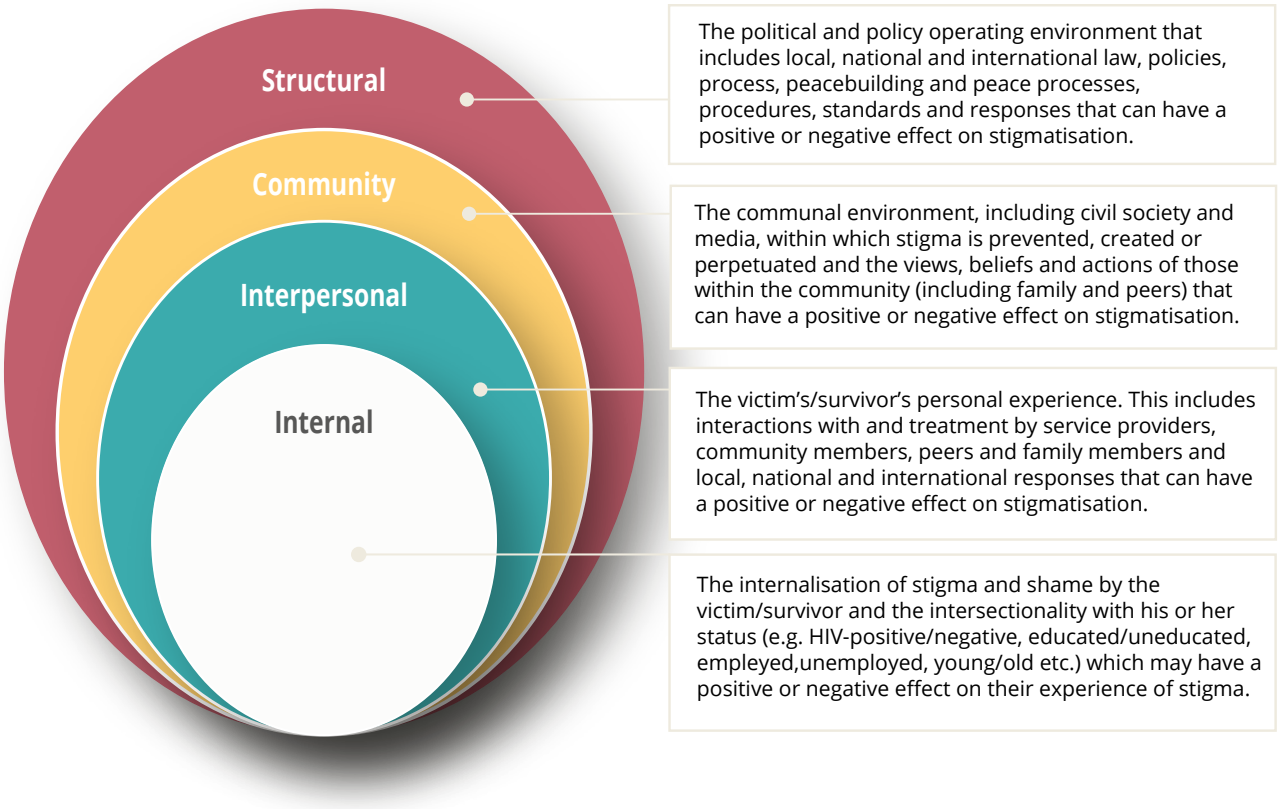


Image from Khan Academy video, using the example of stigma against persons with mental health concerns[40]

38 Frost, 'Social stigma and its consequences for the socially stigmatized' (2011) *Social and Personality Psychology Compass*, 5(11), 3-4; Link and Phelan, 'Conceptualizing Stigma' (2001) Annual Review of Sociology 27.

39 Link and Phelan, *ibid.*

40 Khan Academy Lesson on Stigma https://youtu.be/_jz7yo7L3Z0.



Model for Understanding Stigma, UK Principles for Global Action Preventing and Addressing Stigma Associated with CARSV

Source: FCDO Global Principles for Action on CRSV Stigma

Given its powerful socio-normative dimensions, stigma is often so ingrained in social attitudes as to go unrecognised or unquestioned in its institutionalised forms and in the values or judgements made, sometimes unconsciously, by those who stigmatise.[41]

This Toolkit adopts a wide understanding and definition of 'stigma' which includes all of these forms (knowledge, attitude and practice) and levels (structural, community, interpersonal and internalised) of stigma.

What Stigma is Associated with CARSV?

Sexual violence stigma includes 'prejudicial, stereotyped or false beliefs' and attitudes about sexual violence, characteristics and responses of survivors, and perpetrators. It is rooted in harmful social expectations around gender roles, sexual behaviour and power. Sexual violence stigma is often associated with hetero-normative, patriarchal and conservative gender norms, which attach definitional value on women's purity, modesty and chastity on one hand; and men's strength, dominance and invincibility, on the other. Through this lens, a woman who is sexually violated may be perceived as defiled by the violence, causing others to reject her as dishonourable and impure.[42] Similarly, a man subjected to sexual violence may be regarded as weak and emasculated, leading to his exclusion, or self-isolation, from the community as a 'failed' man.[43] In this sense, stigma places sexual violence into the realm of social

41 Link & Phelan, *ibid,* 368-370.

42 Askin, 'Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles' (2003) *Berkeley Journal of International Law* 21(2), 298.

43 Touquet *et al*, 'From 'It Rarely Happens' to 'It's Worse for Men': Dispelling Misconceptions about Sexual Violence against Men and Boys in Conflict and Displacement' (2020) *Journal of Humanitarian Affairs* 2(3), 28-29; Manivannan, 'Seeking Justice for Male Victims of Sexual Violence in Armed Conflict' (2014) *International Law and Politics* 46, 650-651.

morality and reframes its injury as a negative attribute of the survivor, shifting the blame and shame from the perpetrator of the violence onto those who experience it.[44]

Stigma turns sexual violence into a uniquely continuous harm, as survivors face both the initial act of violence and the layered, compounding and intensifying effects of social discrimination, victim-blaming and ostracisation that follow.[45]

While sexual violence stigma is universally prevalent, its practical manifestations differ based on various contextual factors, including situations of armed conflict and violence. Sexual violence remains a prevalent (although not uniform) feature of modern armed conflicts, whether employed as a deliberate tactic of war and terror against the civilian population or inflicted as individual criminal acts against the general background of violence.[46] The typically aggravated character of CARSV augments the stigmatisation of survivors. Given its potential as an instrument of lasting psychological damage and social destruction, stigma is also a powerful driver of CARSV perpetrated in order to brand survivors and break entire communities from within.[47]

How does CARSV Stigma Affect Criminal Justice?

> *"It is the shame and stigma wrongly attached to the victims of sex crimes that is the primary reason that silence surrounds the crime, and yet this silence distorts the truth about the prevalence and viciousness of the crimes, exacerbating efforts to redress the crimes, and probably perpetuating occurrences of the atrocities. Until the negative stereotyping of sexual violence is reversed, by relocating the shame and stigma off the victims and onto the perpetrators and others responsible for the crimes where it belongs, the obstacles in establishing accountability and developing means of preventing and remedying these crimes will continue to be hindered."*[48]

Sexual violence stigma has a powerfully detrimental impact on accountability and justice. At a broad level, it influences almost every decision-making step and evaluation in the justice process: from survivors' decision to report what has happened to criminal justice authorities, to resourcing, staffing, protection and risk assessments, investigation plans, interview questions, searches for open-source materials or requests for cooperation, witness selection, witness examination and evaluations, language in closing submissions or final judgements, descriptions of events and impacts, and even whether to appeal acquittals or sentences.[49] Particularly in armed conflict situations, stigma causes justice actors to decontextualise sexual violence from other violence and the conflict and to conflate it with normative

44 Gopalan, 'Rejecting Notions of "*Honour*" to Mitigate Stigma: Prosecutions for Sexual Violence before the Bangladeshi International Criminal Tribunals' (2021) Centre for Women Peace and Security (LSE).

45 Rubio-Marín, 'Reparations for Conflict-Related Sexual and Reproductive Violence: A Decalogue' (2012) *William & Mary Journal of Race, Gender, and Social Justice* 19(1), 75.

46 Cohen *et al*, 'Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward' (2013) United States Institute of Peace Special Report, 2-3; Askin, *ibid,* 298; Isaac & Jurasz, 'Towards an Intersectional Understanding of Conflict-Related Sexual Violence: Gender, Sexuality and Ethnicity at the ICTY' (2018) International, DPKO/DFS Training Materials (2022).

47 FCDO, Principles for Global Action: Preventing and Addressing Stigma Associated with CRSV, (2017); FIDH, DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation, FIDH Report (2013), 11-12.

48 Askin, 'Comfort Women – Shifting Shame and Stigma from Victims to Victimizers' (2001) *ICL Review* 1.

49 Hatzenbuehler, 'Structural Stigma: Research Evidence and Implications for Psychological Science' (2016) *APA*.

sexual relations.[50] As a result, they treat the crime and its survivor differently from other violent crimes, overlooking the violence of the act and the violation of bodily integrity as well as its connection to the conflict. Stigma draws the focus of the justice process off from the perpetrator to scrutinise the survivor, their behaviour and other attributes to justify and minimise the violence.[51]

Research into prejudicial attitudes and biases surrounding sexual violence has shown that those who hold stigmatising attitudes are more likely to excuse the perpetrator as not guilty and to believe the survivor consented or in some other manner bears blame for what happened.[52] At its most basic level, where these attitudes have embedded into the justice system, police and investigators are less likely to investigate allegations of sexual violence; prosecutors less likely to pursue charges for sexual violence; and judges less likely to convict on such charges. Structural stigma imports social power imbalances and prejudices into the justice process and revictimises survivors by giving authority to the disbelief, victim-blaming and dismissive biases already targeting them on an interpersonal level.[53] As a result, it critically limits access to justice and contributes to the attrition of sexual violence cases, feeding the continuing cycle of violence, impunity and social inequality.[54]

What Are the common Stigma, Misconceptions and Myths Impacting CARSV Justice?

While stigma manifests in different ways in different contexts, certain common themes can be identified. This section explores four such categories of common stigma and myths and how they have impacted justice processes:

i) Misperceptions and Stereotyping of Survivors and Perpetrators — Credibility and Denial

ii) 'Shame' and 'Dishonour' — Conflation of Sexual Violence with Sex

iii) Blame

iv) Minimisation and Trivialisation

While this Toolkit focuses on CARSV, we have also included stigma, misconceptions, stereotypes and myths which occur in relation to broader forms of sexual violence. In some courts, international crimes are not incorporated into the national criminal law, so accountability will be based on (non-conflict) sexual offence legislation and these broader stigmas and myths may come into even sharper relevance. Almost all of these misconceptions and myths are interrelated, compounding and highly gendered. Some overlap can therefore be expected.

i) Misperceptions about 'Real' Victims and Perpetrators — Credibility and Denial

It is a widespread misconception that sexual violence allegations are commonly fabricated or exaggerated because survivors are seeking personal or financial gain, regret a consensual sexual act or are vindictive for being spurned or rejected.[55] Doubts concerning credibility are typically connected to gender stereotypes

50 *E.g.* ***Indicator J10*** discussion of ICC *Prosecutor v. Katanga*; fn 26 on the German 'Koblenz case'.

51 Askin, *ibid,* 8.

52 Temkin *et al*., 'Different Functions of Rape Myth Use in Court: Findings from a Trial Observation Study' (2018) *Feminist Criminology* 13(2), 207.

53 Gopalan *et al*, 'Proving Crimes of Sexual Violence', in Brammertz & Jarvis (eds.), *ibid,* 130.

54 UN DPKO, *ibid.*

55 This misconception persists (including among justice providers) despite numerous studies proving it as false and demonstrating SV to be a chronically underreported crime. See *e.g.* ICJ, Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice (2015), 11; Orchowski *et al*., 'False Reporting of Sexual Victimization: Prevalence, Definitions and Public Perceptions', in Geffner *et al.* (eds.), *Handbook of Interpersonal Violence Across the Lifespan* (2020), 5-9; Murphy-Oikonen *et al.*, 'Unfounded Sexual Assault: Women's Experiences of Not Being Believed by the Police', (2020) *Journal of Interpersonal Violence*; TRIAL International, Rape Myths in Wartime Sexual Violence Trials: Transferring the Burden from Survivor to Perpetrator (2018), 62-64; Sharratt, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals* (2011), 65.

that hold women to be generally dishonest or untrustworthy.[56] They also reflect other shame and blame assumptions associated with sexual violence (see below) in that survivors may be perceived to 'cry rape' to cover up their supposed sexually immoral behaviour. For instance, men assaulted by other men often face deep distrust, ridicule and homophobic stereotyping as others perceive their allegation of violence as a mere attempt to hide a promiscuous or sexually transgressive lifestyle.[57]

Perceived credibility issues can be most acute when the events, the survivor, the perpetrator and their actions do not conform with assumptions about 'real rape', 'real victims' and 'real perpetrators'. The idealised notion of victimhood typically expects a survivor to be a female who is virtuous, blameless and violently victimised by a stranger despite their best efforts to protect themselves from any risk.[58] In conflict, this expectation manifests as a common misperception that CARSV is the penile rape of women by soldiers at gunpoint or using physical violence.[59] Where the survivor and perpetrator knew each other beforehand, many of the rape myths around 'date rape' for broader forms of SV and defence arguments of consent surface even in highly coercive circumstances such as detention or custody.[60]

As discussed below, the conflation of sexual violence with sex (influenced by associated societal attitudes or expectations), means that people 'expect' and recognise the victimisation of women, but not necessarily that of men. Men rather are expected to be sexually dominant, the initiators of sexual acts and always ready and willing for any sexual acts with any woman. Sexual violence against men is therefore 'impossible', since men are expected to consent or to be able to physically resist.[61] This is similar to the 'promiscuity myth' (based on discriminatory views of women's sexual autonomy) that women who are sexually active are more likely to consent to any sexual act with any man in any circumstances.[62]

Similar assumptions and issues are created about 'real perpetrators'. Perpetrators of sexual violence are often perceived and portrayed to be violent 'monsters' or misfits, not ordinary men or women. Therefore if a 'respectable', 'professional' or 'family' man, or a 'man of God' is accused, stigmatised ideas of perpetrators and sexual violence may lead some to doubt the credibility of this allegation.[63] It has also been suggested that affinity bias, where the decision-maker or adjudicator has a similar background to the accused, may be influential and justice actors may find it hard to recognise the accused's culpability or may have empathy for them.[64] In other words, male investigators, prosecutors and judges may relate more to male accused and may find it easier to doubt their guilt rather than to accept that someone like them could face such accusations or be responsible for such conduct.

Significant repercussions can also arise from stigmatised assumptions about a survivor's response to sexual violence and trauma. Prejudicial expectations of physical resistance, immediate reporting and

56 ICJ, *ibid,* 11; Bizimungu, An Examination of the Impacts of Rape Myths and Gender Bias on the Legal Process for Rape in Rwanda, PhD Thesis, University of Sussex (2018), 60-61.

57 Walfield, '"*Men Cannot Be Raped*": Correlates of Male Rape Myth Acceptance' (2018) *Journal of Interpersonal Violence*, 7, 18-19; Javaid, '"*Poison Ivy*": Queer Masculinities, Sexualities, Homophobia and Sexual Violence' (2018) *European Journal of Criminology*, 6-7, 9-15.

58 Smith & Galey, 'Supporting Rape Survivors Through the Criminal Injuries Compensation Scheme: An Exploration of English and Welsh Sexual Violence Advisor's Experiences', (2018) *Violence Against Women* 24(9); Daly, Court Observations of English Rape and Sexual Assault Trials: An Intersectional Analysis, PhD Thesis, Anglia Ruskin University (2021), 10; Bizimungu, *ibid,* 13-14; Tavrow *et al*, 'Rape Myth Attitudes in Rural Kenya: Toward the Development of a Culturally Relevant Attitude Scale and "*Blame Index*"', (2013) *Journal of Interpersonal Violence*, 10-12.

59 Cohen *et al*, 'Wartime Sexual Violence: Misconceptions, Implications, and Ways Forward', (2013) USIP Special Report 323, 4-8; Nordås & Cohen, 'CRSV', (2021) *Annual Review of Political Science* 24, 198-200. On the myth of rape as natural part of war see *e.g.* Fowler, 'Great Expectations: A Critique of the ICC's Commitment to Victims of Sexual and Gender-Based Violence' (2021) *JICL* 2, 28-29; Askin (2003), *ibid,* 9-10.

60 Gopalan, Kravetz & Menon, *ibid,* 332-334.

61 DeJong *et al*, 'Male Rape in Context: Measures of Intolerance and Support for Male Rape Myths (MRMs)' (2020) *Criminal Justice Studies* 33(3), 196; Turchik & Edwards, 'Myths About Male Rape: A Literature Review' (2012) *Psychology of Men & Masculinity* 13(2), 217; Walfield, *ibid,* 18.

62 TRIAL International, *ibid,* 25-27.

63 *E.g.* Tavrow *et al*, *ibid,* 9-10; Nyul *et al*, 'Perception of a Perpetrator as a Successful Person Predicts Decreased Moral Judgment of a Rape Case and Labeling it as Rape', (2018) *Frontiers in Psychology* 9, 3; TRIAL International, *Punishing CRSV: Guidelines for Combating Inconsistencies in Sentencing* (2019), 27 (Bosnian court considered that the perpetrator was a 'family man' was mitigating).

64 *E.g.* Parreira *et al*., 'Rape-Victim Empathy Scale (REMV): An Exploratory Study' (2013) *Psychological Thought* 6(2). ("*male participants were shown to be more empathetic towards the perpetrator than female participants.)*"

cries for help, as well as expectations of stereotypical displays of extreme distress by highly-traumatised survivors all lead to questions of credibility in their absence. Doubts concerning the survivor's trustworthiness may then manifest in the imposition of more stringent evidential or corroboration requirements in relation to sexual violence distinct from those applied to other violent crime. For instance, prompt complaint requirements limiting timeframes for the filing of sexual violence claims reflect the erroneous assumption that delayed disclosure is a sign of fabrication.[65] Higher corroboration requirements can appear through formal legislative rules or in practice through sceptical attitudes of justice actors. Lawyers and judges may then insist on physical or third-party evidence as prerequisite to substantiate the survivor's testimony, fixate on any perceived inconsistencies in their testimony, and dismiss cases without corroborating evidence as false or too onerous to pursue.

Misconceptions of trauma can also conversely lead to an overprotective reflex or protective measures being automatically applied without any consultation with or decision-making by the survivor (part of infantilization and reduction of survivor agency). For male survivors, this last assumption may also be turned on its head, with people assuming men do not need support or protective measures.[66] Misunderstanding of the impact of trauma on memory and recall can also lead to false assessments of credibility and reliability.

Examples of Impacts on Justice from Misperceptions and Stereotyping:

- *Barriers to access to justice* — when survivors themselves do not recognise what happened as CARSV because it did not match the stereotypical rape of a women by a soldier at gunpoint.[67]
- *Harm to survivors* — the justice processes can revictimise and stigmatise survivors when messages, decisions, questions and outcome doubt their account and honesty. When they are asked 'why' they did not do something or react in a certain expected way, survivors are again retraumatised and harmed by the justice process. For example, a 2009 survivor experience review in England and Wales found that any indication of disbelief (perceived or actual) from authorities was most likely to cause a survivor to withdraw from the process.[68]
- *Credibility and evidence assessments* — including old 'cautionary' warnings for judges relying on sexual violence survivor evidence, setting higher evidential standards or requiring corroboration of sexual violence evidence, judges assessing credibility based on expected demeanour and emotional reactions of the survivor in court ('she is too calm', etc.) and where misunderstandings of the impacts of trauma and PTSD on memory and recall can cast doubt on credibility and reliability.
- *Victim-shaming and credibility challenges* — nominally (but incorrectly) connected to the question of consent, use of prior or subsequent sexual history to seek to shame and discredit survivors, trying to infer consent from being sexually active or having known the accused beforehand.
- *Perpetrator affinity bias* — where justice actors, including judges, either see themselves in the perpetrator or cannot see a 'monster' who would commit sexual violence. This can affect charging decisions by prosecutors, assessment of credibility and evidence, and also sentencing decisions by judges.[69]

65 ICJ, *ibid,* 11-12; Bizimungu, *ibid.*, 167-170.

66 DeJong *et al*, 'Male rape in context: measures of intolerance and support for male rape myths (MRMs)', (2020) *Criminal Justice Studies* 33(3), 197; Touquet *et al*., *ibid,* 29-30; Kapur & Muddell/ICTJ, 'When No One Calls It Rape': Addressing Sexual Violence Against Men and Boys in Transitional Contexts, *Gender Justice Report* (2016), 15.

67 Lamonaca *et al*, Good Practice Tool for Police Hearings with Migrant, Applicant for International Protection, Refugee (MAR), Trafficked and LGBT+ Victims of Sexual Violence, Ghent University (2021), 25.

68 Payne, Rape: The Victim Experience Review, UK Home Office (2009); Stern/UK Home Office, The Stern Report: A Report of an Independent Review Into How Rape Complaints Are Handled by Public Authorities in England and Wales (2010).

69 See *e.g.* Tavrow *et al*, *ibid,* 9-10; Nyul *et al*, *ibid,* 3.

- *Perceptions of delayed reporting* — for many reasons including stigma and trauma, survivors often delay disclosing, and assisted by time, support and healing reporting can disclose in phases or develop over time and through a series of interactions or exchanges. Misunderstanding of this can lead justice actors to doubt credibility or question a late disclosure as a lie.
- *Lower sentencing* — where there is greater empathy with the perpetrator, the use of inappropriate mitigating factors such as an accused being a 'family man'.[70]

ii) 'Shame' and 'Dishonour' — Conflating Sexual Violence with Sex

Shame, or specifically the notion that sexual violence somehow brings shame and dishonour to the survivor, is a stigmatising attitude typically tied to conservative taboo of (non-marital) sexual behaviour and patriarchal gender norms which idealise women's chastity and view them as morally 'contaminated' by sexual violence. This conflation of sexualised violence and sexual relations may come from a lack of prominence and recognition of sexual autonomy and consent within 'normative' sexual interactions (for example where marital rape is not criminalised). As a result, CARSV is viewed as "*more of a sexual matter involving damage to a woman's honour' than a violent crime.*"[71]

Shame frames sexual violence as a crime against the honour of the survivor, who is then rejected and ostracised as a source of disgrace to the shared honour of their family and the wider community.[72] Similarly, male survivors, traditionally posed to be sexually dominant and strong, may be perceived as emasculated and disempowered for failing the expectations of their 'impenetrable' gender role.[73] Again conflating sexual relations and sexual violence, shame is often exacerbated by misunderstandings related to sexuality and psychological and bodily responses to sexual violence. This brings another dimension particularly to the shaming of male survivors, who often have to deal with homophobic stereotyping and perceptions of emasculation (or having been 'feminised') when victimised by other men.[74] Internalised feelings of shame are notoriously common among survivors of sexual violence and have a silencing effect in deterring them from disclosing or reporting the crime and seeking help.[75] Studies in different contexts have shown that many survivors feel sexual violence has brought shame on them and their families, and fear loss of respect and status in their communities if they were identified as survivors.[76] This fear of shame and ostracisation may become even more isolating in conflict situations due to general societal divisions and insecurity and the feeling of having been violated by 'the enemy'.[77]

Notions of dishonour and shame have permeated justice responses to CARSV. International and domestic legal frameworks often criminalise rape and other forms of sexual violence as crimes against the survivor's honour and dignity rather than as crimes of violence.[78] Similar language expressly describing sexual violence as an attack upon the honour of the (female) survivor has been commonly used by lawyers and judges

70 Gopalan, 'CRSV in Kosovo — Gendering Justice Through Transformative Reparations' in Mouthaan and Jurasz (eds), *Gender and War in International and Transitional Justice Perspectives* (2019), 8.

71 Jarvis & Vigneswaran, *ibid,* 34.

72 Askin (2003), ibid; Gopalan, *ibid*; UN DPKO, *ibid.*

73 Fowler, *ibid*; Isaac & Jurasz, *ibid*.

74 Principles for Global Action, *ibid*; Isaac & Jurasz, *ibid*; TRIAL International, *ibid,* 93; Touquet *et al*, *ibid,* 28-29; Sivakumaran, 'Sexual Violence Against Men in Armed Conflict' (2007) 18 EJIL 253-276.

75 Gopalan (2021), *ibid*; Albutt *et al*., 'Stigmatisation and Rejection of Survivors of Sexual Violence in eastern Democratic Republic of the Congo' (2017) Disasters 41(2), 211-212.

76 *E.g.* Synergy for Justice & LDHR, Knowledge, Attitudes and Stigma Surrounding SV and Survivors in Syrian Communities, (2021), 23; Albutt *et al*., *ibid,* 220; Jewkes *et al.*, 'Pathways to and Factors Associated with Rape Stigma Experienced by Rape Survivors in South Africa: Analysis of Baseline Data from a Rape Cohort' (2021) Clinical Psychology & Psychotherapy 1, 5; Bizimungu, *ibid,* 44; Dignity Alliance International & Equality Now, *ibid,* 34.

77 Principles for Global Action, *ibid*; FIDH, *ibid,* 11-12; Kelly *et al*, 'Rejection, acceptance and the spectrum between: understanding male attitudes and experiences towards CRSV in eastern Democratic Republic of Congo' (2017) BMC Women's Health 17, 2; Carpenter, *Forgetting Children Born of War: Setting the Human Rights Agenda in Bosnia and Beyond* (2010), 27; Gilmore, Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare, Prosecutor v Bosco Ntaganda, ICC-01/04-02/06-2623-Anx2-Red2 (2020), 45.

78 Askin (2003), *ibid*; ICJ, *ibid*, 29-30; UN DPKO, *ibid.*

alike as a rhetoric tool to emphasise the perceived moral burden imposed by the crime as 'the worst thing that can happen to a woman'.[79] While seemingly framed as an aggravating factor of the crime, describing sexual violence as an honour-violating crime critically mischaracterises its impact and implies the survivor has been morally damaged, debased and dehumanised, thereby perpetuating the stigma associated with it.[80] In addition to the legal characterisation of sexual violence as such, justice actors also instil feelings of shame through other acts presuming that the survivor feels (or should feel) ashamed and embarrassed of their experience. Police or other reporting authorities may for instance question a survivor's decision to report, appear openly embarrassed or uncomfortable to speak to them, or encourage them to not disclose the crime to avoid perceived humiliation.[81] Automatic application of protective measures is also an example of a stigmatising (albeit often well-intended) practice that reinforces the connection with shame by assuming that all survivors of sexual violence would be embarrassed to be openly identified as such.[82] Survivors are told how they should feel or that they should need protection, which can often be a projection of the responders own discomfort with the topic.

Examples of CARSV justice impacts related to shame and dishonour:

- *Barrier to access to justice including reparations* — if survivors fear bringing shame to themselves or their families, or if investigators assume survivors will not wish to testify.[83]
- *The justice process revictimises and stigmatises survivors* — when assumptions or authoritative statements are made about a survivor's shame, it feeds a cycle of shame and ostracism of survivors. It can also create hesitancy to access necessary support services which can help mitigate some of the harmful effects of the justice process.
- *Levels of discomfort and embarrassment among justice actors* — which may lead to avoidance, not asking questions or asking questions or interacting in awkward and unsupportive ways.
- *Decontextualisation* — seeing sexual violence as different from other forms of violence and separate from the conflict around it. Viewing it as 'unwanted sex', driven by 'lust' and 'opportunism', rather than as connected to and driven by conflict or as a weapon of war, dominance and suppression. This can lead to acquittals due to a failure to find command responsibility or other forms of leadership criminal liability (co-perpetration or joint criminal enterprise, for example).[84]
- *Non-recognition or characterisation* — where sexual violence is recognised as predominantly the penile rape of women. This leads to non-recognition and impunity for other forms of sexual violence against other groups or individuals.

iii) Blame

Victim-blaming attitudes are another deeply engrained aspect of sexual violence stigma. Blame stigma shifts responsibility from the perpetrator onto the survivor by assuming that the latter somehow put themselves at risk, invited or provoked the assault. Like shame, blame is also rooted in conservative gender norms and social expectations of acceptable behaviour. It leads society to scrutinise the survivor's character and behaviour, and to assign them culpability for 'seeking out' the assault where they do not

79 TRIAL International, *ibid*, 84-85.
80 TRIAL International, *ibid*, 84-85; Gopalan (2021), *ibid,* 2; UN DPKO, *ibid.*
81 *E.g.* Dignity Alliance International & Equality Now, *ibid,* 34; Bizimungu, *ibid,* 68.
82 TRIAL International, *ibid,* 86-90.
83 Gopalan, *ibid,* 299.
84 Jarvis & Vigneswaran, *ibid,* 37-39.

conform to the idealised expectations of victimhood. For women, victim-blaming attitudes commonly arise from society's perceptions of promiscuous or risk-taking behaviour, such as provocative dress, going out without a male guardian, substance use or history of several sexual partners.[85] Blame also relates to expectations of how the survivor should have acted during the assault, namely the degree to which they physically fought and resisted the perpetrator. Lack of forceful resistance or resultant physical injury may then be interpreted to imply the sexual contact was consensual, overlooking other more pertinent factors affecting survivor behaviour such as coercive circumstances, fear and shock.[86] Blame stigma is particularly common where the perpetrator 'fits' the survivor's sexual orientation and society perceives a potential for consensual sexual activities between them.[87] In doing so, blame also inappropriately conflates sexual violence with sex and sexuality, and focuses on the survivor's presumed sexual immorality rather than the perpetrator's criminality. Idealisation of the 'real victim' creates an artificial hierarchy of survivors, validating only those considered morally chaste and condemning others as somehow deserving of sexual violence.

Shifting the focus of culpability from the perpetrator onto the survivor, blame stigma has uniquely harmful dimensions in justice processes. Correlation studies have found that those who accept victim-blaming myths are also less likely to blame or convict an accused.[88]

Victim-blaming attitudes also negatively affect how justice actors approach survivors by framing those interactions around the survivor's supposed responsibility and what they should have done differently to avoid the risk of violence. Police, lawyers, judges, and other authorities alike may focus on what the survivor was wearing or doing leading up to the assault, whether they attempted to escape or scream,[89] or why they bear no physical signs of injury. They may use these facts to infer a survivor's consent to the sexual acts or otherwise dismiss the allegation as false or exaggerated. They may also question the survivor's sexual behaviour before or after the assault, insinuating that sexually active survivors would consent to any sex (even if unwanted) or be otherwise unaffected by sexual violence.[90] This approach can deepen survivors' internalised self-blame, which has a deep and lasting impact, retraumatising and shaping survivor's narratives about what happened to them.[91]

Not only are these lines of questioning wholly irrelevant to determining whether sexual violence has taken place,[92] they also critically demotivate and misdirect the justice process. For instance, medical professionals may centre forensic examinations exclusively around the survivor's sexual history and physical signs of injury, particularly through scientifically invalid practices such as 'virginity testing', anal sphincter testing and 'two finger tests'. Similarly police and prosecutors are often inclined not to investigate allegations that do not conform to the 'real victim' scenario and are therefore deemed difficult to prove in court, while judges are more likely to excuse the perpetrator where they consider the survivor's behaviour to have been risky or promiscuous.[93] These issues have proven particularly complicated in situations of armed conflict, where survivors' access to justice institutions is often delayed and they may face increased prejudice and apathy based on ethnic tensions, cultural differences, or mischaracterisations related to their involvement in repeated or prolonged forms of sexual violence,

85 Synergy for Justice & LDHR, *ibid,* 13; TRIAL International, *ibid,* 25-29; Daly (2021), *ibid,* 10.

86 TRIAL International, *ibid,* 34-41.

87 *E.g.* Touquet *et al*, *ibid,* 28.

88 Temkin *et al*, *ibid,* 207.

89 *E.g.* in Bosnian cases where survivors were asked why they did not escape through open doorways in camps, or why they had birth control pills with them when they were detained. Sharratt, *ibid,* 63.

90 TRIAL International, *ibid,* 25-27. This also includes the myth that sex workers cannot be raped.

91 Brooks-Hay *et al*, *ibid,* 22-23.

92 *Vertido v. The Philippines*, *ibid.*

93 Hohl & Stanko, *ibid,* 11-14; Dignity Alliance International Equality Now, *ibid,* 34; *Vertido v. The Philippines*, *ibid.*

such as sexual slavery.[94] Victim-blaming is among the main reported reasons deterring survivors from reporting sexual violence, pushing them to withdraw their complaints and causing them to feel 'raped all over again' while going through the justice process.[95]

Summary of CARSV justice impacts related to victim-blaming:

- *Access to justice* — when survivors internalise self-blame and question what they could have done differently and how they will be judged if they report.
- *When the justice process harms survivors* — when survivors are asked why they did not fight back, why they approached someone, what role they played in what happened — these stigmatised, victim-blaming misconceptions deepen a survivor's own internalised questions of self-blame. If survivor's identities are not protected, stigmatisation or harm may result upon their return home, for example through 'honour' killings, social isolation and many other repercussions.
- *Perceived lack of evidence and false belief of 'consent'* — where there is no evidence of physical injury or no allegation that physical violence was used to overcome the survivor. This is frequent for both male and female survivors: an expectation that a survivor should physically resist and fight off a perpetrator and that anything less than clear evidence of physical injuries somehow suggests consent by the survivor.
- *Attacks on credibility* — victim-blaming and attacks on survivor's character are also frequently used to deflect from the conduct of the accused and to seek to undermine any assessment of the survivor's evidence.[96] This is not only retraumatising and harmful to the survivor, but potentially influences adjudication and assessment of evidence, including by causing police and prosecutors to pre-emptively de-select 'bad witnesses' or to not proceed with charges over doubts that they can secure convictions.
- *Reducing the culpability of the accused* — the more blame assigned to the survivor, the less culpable justice actors find the accused, leading to non-investigation, decisions not to charge or acquittals following trial. It may also include a reduced sentence if there is a conviction.

iv) Trivialisation or Minimisation

Stigma attitudes also prejudicially affect how society judges the gravity and impact of sexual violence. Sexual violence is prone to be trivialised as a lesser crime through attitudes that minimise the perpetrator's culpability and survivor's experience of harm.[97] As a result, assaults are often only taken seriously when they involve penetration or brute force and result in severe physical injuries.[98] In the context of armed conflict in particular, trivialisation manifests in a tendency to minimise or excuse sexual violence as a natural, unavoidable consequence of war and victor's spoils.[99] Moreover, as the generally coercive circumstances of conflict often obviate the need for a perpetrator to use or threaten force, survivors may

94 *E.g.* Dignity Alliance International & Equality Now, *ibid,* 34; Miano, 'Towards a Child-Oriented Approach to Reparations: Reflecting on the Rights and Needs of Child Victims of Armed Conflict' (2013) The Fletcher Journal of Human Security 28, 35-36; Amnesty International, "'*I Don't Know If They Realized I Was A Person*": Rape and Other SV in the Conflict in Tigray, Ethiopia' (2021), 23-27; Kelly *et al*, *ibid,* 2; Gilmore, *ibid.*

95 Hohl & Stanko, *ibid,* 5; Bizimungu, *ibid,* 165.

96 TRIAL International, *ibid.*

97 Leandro, 'Gender Based Crimes as "*Tools of War*" in Armed Conflict', in *Gender Violence in Armed Conflict* (2013).

98 *E.g. Prosecutor v. Rukundo*, ICTR Appeals Chamber, para.231, where a priest locked a woman in his room, put his gun on the bedside table, and sexually assaulted her — after she had begged him for protection after her family had been killed. Defence asserted "*at most, Witness CCH suffered only disappointment since he was not ultimately able to protect her [...] Rukundo argues that Witness CCH was not subjected to degrading or humiliating treatment as part of a campaign against Tutsis and that the incident was also insufficiently grave. Rather, "he treated her with consideration, like a woman one is trying to seduce.*" Sharratt, *ibid,* 66, where Defence at ICTY argued with a survivor that the accused had *'only raped once and didn't hurt*' her.

99 *E.g.* Fowler, *ibid,* 28-29; Askin (2003), *ibid,* 9-10.

face increased credibility challenges insinuating consent and accusing them of attempting to conceal their involvement with the opposing side. Society may then downplay the perpetrator's culpability as a misunderstanding, impulsive expression of wartime frustration, or even a kind of relationship with the survivor, particularly when it comes to prolonged or repeated forms of sexual violence such as sexual slavery.[100] Finally, reflecting strong masculine gender stereotypes, sexual violence against men is often so trivialised as to be silenced as a non-issue.[101]

These same dismissive attitudes can often also manifest in a wholesale refusal to acknowledge sexual violence has taken place, particularly when the assault does not conform to the expectations of a 'real victim' scenario. In the context of conflict-related justice responses, trivialisation has manifested in the inadequate investigation and non-prioritisation of sexual violence due to feared difficulties in obtaining the necessary evidence or even the discomfort of engaging with the subject matter.[102] It has also had a particularly marginalising effect on male survivors, whose victimisation is typically diminished into a non-crime[103] or contrarily characterised under other crimes such as torture, ignoring both the impact of the violence and its sexualised nature.[104]

Examples of impacts on justice related to minimisation:

- *Access to justice* — if survivors are led to believe that the crimes against them are less serious than other forms of violence, they may not disclose them. They may instead report other crimes they witnessed or crimes against their loved ones, such as killing of men. Intersecting discrimination and situational factors, such as displacement and poverty, may also reduce the agency and power of survivors to report and have their crimes taken seriously.
- *Revictimisation and stigmatisation of survivors in the justice process* — when messages, decisions and outcomes deprioritise or devalue their lived experiences.
- *Non-prosecution due to limited resources* — minimisation or failure to recognise the seriousness of sexual violence in comparison with other international crimes can lead to investigation, charging and trial presentation decisions deprioritising and cutting CARSV aspects in favour of other forms of violence.[105]
- *Charges for murder but not the preceding sexual violence* — this is illustrated by many cases, particularly in relation to sexual violence against men at the ICTY and ICTR.[106]
- *Impunity for other forms of sexual violence other than violent rape due to application of gravity thresholds* — as an extension of non-recognition of sexual violence beyond rape of women, failure to recognise the seriousness and gravity of other forms of CARSV has created barriers in jurisdictional gravity

100 Fowler, *ibid,* 28-29; Oosterveld, 'Contextualising Sexual Violence in the Prosecution of International Crimes', in Bergsmo (ed.), *Thematic Prosecution of International Sex Crimes* (2012), 201; Isaac & Jurasz, *ibid.*

101 Isaac & Jurasz, *ibid*; Walfield, *ibid,* 18; Elliott, Kivlahan & Rahhal, *ibid,* 489-490.

102 Nowrojee, *ibid,* 8-13.

103 Turchik & Edwards, 'Myths About Male Rape: A Literature Review' (2012) Psychology of Men & Masculinity 13(2), 216-218; Walfield, *ibid. (New York Judge questioned a male victim who had been forced to have sex to the point of ejaculation with a woman, asking "[W]hat's your problem? How could you not have liked this?")*; Elliott, Kivlahan & Rahhal, *ibid,* 482-485; Bitenga, 'Hidden Survivors of Sexual Violence: Challenges and Barriers in Responding to Rape Against Men in Eastern DRC', Master's Thesis, Linnaeus University (2021) *(rape by woman 'No problem if she has no HIV', male-on-male rape just expression of homosexuality or turns victims gay)*.

104 Elliott, Kivlahan & Rahhal, *ibid,* 480-485; Turchik & Edwards, *ibid,* 216-218; Isaac & Jurasz, *ibid.*

105 Jarvis & Vigneswaran, *ibid,* 36-37, including arguments which were made within the ICTY OTP to not include sexual violence as an underlying act of genocide so as 'not to water down the gravity of the crime'. See also Gopalan, *ibid,* on the same issue surrounding reparations processes.

106 *E.g.* ICTY Kvočka *et al.* (IT-98-30/1) (two male prisoners died from injuries from severe beatings, forced fellation of other prisoners, and insertion of objects into their anuses; charges and conviction only for murder); *ICTY Brđanin* (IT-99-36) (An old man killed after refusing to rape a female detainee; threat of assault recognised against female detainee, but not the man); *ICTR Muhimana* (ICTR-95-1B) (male genitals amputated and hung on a pole, beheaded; charged only with murder). See Elliott, Kivlahan & Rahhal, *ibid,* 478-487.

thresholds as well as evidential ones. For example, in the early years at the ICTY, "*Defence Counsel also challenged the appropriateness of international jurisdiction over sexual violence crimes, arguing they were insufficiently serious.*"[107]

- *Failure to recognise or emphasize the sexual component of crimes in judgements or sentencing* — for example, in Bosnian courts, judgements refer to the headings or titles of crimes, 'war crimes against civilians', 'crimes against humanity', but fail to explicitly state that the underlying acts included sexual violence. Further the language in some other judgements fails to recognise the violence, rather than the sexual component.[108]
- *Non-criminalisation or reduced sentencing* — for types of sexual violence or CARSV against certain survivors based on the perception they may not be 'as serious', or 'as upsetting'.[109]

Does stigma change in different countries, over time and for different groups?

Stigma manifests in a multitude of ways depending on the particular cultural and social context. While underlying stigma attitudes associated with sexual violence — such as shame, victim-blaming and denial — are relatively universal, in practice they may play out in very different forms from one country-context to the other. Different cultures exhibit different degrees of discomfort and taboo different aspects of gendered violence, sex and sexuality, such as non-marital or non-heteronormative sexual behaviour. These cultural and country-specific issues also affect survivor experiences, challenges and priorities related to structural stigma hindering their access to justice. For instance, female survivors in more tight-knit, conservative and patriarchal communities typically face an increased risk of forced marriage or honour-killings, highlighting the need for careful outreach and protective measures tailored to protect them from involuntary identification and further violence. In more liberal contexts, survivors may experience stigma and retraumatisation more through judicial actors' disbelief and contemptuous attitudes attacking their credibility, painting them as 'promiscuous' and insinuating they were complicit in their own victimisation. As such, contextualisation is a prerequisite for any successful initiative seeking to identify or address stigma by carving out the nuances of the problem in the particular social environment.[110] Cultural competency in this regard encompasses both knowledge of the normative context of the community or country as well as understanding of one's own cultural background and biases that could affect evaluation of a different normative system.

As well as being context-specific, stigma is typically an intersectional social phenomenon. While gender narratives and discrimination are at the heart of both SV and the stigma associated with it, they also intersect with other social factors such as race, ethnicity, religion and disability.[111] Where applicable, these factors contribute to compounding forms of discrimination that may motivate SV against certain marginalised individuals, exacerbate the stigma ensuing their victimisation and add to the barriers when seeking justice.[112] Moreover, given the aggravated violence and other extremities characterising armed conflict, the need for contextualisation and intersectional approaches is especially pertinent in relation to CARSV. Survivors are often targeted because of and in a manner targeting their gender, race, religion

107 Jarvis & Vigneswaran, *ibid,* 37.

108 OSCE, Towards Justice for Survivors of CRSV in Bosnia: Progress before Courts in BiH 2014-2016 (2017), 18-32.

109 *E.g.* Javaid, 'Male Rape in Law and the Courtroom', 20 Web JCLI (2014), 4, noting the UK 1994 parliamentary debate suggestions that 'coercive anal rape might be less upsetting for a man than for a woman'.

110 OHCHR, Protection of Victims of SV: Lessons Learned, OHCHR Workshop Report (2019), 17; Beringola, 'Intersectionality: A Tool for the Gender Analysis of SV at the ICC' (2017) Amsterdam Law Forum 84, 97; Oosterveld, *ibid.*

111 Beringola, *ibid,* 86-90.

112 *E.g.* Dignity Alliance International & Equality Now, *ibid,* 34 (barriers to justice 'particularly acute for survivors from socially excluded communities, as law enforcement officials have a greater tendency to not believe women and girls from minority communities due to caste, class, tribal or religious biases intersecting with gender biases.').

or other identity, and may simultaneously be victims of other conflict-related crimes such as torture or persecution.[113] These factors have an inescapable impact on the survivors' experience of harm and are translated into compounded forms of stigma following them in the aftermath of the initial violence. Contextual and intersectional approaches help scope out the full extent of CARSV stigma by connecting the situation of armed conflict to pre-existing social inequalities that underpin the victimisation and prolong the impact of violence on the survivors in their communities.[114]

113 Oosterveld, *ibid,* 192-193; Isaac & Jurasz, *ibid*; FIDH, *ibid,* 11-12; Amnesty International, *ibid,* 12-20.

114 Beringola, *ibid.*

METHODOLOGY

What's the Toolkit For?

This Toolkit is designed to help justice and civil society actors in national, hybrid/supranational and international settings to analyse, understand and address the negative impact of stigma in CARSV justice processes.

In **Part A**, the Toolkit provides an indicator and assessment framework that helps identify when and how gendered and discriminatory biases, prejudices and attitudes about CARSV prevent or block access to justice and undermine the justice process. The same framework presents a model for building and monitoring organisational change and competency. **Part B** contains a set of tools for change focused on supporting responses and change initiatives following that assessment.

The competency-based indicator assessment model is intended to facilitate review exercises that are interactive, reflective, and transformative in themselves, encouraging insight and ownership over the assessment and incentivising aspirational progress in the ensuing reform. Moreover, the function-by-function structure allows the Toolkit to be used either as a whole to assess entire justice systems; or to be compartmentalised and divided to individual chapters, facilitating smaller scale assessments in specific sections of the justice process.

How Was It Developed?

A multidisciplinary team of experts developed the Toolkit based on comparative research on standards and recent reforms in criminal justice systems across the world, guidance and tools on survivor-centred, trauma-informed responses to CARSV, current understandings on what works to tackle stigma and change organisational culture, and their own experience and knowledge of CARSV justice and survivor response work.

Who Can Use It?

The Toolkit is designed to guide assessment and reform initiatives in a variety of different contexts by a variety of different actors, including:

- **internal use** within the criminal justice system or a specific court by a working group seeking to review the level of stigma in their own policies and practices, or
- **external use** by civil society actors and survivor networks to scope out critical action-points and advocate for reform and improvements concerning stigma attitudes in justice systems.[115]

As stated above, the Toolkit can be used as a whole for an end-to-end, multi-agency, full system review, which would require cross-department, inter-agency co-operation and joint leadership (full system assessment). It can also be used in parts, with specific functions or agencies using relevant chapters to review only their part of the process and agency response (focused assessment). For example, the Prosecution Service could use Chapter Seven Prosecution on its own, or it could use that chapter in combination with Chapter One Legislative Framework to assess the law which governs its work. Indeed, we recommend that where assessments using the function chapters find significant limitations due to

115 The Toolkit could also be used by other external assessors such as parliamentary or state party oversight bodies, national human rights commissions, ombudspersons, independent researchers and others.

legal restrictions, an assessment under Chapter One Legislative Framework should become the primary initial focus. We also recommend that all focused assessments should include Chapter Five Access to Justice and Survivor Pathways to complement their own function review, to ensure the experiences and perspective of survivors inform their assessment.

It would also be possible to use the Toolkit to complete a full or focused thematic assessment or review, using just the indicators categorised into one of its three themes (Organisational Leadership and Culture, Survivor Interaction and Engagement, and Technical Competencies and Capabilities) (**thematic assessment**).

Both internal and external assessments can be bolstered by collaborating with external experts to help facilitate and advise the assessment team. External experts can enhance the credibility, objectivity and independence of such processes, as well as bringing technical focus and expertise from broader contexts and systems. However, we do not recommend a review only by external experts, as this is likely to reduce internal ownership, acceptance, reflection and leadership which are critical foundations for any effective review and reform process. External experts working alone are also unlikely to have the necessary depth of knowledge of internal institutional culture and customs.

Internal and external facilitated assessments should provide justice actors insight into their current state of operational competency, attitudes and understandings related to CARSV and stigma, identify weaknesses and needs for improvement, and assist in institutional reform and capacity-building processes addressing these needs. Fully external civil society assessments are also an important avenue for oversight and engagement, to provide justice actors impartial feedback from a survivor-rights perspective and feed into further authoritative internal reviews concerning the functioning of the justice system.

In addition, this Toolkit can be used as part of a capacity-building or reform programme as a baseline measurement, a framework for designing elements of that programme and for monitoring impact and progress made as a result of that programme. Indicators from this Toolkit can be incorporated individually or collectively into project Theories of Change or Monitoring and Evaluation logframes.

How Is It Organised?

Part A is organised into **nine chapters** representative of different key phases or aspects of the justice process. These include:

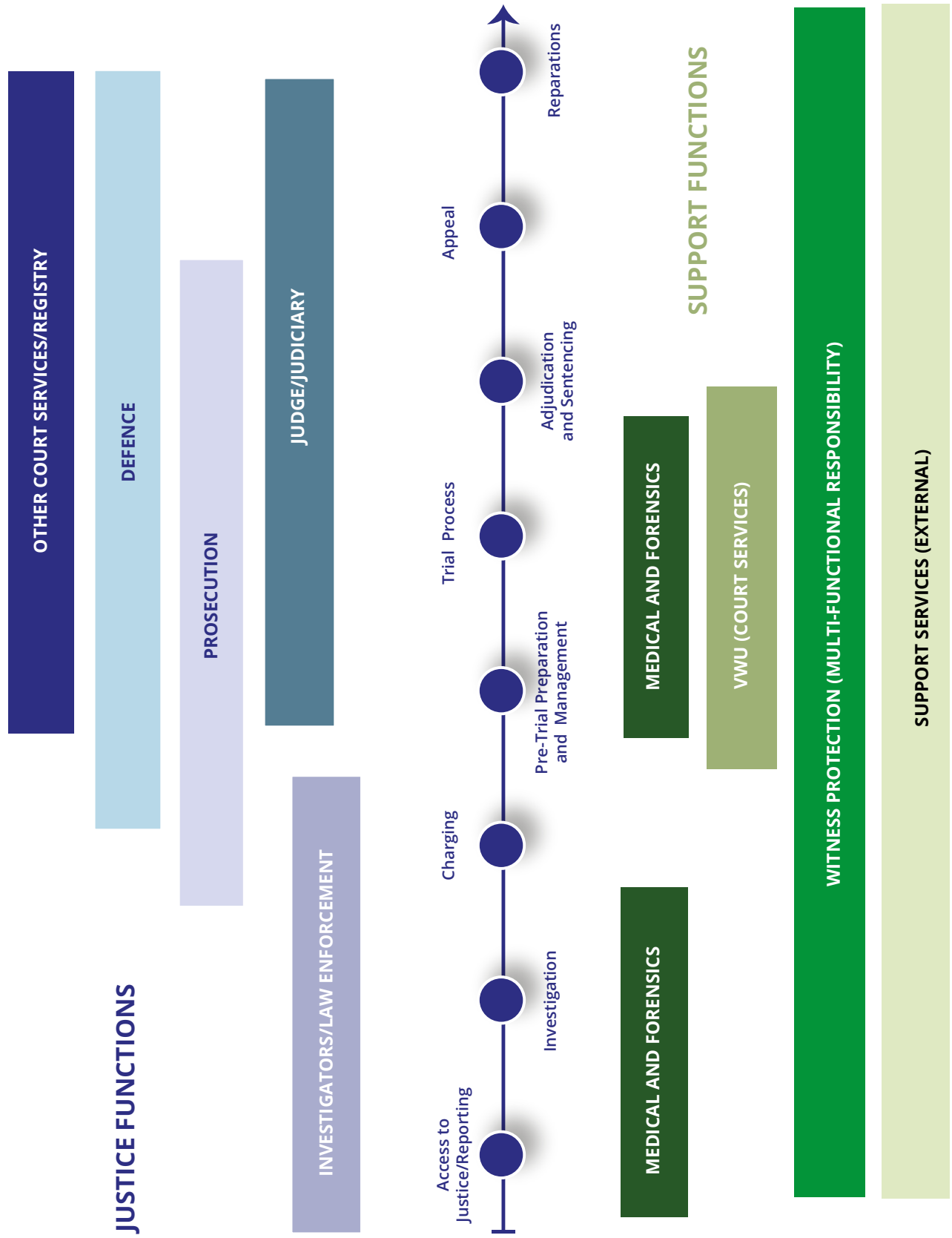
- Chapter One: The Legislative Framework (laws that govern the justice process and functions)
- Chapter Two: Access to Justice and Survivor Pathways
- Chapter Three: Support Services
- Chapter Four: Investigation
- Chapter Five: Witness Protection
- Chapter Six: Medical and Forensics
- Chapter Seven: Prosecution
- Chapter Eight: Defence
- Chapter Nine: The Judiciary and Court Services

Cognisant of the varying cultural, social and legal contexts in which CARSV justice responses take place, the Toolkit is designed to be applicable in a context-sensitive manner in different countries and legal systems. The functions and duties of particular actors may vary from one legal tradition and justice

mechanism to another. Differences between, for instance, civil and common law legal traditions are reflected in inquisitorial features with the judge calling and assessing evidence to determine facts or adversarial features where the judge (or jury) assesses evidence presented and challenged by the parties (prosecution, defence, and sometimes survivors). These differences may also result in context-specific challenges affecting access to justice and survivor-engagement, for instance in mobile courts operating in unstable security conditions or other situations without a solid institutional infrastructure.

By framing the assessment process around universally applicable key competencies (as opposed to concrete guidelines or specific justice institutions), the Toolkit's functional structure is flexible and

Basic diagram of key common steps in justice process and where functions engage[116]



116 Note: In some civil law countries, the investigative stage is entirely overseen by the prosecution or judges, and is not a separate or earlier process as suggested above.

able to be contextualised to appropriately cater for these differences. Assessors using the Toolkit, whether internal or external, should therefore have a well-founded understanding of the legal and administrative framework of the specific country and justice mechanism, as well as the cultural and socio-normative realities contributing to the SV stigmatisation in that specific context.

Note: The Toolkit does not address the specificities of children's access to justice. Other resources tailored to these special needs should be considered to supplement any assessment bearing on child survivors.

What's Included in the Indicator Assessment Framework?

Each chapter includes a comprehensive set of competency indicators that identify and describe key competencies related to the potential manifestation and impact of stigma within that function. The indicators are supported by competency assessment scales with elements and examples of increasing levels of competency, ranging from the lowest level (prioritise for improvement) up to the highest level showing best practices (optimal). Each step on the scale builds organisational development and response based on the Conscious Competency Model, as shown below.[117]

PRIORITISE FOR IMPROVEMENT ☐	**UNDER PERFORMANCE** ☐	**BASIC** ☐	**STRUCTURED** ☐	**OPTIMAL** ☐
Unaware, unaddressed, unconscious bias and stigma unchecked, no survivor-centred approach.	Some awareness, isolated pockets of change.	Awareness, early or basic response to it.	Leadership, policies, tools saying the right things. Not consistently demonstrated in practice, not ingrained	Competency, prioritisation and recognition of importance and counter-measures embedded into organisation and part of the culture. Decision making informed, attitudes non-stigmatised.

In addition to the elements and examples for each level of competency to help users assess where the given justice function/agency sits on the scale, each indicator also has a set of key questions and suggested data sources to further guide the assessment process. Where existing specific tools and resources were identified specific for indicators, these are also included. Each chapter also has a short list of useful resources at the end. The chapters are set up to be coherent and cross-reference each other to appropriately reflect the continuous and interconnected nature of the justice process.

117 This model moves through four stages: 1) an initial situation where the service is not aware of what they do not know or do (*'unconscious incompetency'*), 2) realisation of the issue without an adequate response (*'conscious incompetency'*), 3) building systems and competencies which have to be deliberately and carefully implemented, monitored and enforced (*'conscious competency'*), 4) a stage where those systems, processes and values are so embedded and integrated that competency is part of the culture, happening instinctively or automatically (*'unconscious competency'*).

Guiding Framework: Three Core Themes: To ensure consistent prioritisation of key issues associated with stigma, three core themes have been identified and used to structure the chapters and indicators.

A ORGANISATIONAL CULTURE AND LEADERSHIP	B SURVIVOR ENGAGEMENT AND INTERACTION	C TECHNICAL CAPACITIES AND COMPETENCIES

	ORGANISATIONAL CULTURE AND LEADERSHIP
A1	**Leadership prioritisation:** CARSV, non-stigmatised and SCA appropriately prioritised and resourced ['strategic command'].
A2	**Code of conduct/professional values and expectations/obligations:** work culture, incentives and rewards, expectations.
A3	**Recruitment, selection, retention and commitment to diversity, equality, inclusion, CARSV attitude and CARSV competencies:** policies, outcomes, representative and diverse staff and leaders.
A4	**Compliance and oversight:** Performance review and monitoring of functions and individuals on CARSV KAP and practice, CPD on CARSV, survivor/witness/stakeholder feedback (incl. engaging external expertise and stakeholder groups, survivors, advocates to objectively evaluate CARSV performance.
A5	**Coordination across functions at hand-off and intersections:** explicit procedures at each stage to prioritise hand-offs and coordination/systems of integrated support and work. (See process and function chart.)
A6	**Practice metrics:** process of metric selection, clear, evidence-based metrics including process and outcome KPIs Review process for challenging cases prior to termination.
	SURVIVOR ENGAGEMENT AND INTERACTION
B1	**Survivor-centred approaches embedded at all stages:** prioritised, mainstreamed and embedded in process and practice.
B2	**Participation and agency of survivors (empowerment):** the extent to which survivors are consulted and participate, can make decisions and inform the process, and their feeling of empowerment through justice.
B3	**Informed consent and voluntary participation:** continuous (at every stage and action) survivor autonomy and decision making, awareness and correction of power imbalances or coercion.
B4	**Communications and non-stigmatising interactions:** (including strategies which counter internalised stigma).
B5	**Intersectional awareness and approach:** gender-perspective, inclusivity, diversity and special population support (children, LGBTQI+, persons with disabilities, displaced persons)
B6	**Risk reduction and trauma-informed approach:** active risk reduction around trauma, stigma, safety and other vulnerabilities.
	TECHNICAL CAPACITIES AND COMPETENCIES
C1	**Policies, work plans and tools emphasise accurate understandings of CARSV:** bias recognition, evidence of design and planning for inclusivity, attention to intersectional identities, nature of structural violence and discrimination.
C2	**CARSV (knowledge, skills and attitude):** clear competencies socialised, recognised and updated.
C3	**Decision-making and use of discretion:** reflect and are informed by an accurate understanding of CARSV.
C4	**Assessments and judgements (including credibility of witness and evidence):** influenced by law, science, integrity, context; not by myth, bias and prejudice.

Each chapter is structured to follow the three themes, A. Organisational Culture and Leadership, B. Survivor Engagement and Interaction, and C. Technical Capacities and Competencies. For each of these core themes, common principles have been identified to form a Guiding Framework (below).

The indicators in each chapter have been designed using this Guiding Framework and are referenced using the same numbering (e.g. A5 Coordination across functions, B6 Risk Reduction, C3 Decision Making and Discretion, etc.).

How to Undertake an Assessment using the CARSV Stigma Toolkit — a step-by step guide

PHASE 1: PLANNING	a. **Familiarise yourself with Toolkit and consider any contextual or legal system adaptations and specifics to be taken into account.** b. **Determine the scope of the review —** will it involve just one function or chapter, several chapters together (e.g. legislative framework and prosecution) or will it be a wider assessment end-to-end of the system? Consider the value in more holistic, comprehensive reviews v. the smaller scale but limited scope of partial reviews. c. **Identify the relevant agencies or organisations to be involved in the review.** d. **Ensure agency leadership support*** **(see endnote) —** to secure staff time, access to data and so that the review and response to findings is prioritised. e. **Appoint an assessment team which has the support of all relevant agencies and are able to access and present data.** f. **Create an assessment work plan and set a timeframe for the review.** g. **Calculate and secure resources —** includes staff time to collect and collate data, collaborative workshop to analyse and record, any facilitating expert time.
PHASE 2: DATA COLLECTION	a. **Identify data needs —** consider, who can we ask? What can we read? What can we observe? What can we measure or test? Identify: i) internal documents, reports, etc. ii) external documents from desktop research or requests, iii) who to interview or host focus groups for, or to survey, iv) what survivor feedback data already exists, and how to generate this data safely in a survivor-centred, trauma-informed way. Consider independent sources to strengthen the quality of data.[118] b. **Request access to data.** c. **Set time and location for focus groups, interviews, surveys.** d. **Gap check —** consider what questions and assessment elements you don't have an identified source for. e. **Collate ready for presentation —** ensure data collected is summarised in a digestible accessible form, to allow discussion and assessment.
PHASE 3: ANALYSIS AND RECORDING	a. **Collaborative workshops —** who should attend to ensure the analysis and assessments have engaged the right people, to create ownership and awareness at the right levels? b. **Collate and review indicator assessment ratings,** record comments and explanations for each indicator and assessment scale. c. **Get a second set of eyes to review** these findings. d. **Identify key areas to prioritise for improvement,** and secondary areas which are underperforming. Consider whether these are spread evenly across the three foci or mostly falling within one. e. **Prepare recommendations and action plan** based on priority areas for improvement. Present to leadership for an internal review. Prepare an advocacy report with key talking points and an action plan for external civil society activist reviews.
PHASE 4: REVIEW	a. **Review how the process went,** identify lessons learned and ways that the process could be made more efficient and effective, identify barriers and challenges. b. **Consider when a follow-up assessment should take place** to monitor change and improvements, or the impact of reforms and capacity building, organisational culture change initiatives. c. **Share data and findings** (confidentially/to be de-identified) with the Toolkit Development Team. (recommended)

**DCAF (2011) Gender Self-Assessment Guide, "Senior leadership should make or issue a clear statement of support for the assessment that includes: • the objectives of the assessment • the benefits for the institution of conducting the assessment • who is responsible for conducting the assessment • the expected products and outcomes • who the assessment report will be shared with, including whether it will be public (while ideally the assessment is an open process involving representatives from other institutions and civil society, the institution may decide that the assessment report will not be made public and/or will be limited in circulation within the institution) • encouragement to participate fully and honestly in data collection • ideally, a commitment to follow up the assessment with an action plan • the contact person for more information on the assessment process."*

118 See Social Impact Navigator, 'An overview of data-collection methods', for a simple guide to data collection; for methods https://www.aidsdatahub.org/sites/default/files/resource/unfpa-beyond-numbers-improving-gathering-gbv-data-2021.pdf; https://www.intrac.org/wpcms/wp-content/uploads/2017/01/Basic-tools-for-data-collection.pdf; on participatory approaches https://www.unicef-irc.org/publications/pdf/brief_5_participatoryapproaches_eng.pdf.

Where Does an Assessor Get the Data?

Each indicator also includes potential sources of data relevant to that indicator, including records, statements, publications, interviews, focus groups and collaborative workshops. We recommend that a variety of sources be used, both internal and external, to try to ensure diverse opinions and perspectives. For each context, the assessors will have to adapt their data collection plan to their situation and setting, to what is accessible and available and to create opportunities to obtain data and opinions which are not already recorded.

We urge that survivor feedback is used whenever possible, either through existing reports, collations and research or by working together with survivor networks and civil society to gain their insights and experiences. This is a critical perspective when it comes to stigma and myths, and is a fundamental element for meaningful and lasting changes in attitudes and practice. Most of the data and indicators are qualitative, not quantitative. Numbers rarely give much of the picture.

How to Use the Assessment Scales

Following data collection, assessors should consider what elements best describe the situation according to the data. Consider each of the elements in the scale to see which is the best fit. Then in order to determine which level is the best match for that indicator, select the one where the most elements are present. For example:

Scenario 1: Assessment finds all elements or most elements present under one level of the scale

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☑	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or recognition of stigmatising language as problematic at the Bar. ☐ Stigmatising language commonly used in written and oral submissions and questioning, including victim-blaming (conduct), victim-shaming, minimisation.	☐ Pockets of awareness among the Defence Bar. ☐ Isolated examples of better practice but most Defence Counsel still using such language with or without awareness.	☑ Basic guidance available but not circulated, Defence Counsel not familiar. ☑ Rising awareness of the issues with such language. Still frequent examples of use.	☐ Guidance with examples available with good awareness but not full familiarisation. ☐ Practice not consistent among Defence Counsel, response inconsistent too.	☐ Well-known guidance with examples circulated among Defence Bar. ☐ Culture among the Defence Bar against using such language. ☐ Rare use of stigmatising language in written and oral submissions. Any use is responded to and corrected by prosecution or judges.

Scenario 2: Assessment finds even numbers of elements across two levels of the scale, so conservatively select the lower level.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☑	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or recognition of stigmatising language as problematic at the Bar. ☐ Stigmatising language commonly used in written and oral submissions and questioning, including victim-blaming (conduct), victim-shaming, minimisation.	☐ Pockets of awareness among the Defence Bar. ☑ Isolated examples of better practice but most Defence Counsel still using such language with or without awareness.	☑ Basic guidance available but not circulated, Defence Counsel not familiar. ☐ Rising awareness of the issues with such language. Still frequent examples of use.	☐ Guidance with examples available with good awareness but not full familiarisation. ☐ Practice not consistent among Defence Counsel, response inconsistent too.	☐ Well-known guidance with examples circulated among Defence Bar. ☐ Culture among the Defence Bar against using such language. ☐ Rare use of stigmatising language in written and oral submissions. Any use is responded to and corrected by prosecution or judges.

Global Data, Trends and Enhanced Understanding of CARSV Stigma and What Works

The Toolkit is for use by internal or external assessors in particular systems and settings. However, as part of the use of this Toolkit, we request that (de-identified) data is shared with the Toolkit Development Team.

While there is considerable research on the impacts of stigma and myths on broader forms of sexual violence under national legislation and justice processes not related to conflict, that rigorous research and systematic data does not currently extend into justice processes for international, hybrid and national courts adjudicating CARSV. At present, we mostly have anecdotal data and examples collected through professional work and experience.[119] The assessments and analysis done using this Toolkit could provide standardised, comparable data which could contribute significantly to the understanding and delivery of effective and safe criminal justice processes for CARSV.

119 Sharratt, *ibid*; Brammertz & Jarvis, in relation to lessons learned from prosecuting CARSV at the ICTY.

PART A - INDICATOR ASSESSMENT FRAMEWORK

CHAPTER ONE — LEGISLATIVE FRAMEWORK

> *"The law totally let me down. … The Police felt the law let me down, the prosecutor felt the law let me down, but their hands were tied because they had to work within the law. The law does not care about victims of sexual violence."*[120]

Sexual violence stigma and myths are often embedded into laws, constituting one form of structural or institutional stigma. That structural stigma not only perpetuates and gives authority to misconceptions and prejudices, but also creates barriers to full accountability for CARSV. It can limit the definition of crimes, provide for defences or mitigation in sentences, and fail to protect survivors during the criminal justice process.

"*[I]n many countries, national legislation fails to provide a comprehensive legal framework that recognizes all forms of sexual violence as crimes and protect all individuals who may fall victim. Weaknesses in the laws and procedures of many countries as well as in the administration of justice allow perpetrators to escape punishment and deny victims the right to remedy. Systematic impunity for sexual violence crimes constitutes an important element in contributing to the repetition of these violations.*"[121]

Where laws reflect harmful gender stereotypes, prejudices or stigma relating to sexual violence, the State may be in violation of its international human rights obligations, including under the Convention on the Elimination of Discrimination against Women (CEDAW).[122]

Fortunately, since the legal framework is the bedrock for accountability and well as for safe and fair process, there have been considerable attention and calls for review and reform of sexual violence legislation around the globe. In the same vein, the UN Special Representative to the Secretary General for Sexual Violence in Conflict (UN SRSG SVC) has also produced UN Model Legislative Provisions for conflict-related sexual violence. "*The Model Legislative Provisions seek to remove barriers to access to justice for victims, survivors, and their families. These provisions significantly advance a victim and survivor-centric codification of both substantive and procedural criminal law on conflict-related sexual violence, while also allowing for future progressive developments in this area of law.*" These model provisions are a useful resource for reviewing legislation and are repeatedly referenced in this Chapter.[123]

For national courts, the applicable laws to be assessed extend to broader sexual violence offences which may become relevant where the international criminal provisions are insufficient or have not been incorporated. Furthermore, the applicable evidential, procedural, survivors' rights and participation, and witness protection rules may also be found in national laws which apply in all court proceedings, without special provisions

120 Gravitas, Improving the Justice Response to Victims of Sexual Violence Victims' Experiences (2018), 112.

121 UN SRSG SVC, Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence (2021) (UN Model Legislative Provisions).

122 *Vertido v. The Philippines*, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc CEDAW/C/46/D/18/2008; ICJ, Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice (2015), 6. See also *M.C. v. Bulgaria* (ECHR App no. 39272/98, 4 December 2003) considering physical force as a part of rape to violate the survivor's right to be protected from torture and ill-treatment and right to privacy.

123 UN Model Legislative Provisions, *ibid*.

for international crimes. It is therefore critical that all applicable laws are considered in this review, regardless of whether they are specialised for international crimes or not. In addition, a review of applicable laws should also include any potentially relevant subsidiary legislation, such as court rules of procedure.

A critical part of legislative measures is ensuring implementation of reforms, which requires resources. In low-resource settings, low-cost adaptations will be required but can still be extremely effective. For example, some witness protection measures can require technology (e.g. videolink evidence) or infrastructure (e.g. separate entrances to courts), but there are adaptations which can achieve the same outcome with some thought and operational work. Where possible, low-resource alternatives and useful resources will be highlighted throughout the Toolkit.

This chapter comes with a cautionary note. While the legislative framework and legal reform are a critical bedrock for accountability, they are not the full answer. Clear, non-stigmatised laws can be interpreted and applied in a discriminatory way, coloured by cultural misunderstandings or misconceptions around sexual violence held by the person interpreting the law. This chapter is focused on what the law says, not how it is applied; that aspect is covered in the following functional chapters which relate to the justice actors and different aspects of proceedings and practice.

INDICATORS AND ASSESSMENT

This chapter can be used for assessment by a wide range of justice and civil society actors. Meaningful assessment requires leadership and prioritisation within the legislature, and should engage those with the capability to implement change and set the agenda for legislative review and reform. For justice actors, this chapter can be used in conjunction with the specific function chapters so that legal restrictions impacting practice and culture can be recognised and tackled as well. All other actors, including civil society and survivor networks, can also use this chapter to assess and advocate for reform of laws which embed CARSV stigma. It can also be used to work on a single aspect of the legislative framework, for example survivor rights and participation, or witness protection laws. This chapter includes indicators for all aspects of the legislative framework including, i) substantive criminal law (what are crimes and who are responsible), ii) evidence, iii) procedure, iv) survivor rights and participation, and v) witness protection.

The Guiding Framework set out in Methodology is applied in this chapter in the following order/way:

A. **Organisational Culture and Leadership:** in terms of those who set the legislative and reform agenda.
B. **Survivor Engagement and Interaction:** considering whether the legislation supports survivor participation, survivor-centred and safe procedures, and protection.
C. **Technical Competency and Capacity:** measuring the CARSV accuracy and levels of structural stigma reflected in substantive laws — setting competency levels at non-stigmatised and non-stigmatising laws.

As with the other chapters, some adaptation may be needed to apply the indicator elements and assessment scales to different legal systems, including common law, civil law, hybrid and other system procedures.

Indicator numbers in this chapter are prefaced with LF for Legislative Framework — e.g. LF1, LF2, etc.

Summary and Order of Indicators in this Chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
LF1 Those responsible for the applicable law and rules appropriately prioritise review, reform and improved outcomes for justice for CARSV crimes.
LF2 Those responsible for the administration of justice and budgeting for the criminal justice system/court ensure that adequate resources are made available and prioritised to ensure legislative reform is rolled out and implemented as fully as possible.
LF3 The legislative framework applies nondiscrimination provisions to the interpretation and application of the law.
SURVIVOR INTERACTION AND ENGAGEMENT
LF4 The applicable law and rules require a survivor-centred approach, including the protection of survivor rights and rights of participation to protect those rights in balance with the rights of the accused to a fair trial.
LF5 The applicable law and rules provide for procedural steps and measures which create an environment and process for survivors to give their evidence to the court in the most effective and safe manner, reducing anxiety, stress, distress, trauma, intimidation, power differentials and uncertainties.
LF6 The applicable law provides survivor and witness protection measures which apply to survivors and their families, regardless of whether they choose to testify and which take into account survivor safety and wellbeing at all stages of the criminal justice process, including after the end of formal court proceedings.
TECHNICAL CAPACITY AND COMPETENCY
LF7 The applicable law provides legal definitions and a range of CARSV crimes, to accurately and inclusively criminalise all typologies and all perpetrators responsible for CARSV.
LF8 The applicable law does not allow time bars to prosecution, immunity from prosecution, amnesties or pardons or defences based on stigmatised attitudes or concepts in relation to CARSV crimes.
LF9 The applicable law includes sentencing ranges, aggravating and mitigating factors which reflect the seriousness and gravity of CARSV and do not reflect misconceptions, myths and stigma about CARSV, perpetrators or survivors.
LF10 The applicable laws and rules on admissibility of evidence or evidential requirements ensure that no evidence based on myths, misconceptions or stigmatised attitudes (or any such challenges to evidence) is admissible or permitted in court.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator LF1: Those responsible for the applicable law and rules appropriately prioritise review, reform and improved outcomes for justice for CARSV crimes.

Leadership and prioritisation are required to make real cultural change, driven and framed by law which is up-to-date, effective, accurately reflective of the nature and scope of CARSV, free from stigma and myths, and which advances and enhances survivor-centred justice. Those in a legislative role, in terms of proposing, drafting and passing legislation, must consider their leadership and commitment to survivor-centred, improved justice for CARSV crimes.

As evident throughout this chapter, old unreviewed or unamended legislative provisions are likely to be part of the problem. As advancements are made in many countries to improve survivors' experiences of justice and tackle sexual violence myths and stigmas, it is important that legislative reviews and reforms keep up with these protections and developments. This can be seen in the recent acceleration and attention on SV justice reforms in England and Wales and in Scotland.[124]

Elements of good practice for this indicator include:

1. **Regular legislative review and update, at least every 5 years.**
2. **Consultative processes include survivors' representations and feedback.**
3. **Data on how the law is interpreted and applied in practice is collected and reviewed during legislative processes.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No recent review, with all laws applicable to SV and CARSV being over 20 years old. ☐ No consultation process for legislation or legislative review processes. ☐ No data collected.	☐ Most recent review was over 10 years ago and minor. ☐ Very limited consultation process for legislation or legislative review. ☐ Little basic official crime and courts data available, not specific to CARSV or SV.	☐ Review of legislation within 10 years but only small amendments made. ☐ Basic public consultation exercise on laws related to SV, but limited time and no proactive outreach or engagement with stakeholders or agencies. ☐ Basic information about SV offences and procedures.	☐ Substantive review of legislation within the last 5 years. ☐ Broad consultation with the public and participation of justice functions/ agencies. ☐ Data collection from justice agencies. Not commissioned or ongoing to monitor impact of legislative changes.	☐ Regular reviews every 5 years or as often as needed. ☐ Full consultation with all stakeholders including survivor feedback. ☐ Ongoing data collection required as part of monitoring intended outcomes of legislative changes. Ongoing research and data collection commissioned and resourced.

Key critical questions:

- What is the date of the penal code or crimes statute? If the country is a common law jurisdiction, are the SV/CARSV crimes codified into statutory law? When were these laws last amended?
- How aware, engaged and proactive is the government and legislature on this issue? Are these issues on the legislative agenda or a named priority for the government? What public statements have been made about the need for review and reform?
- Are there any legislative bills currently underway in the legislative process which relate to any of the laws reviewed in this chapter?
- What is the amendment procedure? What is the consultation phase, how long and how is it done? Who reviews the consultation feedback received?
- Are any justice agencies asked to submit recommendations to review proposed legislation?
- Is any comparative review done in relation to best practices in other countries?
- Are any survivor networks or civil society organisations which support survivors and access to justice engaged or asked for their recommendations?
- How is the implementation and impact of legislation monitored? What data is collected or commissioned in order to understand whether it is having the intended effect, etc.?

Data sources:

Internal: Legislation, legislative reform and implementation data and reporting.
External: Survivor feedback, external reviews on legislation and legislative reform, CSO reports.
Interviews and focus groups: Ministry of Justice or Registry/Statute-Rules Committees, survivors, judges and prosecutors.

124 See *e.g.* UK Victims Commissioner, 2020/21 Annual Report Dame Vera Baird QC Victims' Commissioner for England and Wales (2021); George & Ferguson/UK MOJ, Review into the Criminal Justice System Response to Adult Rape and Serious Sexual Offences Across England and Wales (2021); HM IPS Scotland, Thematic Review of the Investigation and Prosecution of Sexual Crimes (2017); HM IPS Scotland, Follow-up Review of the Investigation and Prosecution of Sexual Crime (2020).

Competency Indicator LF2: Those responsible for the administration of justice and budgeting for the criminal justice system/court ensure that adequate resources are made available and prioritised to ensure legislative reform is rolled out and implemented as fully as possible.

Appropriate legislative reform and framework are only one part of the solution. In addition to tackling these issues in practice in the specific functions of the criminal justice system, it is important that any legislative provisions are supported both in terms of adequate resourcing to ensure implementation; and in terms of avenues for enforceability if the legislation is not followed.

Elements of good practice for this indicator includes:

1. **Assessment and allocation of necessary financial and other means of support and implementation for legislative provisions, protections, procedures, representation, support, etc. as well as capacity building and support to functions to ensure organisational and attitudinal change to implement legislation fully.**
2. **Legislative provisions have associated implementation strategies and roll-out plans, regular reviews of implementation of legislative provisions with remedial steps or issues identified.**
3. **Ensuring appropriate provisions for sanction and effective remedies for non-compliance with legislative provisions, including constitutional or other legal protections for any breach of survivor rights.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No implementation strategy or review. ☐ No budgeting or resources to support implementation. ☐ No means to enforce rights or provisions.	☐ Implementation plan and reviews left to functions. ☐ No budget needs assessed or allocated. Functions expected to implement using existing budget. ☐ Very few provisions which sanction or provide rights in terms of non-adherence or breach of provisions or protections.	☐ Basic implementation plan, with little review of effectiveness. ☐ Basic budget allocated but not at all adequate. ☐ Some basic means of enforcement but only with judges who may be an integral part of non-compliance or as part of wider court system which is not very effective or accessible.	☐ Implementation strategy and review plan, but not comprehensive review or data collection to allow review. ☐ Budget and resources cover some implementation, but not a full review or monitoring of implementation. ☐ Law provides sanctions and remedies but not fully functional or accessible.	☐ Regular (annual or biannual) review of implementation of CARSV justice provisions. ☐ Regular budgeting reviews (annual or biannual) to ensure effective implementation. ☐ Implementation plan, including remedial plans where implementation fails. ☐ Effective accessible means to enforce provisions, protections and rights.

Key critical questions:

- Who is responsible for the effective implementation of legislative reforms and provisions for the justice system? Are there implementation plans or monitoring? How do they assess whether the provisions have been adopted in practice? How is this done for CARSV and survivor-centred justice reforms?
- How effectively are legislative reforms being implemented? How do CARSV or survivor-centred reforms compare to other types of reforms? What are the barriers to implementation for CARSV reforms? What is needed to reduce those barriers?
- Who is responsible for budgeting for the court system, different elements, functions or agencies? How is this process undertaken? How are reforms and effective implementation taken into account?
- How is the resource situation for the justice system? How well-resourced is it? What items are prioritised in budgets?
- What happens when legislative reforms, e.g. changes in court procedures, are made? Whose role is it to ensure they are implemented and enforced? What happens in any instances of non-compliance? Are there any remedies for those affected, e.g. survivors?

Data sources:

Internal: Legislation, implementation strategies and action plans, budgets, monitoring reports.
External: Survivor feedback, external reviews on legislation and legislative reform, CSO reports.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors.

Competency Indicator LF3: The legislative framework applies non-discrimination provisions to the interpretation and application of the law.

While this is connected to Indicator LF9 in terms of enforcement of legislative provisions and connects to practice in the coming chapters, it is important to recognise that discriminatory interpretation or application of the law is a central part of the problem this toolkit seeks to address. The law must require non-discriminatory application of the law, and provide remedies where this is not done.

The Committee on the Elimination of Discrimination against Women in Vertido v. The Philippines found that the Convention (CEDAW) requires that "*all legal procedures in cases involving crimes of rape and other sexual offenses must be impartial and fair, and not affected by prejudices or stereotypical gender notions.*"[125] In the Council of Europe's (CoE) Istanbul Convention to Stop Violence Against Women, Article 36 requires that States must ensure that interpretations of rape legislation and prosecutions in rape cases are not influenced by gender stereotypes and myths about male or female sexuality.

The **UN Model Legislative Provisions** includes: "*The application and interpretation of this [Act] [Law] must be consistent with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender, sex, age, race, colour, language, disability, religion or belief, political or other opinion, national, ethnic or social origin, customary or societal communal roles, wealth, birth or other status.*"[126]

Elements of good practice for this indicator includes:

1. **A clear and enforceable legislative provision requires nondiscriminatory interpretation and application of all CARSV legislative provisions, with an explicit reference to ensuring the interpretation and application is free from influence of gendered stigma or SV myths.**
2. **A mechanism for enforcement and effective remedy when the interpretation or application of the law is discriminatory, including where it is influenced by stigmatised attitudes or myths.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No legislative provision or non-discrimination provisions. ☐ No means of review or effective remedy for discriminatory application or interpretation of the law.	☐ Basic provisions or guidance on non-discrimination. Judges exempt. ☐ No means of review or remedy.	☐ Basic provisions on discrimination which applies to judge but protection on paper only. ☐ Basic provisions for review or remedy but not accessible or effective in practice.	☐ Legislative provisions on non-discrimination which apply to judges. No explicit reference to SV myths or gendered/ intersectional stigma. ☐ Avenues for claiming legal remedy but not for review.	☐ Clear legislative requirement for non-discriminatory application of all legislative provisions related to CARSV, with an explicit reference which prohibits the influence of SV myths and gendered and intersectional stigmas. ☐ Effective accessible and safe means to review application or interpretation of the law and get an effective remedy.

Key critical questions:

- How does the law protect against discriminatory application of the law? What are the recognised forms of discrimination? Is intersectional discrimination recognised? Are stigmatised attitudes and decisions recognised as discrimination?
- Are decisions or applications of the law which are discriminatory eligible for review? Who can review them or apply for review? How often is this done? What are the barriers to this occurring?
- What are the remedies for someone who has been affected by the discriminatory application of the law? How accessible are those remedies? What are the barriers to access - including structural intersectional inequalities, resources, legal advice and representation, language, awareness, distance, etc.? What steps have been taken to reduce these barriers and to support access to these remedies?
- How active is 'strategic litigation' in relation to these issues? Are there pro bono law firms or legal representatives who are pursuing review and remedies to prevent further discriminatory practices?

125 Vertido v. The Philippines, CEDAW Communication No. 18/2008, Views of 16 July 2010, UN Doc CEDAW/C/46/D/18/2008.

126 UN Model Legislative Provisions, *ibid.*

Data sources:
Internal: Legislation, regulations, legislative materials and drafting records.
External: Survivor feedback, external reviews on discriminatory application of the law and strategic litigation, CSO reports.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors, pro bono law firms/activists.

B. SURVIVOR ENGAGEMENT AND INTERACTION

Competency Indicator LF4: The applicable law and rules require a survivor-centred approach, including the protection of survivor rights and rights of participation to protect those rights in balance with the rights of the accused to a fair trial.

Survivor-centred approaches are key to ensuring that survivors are not further traumatised or stigmatised by the criminal justice process. Their active participation and protected rights are also key to reducing the influence of myths, misconceptions and stigma in the process. The **UN Model Legislative Provisions** recommend that laws "*adopt a victim and survivor-centred approach, meaning they prioritise the rights, needs, participation, and wishes of the victim or survivor of sexual violence with full respect for their autonomy*".[127]

For civil law systems, the participation of survivors in criminal justice proceedings is far more common and familiar. In some jurisdictions, survivors have the right to participate as a party in the case. Survivors also have rights to initiate criminal proceedings as a party in many civil law countries, and may in some common law systems also have the right to petition to conduct a private prosecution (although these are relatively rare). At the international and hybrid court level, survivor participation has been included for the ICC, Special Tribunal for Lebanon (STL), ECCC, Kosovo Specialist Chambers (KSC) and for others where civil law traditions have had more of an influence. For common law adversarial processes, survivor participation is traditionally far less common, although survivor rights in criminal justice processes are increasingly being incorporated into law and the balance between the rights of the accused and the rights of survivors achieved.

UN Model Legislation Provisions include: "**Respect.** *Victims shall be treated with respect and dignity [...]. Victims shall be treated in a respectful and sensitive manner throughout the legal proceedings, considering their personal situations and immediate special needs.*"

"From the initiation of an investigation, [the prosecutor] [the police] [the pre-trial judge or investigative magistrate] [the responsible ministry] are responsible for ensuring that victims are informed of their rights:

1) *To the protective measures available to them, in particular the protection measures provided for in Article 55, and how to access them. Victims shall also be informed of any penalties incurred by the perpetrators of the violence and the conditions of execution of any possible convictions;*
2) *To be heard by investigators and other officials who are the same gender as the victim if the victim so requests;*
3) *To participate in the criminal proceedings in accordance with international or domestic law (as applicable);*
4) *To be assisted by a legal representative of their choice or who, at their request, is [appointed] [referred to them] by the State [free of charge] [the costs being at the expense of the victims unless they fulfil the conditions of access to legal aid, explicitly detailing those conditions, or if they benefit from legal protection insurance];*
5) *To be assisted by a service under one or more relevant public authorities or by an association that is a victim support organisation, which might be a non-governmental organisation;*
6) *To be provided with any information that may affect their personal security, such as the accused or offender's release from detention or imprisonment;*
7) *To be informed of the progress and results of the investigation of their case as well as the scheduling, progress and ultimate disposition of any proceedings;*
8) *To benefit from an interpreter and translation essential to their understanding of the proceedings in their entirety;*
9) *To have diplomatic and consular assistance, necessary visas and travel documents, and contact tracing to a victim's family upon request;*
10) *To be accompanied at their request, at all stages of the proceedings, by their legal representative and by a support person of their choice, unless otherwise decided by the competent judicial authority;*
11) *To declare as domicile the address of a third party, subject to the express agreement of that third party or otherwise to have the location of their domicile concealed;*
12) *To be provided with sexual and reproductive health services free of charge;*
13) *To obtain reparation, by compensation and/or by any other appropriate means, considering their personal circumstances and any special needs."*[128]

127 UN Model Legislative Provisions, *ibid*, 11 (Guiding Principle A).
128 UN Model Legislative Provisions (2021), *ibid*, 27-28 (Model Articles 49 and 50).

Elements of good practice for survivor participation and rights in the process include legislative provisions which require:

1. **Survivors to be informed of their rights in relation to the criminal proceedings.**
2. **Survivors to be treated with respect throughout the process, including respect for their rights such as safety, privacy and dignity.**
3. **Survivors to be consulted and provided information during the justice process.**
4. **Survivor participation or interaction with processes based on fully informed, voluntary consent (with removal of compulsion powers or summoning powers in relation to CARSV survivors).**
5. **Access to pro bono support, including MHPSS, language, health, special assistance and reasonable accommodations to ensure participation, including support persons.**
6. **Access to pro bono representation to protect rights during proceedings, including rights of audience where the hearing or application has direct bearing on their rights,**
7. **The right to submit survivor impact statements and be heard at sentencing hearings,**
8. **Statement of CARSV survivor rights contained in a law or other enforceable measure (e.g. A Victim's Bill of Rights).**

*See **Chapter Two — Access to Justice and Survivor Pathways**.*

*See **Chapter Five — Witness Protection**.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
□ Survivor rights are not written down in law, nor are there procedural steps which allow for participation (other than as witnesses called by a party to the action). □ Survivors have to be summoned or compelled to attend court hearings or provide information or access to, without representation and without their informed consent. □ No provisions or practice consulting survivors or providing information or updates at any stage of the process. □ No legal requirement or expectation in practice for access to support in association with criminal justice processes. □ No right to representation, no legal aid or pro bono assistance.	□ Survivor rights are protected through regional or other human rights instruments but not in national or court laws. □ Summoning of survivors common practice. □ No provisions to consult with survivors or provide information, but a few examples where done in practice. □ Access to support only provided from outside the system, by external actors on ad hoc basis. No legal requirement or expectation. □ No right to representation, only some ad hoc assistance provided by external actors without right to appear in court.	□ Some basic survivor rights appear in law. □ Law only acknowledges rights of accused without any provision or balance against rights of survivors. □ Provision of information to survivors contained only in internal practice policies or procedures, but not required in law. □ Mixed use of powers of compulsion, practice limited in CARSV cases. □ Very limited rights of representation or support allowed. No resources to support this.	□ Good set of survivor rights in law. □ Survivor participation provided for on limited basis or without options (all in or out). □ Survivor participation or interaction on voluntary basis, any powers of compulsion not used based on internal policies or procedures and not based on law. □ Information provision included in law. □ No consultation with survivors required in law, but is included in internal procedures and policies. □ Some support rights in law, with corresponding resources. Not full set. □ Some rights to representation where rights directly affected, no corresponding legal aid.	□ Survivor rights protected and encapsulated in law. □ Structured set of options for survivor participation and engagement in criminal justice processes, including information provision and update or more proactive participation. □ Law includes balance of accused's rights and survivor rights. □ Some forms of consultation with survivors required in law. □ Survivors' participation based on voluntary informed decision-making, not summoning or compulsion used by the court or other actors, which is explicitly limited in law. □ Right to representation where rights directly affected, with corresponding legal aid support.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
				□ Legal right to comprehensive support integrated into the criminal justice process and survivor participation including MHPSS, language, health, special assistance, reasonable accommodations/ measures to ensure participation, including support person.

Key critical questions:

- What legal sources determine survivor rights in criminal processes? What are the state's international obligations in terms of these rights? Which relevant international and regional human rights instruments are applicable and enforceable (e.g. European Directive on Victims Rights, etc.)?
- What survivor rights are captured in national laws/rules relating to the court or criminal procedure?
- In what ways does the law allow survivors to participate or interact in criminal proceedings relating to a crime committed against them? Are these laws expanded or limited in any way for international crimes?
- Does the legislation require any provision of information for CARSV survivors? At what stages of the process and by whom?
- Does the legislation provide for any support services for CARSV survivors who participate in criminal proceedings? What are the limits in time, duration or types of services for survivors?
- Does the legislation provide for any legal advice or representation for survivors in the criminal justice process? What are the limitations to that? Is it supported by eligibility or access to legal aid? Does it support a choice of counsel? Who appoints counsel for survivors?

Data sources:

Internal: Legislation, regulations, legislative materials and drafting records, international law instruments.
External: Survivor feedback, external reviews on survivor rights, CSO reports.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors.

Useful resources, exercises or tools:

- UN Model Legislative Provisions, Articles 49-53.
- Lesley Thomson, Review of Victim Care in the Justice Sector in Scotland: Report and Recommendations (2017) (Scotland).

Competency Indicator LF5: The applicable law and rules provide for procedural steps and measures which create an environment and process for survivors to give their evidence to the court in the most effective and safe manner, reducing anxiety, stress, distress, trauma, intimation, power differentials and uncertainties.

The creation of an environment in which evidence can be safely and effectively heard is essential for fact-finding and determining the truth, including the liability of the accused. For potentially vulnerable witnesses, including survivors, there are many measures and processes which can be deployed as vital options for survivors to reduce risks of harm and to enhance the accuracy of their testimony. *See also complementary indicators for judges, prosecutors, support services and defence counsel which are critical to measure practice.* Legislative provisions create the framework for this to happen. Adversarial processes, with traditionally combative cross-examination, can be most harmful and damaging for survivors. However, all systems have been moving towards better, less confrontational means for vulnerable survivors to provide their evidence, while maintaining the accused's right to test and challenge the evidence against them.[129]

"*[A] fair trial does not involve abstract balancing between the rights claims of the defendant and the complainant. Measures to protect one do not inevitably detract from the rights of the other in a zero-sum game. The defence and prosecution are entitled to challenge a witness's testimony, but under conditions most conducive to eliciting the truth, in a process predicated upon equality of arms and effective participation.*"[130]

Elements of good practice for this protective procedures indicator include:

1. **A good range of protective or special measures and options are available for a survivor to choose from, removing uncertainty and reducing discretion of prosecution or the judge.**

This is critical to ensuring informed consent and voluntary participation, which require survivors to have an understanding of and choices around how and within what terms their testimony is provided. Survivors should understand their rights and options, and should be informed of the associated boundaries and limitations, for example the accused's right to challenge evidence against them.

These measures should include full range of closed or in-camera court sessions, image and voice altering, use of pseudonyms, closed circuit TV/link, screens, being accompanied by a support person in court, familiarisation processes, preparation with prosecutor, alternative means of testifying (pre-recording or evidence on commission131), reduced formalities including removal of wigs/gowns/formal attire, and reduction of infrastructure aspects which increase formalities or elevate positions above others. Low-resource setting alternatives should be designed.

Risk/vulnerability assessments should be required and conducted with the survivor's input and participation, without making assumptions about trauma or vulnerabilities, to ensure duty of care of justice actors is met and survivors protected from harm and secondary victimisation.

2. **Procedural rules which require preliminary hearings, with a survivor's right to be represented and heard.**

This includes hearings related to any special measures for the survivor's testimony or certain challenges/admissibility of evidence which relate to any attempts to introduce or obtain evidence which is generally restricted due to its potential relation to irrelevant stigmatised attitudes, CARSV myths or misconceptions, or any other measures which impact the rights of the accused and defence counsel's ability to test the evidence in a trauma-informed sensitive way (for example anonymity or delayed disclosure measures).

*See also legal relevancy and evidential rules **Indicator LF4**. See* **UN Model Legislative Provisions** relating to procedural rules and preliminary hearings for introducing or eliciting evidence about consent.

3. **The law or rules require ground rules hearings about any survivor testimony.**

*See also **Indicator D3** and **Indicator D4** about Defence participation in such hearings and compliance with any ground rules set.*

4. **The law requires judicial control or intervention to ensure a safe environment, prevent secondary victimisation and to ensure no evidence is adduced, submitted or sought which is legally irrelevant and based on stigmatised misconceptions.**

*See also **Indicator J7** about judicial control and intervention where the environment or conduct within the environment is not safe. See also ICC Rule 88(5) and Istanbul Convention Article 54 (necessary precautions to protect victims within criminal proceedings).*

5. **The law forbids cross-examination by the accused themself — any questioning of a CARSV survivor must be done through the judge or counsel.**

See UN Model Legislative Provisions, Article 63.

129 Thomson, Review of Victim Care in the Justice Sector in Scotland: Report and Recommendations (2017). Gravitas, *ibid*.

130 Hoyano, 'Reforming the Adversarial Trial for Vulnerable Witnesses and Defendants', (2015) Criminal Law Review 107.

131 See also variations of the Nordic Barnahus Model for early recording or interviews conducted through specialist intermediaries with defence participation; Doak *et al*, 'Cross-Examination in Criminal Trials Towards a Revolution in Best Practice?' (2021).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No special or protective measures for CARSV survivors as vulnerable witnesses. ☐ No procedural hearings mandated about survivor evidence nor ground rules hearings about survivor testimony. ☐ No specific law or procedural requirement for judicial intervention to prevent harm.	☐ One or two very basic measures available at the judge's discretion, no risk/ vulnerability assessment required. ☐ Basic preliminary court management hearings discretionary. ☐ Judge's duty to conduct fair and safe proceedings. References accused's rights to a fair trial only.	☐ Basic set of protective measures available for vulnerable witnesses but at judge's discretion upon application by prosecutor. ☐ Procedural and preliminary hearings discretionary. No survivor representation provided for (beyond survivor participation rights in system). ☐ Judge's duty of care specifically balances accused rights and survivor's safety.	☐ Full set of protective measures available based on vulnerability assessment or automatically imposed without consultation with survivors. ☐ Procedural hearing required on defence application to introduce any evidence regarding consent. Victim/survivor representation discretionary. ☐ Preliminary ground rules hearings discretionary. ☐ More detailed set of judge's duties which include prevention of harm to survivor safety and wellbeing.	☐ Full range of protective and special testimony measures, with many open to survivor choice. ☐ Risk/vulnerability assessment in consultation with survivors required. ☐ Procedural hearing required on defence application to introduce any evidence based on any potentially stigmatised or stigmatising misconception. Victim/survivor advanced notice and representation required. ☐ Preliminary ground rules hearings mandatory with specific elements around safe environment for adducing 'best evidence' with survivor representation allowed. ☐ Procedural law provides clear requirement to act on judge's duty to intervene and control the court environment to ensure safety, best evidence and to prevent secondary victimisation and stigmatisation.

Key critical questions:

- What are the protective measures in court which seek to ensure the safety and welfare of survivors and vulnerable witnesses and prevent retraumatisation (private sessions/closed court, screens, remote testimony, pseudonyms, voice distortion, support, etc.)?
- What provisions and allowances are made for alternative, pretrial, out of court recording of survivor testimony, including cross-examination?
- By whom and how are the application of any of these measures determined?
- What role does the survivor have in determining the circumstances in which they would like to testify and what special measures are put in place?
- What is the procedure if the defence seeks to challenge or lead any evidence relating to consent or tied to any evidential aspects which may be restricted due to their legal irrelevancy and connection to sexual violence myths and stigma?
- What rules are in place around self-representation by an accused, and their questioning of survivors?
- What is the infrastructure, customs and formalities of the court? What are the rules around situations where these are relaxed or what should be changed in relation to vulnerable witnesses?

Data sources:
Internal: Legislation, regulations, procedural guidance, legislative materials and drafting records.
External: Survivor feedback, CSO reports.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors groups, survivors' advocates.

Useful resources, exercises or tools:

- UN Model Legislative Provisions.
- Thomson, Review of Victim Care in the Justice Sector in Scotland: Report and Recommendations (2017) (Scotland) paras. 252-271.
- Section 271(c) of the Criminal Procedure (Scotland) Act 1995 (as amended by Victim and Witnesses (Scotland) Act 2014) (includes special measures and vulnerable witness status which allows choice of these measures to be with a survivor).
- Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People', (2016) Criminal Law Review 3.
- Ciorciari & Heindel, 'Victim Testimony in International and Hybrid Criminal Courts: Narrative Opportunities, Challenges and Fair Trial Demands' (2016) Virginia Journal of International Law 56(2).

Competency Indicator LF6: The applicable law provides survivor and witness protection measures which apply to survivors and their families, regardless of whether they choose to testify and which take into account survivor safety and wellbeing at all stages of the criminal justice process, including after the end of formal court proceedings.

In addition to safe courtroom procedures and environments, broader witness and survivor protection outside court is a fundamental requirement for safe and effective justice for CARSV. If it is not done effectively, the consequences for survivors can be life-threatening, violating their basic human rights including those to privacy, safety and wellbeing. It can result in repercussions, reprisals, life-long stigma and social consequences for survivors. See also Istanbul Convention, Article 56 requiring state parties to take necessary precautions to protect survivors within criminal proceedings, including from intimidation, reprisals and revictimisation.

Protection is a huge responsibility for all involved in justice processes, and one to be prioritised above all else. Witness protection in its broadest sense requires all justice actors to operationalise risk assessments and safe working protocols. See indicators reflecting those responsibilities are included in the functional chapters which follow, and Chapter Five Witness Protection which focuses on practice.

UN Model Legislative Provisions Article 55:

"1) All reasonably necessary measures must be used to avoid secondary victimisation.

2) All reasonably necessary measures shall be adopted for the wellbeing of victims to guarantee their personal and family security, both mental and physical, including protection against any action or exposure that could result in an undue attack on their privacy or security. Such measures must not be to the detriment of the rights of the accused or of a fair and impartial trial, nor will they be incompatible with them.

3) To guarantee the physical safety and mental wellbeing of victim and witness and/or their families, and in respect of their privacy, protective measures may be imposed by the [court] [pre-trial judge or competent magistrate] on application of the prosecutor or victim representative, or on application of victim or witness, or on the [court's] [pre-trial judge's or competent magistrate's] own motion, and at any time during the justice process. Such measures may include:

   a. Measures to prevent interaction between a victim or witness and the accused or associates of the accused, including in-person meetings, phone calls, email, mail, text, social media, or any other form of communication;

   b. Restraining orders from a competent court, supported by a restraining and protective order registry system;

   c. Orders to place the accused in pretrial detention, with conditions that take into account the safety risks and situation of vulnerability of victims, including "no contact" bail conditions;

   d. An order of house arrest only if the house is not shared by a victim, a victim's relative (including their children), or a witness;

   e. Protection for a victim or witness by the police or other relevant agencies and safeguarding the whereabouts of the victim or witness from disclosure;

   f. Other protective measures from competent authorities that may be deemed appropriate.

4) Protective measures may be imposed by the [court] [pre-trial judge or competent magistrate] [ex officio or on ex parte application of the prosecutor, victim, or victim representative] for the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture as restitution or reparations, without prejudice to the rights of bona fide third parties.

5) A breach of any protective measure ordered by the court shall be punishable by a term of imprisonment or other sanction consistent with the nature of the crime committed in breach thereof, and with the scale and gravity of the harm caused to victims, witnesses or other persons."

Elements of good practice for witness protection laws include:

1. **Protection mandate (duty of care) set within police or court police, or centralised into protective services, including protection after testimony.**
2. **Risk assessments for safety and vulnerability, which include the survivor, and share information about risks with survivors as part of their continuing informed consent to participate.**
3. **Protection orders preventing survivor-accused interaction (including restraining orders).**
4. **Provision for pre-trial custody (remand) if CARSV accused are shown to be a safety risk to survivors and witnesses.**
5. **Confidentiality and non-disclosure orders to prevent any public disclosure of survivor's identity, identifying details, contact or residence information, or testimony (if in closed session) and to ensure the court record does not contain such information.**
6. **Legal provisions to criminalise any breach of protective measures with serious sanction reflective of the harm to survivors and to the interests of justice.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No protection mandate or duty of care in law. ☐ No risk assessments required in law in relation to survivor/ witness engagement and protection. ☐ No protection or restraining orders for CSRV survivors. ☐ CARSV/SV categorisation as non-serious, non-violent crime for bail/ detention on remand. ☐ Nothing in law about non-disclosure or survivor identity protection. ☐ No legal sanction for breach of protection laws or judge's order.	☐ Basic duty of care as public officers. ☐ No risk assessments required in law. ☐ Basic protection orders for SV survivors. ☐ Very high threshold for detention on remand (harm already done). ☐ Limited non-disclosure order powers. ☐ Very low-level administrative caution/ misdemeanour for violation of court order.	☐ Duties of protection limited to in-court testimony only (see Indicator LF5). ☐ Risk assessments discretionary. ☐ Basic set of protection orders for survivors of sexual violence. Court ordered access to protective safe houses based on threat to life (women only). ☐ Non-disclosure orders limited to closed session testimony only. ☐ Low-level criminal sanction for breaching court order or protection laws.	☐ Non-centralised, protection functions across agencies and actors. Not coordinated. ☐ Risk assessments required for high-risk, highly vulnerable survivors only. No survivor voluntary participation. Limited information sharing on risks with survivors. ☐ Set of protection orders not fully inclusive or gender/ age sensitive. Not discussed with survivors. ☐ Non-disclosure orders include survivor identifying information. Can be issued without consultation with survivors. ☐ Medium-level criminal sanctions for those who violate law and orders regarding survivor protection and safety.	☐ Clear protection mandate, duties and power centralised into protection services, which includes protection needs beyond testimony and after proceedings. ☐ Risk/vulnerability assessments mandated and include participation and information sharing with survivors. ☐ Protection orders, which are age and gender sensitive, available for survivors and discussed with them. ☐ Detention on remand for demonstrated risks to survivors from accused. ☐ Full range of survivor identification protection measures and non-disclosure orders, issued after survivor consultation. ☐ Clear and serious criminal sanction for those who breach protection and safety laws and orders.

Key critical questions:

- What protection measures are set out in the law?
- Which of them are specific to CARSV survivors? Is it a full range of measures which covers all aspects, not just physical safety of witnesses in court? Does it extend to survivors participating in the justice process but not giving testimony? Does it extend to their families?
- What measures are available for survivors to choose from? What measures are only available after a 'vulnerability' assessment or through judge's discretion?
- What protection duties are set out in the law? Who is responsible and how is this coordinated?
- What sanctions and remedies are set out in the law for any non-compliance with measures or duties?

Data sources:

Internal: Legislation, regulations, legislative materials and drafting records.
External: CSO reports.
Interviews/focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors, WVU/witness protection services, survivor support, survivor advocates.

C. TECHNICAL CAPACITIES AND COMPETENCIES

This final group of legislative indicators looks at different aspects of the substantive law relating to CARSV to assess whether the provisions accurately reflect and provide an effective basis for criminal justice for CARSV crimes, or whether they institutionalise and perpetuate stigma, sexual violence myths and misunderstandings.

Competency Indicator LF7: The applicable law provides legal definitions and a range of CARSV crimes, to accurately and inclusively criminalise all typologies and all perpetrators responsible for CARSV.

Societal understandings and myths about SV are most clearly found in what acts are criminalised, and what acts are not. For example, the assumption that men are always perpetrators and women the survivor becomes reflected in limited legal definitions, such as rape defined as 'penile penetration of the vagina' or 'sexual intercourse with a woman without her consent'. There are many examples of stigmatised attitudes and myths institutionalised into the definition of crimes.

"*Where countries prosecute conflict crimes using Penal Code sexual violence provisions, very few are fully gender neutral. Many still define rape as requiring penile penetration. Some limit rape to female victims. Many use antiquated terms such as 'carnal knowledge' or include 'sexual gratification' as a purposive element. Similarly, opaque and gendered language appears for other forms of sexual violence: 'indecent assault against a woman or girl' (Uganda), 'attacks on decency' (Syria), 'immodest act', 'assails a women in a public place in an immodest manner' (Iraq), 'disgraceful act with a female' (Yemen) and 'insult the modesty of a woman'(Bangladesh).*"[132]

The elements of good practice for this indicator set out below also demonstrate ways that stigma can creep into law.

Elements of good practice for substantive law includes:

1. **Incorporation of international crimes into court's governing law, using International Criminal Court (ICC) definitions or in line with current understanding of customary international law.**

For instance the German Code of Crimes Against International Law did not initially incorporate 'any form of sexualised violence of a comparable gravity' from the ICC Rome Statute and instead used 'sexualised coercion' from its Penal Code. "*Due to its narrow, outdated, and discriminatory requirements — violence, threat, and impossibility to resist — which need to be met for an act to constitute sexualized coercion, only some forms and acts of sexualized violence could be accounted for and definite impunity gaps existed for others. Moreover, the law did not conform with the standards set by the Istanbul Convention. Though a reform was brought about in 2016, for international crimes allegedly committed before this, the old version is the applicable law.*"[133]

2. **Inclusive definitions of sexual offences which are not gendered (or otherwise reflect or perpetuate gender or other forms of discrimination).**
3. **Crimes include a full range of typology and victimology of CARSV, including those forced to penetrate (compelled rape) and those forced to witness, with explicit reference to genital mutilation, castration and other forms of CARSV against men and boys, as well as indirect perpetration. Rape by a spouse, i.e. marital rape, is criminalised.**

The Hague Principles "*understood broadly, the concept of "sexual violence*" encompasses all violations of sexual autonomy and sexual integrity". See The Hague Principles for discussion and examples of the breadth of CARSV supported by case law.

4. **The definition and scope of CARSV in law does not otherwise reflect or perpetuate stigma, misunderstandings and myths about CARSV, survivors or perpetrators.**

For example, the words used do not conflate or confuse sexual relations with sexual violence (e.g. as sexual intercourse without consent or being tied to sexual gratification), nor do the crimes refer to 'honour' rather than recognising the crimes as a form of violence.[134] "*In many countries, national laws mischaracterize rape as a crime against honour or custom, rather than a crime of physical harm to the victim, thus minimizing its seriousness.*"[135]

5. **Sexual violence is defined around coercive circumstances (focused more on accused's conduct, and less on consent) and reflects a full range of coercive circumstances where consent is not voluntary or possible. Sexual violence is not defined solely dependent on use of force or overcoming will.**

"This has been described as involving 'a shift of focus of the utmost importance from the subjective state of mind of the victim to the imbalance of power between the parties on the occasion in question.' Legislation in Namibia and Lesotho provide examples of the coercive circumstances model, defining coercive circumstances with a non-exhaustive list of circumstances that are coercive."[136] A dual approach still based on consent is possible but should include a non-exhaustive list of circumstances under which no consent can be found to exist, such as instances of abuses of power.

132 Elliott, Kivlahan & Rahhal, *ibid*, 480.

133 Studzinsky & Kather, *ibid.*

134 Note: International humanitarian law, with respect to the Geneva Conventions 1949, contains such language; for example, 'outrages of personal dignity', which are often directly transposed into IHL criminal provisions.

135 Nowrojee, *ibid*, 26.

136 ICJ, *ibid.*

UN Model Legislation Legislative Provisions: "*committed by force, or threat of force, or by coercion or by taking advantage of a coercive environment or the conduct was committed against a person incapable of giving genuine consent. Coercion includes but is not limited to fear of physical, sexual or psychological violence, duress, detention, oppression, abuse of authority or power.*"

6. **The legislation uses up-to-date, clear and simple terms, without antiquated terminology or phrases which do not provide a clear definition of acts of a sexual nature.**

Even the important catch-all CARSV crime of 'any other form of sexual violence' "*has 'acts of a sexual nature' as the recognized actus reus component of sexual violence. This is ambiguous, and how this is applied depends on knowledge and understanding of 'sexual nature', informed — or misinformed — by the societal norms and biases around them.*"[137] The Hague Principles were developed to try to address this problem.

7. **Sexual violence crimes, including CARSV, are not classified or grouped separate from other violent crimes or described as crimes of honour.**

E.g. in some jurisdictions sexual offences are classified in criminal laws as crimes against honour or public morals. This means they are placed in a different section of the criminal code than crimes such as physical assault or murder, which are categorised as crimes against the person.[138]

8. **There are no hierarchies around 'less' serious forms of sexual violence, and no support for the misconception that the rape of women is the only form of grave sexual violence.**

There is no minimisation of types or survivors' experience of CARSV, and no hierarchy of crimes such that unnamed CARSV is ignored or minimised. Any gravity threshold specifically relates to a survivor's perception and impact, not that of a judge. Gravity thresholds can reinforce 'hierarchy of violence or singular understanding of CARSV as rape'. For example, in the arrest warrant and charges confirmation processes of the Bemba case at the ICC, the Pre-Trial Chamber stripped out all forms of CARSV that were not rape largely based on gravity thresholds.[139]

"*There is an over-emphasis on penile vaginal rape as the only serious crime, to the detriment of other forms of sexual violence. Aliraza Javaid notes that the UK 1994 parliamentary debates about expanding the law of rape to include male victims were punctuated by suggestions that 'coercive anal rape might be less upsetting for a man than for a woman'. He stresses that 'if this notion of naming or labelling such forced sexual acts as rape is ignored in law, it will exacerbate the institutional neglect of male rape and the lack of societal recognition of this social issue'.*"[140]

9. **There are no provisions which potentially criminalise CARSV survivors.**

In some jurisdictions, 'morality crimes' can fail to distinguish consensual sexual relations and sexual violence. By neglecting to include an element of consensual participation in such crimes (which are usually discriminatory by definition), CARSV or SV survivors can be criminalised. This may be the result in particular for morality crimes such as adultery or extra-marital sexual relations (known as 'zina' crimes under Sharia Law) or provisions criminalising homosexuality.[141]

137 Elliott, Kivlahan & Rahhal, *ibid*, 479.

138 ICJ, *ibid*.

139 See Grey, 'Conflicting interpretations of 'sexual violence' in the ICC' (2014) Australian Feminist Studies 29(81), 273-288.

140 Elliott, Kivlahan & Rahhal, *ibid*, 481.

141 See ICJ, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No international crimes incorporated into law. ☐ Criminal law provisions on SV have not been reviewed or amended in years. ☐ Antiquated and gendered terminology, 'honour', 'sexual intercourse' and other stigmatised, myth content. ☐ Focus on penile rape of women by force, with other crimes either not criminalised or falling within generic 'lower offences'. ☐ Survivors criminalised by other 'morality' crimes.	☐ Some international crimes incorporated but outdated and incomplete or deviating definitions, especially for CARSV. ☐ SV provisions still use unclear and gendered terms. ☐ Still focus and hierarchy of penile rape of women, but with some initially widening definitions and offences. ☐ Still focus on use of force, overcoming will.	☐ International crimes almost fully incorporated, but with some deviation from definitions for full provisions. Not updated. ☐ SV provisions reformed within last 5-10 years but a few gendered provisions remain. ☐ Wider recognition of broader typology of CARSV, but still with hierarchy and explicit emphasis and clarity for rape only. ☐ Based on consent but without listing or recognising coercive circumstances. ☐ While consensual relations distinguished, survivors could still fear criminalisation if there is any argument or assumption of consent.	☐ Incorporation of international crimes, with consistent definitions but not updated to reflect all typology and developments in customary international law. ☐ Gender-neutral terms, but retains lists of explicit types which are not fully gender inclusive. ☐ Dual approach with consent but listing coercive circumstances where consent not possible. ☐ Gravity thresholds still leave understanding and seriousness judgement to discretion/open interpretation. ☐ Survivors not criminalised by other crimes.	☐ Sexual violence provisions updated and regularly reviewed (at least every 5 years). ☐ Full incorporation of international crimes including ensuring CARSV against all victims included and explicit. Reflects up-to-date customary international law. ☐ Authoritative guidance on 'acts of a sexual nature' or forms of sexual violence. ☐ Fully gender neutral. No stigmatised attitudes or myths reflected. ☐ Centred on coercive circumstances and accused's conduct. ☐ Survivors not criminalised by other crimes. ☐ Any remaining gravity thresholds countered by guidance or non-exhaustive list, gravity as a survivor-centred/ contextual concept.

Key critical questions:
- Has the law incorporated international crimes, either from the ICC Rome Statute or a proper reflection of customary international law?
- What human rights treaties has the State ratified? Does this include CEDAW?
- Is the definition of 'rape' broad enough to capture all penetrative invasions of a sexual nature or of/by a sexual organ regardless of the gender of the survivor and perpetrator?
- Is gendered language used in the elements or definitions in crimes? List examples.
- Are terms properly defined, and defined in a non-gendered or stigmatising way?
- Are antiquated terms used? Is there reference to 'honour', 'indecency', 'immodesty', 'carnal knowledge', 'fornication' (and other equivalent terms in the national/local language(s))?
- Is there any reference to 'virginity'?
- Is lack of consent an element in sexual violence offences?
- Does the definition of lack of consent cover coercive circumstances? Does lack of consent include those without legal capacity to consent (e.g. children, mentally or physically incapacitated persons)?
- Are there any examples of stigma, SV myths or misassumptions about CARSV or SV in the laws?
- Is there a hierarchy of SV crimes or between SV crimes and other international crimes?
- Is CARSV treated differently from other underlying crimes, such as murder or assault?
- Is sexual violence between spouses criminalised?
- What is the legal age of marriage? Is it the same for all genders? Does it require fully and freely given consent of both spouses equally regardless of gender?
- Are acts of a sexual nature outside marriage criminalised without regard to consent — i.e. that a non-consenting person would be guilty of a crime?
- Is anal penetration criminalised without regard to consent – i.e. that a non-consenting person would be guilty of a crime?
- Are there discriminatory provisions in other laws which are relevant? For example, in personal status laws or rights of women or LGBTQI+ community?

Data sources:
Internal: Penal code/criminal statutes, any laws or regulations incorporating ICL and human rights standards, commentaries or official guidance on the law and its interpretation, legislative materials, drafting records.
External: CSO reports or other reviews of CARSV or SV legal framework, CEDAW reporting and reviews.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors groups, survivor supporters, survivor advocates.

Useful resources, exercises or tools:
- UN Model Legislative Provisions (2021).
- The Hague Principles and Tools.
- IICI, Supplement to the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Guidance for Practitioners in Iraq (2018), 16.
- ICJ, Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice (2015).
- CNM Country Supplement to the International Protocol on Investigating and Documenting CRSV – CAR.
- The Human Dignity Trust, Good Practice in Human Rights Compliant Sexual Offences Laws in the Commonwealth (2019); Next Steps Towards Reform: Assessing good practice and gaps in Commonwealth sexual offences legislation: Africa, Asia, Caribbean & Americas, Pacific, Europe (2020).

Competency Indicator LF8: The applicable law provides for all modes of criminal responsibility under international law and does not allow time bars to prosecution, immunity from prosecution, amnesties or pardons or defences based on stigmatised attitudes or concepts in relation to CARSV crimes.

International crimes, including CARSV, are usually perpetrated by groups or through the coordinated acts of multiple parties. National laws on criminal responsibility can focus on physical perpetrators and may not provide for accountability of the many other roles which contribute to and have most responsibility for CARSV. Without these modes of responsibility, CARSV may be de-contextualised, misunderstood or prosecuted without recognition of its strategic use as a weapon of war.

While international law prohibits statutory limitations, amnesty and immunity for international crimes, CARSV (and SV laws which might be applied to CARSV) are often treated differently to other forms of violence. This is namely due to a misunderstanding or 'othering' of sexual crimes, which focuses on and conflates them with sexual relations rather than recognising and contextualising them as another form of violence.

Time limits have an important impact on SV cases as reporting or disclosure of SV crimes is often complicated and delayed by stigma (attitudes of the community and fear due to internalised stigma by survivors). One well recognised rape myth or stigma attitude is the misassumption that 'real victims' are able and would report immediately and that delayed disclosure is somehow an indication of untruthfulness. It is critical that this stigma is combatted and not perpetuated, and that any time bars or lack of recognition of delayed disclosures are removed.

UN Model Legislative Provisions include:
"No [prescription] [statutes of limitations] shall be applied to the criminal offences enumerated in Articles 1 through 35 of this [Act][Law] nor to any conduct which constitute acts of genocide, crimes against humanity, war crimes, or other criminal offences that, pursuant to international law, are not subject to the statute of limitations.

2) No time limits as to investigation or other procedural rules shall impede or prevent investigation, civil or criminal complaint, indictment, or prosecution of criminal offences identified in paragraph (1) of this article, except as strictly necessary to protect the rights of the accused."[142]

Elements of good practice for this indicator include:

1. **The law provides for criminal responsibility for all modes of liability under international law.**

This includes levels of leadership, co-perpetration, ordering, inciting, instigating, planning and accomplice liabilities, as well as non-physical perpetration or indirect perpetration.

2. **The law does not provide a defence for husbands based on marital status or if the perpetrator subsequently marries the survivor so 'honour is somehow restored.'** [143]

See also Indicator LF9 mitigating factors, Indicator LF1 definitions of crimes.

3. **The law does not provide a defence of necessity, law, order or official status including no head of state, state agent or foreign official immunity.**
4. **The law does not allow amnesties or pardons for CARSV.**
5. **Any statutes of limitation do not apply to CARSV.**
6. **Reporting or complaint deadlines for survivors do not apply to CARSV (or SV crimes which may be used for accountability of CARSV in the absence of international crimes incorporated into criminal law).**
7. **Any procedural deadlines for cases involving CARSV or SV allow for reasons shown, and are not automatic time bars.**

142 UN Model Legislative Provisions, *ibid*, 26 (Model Article 45).

143 ICJ, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No reform or review for some time. ☐ Law mainly provides for physical, direct perpetration, and aiding and abetting. ☐ Defence or mitigating factors of marriage, 'honour' or 'provocation' available for men. ☐ Highly gendered provisions. ☐ Amnesties and pardons allowed and exist for CARSV. ☐ Immunities for state agents cover torture and sexual violence committed at work. ☐ Statute of limitations/ prescriptions low for SV. ☐ Reporting deadlines for SV less than 1 year.	☐ Little recent review or reform. ☐ Some additional modes of criminal responsibility but not full representation of ICL modes. ☐ While some reforms had removed defences or mitigation based on marriage, gendered provisions still remain (such as 'honour' or 'provocation' defences or mitigation for men). ☐ Many gendered provisions remain.	☐ Basic review and reforms to the laws. ☐ Basic forms of ICL responsibility covered but not all definitions match ICL. ☐ Marital defence or defences or mitigation based on 'honour' or 'provocation' removed from law. ☐ Some gendered provisions remain. ☐ Amnesties, immunities and pardons not allowed in constitution or based on international treaty obligations but exist in law. ☐ Statutes of limitation do not apply to international crimes but are short for SV crimes.	☐ Recent review and amendment to the law. ☐ Almost all elements of good practice are in place. ☐ Some inconsistencies remain and some obstacles based on time or gender remain within the law.	☐ Clear, up-to-date provisions which meet all elements of good practice above. ☐ No amnesties or pardons allowed or in place. ☐ No gendered defences or defences based on stigma, myths or misassumptions about CARSV/SV including no defence for spouses or future spouses. ☐ Law clearly acknowledges delayed disclosure as normal, understandable outcome of stigmatising attitudes. No timebars or reporting deadlines or statutory limitations prevent historical cases of CARSV/SV.

Key critical questions:

- What modes of criminal liability apply to SV crimes and any CARSV crimes in law? How do the definitions match with international law?
- What defences are available for sexual violence crimes?
- Are there any gendered terms, gender distinction or gendered aspects to defences?
- Does the law provide for a defence or mitigation if the perpetrator is or becomes married to the survivor?
- Does the law provide a defence for sexual violence for exercising legal rights including for example, a legal right of 'punishment of a wife by her husband'?
- Is there a defence or mitigation provided for 'honour' crimes or does provocation include 'honour'? How are 'honour' killings and violence criminalised?
- Do mitigating factors apply to both genders equally (e.g. is provocation equally available to women)?
- Are there any immunities which cover SV/CARSV in the law?
- Are there any amnesties or pardons in the law which cover SV/CARSV?
- What are the statute of limitations/prescriptions which apply to CARSV and to SV crimes?
- What are the procedures on initiating criminal proceedings for sexual violence?
- Are there any time limits for reporting/initiating or short statute of limitations for SV or CARSV? Are any exceptions provided for if there are deadlines?

Data sources:

Internal: Penal code/criminal statutes, any laws or regulations incorporating ICL and human rights standards, commentaries or official guidance on the law and its interpretation, legislative materials, drafting records.
External: CSO reports or other reviews of CARSV or SV legal framework, CEDAW reporting and reviews.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors groups, survivor supporters, survivor advocates,

Useful resources, exercises or tools:

- UN Model Legislative Provisions (2021).

Competency Indicator LF9: The applicable law includes sentencing ranges, aggravating and mitigating factors which reflect the seriousness and gravity of CARSV and do not reflect misconceptions, myths and stigma about CARSV, perpetrators or survivors.

Sentencing ranges are a key indicator of the perceived seriousness or gravity of a crime. Myths such as minimisation or trivialisation of certain survivors' experiences or impact can be embedded into sentencing ranges for certain crimes, in aggravating and mitigating factors set out in the law as well as in sentencing guidelines.

"*The gravity of a sexual violence crime should not be diminished based on discriminatory assessments or harmful traditional or customary values. Sexual violence is to be treated with the same degree of seriousness and penalties as applied to other criminal acts of similar gravity.*"[144]

Elements of good practice for this indicator includes:

1. **Sentencing ranges are medium- to long-term, to reflect the gravity of this international crime.**

See for example Bosnia, where an ECHR judgement was interpreted to limit prosecution of war crimes to old SFRY legislation with sentencing ranges of 5-15 years. Average sentencing for CARSV cases at local level courts was 4.77 years (below the statutory minimum — *see also **Indicator J10** on judges' sentencing decisions*). "*In two recent cases, perpetrators who committed wartime sexual violence against minors received just one year of jail time; both men promptly converted their sentences to the payment of a fine, meaning that they will never see the inside of a prison.*"[145]

2. **Aggravating factors include only relevant factors, e.g. survivor age, impact, gravity/brutality, multiple incidents, multiple perpetrators, relationship of trust/duty of care.**

Relevant aggravating factors do not include 'virginity' as this suggests that sexual violence is less harmful to men, women who are or have been sexually active, married women or women once they have children. Including 'virginity' as an aggravating factor also encourages harmful and scientifically invalid 'virginity tests' or 'two finger' tests. *See also **Chapter Six — Medical and Forensics**.* Examples of relevant aggravating sentencing factors can be found in the UN Model Legislative Provisions, Article 36.

3. **Mitigating factors include only factors relevant to the crime and criminal conduct, and do not include any stigmatising or stigmatised perceptions of CARSV, its survivor or perpetrator.**

For example the following are not relevant mitigating factors and are rather based on stigmatised attitudes or myths about CARSV, the survivor or perpetrator: that the perpetrator was an ordinary man or 'good family man' (stereotyping or affinity bias); the perpetrator married the survivor afterwards (supposedly 'restoring honour'); the perpetrator was not 'violent'; the survivor was not 'physically injured'; the survivor's gender; the survivor was sexually active or had children; survivor's non-participation or withdrawal from proceedings; survivor's demeanour in court (that they do not seem upset or traumatised).

An example of mitigating factors reflecting gendered assumptions and minimisation of gravity of sexual violence is provided by TRIAL from Bosnia: "*in Indira Kameric, the Accused, convicted of torture and inhuman treatment for ordering a male detainee to sexually assault a female detainee, was credited with the particularly mitigating factor that 'the consequences of her actions (were) not too grave or of a far-reaching nature as is the case with more severe war crimes offences.' She received a three-year sentence, below the SFRY CC's statutory minimum.*"[146]

4. **The law gives survivors the right to submit a victim impact statement or be heard at a sentencing hearing – see also *Indicator LF4* above.**

144 UN Model Legislative Provisions, *ibid*, 54 (Article 37).

145 TRIAL International (2019), *ibid*, 4.

146 TRIAL International (2019), *ibid*, 52.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No incorporation of international crimes in law, sentencing range related to SV offences. ☐ No sentencing guidelines in relation to CARSV. ☐ SV sentencing ranges are low compared to other serious forms of violence such as aggravated assault or murder. ☐ Aggravating factors include 'honour' and 'virginity'. ☐ Mitigating factors permit the consideration of the accused as a family man or ordinary man who did something bad. ☐ No right to be heard or to submit victim impact statements.	☐ No or little incorporation of international crimes in law, so sentencing range related to SV offences or low ranges for war crimes. ☐ Little guidance on sentencing, does not include CARSV. ☐ Some small amendments to aggravating and mitigating factors but still gendered, stigmatised or stigmatising in the most part. Allow wide discretion for judges to apply stigmatised views of survivors, perpetrators or minimise seriousness of CARSV. ☐ No right for survivor impact statements to be included.	☐ International crimes almost fully incorporated, but with some deviation from definitions for full provisions. Not updated. National sentencing ranges applied or outdated - not reflective of gravity for CARSV crimes. ☐ Guidance on sentencing for CARSV very basic. No reference to myths and stigma. ☐ Aggravating factors focus mainly on gravity, cruelty/ brutality, impact, but residual gendered or stigmatised factors included. ☐ Mitigating factors not specific to CARSV and allow very wide judicial discretion. ☐ Basic provisions to allow judges to take survivor impact into account for sentencing.	☐ International crimes incorporated. ☐ Better sentencing guidance with specific provisions for CARSV but with little reference to the countering of stigma and myths. ☐ Set of aggravating and mitigating factors set out in law, with some specificity to CARSV. No requirement for reasoned judgement and discretion of judge still very broad. ☐ Procedural provisions allowing victim impact statements' submission and statements at sentencing hearings. Inconsistent practice, discretionary.	☐ International crimes and sentencing ranges incorporated. ☐ Sentencing ranges for CARSV equate to other serious violence crimes. ☐ Clear sentencing guidelines in law or authoritative form specific to CARSV and addressing and countering stigma and myths. ☐ Clear set of appropriate aggravating and mitigating factors set out in law specific for CARSV, with requirement for reasoned judgement. ☐ Clear provisions requiring victim impact statement process (if survivors consent and wish to participate), used in practice.

Key critical questions:

- What sentences does the law impose for CARSV/SV (whichever is available for accountability purposes)?
- What are the maximum terms of imprisonment and maximum fines for the relevant offences? How do these compare with other international crimes or grave national crimes?
- Are there minimum penalties for CARSV/SV offences? How do these compare with other international crimes or grave national crimes?
- What are the aggravating and mitigating factors set out in law?
- Are there any sentencing guidelines in law or authoritative form? Do they specifically relate to or address CARSV? Do they say anything about CARSV/SV rape myths, stereotypes or stigma?
- What are the legal provisions and practices around victim impact statements?

Data sources:

Internal: Penal code, criminal statutes and any relevant subsidiary, official sentencing guidelines.
External: CSO reports on sentencing ranges.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, defence counsel, survivors.

Useful resources, exercises or tools:

- UN Model Legislative Provisions (2021).
- TRIAL International, Punishing CRSV: Guidelines for Combating Inconsistencies in Sentencing (2019).

Competency Indicator LF10: The applicable laws and rules on admissibility of evidence or evidential requirements ensure that no evidence based on myths, misconceptions or stigmatised attitudes (or any such challenges to evidence) is admissible or permitted in court.

Evidence rules are not the whole answer, but can build a critical foundation through which judges, prosecutors and defence counsel can limit evidence, lines of questions or challenge and the influence of outdated, prejudicial and discriminatory stigmatised attitudes and SV myths. Given the possible implicit bias/unconscious stigma within judges and other actors, studies have found that judicial protection based on case-by-case discretion and assessment of these issues is poor and that judges are not good at protecting survivors and cases from irrelevant challenges or facts. For example, "*[in the South African Law Reform Commission's] evaluation the researchers conclude that s.227 [on evidence of prior sexual history in sexual violence cases] has to some extent failed of its purpose and that '[t]he unfettered discretion given to presiding officers to determine the admissibility of such evidence on the broad and subjective basis of relevance seems to be a large part of the problem'. Accordingly, they propose that s.227 be amended 'to clearly delineate the circumstances under which evidence of previous sexual history may be adduced'.*"[147]

This chapter focuses on the legislative provisions, rather than the judicial use of discretion or interpretation of the law; but if legal provisions can constrain that discretion and create clear rules on what is irrelevant and therefore should be excluded, they can also reduce the risk of discriminatory interpretation of these rules.

UN Model Legislative Provisions include the following evidential rules:
"a. No corroboration of the victim's testimony shall be required;

b. Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;

c. Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent;

d. Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence;

e. Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred from the prior or subsequent conduct of a victim or witness;

f. No adverse inference may be drawn solely from a delay of any length between the alleged commission of an offence under this [Act] [Law] and the reporting thereof."[148]

There are other rape myths and stigmatised attitudes or concepts which can be addressed in evidential rules as an important foundation to reduce the introduction and influence of such ideas on the justice process, decision-making and assessments.

Elements of good practice for evidential rules include:

1. **There is no heightened burden of proof for sexual violence cases, including no cautionary rule requiring special caution or warning when assessing a survivor's evidence.**
2. **There is a clear legal provision asserting that no corroboration is required for survivor's testimony and that convictions for CARSV may be based on a survivor's testimony alone.**
3. **The law contains clear rules stating the legal irrelevancy and misleading nature (and therefore inadmissibility) of challenges or evidence based on any CARSV/SV myths or misconceptions, including:**

- exclusion of evidence of prior or subsequent sexual behaviour or experience (as to consent, credibility or impact);[149]
- exclusion of evidence of any words or conduct of, silence of or lack of resistance by a survivor as inference of consent where force, threat of force, coercion or taking advantage of a coercive environment undermined the survivor's ability to give voluntary and genuine consent or where a survivor is incapable of giving genuine consent;
- irrelevancy of whether the perpetrator and survivor knew each other before;
- exclusion of any implications from delayed disclosure or reporting as to credibility of a survivor as witness (e.g. Lesotho, Canada);[150]
- no requirement for physical evidence of physical resistance, plus the lack of evidence of physical injuries is not relevant;
- exclusion of any evidence which assumes lack of or lesser impact because of the sexual history, number of children, gender or sexual orientation, or profession of the survivor;
- no inferences will be drawn in relation to the survivor's pretrial counselling or therapy.

4. **The law does not permit any unnecessary intrusion or violation of the survivor's rights to privacy, including family life, correspondence, etc.**

147 Swemmer, 'Justice Denied? Prosecutors and Presiding Officers' Reliance on Evidence of Previous Sexual History in South African Rape Trials', (2021) South African Crime Quarterly 69, 48-49.

148 UN Model Legislative Provisions, *ibid*, 30 (Article 56).

149 See Canada, *e.g.* ICJ, *ibid*; Tanovich, "'Whack" No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases', (2014) Ottawa Law Review 45(3).

150 ICJ, *ibid*; Craig, 'The Ethical Obligations of Defence Counsel in Sexual Assault Cases', (2014) Osgoode Legal Studies Research Paper Series 72.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Cautionary rule in place warning against sexual violence survivor's testimony or requirement to corroborate survivor testimony. ☐ Gendered distinction in terms of value or weight of evidence. ☐ No restrictions or constraints on use or admissibility of evidence based on myths, stigmatised attitudes or misconceptions. ☐ Definitions of crimes still make these stigmatised concepts relevant in law to determining whether the crime took place, e.g. requirement that violence used or 'by force'. ☐ Law requires unrestricted invasion of survivor privacy through mandated access or provision of communication devices and access to confidential social media or messages, health records, etc.	☐ Some amendments to law and removal of some prejudicial evidential provisions. ☐ Substantive issues remain and largely evidential restrictions around myths and CARSV misconception are absent. ☐ No procedural protections or enforcement around legally irrelevant challenges or 'evidence'. ☐ Left to judicial action and intervention, rarely seen or effected. ☐ Law silent on access to survivor's private information including records and private communications.	☐ No cautionary warning required in law. ☐ Some basic provisions restricting some forms of evidence but not comprehensive. ☐ No procedural steps in law to support evidential restrictions. Left to judicial intervention and action, with inconsistent practice and little protection. ☐ Procedural steps for defence to seek private information about survivors but does not provide any notice to or participation of survivors.	☐ No corroboration or cautionary warning required in law. No gendered distinction in the value or weight of evidence. ☐ Clear set of evidential restrictions but not necessarily with catch-all for myths, stigmatised or gendered misconception. ☐ Interpretation and decision-making largely left to judges. ☐ Some procedural rules but seen as discretionary and not always followed. ☐ Advanced notice to survivors of applications seeking private information but no right of representation.	☐ No corroboration, no cautionary warnings. No gendered evaluation or distinction in value. ☐ Well-established, clear and comprehensive set of evidential restrictions with explicit catch-all for myths, stigmatised attitudes and misconceptions. Reduced discretion to reduce bias in decision-making. ☐ Procedural rules which support and enforce these restrictions, including pre-trial hearings about defence challenges. ☐ Survivor representation at hearings seeking any private information about the survivor.

Key critical questions:

- What are the rules of evidence regarding SV and CARSV? Are any of these rules gendered, e.g. Is the weighing or value of evidence gendered?
- Is corroboration of a survivor's testimony required in law?
- Are there any rules regarding what questions can be asked of a survivor as a witness? Are there restrictions (admissibility and relevancy) on questions or evidence relating to a survivor's prior and/or subsequent sexual conduct? What is left to judicial discretion or intervention?
- Are there restrictions or special procedures in place if a party seeks to challenge or lead any evidence relating to consent?
- What are the procedural steps necessary for a party to seek or obtain private information about survivors, such as health records, their phones, private communications, etc.? What limitations or restrictions are placed on such actions?

Data sources:

Internal: Penal code/criminal statutes, any laws/regulations incorporating ICL and human rights standards, commentaries or official guidance on the law and its interpretation, legislative materials, drafting records.
External: Reports or other reviews of CARSV or SV legal framework, CEDAW reporting and reviews, country supplements to International Protocol on Investigating and Documenting CARSV.
Interviews and focus groups: Legislators, Ministry of Justice/Registry-Statute Rules Committees, judges, prosecutors, survivors groups, survivor support, survivor advocates.

Useful resources, exercises or tools:
- UN Model Legislative Provisions (2021).
- ICJ, SV Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice (2015).
- Craig, 'The Ethical Obligations of Defence Counsel in Sexual Assault Cases', (2014) Osgoode Legal Studies Research Paper Series 72.
- Tanovich, '"Whack" No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases', (2014) Ottawa Law Review 45(3).

CHAPTER TWO — ACCESS TO JUSTICE AND SURVIVOR PATHWAYS

This chapter is fundamental for the assessment of all justice actors. Its central focus is access to justice for survivors and their experiences, during both their initial decision to participate and all continuing engagement with the justice process thereafter. All justice actors need to understand survivors' perspectives of reporting what has happened — the huge barriers that the system and the environment around survivors create. These actors also need to understand survivors' perspectives and experiences as they brave the justice system. Absent this understanding, they will never work in a more survivor-centred way nor create environments which are conducive and safe for survivor participation and testimony. Justice outcomes for CARSV will not improve, nor will the process be meaningful for survivors.

Survivors' decisions not to report what has happened to official authorities accounts for up to 80% or more of sexual violence crimes not progressing through the justice process.[151] Survivors have said that they feel embarrassed, have feelings of shame or self-blame (internalised stigma), are concerned about the effect on their family (anticipated stigma), are worried about safety or reprisals, did not think the police would or could help them, or do not trust authorities and feel reporting sexual abuse would be humiliating.[152]

> *"Stigma and stigmatisation play a critical role in shaping survivors' thoughts, feelings and behaviours as they recover; their risk of revictimisation; and their help-seeking and attainment process. […] Self-blame, shame and anticipatory stigma are powerful barriers to […] survivors' disclosure and help seeking."*[153]

Statistics in the UK shows that only 1 in 100 rapes reported to police result in a charge. Despite high rates of rape and sexual abuse and an increase in reporting in recent years, charging and convictions rates have dropped. In the year to September 2021, just 1.3% of rape cases recorded by police resulted in a suspect being charged. There are many factors that contribute to attrition rates after reporting. For example, sexual violence crimes not being a priority for justice system, gender biases and stereotypes amongst institutional service providers, a lack of coordination within the justice system, and many other reasons.[154] For sexual violence cases which are reported, survivor withdrawal from the process can range from 36-85% at different stages of the process, with many of these cases then stalling or ending because of this withdrawal.[155]

151 ***Introduction***, fn17.

152 *E.g.* Gravitas, Improving the Justice Response to Victims of SV: Victims' Experiences (2018); Hohl & Stanko, 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', (2015) European Journal of Criminology 12(3), 5.

153 Kennedy & Prock, "'I Still Feel Like I Am Not Normal": A Review of the Role of Stigma and Stigmatization Among Female Survivors of Child Sexual Abuse, Sexual Assault, and Intimate Partner Violence', (2018) Trauma, Violence and Abuse 19(5).

154 *E.g.* for male SV in the US, Walfield *et al*, 'Understanding Case Outcomes for Male Victims of Forcible Sexual Assaults', (2020) Journal of Interpersonal Violence.

155 *E.g.* Hohl & Stanko, *ibid*, (finding 67% of survivors withdrew from cases during the police investigation in England and Wales); Skinnider *et al*, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017) (finding survivor withdrawal to account for 36% of cases dropped during investigation in Viet Nam, namely due to fears of stigma and privacy); Machisa et al, Attrition of Rape Matters at the Prosecution Stage of the South African Criminal Justice System (2018) (finding survivor withdrawal to account for 85,9% of cases dropped at prosecution stage in South Africa).

> *"When sexual assault survivors do tell people about what happened to them, they frequently face negative reactions such as victim blaming and disbelief, especially from formal providers such as law enforcement; these experiences, termed the second rape or secondary victimization, exacerbate survivors' PTSD and can impede the receipt of effective formal help that meets their needs and facilitates recovery."* [156]

Justice actors must work together to tackle barriers to reporting and to create environments and processes in which survivors feel willing and able to participate, and which do not harm them through secondary victimisation. Justice actors, most importantly as first responders, have a key role in contributing to a survivor reporting or not reporting, withdrawing or pursuing justice. As a Thai survivor described her experience accessing justice: "*The first question that was put to me was 'why didn't you report earlier?' So, I explained that I did not know how. I did not have legal knowledge. Then the other police officer asked me 'Why didn't you simply accept compensation from him (the offender)? You already have children, why were you asking for so many things?' I thought that was an insult. It was me who was raped, and I had to be the one who understands and compromises.*"[157]

When survivors access justice, justice actors must ensure that the experience does not cause further harm. They must have a survivor-centred, gender-sensitive approach and prioritise the principle of 'do no harm', recognising the importance of the process of seeking justice as well as the outcome at trial of obtaining justice. To achieve this, the institutions must respond promptly and adequately.

How Survivors Access Justice for CARSV:

For CARSV, how and where survivors access justice can vary across as well as within settings. For example, some settings with more organised and structured CARSV response systems have access points (such as women's organisations, community-based survivor networks or support organisations) into services with central focal points or case managers who can assist survivors to decide whether they wish to be referred to authorities within available criminal justice systems. In some contexts, there are mandatory reporting laws which may lead to a service provider informing the national police authorities of CARSV which has been disclosed to them. Where local criminal justice processes are available, survivors may choose to go directly to police stations to report, rather than to access justice through a centralised integrated support and referral system. Lastly, the police or investigators — from either national or international systems — may identify the survivor from investigation leads or other information and approach the survivor directly, seeking their information and assistance. Often this form of initial contact is outside a system of support and care.

In some conflict settings, there are no pathways to criminal justice available at the material time – no national functioning or independent court system and no international court with jurisdiction. Universal jurisdiction has created new pathways to national criminal justice systems remote from whether the crimes took place. A survivor may wish to participate in justice, but may have to work with non-mandated actors to preserve evidence in the hope that a future justice process will be constituted. In summary, access to justice can be through:

156 Kennedy & Prock, *ibid*.

157 Dignity Alliance International/Equality Now, SV in South Asia: Legal and Other Barriers to Justice for Survivors (2021).

- A centralised support system which facilitates access to justice as well, including legal advice and representation.
- Direct reporting to police, independent of a support or referral system.
- Reporting by a third party – service provider or witness.
- An investigator approaching the survivor at their home, IDP camp or work, etc.
- Preservation of evidence with a non-mandated actor with further justice objective.

It is also important to recognise that some courts or avenues to criminal accountability may be remote from where the crimes took place, or remote from where the survivor is now (given the high correlation between CARSV and displacement during and after conflict and crisis). Remote justice actors who visit a location to contact and engage a survivor can create different kinds of risks for secondary victimisation. Engagement with community-based first responders and justice actors also can create risks of harm for survivors in their communities.

This chapter aims to cover all these scenarios and actors. It also targets what happens before any reporting, in terms of the barriers which prevent or discourage reporting; and incorporates survivor experiences of the justice process after reporting has occurred.

INDICATORS AND ASSESSMENT

We recommend that the indicators in this chapter are used regardless of whether the assessment is a partial functional review, a partial thematic review, or a whole end-to-end system review. The data collected and assessments made are critical to reflection, understanding and change for all justice actors.

This chapter requires data collection from survivors. Assessments scales specifically refer to survivor experiences, perspectives, and impact. In some settings, this work may have already been conducted through surveys, feedback, and survivor justice pathway reports. We recommend that survivor input is the core data assessed for this chapter.

This chapter is organised along the three common themes:

A. Organisational Culture and Leadership (which can be used by whichever function is under review or externally assessing each of the justice functions which play a role in survivor access and participation in justice).

B. Survivor Interaction and Engagement

C. Technical Capacity and Competency

Indicators are numbered using the acronym ATJ for "*Access to Justice*" – e.g. ATJ1, ATJ2, etc.

Summary and order of Indicators in this Chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
ATJ1 Leadership of First Responder Services prioritise, resource and contribute to stigma reduction trust-building and inclusive outreach measures targeting all survivors groups and affected communities.
ATJ2 Leadership of First Responder Services and justice functions ensure diversity, equality and inclusivity in their teams, workplace and cultures, to ensure accessibility and peer representation for all survivors groups.
ATJ3 Leadership of First Responder Services set, monitor and enforce clear values and expectations for non-stigmatising survivor-centred CARSV responses and work.
ATJ4 Leadership of First Responder Services and justice functions cooperate and coordinate to provide integrated, cohesive support and communication systems for survivors choosing to participate in justice processes.
SURVIVOR INTERACTION AND ENGAGEMENT
ATJ5 Survivors feel recognised and responded to as unique individuals, with intersectional and inclusive approaches which reduce discriminatory barriers allowing all groups of survivors to feel able to access and participate in justice processes.
ATJ6 Survivors feel empowered, respected, dignified, and know they can exercise their rights in the justice process.
ATJ7 Survivors feel that they have received effective communications and are protected from secondary victimisation and stigmatising communications and interactions, their rights to information being kept throughout the process.
ATJ8 Survivors voluntarily participate throughout the justice process based on fully informed consent, are engaged in consultations and given opportunities to make choices, and have agency over their engagement.
ATJ9 Upon reporting, survivors feel safe and supported, informed of risks and provided with integrated support which they find conducive for disclosure, this process facilitating and not adversely impacting their recovery and wellbeing.
TECHNICAL CAPACITY AND COMPETENCY
ATJ10 First Responders and justice actors have contextual and community awareness, specifically about CARSV stigmas and barriers to accessing and participating in justice for survivors, and integrate countering stigma into their core work.
ATJ11 First Responders and justice actors employ trauma-informed, non-stigmatising interview and communication skills, and create an environment which is supportive, sensitive and helps facilitate safe CARSV disclosure by survivors at the point of reporting, providing a statement and during testimony.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator ATJ1: Leadership of First Responder Services prioritise, resource and contribute to stigma reduction trust-building and inclusive outreach measures targeting all survivors groups and affected communities.

It is the First Responder's responsibility to ensure that survivors are not approached with stigmatised attitudes that can hinder the process of seeking justice. As well as revictimising survivors, this will undermine trust in the system, may serve as an added barrier to accessing justice and is a common reason why survivors may withdraw complaints after reporting. The role of the First Responder is to take all survivors' complaints very seriously.

Additionally, beyond the culture and response within the justice system, justice actors should consider how they can proactively tackle other layers of stigma (including internalised, interpersonal and community layers) which can silence survivors and create some of the biggest barriers to accessing justice.

"Often the shame, ostracism and dishonour that should be imputed to the perpetrator of sexual violence, attaches instead to the survivor. The veil of silence which surrounds crimes of sexual violence can seem more like an iron curtain. However, this silence is being lifted as women and girls courageously are reporting their experiences and demanding justice. The world must ensure that their pain of coming forward will not be in vain."[158]

"*[Reporting] is a big step, especially for a male. Going along and telling that some other man has been abusive towards you, putting hands on you. It's the hardest thing to do for a male, very much so. It's very, very hard. It's that whole male thing — 'we're tough and don't touch us' type thing.*"[159]

"*Rape and sexual violence survivors feared, often with good reason, that family and neighbours would regard them as morally tainted, or even complicit in the genocide [...] Some worried about threats from perpetrators still living among them [...] Many concealed their trauma, they did not talk about being raped because they risked rejection by their husbands or being cast out of their homes for bringing shame upon the family: "It is unlikely that women who have been raped will admit it, much less file charges, because of the stigma that tends to be associated with rape*". A Rwandan survivor explains: "*... genocide witnesses are viewed with suspicion and people fear associating with them because of fear of being identified with them. This problem is more severe for raped witnesses who are the most stigmatized witnesses.*""[160]

Access to justice must also be available to all, and efforts to reduce barriers must include structures and resources that reach into affected communities.

Elements of good practice include:

1. **Leadership recognises critical importance of and prioritises tackling of the three levels of stigma (self-stigmatisation/ personal, cultural and structural) within and outside their services to reduce barriers to accessing and pursuing justice for survivors.**
   Leadership has a well-informed, contextualised strategy and action plan to understand and tackle stigma as a barrier to justice within their service and within communities.
2. **Leadership builds policies, procedures and first responses around a good understanding of survivor stigma and its association with self-esteem, and the vulnerability of survivors according to different risk factors related to age, gender and other intersectional factors.**
3. **Leadership builds access points which are inclusive, safe, supported and physically within reach of survivors.**

These access and contact points with survivors include personnel who have CARSV, survivor-centred and trauma-informed competencies. These access points play a critical role at tackling barriers to accessing justice, and proactively counter CARSV stigma. The access points also mitigate intersectional vulnerabilities and provide special population support (e.g. women, men, LGBTQI+ persons, minorities, persons with disabilities, children).

See also Indicator ATJ4 on coordination, these access points are one-stop shops integrated into a holistic response system which includes supported access to justice.

4. **Leadership provides guidelines and work models that are human rights-based and survivor-centred, and designed to be used for multi-faceted individuals, avoiding applying the same approach for all.**
5. **Justice leaders ensure that those working with survivors know how to deal with intersectional stigma experiences, including the widespread stigmatisation of survivors with mental health problems and others often marginalised within wider support systems.**
6. **Leaders coordinate and support outreach work and community projects addressing stigma issues and barriers to accessing and pursuing justice.**
7. **Leadership support work to address identified cases of stigma in the community.**

158 Askin, 'Comfort Women — Shifting Shame and Stigma from Victims to Victimizers' (2001) ICLR 1, 31, quoting McDougall.

159 Gravitas, *ibid*.

160 Price *et al*, 'Injustice After Sexual Violence: Problems in Practice at the ICTR', Conference Paper (2010).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness on different forms of stigma, their impact on survivors or their ability access to justice. ☐ No policies around CARSV stigma or human rights-based and intersectional approaches. ☐ Access points limited to general first response/ police stations, with no specialist support available. Survivors feel unwelcome, intimidated, unable to access. ☐ Community outreach not considered part of First Responder mandate.	☐ Early leadership awareness of stigma and its impact on survivors and their ability to access justice. Limited understanding of different forms of stigma and their manifestation. ☐ Intersectionality considered in policy, not specific to CARSV survivors, not consistent practice. ☐ Access points limited to general first response/ police stations, with no specialist support available. Survivors still feel unable to access.	☐ Leadership understand stigma in its various forms and its impact on survivor behaviour. Early examples of this being reflected in policy, not consistent. ☐ Intersectionality, human rights-based approach and survivor-centred approach considered in policy and internal messaging. Practice inconsistent, most staff unaware of how to implement. ☐ Access points limited to general first response/ police stations. Some specialist support available on referral, but often in practice remote/inaccessible to survivors.	☐ Understanding of stigma, its different forms and its impact on access to justice consistently reflected in organisational policy. ☐ All staff have a level of understanding of intersectionality, human rights-based and survivor-centred approaches. Specialist officers with competency in SCA and stigma sometimes available. ☐ Specialist one-stop shops established, discreet and safe. Not accessible to all survivors groups. ☐ Some community outreach programs implemented to educate and reduce levels of stigma in survivor communities.	☐ Understanding of stigma, its different forms and its impact on access to justice (and wider survivor impacts) consistently reflected in organisational policy and embedded in all First Responder action. ☐ All staff regularly trained and monitored on intersectionality, human rights-based and survivor-centred approaches. Specialist officers for SCA and CARSV stigma available, but all staff competent to handle/refer cases. ☐ Specialist one-stop shops established, discreet, safe and accessible to different survivors groups. ☐ Stigma responses and provision of survivor support measures monitored. Feedback from survivor experience regularly collected and acted upon. ☐ Comprehensive, consistent and inclusive community outreach programs to educate and reduce levels of stigma in survivor communities.

Key critical questions:

- What is the leadership awareness of stigma and other barriers to accessing justice? Is there any awareness of the different levels of stigma, of intersectional stigma and the impact of these stigmas in silencing different groups or individual survivors in different ways? Is there an awareness of the gendered aspects of stigma and community consequences of stigma?
- What is their attitude towards it? Do they take any responsibility or role in trying to tackle it?
- What steps have they taken for internal stigma at the point of access and then at points of contact with the justice process for survivors?
- What steps have they taken to work on external stigma and stigma in survivors' families and communities? Is the institution involved in awareness raising or stigma tackling campaigns or activities?
- What steps or measures have they taken on countering internalised stigma of survivors?
- What guidelines, tools and support are in place to ensure the first response is not stigmatised and is inclusive in terms of understanding and countering intersectional stigma for different individual survivors?

Data sources:
Internal: Leadership statements, policies, procedures, budgets, projects/partnership agreements, outreach.
External: Survivor feedback, external reviews or reports.
Interviews and focus groups: Police and prosecution leadership, access point leadership, first responding officers, outreach officers, survivors groups and advocates, support services, community representatives.

Useful resources, exercises or tools:
- Synergy for Justice & LDHR, Knowledge, Attitudes and Stigma Surrounding Sexual Violence and its Survivors in Syrian Communities (2021).
- Skinnider *et al*, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017).
- UNODC, Strengthening Crime Prevention and Justice Responses to Violence Against Women (2014).
- IICI Murad Code, Commitments 1.1, 1.4, 1.8, 2.1, 3.3, 6.4, 6.5, 6.10, 7.7.

Competency Indicator ATJ2: Leadership of First Responder Services and justice functions ensure diversity, equality and inclusivity in their teams, workplace and cultures, to ensure accessibility and peer representation for all survivors groups.

A justice system that is diverse and inclusive is important in helping everybody feel represented. Survivors need to feel that they can relate at some degree with officers involved. For instance experience in some contexts shows that being given a choice of the gender of the police officer can make a difference, as can the acknowledgement that this might be important to their sense of safety and comfort in the process.[161]

"*Survivors reported that they found it difficult to the need to 're-tell' their story to different officers; uncomfortable spaces and conditions in which they gave their statement; a lack of appreciation for their basic food, drink and toilet needs; the gender of officers available at the point of reporting; and the business-like manner of the police.*"[162]

Elements of good practice include:

1. **First Responder Services have policies on values, ethics, integrity, gender equality and sexual harassment. Clear policies and expectations counter discrimination, including intersectional discrimination in the workplace and in work practice. Leadership ensures that such policies are followed, constantly mentioned and discussed, and include diversity as part of the values of the organisation.**
2. **Diversity is a driving principle of work. Leaders consistently communicate and model expected behaviours. Active, engaged leaders are committed to fostering a work culture that actively promotes equity, diversity and inclusion and sets and sustains a tone of mutual respect. Leaders at all levels are prepared to challenge personal and organisational core beliefs, values, traditions, negative assumptions and harmful language. Reporting procedures in place and accessible to any staff experiencing discrimination or harassment.**
3. **Composition of the team of justice actors is diverse and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. Full diversity of thoughts and perspectives is welcomed as a positive contribution to fulfilling the organisation's service mission.**
4. **Management of justice providers ensure that their recruitment process is representative of the survivors/victims and that case allocations can be organised accordingly. Recruitment, selection and retention policies are developed and implemented to promote and advance equality, diversity and inclusion (EDI) throughout the First Responder Service.**
5. **Leadership prioritises capacity-building opportunities to ensure that staff are up to date with policies and guidance, and these are embedded into practices. Development, maintenance and advancement of an equitable and adaptive work environment where every employee can feel valued and respected and contribute to the organisation's priorities free from systemic barriers, negative behaviours and discrimination, throughout their career.**

161 New Zealand Law Commission, The Justice Response to Victims of SV: Criminal Trials and Alternative Processes (2015).

162 Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leader recognition of the need and value of diversity in addressing CARSV. ☐ No efforts are made to mainstream human rights and advance EDI. ☐ There is no/very limited diversity of individuals and thoughts in the organisation. ☐ No policies or reporting systems on discrimination, including gender. ☐ Disrespectful communication and behaviour common. ☐ Staff belonging to a minority feel undervalued, disrespected, stigmatised; punished for reporting harassment. ☐ No leadership follow up or disciplinary measures for discrimination in the workplace.	☐ Leader acknowledges the need to mainstream EDI, human rights throughout the organisation. ☐ Promoting and advancing diversity within the organisation is not a priority. ☐ Some isolated pockets of diversity exist in the organisation. ☐ There is no consideration given to how diverse staff are impacted by management decision-making and practices. ☐ Expression of bias and stigma are common in the workplace. ☐ No organisational EDI expectations set, or structures, policy or practices implemented. ☐ Some isolated examples of EDI practices at lower levels. ☐ Many staff belonging to a minority feel undervalued, reports of abuse and harassment often unaddressed or minimised.	☐ Leader recognises the potential value of a diverse workforce, though not specifically in connection to CARSV first responses. ☐ Some efforts are made to increase diversity. ☐ No one is held accountable for increasing diversity. ☐ Leader sets some basic expectations around organisational EDI. Not consistently enforced. ☐ No data collection, monitoring or evaluation of organisational policy, procedure and practice. ☐ Reports of staff being undervalued, disrespected, unequally treated occur. Reporting systems unclear and inconsistent.	☐ Recognition of importance of EDI in creating a safe environment for CARSV reporting. ☐ A human resource management framework supports recruiting and retention of diverse, gender sensitive staff. ☐ Management team responsibilities for advancing EDI are identified. ☐ Efforts are made to identify systemic barriers that are negatively impacting recruiting and advancement of diverse staff. ☐ Some human resource management data is collected, but analysis is limited. ☐ Steps are taken to set expectations, a code of conduct and internal governance structures around EDI and CARSV. ☐ Some data collection, monitoring and evaluation is being conducted. ☐ Messaging and practice are not consistent. ☐ Rare expressions of discrimination, disrespectful language, or conduct. Reporting systems in place.	☐ Value of EDI as part of safe CARSV reporting environment and accessible justice recognised as a guiding principle of organisational policy. ☐ Advancing EDI are mainstreamed throughout all human resource decision-making. ☐ The level of diversity of individuals and thought is evident, is valued, and is promoted. ☐ Systemic barriers to EDI have been identified, and steps taken to eliminate them. ☐ Leader models exemplary language and EDI practices. ☐ Expectations, code of conduct, internal and external governance structures, and EDI and CARSV policies, procedures and practices are aligned. ☐ Data is collected, performance is monitored against clearly defined indicators. ☐ Reporting systems easy to access. ☐ Expressions of gender inequality or discrimination are identified and challenged at all levels.

Key critical questions:

- How does leadership view the importance of EDI? Is it seen as relevant to accessible justice and a safe reporting environment or how First Responders are able to engage with survivors?
- What is the level of diversity in the First Responder Service, for instance in terms of gender, LGBTQI+, race/ethnicity, faith? Is the level of diversity different at general staff, management and leadership levels?
- Does management lead by example in expressing a commitment to EDI, and demand the same from all employees?
- What specific measures are in place to ensure recruitment and staffing processes are based on merit rather than on personal opinion, preference, bias or stereotypes? Are efforts in place to increase diversity and recruit employees from under-represented groups? What checks and balances are in place to identify and address systemic barriers in recruiting, staffing and promotion? Do recruitment processes screen potential staff on selection criteria related to their EDI attitudes?
- What are the policies, procedure and enforcement relating to sexual harassment, abuse, nondiscrimination, and EDI in the First Responder Service? What do staff know about it? How do staff feel about reporting deviations from policies or procedure?
- Does the First Responder Service have an EDI office/officer that provides oversight and direction on these issues, to promote EDI principles across the organisation? How is progress towards these goals monitored?
- Have policies, processes and practices been analysed to identify biases, stereotypes, prejudices, discrimination and systemic discrimination that can negatively impact the individual First Responder's and the organisation's ability to effectively respond to the unique needs and desires of each survivor?
- What beliefs, attitudes, behaviours, actions, gender and other forms of discrimination are present in the organisation? For example, against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, persons with criminal records?
- What steps are being taken to eliminate these biases, beliefs, attitudes and discriminatory practices?
- What complaint mechanisms are available to staff to lodge concerns?
- Who monitors cases to compare survivors' experiences from all groups?

Data sources:

Internal: Organisational EDI documents, strategic plans, diversity and workplace policies and reviews, human resources records, recruitment strategies, policies and practices, harassment and non-discrimination policies and practices, EDI training materials and records, complaint mechanism reports and reviews.
External: External reviews on organisational diversity.
Interviews: Organisational leadership, EDI officers and staff, diverse samples at all levels.

Useful resources, exercises or tools:

- DCAF, Gender Self-Assessment Guide for the Police, Armed Forces and Justice Sector. Chapter 3 (2011).
- DCAF, OSCE and ODIHR, Integrating Gender into Internal Police Oversight (2014).
- UNODC, IAWP & UN Women, The Handbook on Gender Responsive Police Services for Women and Girls Subject to Violence (2021).
- Ottawa Police Services Board, OPS Gender Project: Final Report (2017).

Competency Indicator ATJ3: Leadership of First Responder Services and justice services set, monitor and enforce clear values and expectations for non-stigmatising survivor-centred CARSV responses and work.

Part of setting values and changing culture is ensuring follow-up and embedding of policies, procedures, practice, including attitudes and behaviour. It is critical that leadership of the first point of contact with survivors and those in contact with survivors during their involvement are consistently interacting in a way that positively counters stigma, builds trust and follows a survivor-centred approach.

Elements of good survivor-centred approaches include:

1. **Leadership sets clear external-facing qualitative Key Performance Indicators (KPIs) and Performance Evaluation and Review (PER) expectations around non-stigmatising and survivor-centred approaches for all personnel interacting with CARSV survivors.**
2. **Justice leaders to share success stories and recognise officers who have demonstrated consistency in good practice and empowering survivor experiences.**
3. **Justice leadership demonstrate zero tolerance towards stigmatising behaviours and ensure training, mentoring and development support so that officers are up to date on how to tackle stigma against all survivors.**
4. **Leadership invests in and establishes processes that monitor compliance with these expectations and standards, and include survivor experiences and feedback as a central focus. Cases are regularly monitored and reviewed to ensure good practices are followed.**
5. **Leadership ensures an effective data collection system which seeks to understand attrition and survivor choices not to report or to withdraw once reported.**
6. **Regular monitoring and evaluations are carried out to extract lessons learnt in particular cases to avoid reoccurence.**
7. **Leadership uses information and data collected to advocate for and promote survivor-centred approaches when responding to CARSV.**
8. **Leadership identifies cases that were withdrawn and seeks to ensure continued support, and to assist sensitively, without any pressure, survivors who wish to still go ahead with legal proceedings.**

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No leadership awareness of SCA impact on survivor access to justice or case attrition. □ First Responders exhibit stigmatising behaviour, not acknowledged or acted upon by leadership. □ No data collection on stigma behaviours or SCA. □ Survivor feedback on stigma experiences not actively collected nor acted upon when volunteered. □ No support or follow up for survivors whose cases are dropped or who withdraw from justice process.	□ Early leadership awareness of SCA impact on survivor access to justice and case attrition, not CARSV specific. □ Informal ad hoc conversations about non-stigmatising interactions and SCA performance, no formal evaluation or standards. □ Isolated examples of stigmatising behaviour flagged and addressed by leadership or individual teams. □ Survivor feedback collected when volunteered, limited follow up action. □ Data collection on attrition of cases, little to no markers connecting to stigma. □ Isolated examples of individual officers following up on survivors whose cases are dropped or who withdraw from justice process.	□ Basic leadership action prioritising SCA to counter CARSV case attrition. □ SCA and non-stigmatising interactions included in some general KPI/PER evaluations, not CARSV specific. Basic monitoring of attitudes and stigma behaviours. □ Stigmatising behaviour usually flagged and addressed by leadership. Practice inconsistent. □ Basic survivor feedback on stigma experiences collected, mainly when they withdraw from the justice process. □ Data collection on attrition includes markers specific to stigma. □ General follow up procedures for survivors whose cases are dropped or who withdraw. Limited ability to assist those who would like to pursue dropped cases.	□ SCA and non-stigmatising treatment prioritised in all policy to prevent attrition. □ Standard KPI/PER evaluations built around SCA and non-stigmatising interactions. Basic monitoring of attitudes and stigma behaviours. □ Stigmatising behaviour actively identified and addressed by leadership. □ Survivor feedback on stigma experiences collected as matter of policy. Follow up on substandard practices inconsistent. □ Data collection on attrition includes specific markers on stigma, survivor-empowerment and trauma-informed approaches. □ General follow up procedures for survivors whose cases are dropped or who withdraw. Some support available to those who wish to pursue dropped cases.	□ SCA and non-stigmatising treatment prioritised and embedded into all policy and action as priority items to prevent attrition and enhance survivor empowerment. □ Comprehensive KPI/PER evaluations around SCA and non-stigmatising interactions, combined with regular monitoring and screening for all staff. □ Stigmatising behaviour actively assessed, identified and addressed by leadership. □ Survivor feedback on stigma experiences collected, followed up and acted upon. □ Specific data collection on stigma-related attrition, survivor-empowerment and trauma-informed approaches. □ Follow up on all survivors whose cases are dropped or who withdraw, with post-process support available to all.

Key critical questions:

- What does the institution do to ensure stigmatised practices are reduced?
- What is the leadership approach to compliance, oversight and improvements for non-stigmatising and survivor-centred policies, procedures and practice?
- What are the KPIs and PERs for survivor-centred practice and those in contact with survivors?
- Is the model of survivor-centred approach shared and promoted? What is done to ensure that officers are up to date with the guidelines and framework for effective practice against stigma?
- Is there a person or unit dedicated to monitor progress and outcomes? Is any budget allocated for this?
- How regularly is the team briefed about policies and guidance?
- How many survivors have received support to reconnect with a justice process or support after withdrawing from the process?
- How often is the leadership monitoring progress and outcomes on cases?
- How are survivors' feedback collected about the experience of the process? How is this feedback used? How often do the survivors report fear, stigma or other barriers to reporting or remaining engaged in the justice process? What were their reasons for withdrawing? How did leadership respond?
- How are officers who have shown wrong behaviour dealt with?

Data sources:
Internal: KPIs, PERs, monitoring reports, databases, recommendations, disciplinary reports.
External: External reviews or reports.
Interviews and focal groups: Organisational leadership, first responding officers, survivors groups, survivor advocates, support organisations.

Useful resources, exercises, or tools:
- Skinnider *et al*/UN Women, UNDP & UNODC, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017).
- Walfield et all, 'Understanding Case Outcomes for Male Victims of Forcible Sexual Assaults', (2020) Journal of Interpersonal Violence.
- UNODC, Strengthening Crime Prevention and Justice Responses to Violence Against Women (2014).
- Key Performance Indicators for First Response and Survivor-Centred Engagement.
- Sample performance evaluation and review measurements and ToRs.
- Survivor Pathway exercises, and survivor feedback surveys for accessing justice and withdrawal from justice processes.

Competency Indicator ATJ4: Leadership of First Responder Services and justice functions cooperate and coordinate to provide integrated, cohesive support and communication systems for survivors choosing to participate in justice processes.

Leadership of justice institutions must encourage officers to focus on survivors' needs and perspectives to bring to light their often-invisible experiences of the criminal justice process as well as to identify their specific needs and interests related to the criminal justice system. The best first response is a safe, coordinated one with access to necessary services, support, legal advice, protection, medical care and forensic services. Lack of coordination at the access point and in the ensuing process can lead to unnecessary duplication and additional exposure to potential retraumatisation from recounting what happened multiple times.

"*The police officer interviewed her immediately, but did not wait for an interpreter — the interview was conducted in English, which was neither Helen's nor the officer's first language — and as a result the interview had to be repeated. "Helen*" found it stressful having to answer the same questions again, as if the first interview had never happened. She said she wished the officer had apologised and asked her to confirm the content of the first interview, rather than repeating the process [...]"[163]

"*I found it really off-putting being put on a waiting list [to see a counsellor after first reporting] because, after that interview, it's really fresh and you're still really going through the initial effect of it all. You're really left on your own. If the police had a good support system for people initially coming out of an interview or even first bringing something up. Because it changes everything in your life, you know? You become a victim again, you feel vulnerable again. It just would've been very valuable to have a counsellor lined up for you to go to straightaway.*"

"*I felt completely hopeless that something so important [sexual violence complaint] was in the hands of people who didn't seem to know what they were doing. Every time the case changed hands, information was lost along the way.*"[164]

Elements of good practice include:

1. **Leaders coordinate with other agencies to ensure a coordinated first response and access points, and coordinated support, protection and communications throughout the justice process.**

This includes MoUs or agreements establishing an integrated coordinated process with clearly allocated roles and responsibilities, shared tools and shared needs and risk assessments, a survivor liaison strategy and centralised trusted focal point or liaison who can guide and accompany the survivor through the process and provide information and support choices.

2. **From a survivor's perspective, this integrated, cohesive response should ensure that:**
   - the First Responder Service has a holistic approach in delivering justice for them.
   - the justice process is inclusive of other disciplines in order to approach their case in a way that seeks to address all issues they are facing.
   - survivors do not have to unnecessarily recount what happened to them to multiple actors at multiple times.
   - survivors have a clear understanding of who to contact for each purpose.
   - survivors are able to get access to support services.
   - survivors provide feedback to an independent person to share their experience of the process.
3. **Those involved in access to justice also coordinate their efforts to reduce barriers to accessing and pursuing justice, and coordinate their efforts to tackle and respond to the stigma which the survivors face and experience.**

*See also complementary indicators for witness protection **Indicator WP3**, support services **Indicator SS8** and prosecution **Indicator P4**.*

163 Amnesty International, Time for Change: Justice for Rape Survivors in Nordic Countries (2019) 50.
164 Gravitas, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No understanding of need or value of protocols for coordinated responses to CARSV survivors. ☐ No interactions with other justice, health or support services on CARSV-related issues or individual cases. ☐ No agreements or MoUs with other actors, even where handovers, intersections or duplication in function or process. ☐ No formal meetings with other actors. ☐ Voices criticism of other actors and functions without engagement. ☐ No mapping or understanding of other actors, documenters, support services or protection services. ☐ No efforts to ensure integrated and coordinated access to justice and response to needs. ☐ Survivors consistently report disjointed process, multiple contact points, inconsistent communications, with overlaps and gaps. ☐ Survivors have to recount their stories to different actors due to lack of coordination. ☐ Survivors confused who is doing what, who to contact and where to access support.	☐ Isolated pockets of informal contacts between justice and other service providers emerging at lower levels. ☐ Some ad hoc working level meetings to try to improve. ☐ Some isolated pockets of First Responders undertaking mappings and trying to work with services. Ad hoc shared vulnerability assessments and protection plans on individual staff initiative. ☐ Survivors frequently report disjointed process, with multiple contact points, inconsistent communications, with overlaps and gaps. Some isolated examples of better practice and coordination happening ad hoc through some teams. ☐ No centralised focal points or liaisons, survivors generally have to work with different individuals each time, no continuity.	☐ Some basic agreements with most of the other key actors. ☐ Leadership meetings sporadically or responsive to crisis or criticism. ☐ No joint processes or shared tools. ☐ First Responders have limited knowledge and understanding of the broader justice process and do not seek interactions with other actors. ☐ Informal contacts between justice and other service providers are increasing. ☐ Some survivors report areas of collaboration and coordinated support or communications, but mostly still overlapping, inconsistent, conflicting and confusing interactions with different persons in different functions or departments. ☐ No centralised focal point/liaison policy, examples of survivors being informally assigned specific officers to continuously interact with in practice. ☐ Many survivors still have to recount their stories due to insufficient coordination, confusion over roles of different actors.	☐ Agreements/MoUs with all key actors with some joint processes. No shared tools or regular day-to-day collaboration on cases. ☐ Leadership meetings and reviews more regular. ☐ Some good working relations emerging but not integrated working. ☐ Role and responsibilities on paper but in practice some confusion, gaps or competition. ☐ Mixed reports by survivors, with still significant issues around overlapping, conflicting contact points or gaps. Some still report disjointed, confusing process. ☐ Survivors assigned specific focal point officers as a matter of standard practice. Some inconsistencies in continuity, quality of communication and support persist. ☐ Risk assessments generally done in collaboration with other justice actors to ensure continuity.	☐ Fully integrated cooperation and collaboration to ensure seamless, deconflicted and consistent process for survivors. ☐ Includes joint agreements/MoUs, with joint processes and shared tools with all other actors. ☐ Roles and responsibilities of all involved service providers are clearly defined. ☐ Includes day-to-day working level team meetings for individual cases, and regular leadership review meetings. ☐ Survivors report a simple, streamlined, coordinated system which meets their communication, information, preparation, support and preparation needs. ☐ Survivors assigned specific focal point officers for continuous support and communication. ☐ Vulnerability and risk assessments done in coordination with support and protection services, integrated pathways working in lockstep with justice processes. ☐ Local support actors in the community towards survivors are recognised and supported.

Key critical questions:
- How integrated are the services meeting survivor needs at the point of access to the justice system? Is there a one-stop shop?
- What agreements and shared processes are in place between justice actors and between justice actors and external service providers? How does this work in practice?
- Are the roles and responsibilities clear?
- How often are these reviewed to ensure they are working well? How often are there interagency, multidisciplinary meetings? How many case working-level joint meetings are there?
- What measures are put in place that create the opportunity for other professionals to contribute to the justice process?
- Who determines the mental/physical capacity for a survivor to be involved should they wish to do so? What medical and mental health specialists are engaged for this?
- What criteria is put in place for determining whether participating will cause secondary victimisation?
- What support services are available for the survivor at the point of reporting or accessing justice?
- Who is the key contact for survivors? Do they have an assigned contact point? Is the contact point continuous, or do survivors have to engage with different individuals each time?
- How do survivors feel about the process of reporting? Is it clear, integrated, smooth, holistic? Are their needs met? How many different people did they have to deal with? How many times did they have to explain what had happened to them?

Data sources:
Internal: Interagency coordination agreements, meeting minutes and notes, joint policies, SOPs, tools, information sharing tools, survivor liaison strategies and plans.
External: External reports.
Interviews and focus groups: Organisational leadership, first responding officers, survivor liaison officers, survivor support services, survivor advocates.

Useful resources, exercises or tools:
- UN Women & UNODC, Handbook on Gender-Responsive Police Services for Women and Girls Subject to Violence (2021), Chapter 8.
- UNODC, Strengthening Crime Prevention and Justice Responses to Violence Against Women (2014).

B. SURVIVOR INTERACTION AND ENGAGEMENT

Competency Indicator ATJ5: Survivors feel recognised and responded to as unique individuals, with intersectional and inclusive approaches which reduce discriminatory barriers allowing all groups of survivors to feel able to access and participate in justice processes.

As survivors are unique as individuals and are impacted differently by their experiences, First Responders must avoid making assumptions and have a person-centred approach. Survivors need to feel that justice actors have an understanding of their multitude of identities, such as gender, age, ethnicity or religious affiliations that make them particularly vulnerable to suffering. For instance, narrow understandings of gender-based violence as synonymous with violence against women and girls has led to gaps in the provision of humanitarian assistance to male survivors of sexual violence, including boys.

Murad Code Principle 1.1: ***"Adapt to survivor's individuality: We respect that each survivor is unique. We will tailor our approach to their specific identities, characteristics, groups and contexts, such as their age, gender, evolving capacities, resilience, relationships with and connections to others, socio-economic and political situation, and the discrimination they face. We recognise that such elements change over time and context and that our approach may have to be adjusted accordingly."***

"*I can express my emotions in my own language. If they know our culture, it's better. I was with [BME worker] and I told her, if it was some other people I wouldn't start. Sometimes our emotions, we can't express in another language. I feel better, lighter after I meet her [...] someone who helps you emotionally, sits and listens to you, it's like an angel has been sent to you [...] Now I feel like I can do something. They make me feel there are good people.*"[165]

Elements of good practice includes:
Survivors feel that officers working with them:

4. **understand that every survivor is different and that CARSV has different impacts on different survivors, and therefore use an individualised (case-by-case) approach so as to ensure appropriate response to the individual needs.**
5. **do not make assumptions about survivors or their experiences based on expectations of trauma, gender, age, etc.**[166]
6. **ask survivors what they need and provide flexibility and choices in terms of who the survivor can work with, e.g. gender of the officer, etc.**
7. **engage survivors in risk assessments and protective measures to ensure their concerns and needs are met.**
8. **do not define the justice survivors wish to see (as justice means very different things to different survivors).**
9. **have the right competencies and understanding to meet the individual survivors' needs as they engage with the justice process and as they access support.**

For example that the case worker has knowledge of issues LGBTQI+ communities experience in the local region and acts accordingly; special trained officers to engage with children so that special skills are applied to support disclosure and avoid retraumatisation; or disability attuned, to allow reasonable accommodation and accessibility for survivors with disabilities.

10. **understand the contextual, cultural and gender dynamics and risks for different survivors and their intersectional and situational realities.**
11. **understand that CARSV and the stigma attached to it may affect survivors in many ways and that the impact it has on the person can manifest differently, and support the survivor in reducing or countering internalised stigma and concerns.**
12. **understand that different survivors engage, disclose and experience the process in different ways.**
13. **take care to ensure interactions do not (directly or indirectly) question the degree of harm suffered by the specific individual or their reaction thereto.**
14. **have a good understanding of holistic and intersectional needs for individual survivors such as needs for physical health, psychological wellbeing, safety and social as well as other issues related to SOGIESC, disability, race, religion or belief, social class, occupational/profession, and culture.**

165 Thiara & Roy, Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings, Imkaan (2020) 48.

166 "*They assumed I was at risk of forced marriage just because I am Pakistani.*" Thiara & Roy, *ibid*, 51.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness of intersectional approaches or compounding stigma and impact on CARSV survivors. ☐ General/standard approaches used towards all survivors with no adaptation. ☐ Officers interacting with survivors have no training or understanding of intersectionality, SCA or CARSV stigma. ☐ Officers often make assumptions about survivors based on their experiences, behaviour, gender, race/ethnicity, faith etc. ☐ Officers often minimise or dismiss survivors based on biassed assumptions. ☐ Survivors not consulted, have no influence over the officers they interact with. ☐ No holistic support available.	☐ Early awareness of intersectional approaches in general, limited prioritisation. ☐ General/standard approaches used towards all survivors. Isolated examples of individualised support approaches in some teams. ☐ Officers interacting with survivors have no training on intersectionality, SCA or CARSV stigma. Some officers display competency, mainly out of personal interest. ☐ Officers often make assumptions about survivors based on their experiences, behaviour, gender, race/ethnicity, faith etc. Biassed assumptions occasionally flagged and addressed. ☐ Isolated examples of survivor preferences for support and interactions being taken into account. ☐ Isolated examples of holistic support approaches, no uniform practice or policy.	☐ Early policy and practice prioritisation of intersectional approaches. ☐ General approaches often adapted based on individual survivor needs, but practice inconsistent, not mainstreamed. ☐ Officers receive basic training on intersectionality, SCA and CARSV stigma. Understanding and practical implementation still inconsistent. ☐ Some officers still make assumptions about survivors. Biassed assumptions usually flagged and addressed but no standard monitoring. ☐ Survivor preferences for support and interactions usually taken into account, not prioritised. ☐ Holistic support approaches sometimes available, not standard or mainstreamed.	☐ Intersectional approaches embedded into organisational policy. ☐ Individualised approaches prioritised and mainstreamed as matter of policy. In practice some officers still rely on general approaches with insufficient adaptation. ☐ All officers receive training on intersectionality, SCA and CARSV stigma. Monitoring in practice inconsistent. ☐ Biassed assumptions about survivors monitored, flagged and addressed. ☐ Survivor preferences always taken into account, not always implemented/ prioritised/resourced. ☐ Holistic approaches available and mainstreamed, not always offered or followed through in practice.	☐ Intersectional approaches part of organisational policy and practice at all levels. ☐ Individualised approaches prioritised and mainstreamed. Officers always consult survivors as to their individual needs and actively seek to accommodate. ☐ All officers receive training on intersectionality, SCA and CARSV stigma. Regular monitoring and checks on competency. ☐ Biassed assumptions about survivors rare, always monitored, flagged and addressed. ☐ Survivor preferences always sought and prioritised, with resources available for implementation. ☐ Holistic approaches available, mainstreamed and sufficiently resourced. Officers work with survivors to scope out their support needs and form continuing support plans.

Key critical questions:

- **Do survivors feel that their needs and concerns were met? That the people working with them took the time to ask them and to understand what they needed and wanted? Do survivors feel like the first responders and other justice actors working with them understand their context and culture?**
- **Do survivors feel like they are dealt with as an individual case with individual circumstances and needs? In what ways were survivors able to individualise the process and their engagement? How were survivors given choices to meet their individual needs and concerns? Did first responders and other justice officers work with them to create agreed processes and arrangements, such as contact points, communication methods and frequency, etc.?**
- **Do survivors have any choice or see any flexibility in terms of finding and assigning the right person to deal with them? What gender, age or other intersectional sensitivities are reflected in the assignment? Does the officer assigned have the right set of competencies, particularly in relation to intersectional factors such as LGBTQI+, disability or child rights and needs?**
- **What about persons with disabilities – is there an accessible and attuned response, have reasonable accommodations been provided, including any communication or decision-making support?**
- **Do survivors experience any assumptions or expectations about them or their reactions or behaviour during reporting or engagement with the justice process?**
- **Do survivors feel that they are expected to disclose what happened in a certain way or at a certain time, or all at once? What measures were taken to give them space, time and control to disclose when, how and to whom?**

Data sources:

Internal: Policies, guidance and tools around first response and engagement, training and manuals, first response forms and procedures.
External: External reviews/reports.
Interviews and focus groups: Survivors and survivors groups, survivor advocates, survivor support services, first responding officers, interviewing officers, survivor liaison officers.

Useful resources, exercises or tools:

- IICI, The Murad Code.
- Preventing Sexual Violence Initiative, Stigma Workshops: South Sudan, Report (2017).
- Touquet, 'Silent or Inaudible? Male Survivor Stories in Bosnia-Herzegovina', (2021) Social Politics: International Studies in Gender, State & Society.
- Thiara & Roy, Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings, Imkaan (2020).

Competency Indicator ATJ6: Survivors feel empowered, respected and dignified, and know they can exercise their rights in the justice process.

*See also **Indicator LF4** on legislation on survivor rights and participation.* The first step in demonstrating that a survivor has access to justice is that they feel empowered about the process from the first moment of reporting. Survivor's choice must be recognised.

"*The theme of all of this has been my powerlessness on a deep, deep, deep level. This process should've been empowering. If we could make the justice process more of that — not let the victim stand up and run the thing, but that roundtable thing where all the stakeholders have a say and that is visible and clear.*"[167]

Elements of good practice include:

1. **Survivors feel that they are being treated in a dignified manner, with due respect to their rights as participants in the process, particularly with regard to their rights to privacy, participation, safety and redress.**

Survivors feel respected, believed, and their report of crimes against them taken seriously. They are not made to feel marginal to the justice process. Survivors feel that officers' responses are based on respect for human rights and dignity of the people involved, and that complaints are handled confidentially. Survivors feel that the people working with them are attentive and actively listen. This includes knowing what open questions to ask from the beginning of the process, giving priority to survivor needs over personal or organisational goals, and ensuring they have received any immediately required care (physical or psychological).

2. **Survivors are informed and empowered in relation to their rights and promoted in their efforts to access justice and other necessary services.**

It is important to provide standing liaison support positions within the police force/justice system who can build a trusted working relationship and accompany survivors along their justice journey, such as survivor assistance workers or working closely with a survivor support service.
Survivors feel that the person working with them adopts an approach that aims to build upon strengths, avoids negative starting points and emphasises survivor agency and healing pathways through the justice system.

3. **Survivors are supported and empowered through referrals to professional support services such as institutions advocating for survivors' rights to access emotional and financial support.**

*See also **Chapter Three — Support Services**.* Survivors are talked through referral systems and justice pathways so they can make choices and are supported. Survivors can access support, including MHPSS, language, health, special assistance and reasonable accommodations/measures to ensure participation and pro bono representation to protect rights during proceedings, including rights of audience where the hearing or application has direct bearing on their rights.

4. **Survivors have allocated officers who can work with them to overcome barriers to accessing justice and reporting.**

These include language, legal language, parental responsibility, time, money constraints, the complexity of proceedings, the length of proceedings, physical barriers for those with disabilities, lack of equality and gender-sensitivity, legal aid, etc.

"*If you could have a person, one contact person to deal with throughout, that would be amazing. In a way that would be the single most [effective] thing because you wouldn't feel lost in the system then.*"[168]

5. **Survivors feel that the First Responders listen and appreciate their views and promote their participation in the decision-making process by providing timely information with regards to case processing, possible outcomes and implications, while not placing the burden of the investigation on the survivor.**

167 Gravitas, *ibid*.
168 Gravitas, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Survivors report feeling shamed, disempowered and disrespected when reporting. ☐ Survivors cite fear for their privacy and dignity as reasons to withdraw from the justice process. ☐ Survivors receive little to no information about their rights or availability of support. ☐ First Responders approach survivors as 'objects' to the justice process, merely trying to get evidence and their statement with no consideration of support needs. ☐ No referrals to support made upon reporting. ☐ No specific officers/ contact points allocated upon reporting.	☐ Survivors report feeling disempowered, uncomfortable when reporting. ☐ Survivors unsure what their privacy rights are and how their info is treated in the justice process. Confidentiality concerns cited to cause unsafe feeling when accessing justice. ☐ First Responders have limited understanding or consideration for survivor support needs and potential for secondary trauma during justice process. ☐ Isolated examples of referral practices to support services upon reporting, no consistent policy or practice. ☐ Specific contact points usually allocated upon reporting, most officers lack requisite competency.	☐ Survivors report mixed levels of empowerment and comfort when reporting. ☐ Survivors often receive info about their rights in the justice process, including privacy and confidentiality. Quality of info varied, some misinformed, confused. ☐ First Responders provide survivors info about their rights, the justice process and their options. In practice survivor choice limited. ☐ General referrals to support made upon reporting but not adapted to individual needs. ☐ Specific contact points usually allocated upon reporting, most officers have some competency to work with CARSV cases.	☐ Most survivors report feeling empowered, heard and supported when reporting. ☐ Survivors provided standard info packages about their rights, including privacy and confidentiality. Some still feel confused, struggle to gain more info. ☐ First Responders provide survivors info about their rights, the justice process and their options. Survivor choices often accommodated. ☐ Referrals to support services always made upon reporting. Often adapted to specific needs, though not consistent practice. ☐ Specific contact points always allocated upon reporting, most officers have some competency to work with CARSV cases.	☐ Survivors report feeling empowered, heard and supported when reporting. ☐ Survivors provided comprehensive info about their rights, including privacy and confidentiality. Additional info easily gained. Survivors feel comfortable and secure to participate in the process. ☐ First Responders provide survivors comprehensive info about their rights, the justice process and their options. Survivor choices accommodated and prioritised. ☐ Referrals to support services always made upon reporting based on survivor consultation and adapted support plans. ☐ Specific contact points with specialist CARSV officers always allocated upon reporting.

Key critical questions:

- **Do the survivors receive explanations about how the justice process functions in terms of their rights, their potential role, reasonable expectations and what their options are? Do survivors have an opportunity to ask questions or for additional information?**
- **How much time/notice is given to the survivor to read and absorb the information that will be vital during procedures?**
- **Is information available in the language that the survivor speaks? Is the information accessible, easy to read and understood by survivors?**
- **How are referrals made at the point of first reporting? Are they standardised or individualised based on survivor needs and wishes?**
- **Are survivors allocated specific working officers when they report? Are these officers competent to interact with survivors, specifically in terms of empowering, non-stigmatising, survivor-centred and trauma-informed approaches?**
- **How do survivors describe their feelings when reporting?**
- **Do survivors understand how their information is handled, stored and shared when they access justice? How are confidentiality protocols explained to them?**
- **Are officers trained in human rights-based approaches and interview skills? Active listening? Trauma-informed interview techniques?**

Data sources:

Internal: Codes of conduct, guidance and expectations about survivor interactions, survivor liaisons TORs.
External: External reviews/reports.
Interviews and focus groups: Survivors groups, survivor advocates, survivor support services, first responding officers, interviewing officers, survivor liaison officers.

Competency Indicator ATJ7: Survivors feel that they have received effective communications and are protected from secondary victimisation and stigmatising communications and interactions, their rights to information being kept throughout the process.

Communication is effective when it is accessible, available and understood by the intended recipient. There are times when survivors were satisfied with the police communication when reporting. They found that reporting what happened was straightforward when they were treated with respect, dignity and that their privacy was protected. However, the feeling was different when a survivor perceived that they were given misinformation and that the complaint was not dealt with in a manner consistent with the gravity of the reported offence.

It is also highly retraumatising and revictimising when survivors feel blamed, shamed, marginalised, minimised, ridiculed or otherwise judged. Encountering stigma and stigmatised attitudes or comments from justice officials — who are supposed to be trusted actors who believe in justice, equality and human rights — can be particularly harmful and cause survivors to withdraw from the justice system and other forms of support.

Examples of stigma and myths embedded in justice responses and expressed by justice actors are numerous.

- "*Raping a virgin is worse than raping a non-virgin*" — This was the response of a male officer in Vietnam reflecting the belief that once having been 'used', a female's sexual worth could not be much worse off by additional 'usage'."[169]
- "*The officers would tell the victim's family, "She is okay now so it's better to protect her honour. If this becomes known when she grows up, she will have difficulty finding a husband."*"[170]
- "*In one case, a New York judge questioned a male victim who had been forced to have sex to the point of ejaculation with a woman, asking '[W]hat's your problem? How could you not have liked this?'*"[171]
- "*...I was turned away. I was told I was hysterical. [The perpetrator] had tried to strangle me. In fact, he was found guilty for attacking me that night. I had gone to the police that night on crutches, could barely walk, his handprint round my neck and asked if I report will [...] they keep me safe? [...] they threatened to arrest me if I didn't give my details. [...] I was made to feel that I was hysterical [...] they tell you you're hysterical or you've got mental health issues or you're nuts or you're crazy or you're a fruitcake. That's the language they use. So [...] when the authorities use it, what does it do? It puts up a brick wall.*" Survivor in Scotland[172]

Elements of good practice include:

1. **First Responders and justice actors working with survivors put in place procedures to ensure effective continued and agreed communication with them.**

Survivors are provided with contact details so that they can be updated on their case unless they have expressed a wish not to receive such information. Survivors are asked about safe, private and discreet means of communication to protect confidentiality. Communications are regular and survivors are kept up to date.

"*The confidence and the strength that you have to have to initially go in for the interview. And then you're just left in silence for months and months, not knowing what's happening.*"[173]

2. **Survivors find that communication is adapted to their understanding, including measures put in place to avoid the use of jargon and unfamiliar or overly legalised language.**

Survivors feel that their language needs are met, and they are provided with information and interactions which help build their trust in the system.

"*[Court Victims Advisor] did explain [the process] but it's complicated and it's all in court lingo. She tried to explain it as best she could but it's hard as we don't know anything about the court. She's so nice, she's a lovely lady but it's just so confusing when it's court words.*"[174]

3. **Survivors feel that the language used and the things said were non-stigmatising towards them and did not contain any misconceptions, myths or minimisation of CARSV.**

More positively, survivors should feel that their interaction with First Responders and justice actors helped counter their fears of stigma or any stigma they had internalised. Survivors can see that the officers have a sensitive approach in discussing CARSV.

4. **Survivors feel that they have a realistic understanding of the process, the benefits and risks, the people involved and have time to process information — and get advice if they wish — before they decide to report or participate in the justice process.**

Survivors feel that officers have been realistic and truthful about possible negative effects/impacts, and that officers avoided raising expectations to avoid them being motivated or deciding to participate for the wrong reasons.

169 Skinnider *et al*, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017).

170 Skinnider *et al*, *ibid*.

171 Walfield, *ibid*, p.18.

172 Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019), 6.

173 Gravitas, *ibid*.

174 Gravitas, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No practice of continued communication with survivors. ☐ Survivors find communication with First Responders inconsistent, delayed, unreliable, hard to understand. Lack of communication and info cited as a cause for insecurity during the process. ☐ First Responders use inaccessible technical language when engaging with survivors. No info available in the language survivor speaks. ☐ First Responders use stigmatising or stigmatised language, including when engaging with survivors. ☐ Survivors feel uncomfortable, judged when engaging with officers. ☐ Survivors feel confused about the justice process and do not understand their role, risks involved or what to expect. Justice process feels intimidating, daunting.	☐ Communication with survivors generally inconsistent. ☐ Survivors find communication with First Responders infrequent, hard to understand. More interaction gained only by chasing officers. ☐ Info generally available in the language survivor speaks, not comprehensive. Inaccessible technical language still an issue. ☐ First Responders use stigmatising or stigmatised language, including when engaging with survivors. Some examples of leadership addressing. ☐ Survivors generally feel uncomfortable when engaging with officers. Isolated examples of effective communication and non-stigmatising practices. ☐ Isolated examples of SCA increasing survivor comfort and confidence. Most still report a daunting process.	☐ Basic standards on communication with survivors. ☐ First Responders encouraged to communicate actively with survivors. Practice inconsistent, many still report long delays and unreliable contacts. ☐ Info generally available in the language survivor speaks, not comprehensive. Efforts to address overly technical language. ☐ Use of stigmatised or stigmatising language (including with survivors) generally addressed when flagged, but not consistently monitored. ☐ Effective communication and non-stigmatising practices acknowledged as increasing survivor comfort, inconsistent practice.	☐ Continuous communication and info for survivors prioritised on policy level. ☐ First Responders expected to communicate with survivors in timely, consistent and understandable manner. Deficiencies practice often addressed, though some survivors still feel disconnected. ☐ Info available in different languages spoken by survivors, adapted to understandable and non-technical language. Some still struggle to gain more detailed info. ☐ Use of stigmatised and stigmatising language monitored and addressed in the organisation. ☐ Effective and non-stigmatising communications prioritised. ☐ Most survivors report feeling informed, confident about how to access justice. Some still confused by the process.	☐ Continuous, non-stigmatising and effective communications prioritised and embedded into practice. ☐ First Responders communicate with survivors in timely, consistent and understandable manner. Survivors feel connected, informed and secure in their interactions with officers. ☐ Comprehensive info available in different languages spoken by survivors, adapted to understandable and non-technical language. Survivors have access to additional info and resources in a format understandable to them. ☐ Use of stigmatised and stigmatising language monitored. Zero tolerance for stigma behaviours with survivors or otherwise. ☐ Survivors report feeling informed, acknowledged, confident about how to access justice.

Key critical questions:

- **What are the communications practices and expectations of First Responders? How often do officers engage with survivors during and after the reporting process?**
- **How do survivors describe communications with the First Responders? Are they timely, inconsistent, delayed, reliable, informative, hard to understand, accommodating, etc.?**
- **Do survivors feel comfortable communicating with allocated officers? Do they feel comfortable asking for more information? Do they have to chase contacts? Do they feel understood and respected?**
- **Do survivors report judging or stigmatising experiences when communicating or interacting with officers? How are these addressed?**
- **Is communication available in the language spoken by survivors? Is it accessible in terms of terminology used? Is more information or assistance available to survivors upon request?**
- **Are First Responders trained, aware and monitored in relation to their manner of communicating with survivors? Are they monitored for inaccessible language? Stigmatising or stigmatised language? Hostile or unfriendly body language?**

Data sources:
Internal: Policies and guidelines for communication, guides to non-stigmatising language, training records and materials, survivor liaison strategies and plans.
External: External reviews/reports.
Interviews and focus groups: Survivors groups, survivor advocates, survivor support services, first responding officers, interviewing officers, survivor liaison officers.

Useful resources, exercises or tools:

- Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019).
- Davies & Bartels, 'Challenges of Effective Communication in the Criminal Justice Process: Findings from Interviews with Victims of Sexual Offences in Australia', (2020) MPDI Laws 9.

Competency Indicator ATJ8: Survivors voluntarily participate throughout the justice process based on fully informed consent, are engaged in consultations and given opportunities to make choices, and have agency over their engagement.

Murad Code Principle 2: Respect Survivor Control and Autonomy provides minimum core standards for informed consent and survivor autonomy over their information. It is critically important to understand and respect that survivors should be fully informed voluntary participants in the justice process. Many mandated officers have powers to summon or compel information or testimony from witnesses during investigations or at trial. However forcing survivors to engage in a process against their will is a form of revictimisation and harm. It is also unlikely to be effective at achieving justice.

First Responders must respect a survivor's decision not to report or participate in justice, or to decide after reporting that they do not wish to continue. Justice processes can continue without a survivor, as is always the case for murder trials. In the context of CARSV, there will be important alternative sources of evidence to prove that these crimes took place. Rather than pressure or coerce a survivor through the process, justice actors should focus their efforts on building better systems and practice that survivors can have more faith and trust to allow more survivors to decide to participate willingly.

Murad Code Foreword: "*We must also address our overreliance on survivor information. If we all decide that we need information from survivors, we create multiple demands and pressures on survivors and amplify risks of exposure and retraumatisation. Whenever we can, we should look for SCRSV information from sources other than survivors (such as fact-pattern witnesses and expert reports) to reduce pressure on survivors.***"**

Murad Code Principle 2.6 "*Reduce pressures: We will proactively mitigate factors that can pressure survivors to share information. Such factors include real or perceived imbalances in power, status, gender or age, and social etiquette, politicisation, or family and community influences (also recognising that concerns for their community can be positive motivators for survivors). We will not use any legal power we may have to compel survivors as doing this can harm them and any justice processes and outcomes.***"**

Some survivors really want to participate and play a role in the justice proceedings. However, before a case can come to court, the survivors must first be prepared to risk exposure to the social stigma associated with sexual violence.

"*What I found most difficult in Arusha was speaking about rape, especially in front of men. Talking of sex, and in such detail was difficult for me. I tried my best, but I didn't give all the details and show the full extent of what I had gone through. I felt I had not said enough. At one point they asked me to explain things further. I said, "Don't you understand? I was raped!*" The judge said they needed more detail and that they didn't understand. I asked in French: "*You don't understand about being raped?*" They said they didn't, so I spelt it out. At that point, I was asking myself what I was there for. What had I come to do here? I felt tortured."[175] A survivor from Rwanda.

See also *Indicator ATJ7* on effective communications — include having material and realistic information in an understandable format to support survivor decision-making.

Elements of good practice include:

1. **Survivors' consent is sought from the beginning and actively reviewed throughout the process to avoid assumption that a survivor who consented to one part of the process has also done so for the others.**
2. **Survivors are given time and support to make decisions. Survivors feel that the person takes time to explain the rights and options available to them, avoiding any pressure, persuasion or coercion to get them involved in the process. Survivors also are given an explanation of how their consent to participate can be withdrawn, and that survivors may choose not to answer any specific questions they do not wish to.**
3. **Survivors' choices are based on a realistic understanding of the process, what kind of questions or topics they will be asked about, what protections are automatically available and which ones depend on a judge's order, what will happen to that information, whether and with whom that information will be shared (mandatory reporting or disclosure obligations, e.g. to the defence), what the risks and potential broader implications are. This includes any limitations on that person protecting their information or on their role.**

Murad Code Principle 2.9: "*Be clear on limitations: We will be clear and honest with survivors on what we can and cannot do, what we can protect and what we cannot, and where our own limitations and professional boundaries are. If we are unable to adapt our approach to meet a survivor's wishes, we will explain why. Where we are obliged to report or share their information (such as a duty to report crimes to authorities, make disclosures to defence or respond to life-threatening situations), we will discuss these upfront with a survivor and give them time and space to decide whether they wish to proceed to provide information to us.***"**

"*The police officer that dealt with the case, who investigated the case, was really real about what she said was going to happen at court. The victim support people were really real about what was going to happen at court. So, we were very well prepared and understood that it was just part of the process. For me it was traumatic, and it was the hardest thing I've ever done in my life, but I was really well prepared for it.*"[176]

175 Price *et al*, *ibid*.

176 Gravitas, *ibid*.

4. **Survivors have an opportunity to discuss what privacy, confidentiality and control over information measures are available, and to fully understand limitations and options. Some survivors may feel uncomfortable disclosing their experience due to fear that they will be marked as rape victims and may be ostracised by their families and community. Many survivors fear that reintegrating into their communities and resuming their lives will be more difficult if their rape is known.**
5. **Survivors do not feel obliged to comply in a process for any reason, including by fear of losing support or access to services.**
6. **Survivors participate in decision-making and have choices and a degree of control over the interview and statement-taking process, including timing, length, location and people present.**

"[Police officer] was a male. He did mention that to me at the very beginning if I was comfortable with him being a male. And I was [...] at that point as well, I wasn't sensitive about it, I guess. I could imagine, if it was a very recent event or anything, or even if he somehow resembled this person, I would be uncomfortable with it. But I was really happy with them even saying that to me. And it, again it felt like that was a choice, I had a lot of choices."[177]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No consideration given to survivor wishes. Consent processes seen as secondary or inconvenient. ☐ Consent not sought or reviewed during the proceedings. Survivors feel rushed, pressured, coerced in their involvement with the justice process. ☐ Survivors feel uncomfortable but unable to withdraw from the justice process due to pressure, coercive practices, fear of repercussions or loss of support. ☐ Survivors feel confused about their rights, role and expectations during the process. ☐ Survivors often in the dark about different stages of the process, including how their protection needs are addressed and how they are treated during trial. ☐ Survivors not consulted in decision-making related to their involvement, including interview process.	☐ Consent processes usually implemented but without sufficient information. ☐ Survivors feel lost, confused by the justice process, do not understand their role or what to expect, and feel rushed to consent to participate. ☐ Survivors feel unable to withdraw from the justice process due to pressure, coercive practices, fear of repercussions or loss of support. ☐ Survivors receive some info about their rights and role in the justice process, but little practical guidance. Most still in the dark about different stages of the process, including how their protection needs are addressed and how they are treated during trial. ☐ Isolated examples of survivor consultation regarding in decision-making, including interview process. In practice survivor preference rarely accommodated.	☐ Consent processes implemented with standard info, not sufficient for survivors to make informed choices. ☐ Survivors are provided basic info about the justice process, their role and what to expect. ☐ Limited efforts to make sure survivors genuinely understand and are able to make informed choices. Many still feel confused, rushed. ☐ Some practical guidance on different stages of the justice process provided. ☐ Isolated examples of survivor consultation to involve them in decision-making, including interview process. Wishes sometimes accommodated	☐ Engagement with survivors is driven by consent. ☐ Consent processes include thorough info intended to enable survivors to make informed choices. ☐ Survivors are provided info about the justice process, their role and what to expect. ☐ Efforts to make sure survivors understand their role and are able to make informed choices. Most feel confident in their ability to participate and what to expect, though practice not fully consistent. ☐ Practical guidance on different stages of the justice process provided. Familiarisation/ comfort efforts made, e.g. survivors able to see courtroom before testifying. ☐ Survivors involved in decision-making, including interview process. Wishes usually accommodated.	☐ Engagement with survivors is driven by consent, ensuring survivors are fully informed and have a sense of agency. ☐ Consent processes include thorough info intended to enable survivors to make informed choices. Follow up to monitor survivors genuinely understand what to expect and are able to ask further questions if needed. ☐ Survivors are confident in their ability to make informed choices and in their understanding of the justice process, their role, and what to expect. ☐ Practical guidance on different stages of the justice process provided. Familiarisation/ comfort efforts made, e.g. survivors able to see courtroom before testifying. ☐ Survivors always actively involved and consulted in decision-making, including interview process. Wishes prioritised and accommodated.

177 Gravitas, *ibid*.

Key critical questions:
- **How is survivor informed consent sought, reviewed and ensured during the reporting process? How often is consent reviewed?**
- **What information is provided to the survivor upon reporting and seeking consent, particularly in relation to their rights, role and expectations during the justice process? Confidentiality and privacy concerns?**
- **Do survivors feel confused, pressured or coerced to participate in the justice process? Do they feel comfortable asking for more information or time to make decisions? Are such requests accommodated?**
- **Do survivors feel comfortable to withdraw their consent? Do they fear withdrawing from the process would have negative consequences for them?**
- **Do survivors know what to expect at each stage of the justice process? What information is provided to them? Are they guided and accommodated to ensure they are able to make informed choices and participate in decision-making related to their involvement?**
- **Are survivors guided in the practicalities of their involvement, including any safety or security concerns? Do officers accommodate wishes for familiarisation, e.g. to visit the courtroom before testifying?**
- **Are survivors consulted as to the modalities of interview processes? Do they have a say on e.g. where the interview takes place, when and for how long, when to take breaks, who is present?**

Data sources:
Internal records: Informed consent policies, templates, tools, training materials, records.
External: External reviews/reports.
Interviews and focus groups: Survivors groups, survivor advocates, support services, first responding officers, interviewing officers, survivor liaison officers, prosecutors or others calling witnesses to testify.

Useful resources, exercises or tools:
- Price *et al*, 'Injustice After Sexual Violence: Problems in Practice at the ICTR', Conference Paper (2010).

Competency Indicator ATJ9: Upon reporting, survivors feel safe and supported, informed of risks and provided with integrated support which they find conducive for disclosure, this process facilitating and not adversely impacting their recovery and wellbeing.

Survivor safety is the driving principle of all. There is a difference between being safe and feeling safe. Access to justice for survivors of CARSV is a process and experience; not feeling safe can become the primary barrier.

Stigma is a major driver for security and protection risks for survivors, who are often blamed, shamed and punished for the crimes committed against them. "*Some people say that a girl will not receive such insults unless she is loose. The belief that GBV is a woman's fault results in punishment and retribution against the survivors rather than the perpetrator. Anger against the survivor is a common denominator in families' reactions to GBV survivors: "Most families blame, beat, isolate and maltreat women and girls for sexual violence against them.*"[178]

See also ***Chapter Three — Support Services*** *and* ***Chapter Five — Witness Protection****.*

Elements of good practice include:

1. **Survivors can see that confidentiality is prioritised, and confidentiality measures are well-understood and enforced.**

This is one of the signs that reassure survivors that their best interest is at the heart of the process. All first responders and other justice actors show good practice with information handling, especially keeping records containing personal information about the survivor. Officers discuss with survivors options, effects and limitations for concealing their identity in the justice process, and from whom. Survivors understand what measures are dependent on judges' decisions and are not automatic. Survivors also understand the risks. All potential court and operational measures are discussed for confidentiality so there is a shared confidentiality and information security plan.

2. **Survivors participate in and inform risk and vulnerability assessments, and are fully aware of potential risks as well as risk mitigation measures and their choices or options for protective measures. Survivors feel consulted and some measure of control over such measures.**

Ensuring that the process is safeguarded, especially regarding the survivor's vulnerabilities to avoid further harms. Avoid interaction that in any way exposes survivors to rejection. Knowing when, where to engage with the survivors is important.

"*It was such a standardised risk assessment, they didn't really look into why I was so scared to report it and why I didn't report it earlier and stuff like that. The risk assessment was made asking what's happening to you, how do you feel and stuff like that. They were just looking at me but not the wider picture of why it was happening and why you can't report or the type of violence you are experiencing or from whom.*"[179]

3. **Survivors participate in identifying and selecting safe settings for meetings and interactions, and feel that officers prioritise safe and discreet access and meeting points, as well as means of transport and access.**

Ensure that survivors are engaging in safe settings; a place can be safe when it does not easily reveal what it is there for (discreet or camouflaged). Survivors are provided with an environment that is safe, accessible and appropriate, meaning that does not endanger or expose them, or trigger traumatic reactions or memories. For example police stations, formal offices, institutional atmospheres or uniforms may be part of a survivor's CARSV or other traumatic experience.

4. **Survivors feel comfortable in the environment in which they will provide their information or testimony.**

Survivors feel those present are trauma-informed, sensitive, supportive and attentive to their needs and reactions. Survivors do not feel intimidated by the positioning, language, attire or attitudes of any one present while testifying or providing information. First Responders understand the fear and concerns survivors have about reporting what happened.

"*Whether the process of reporting was delayed or not, victims described feeling 'scared', 'frightened', 'terrified' and 'in shock' at the prospect of engaging with criminal justice. Fran noted that, "I drove to the police station about three times before I finally went in*".[180]

5. **Survivors understand their role in the court process, who performs what role, and if permitted, meet with prosecutors and other court staff to be familiar with and prepared for what may happen.**

"*This was the first time I had been in the court. I don't know who anyone is. I don't know their roles or what they're doing. That would have been nice, that would have helped prepare me.*"[181]

6. *See* Indicator P8 *on ensuring familiarity and preparation as part of reducing stress and increasing comfort levels.* **Survivors have and can access to other services whilst accessing justice, including legal advice and representation, support persons and counselling, without negative implications or stigmatised responses.**

Survivors feel that the justice system is there to work for them and not the other way round.

178 Synergy for Justice & LDHR, *ibid*.

179 Thiara & Roy, *ibid*, 29.

180 Brooks-Hay *et al*, *ibid*, 6.

181 Gravitas, *ibid*.

7. Survivors feel that they have access to a justice system that supports them and does not hinder their rights to reparation, and other forms of effective remedies. Survivors feel that they are believed, and that trauma is understood.

"*Lonsway (2010) argues that 'underlying skepticism that sexual assault survivors face when they disclose may be the single most damaging factor in our societal response. It may also be the most powerful tool in the arsenal of rapists because it allows them to commit their crimes with impunity.*"[182]

"*I've got to deal with this now. I've got to deal with what this man did to me and also deal with being degraded through the court system. You hear of people getting assaulted, and I know I shouldn't think this, but I think "poor person, they're going to have to go through that system*". They're going to get treated like dirt and at the end of the day I don't have much hope that they will get justice." Survivor in New Zealand[183]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Survivors feel unsafe when reporting, are not informed about and do not understand confidentiality measures. ☐ Officers do not inform survivors about confidentiality, potential risks, or options for protective measures. ☐ Risk and vulnerability assessments done without organisational standards, ad hoc. Survivors not informed or involved in assessments. ☐ Protective measures not prioritised, not coordinated. ☐ Survivors not consulted about security for meetings or transport. Meetings at generally designated places, many survivors feel intimidated, uncomfortable (e.g. formal police interview spaces). ☐ Survivors not informed about availability of other supporting services. Officers view support as a potential liability for the survivor's evidence and discourage.	☐ Survivors receive basic info about confidentiality measures, potential risks and options for protective measures. Inaccessible and not understood by most. ☐ Risk and vulnerability assessments done based on general standards. Survivors not informed or involved in assessments. ☐ Protective measures applied based on general standards, not adapted to individual circumstances, survivors not consulted. ☐ Meetings at generally designated places, many survivors feel intimidated, uncomfortable (e.g. formal police interview spaces). Isolated examples of officers accommodating survivor needs to make them more comfortable.	☐ Survivors receive info about confidentiality measures, potential risks and options for protective measures. Basic checks to ensure info understood, most survivors still struggle feeling unsafe or confused. ☐ Basic monitoring for confidentiality practices, inconsistent. ☐ Risk and vulnerability assessments done based on general standards, with some involvement with survivor. ☐ Protective measures applied based on general standards with some involvement with survivor, usually still not adapted to individual circumstances. ☐ Officers sometimes accommodate survivors' security concerns over meeting points and transport. ☐ Survivors receive basic info about availability of other supporting services. Some officers still discourage some forms of support (e.g. counselling).	☐ Survivors receive info about confidentiality, potential risks and options for protective measures. Follow up to ensure info is understood and survivors able to ask more questions. ☐ Staff receive regular training on confidentiality, practice monitored regularly. Rare transgressions from confidentiality policies addressed. ☐ Risk and vulnerability assessments done with involvement of survivor. ☐ Protective measures applied and adapted to individual circumstances with some consultation with survivor, though practice inconsistent. ☐ Officers encouraged and expected to accommodate survivors' security concerns over meeting points and transport, practice inconsistent.	☐ Survivors actively informed about confidentiality, potential risks and options for protective measures. Continuing follow up to ensure info is understood and survivors able to ask more questions. ☐ Staff regularly trained and monitored on confidentiality. Zero tolerance for transgressions, always addressed by leadership. ☐ Risk and vulnerability assessments done active consultation with survivor, their needs and wishes prioritised. ☐ Protective measures applied and adapted to individual circumstances with consultation with survivor, with their needs and wishes prioritised. ☐ Officers consistently accommodate survivors' security concerns over meeting points and transport.

182 Walfield, *ibid*, 20. See also Stern/UK Home Office, The Stern Report: A Report by Baroness Vivien Stern CBE of an Independent Review Into How Rape Complaints Are Handled by Public Authorities in England and Wales (2010), finding survivors can withdraw from justice processes due to a raised eyebrow which conveys disbelief or doubt over their report.

183 Gravitas, *ibid*.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ Survivors feel like their experience is questioned by the reporting officers, feel obliged to prove themselves. Secondary trauma often inflicted.	□ Survivors receive basic info about availability of other supporting services. Officers view support as a potential liability for the survivor's evidence and still often discourage. □ Survivors often report feeling unsafe, confused and insecure when interacting with officers. Secondary trauma common.	□ Survivors often report feeling confused about their options for protection in the justice process.	□ Survivors receive info about availability of other supporting services. Officers generally neutral about survivors seeking support. □ Survivors generally report feeling safe and comfortable with their engagement. Protection wishes usually addressed sufficiently.	□ Survivors receive info and referrals to other supporting services. Officers assist and encourage survivors to access support and help them form support plans. □ Survivors report feeling protected, safe and comfortable with their engagement.

Key critical questions:

- **What are the resources available in preparing a safe environment for engagement with survivors?**
- **What feedback is sought from CARSV survivors about the extent to which safety and confidentiality measures are maintained and the impacts those measures have had for them?**
- **What structures, policy, and measures are in place to assure survivor confidentiality?**
- **When multi-disciplinary agencies are connected, who has the overall decision-making power?**
- **Are all stakeholders aware/briefed on the protocols in place to define the roles, responsibilities and relationships of each party in developing, maintaining and adjusting survivor safety plans? Who else is part of the safety and support plan? Was the survivor able to participate in safety planning?**
- **What information is given to survivors about confidentiality, protective measures and risk/vulnerability assessments? Are survivors consulted in decision-making related to their safety and security?**
- **What confidentiality measures and protocols are followed in the organisation? How familiar are officers with their duties related to survivor confidentiality?**
- **How are risk and vulnerability assessments made? Are there standardised assessments? Are survivors consulted? If so, what effect do their needs and wishes have on the assessment?**
- **How are necessary protective measures determined? Are there standardised measures applied in all cases? Are survivors consulted? If so, what effect do their needs and wishes have on the determination?**

Data sources:

Internal: Organisational expectations, codes of conduct and tools for survivor information practices and communications, guidelines for identifying protection needs, risk and needs assessment standards and templates, referral practices, privacy and confidentiality protocols.

External: Survivor feedback.

Interviews and focus groups: Survivors groups, survivor advocates, support services, first responding officers, interviewing officers, survivor liaison officers.

Useful resources, exercises or tools:

- Freedom From Torture, Beyond Belief: How the Home Office Fails Survivors of Torture at the Asylum Interview (2019).
- IICI The Murad Code, Commitments 5.3, 5.6, 9.3, 10.4 and others.

C. TECHNICAL COMPETENCY AND CAPACITY

Competency Indicator ATJ10: First Responders and justice actors have contextual and community awareness, specifically about CARSV stigmas and barriers to accessing and participating in justice for survivors, and integrate countering stigma into their core work.

To ensure that survivors have access to justice, justice actors cannot ignore the barriers survivors will have in the community. Third parties can play a significant role in silencing survivors but also in encouragement and pressure to report. First Responder encouragement can be a decisive factor in encouraging survivors to proceed with reporting. Survivors can experience condemnation from family members and be blamed for what they have experienced, because the family can also experience stigma. *See also **Indicator ATJ1** on leadership support for efforts to reduce stigma as a barrier to access justice, and to reduce harmful responses in communities.*

Justice officers, including First Responders and others working with survivors, should understand the three layers of stigma and should proactively seek to counter those stigmas and misconceptions:

- Within their own work and that of their teams.
- With survivors who they work and interact with.
- With communities as part of their outreach and community engagement, public messaging and work with community-based partners.

"*My husband never supported me. I believe he thinks it was my fault for experiencing all this. Once he told me that it was my fault for staying there, he thinks that I should have left. And I also think I should have left, but obviously I haven't.*"[184] A survivor from Bosnia

"*They don't like any police getting involved, so everyone, like my uncles, got together. Everyone got together and they said this is the story we're gonna tell and everyone sticks to this story and then everyone acts like nothing happened. And because I was 15, the police got in touch with my parents rather than me and my parents just brushed it off and said everything is fine.*"[185]

"*In a country such as Uganda, where many areas have been (and, to some extent, still are) ravaged by an ongoing conflict and communication and travelling between different areas may be difficult, it would be inappropriate to expect applicants to be able to provide a proof of identity of the same type as would be required of individuals living in areas not experiencing the same kind of difficulties. On the other hand, given the profound impact that the right to participate may have on the parties and, ultimately, on the overall fairness of the proceedings, it would be equally inappropriate not to require that some kind of proof meeting a few basic requirements be submitted.*" ICC Single Judge on evaluating victim participation applications[186]

Elements of good practice include:

1. **Individuals working with survivors receive continuous training in holistic, non-judgmental, sensitive techniques that avoid assumptions, supports inclusion, recognise, and respect individual choice, and acknowledge diversity; they should challenge inequality, discrimination, or exclusion from access to justice.**
2. **First Responders understand the context and are aware of the issues surrounding tackling stigma within families and communities, reducing barriers to accessing justice, and improving support and responses to survivors in their communities during and after their participation in justice.**
3. **First Responders and justice actors demonstrate a good understanding of the three levels of stigma (self-stigmatisation/ personal, cultural and structural) and its association with self-esteem, and the vulnerability of survivors according to different risk factors related to age, gender and other intersectional and situational factors.**
4. **First Responders and justice actors know about the misconceptions and myths, and cultures attitude towards survivors of CARSV, and do not accept or express those (Knowledge, Attitude and Practice Surveys).**
5. **First Responders and justice actors understand and proactively counter the compounding and intersecting impacts of CARSV stigma on survivors, including internalised fear of stigmatisation, of not being believed and other fears in engaging with justice.**
6. **First Responders and justice actors avoid secondary victimisation due to patriarchal prejudices or gender bias, and ensure that there is no process or practice that imply or place blame on survivors for the violence committed against them.**
7. **First Responders take all reporting very seriously, and do not encourage or seek to persuade survivors against accessing or participating in justice. First Responders start by believing.**

"*Rebecca: [I]t's difficult for me to identify the impact of the police separate from the impact of the incident [...] and I've seen the police officer that interviewed me, you know, two or three times since just in passing. Once when I was walking [...] and she walked past with her colleague and I literally had to stop and cry because I feel so angry and hurt about it [...] when I see the police, I feel, yeah, why didn't they believe me?*"[187]

8. **First Responders are competent and follow survivor-centred policies, protocols and processes to assist all survivors groups to effectively and safely access to criminal justice.**

184 UNFPA, Stigma Against Survivors of Conflict-Related Sexual Violence in Bosnia: Research Summary (2015), 6.

185 Thiara & Roy, *ibid*.

186 Decision on victims' applications, Situation in Uganda (ICC-02/04-101), Pre-Trial Chamber II, 10 August 2007, para.16.

187 Brooks-Hay *et al*, *ibid*, 6.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No training on CARSV stigma or holistic, non-stigmatising and trauma-informed approaches. ☐ Officers regularly exhibit stigmatising attitudes and biases in their interactions with survivors. ☐ Officers have limited understanding of context of CARSV and survivors' communities. ☐ Officers lack understanding of how stigma affects survivor behaviour, often make biassed assumptions based on myths, biases and how they 'should' act. ☐ Officers often minimise survivor experiences based on myths and biases, belittle or discourage reporting as something 'shameful'. ☐ Survivors report feeling disbelieved, dismissed, shamed, stigmatised.	☐ Some officers aware of CARSV stigma or holistic, non-stigmatising and trauma-informed approaches based on own interest. No organisational priority or training. ☐ Isolated examples of stigmatising attitudes in interactions with survivors being challenged. Negative experiences still common. ☐ Some officers have an understanding of context of CARSV and survivors' communities, mainly based on individual interest or experience. Context knowledge not prioritised. ☐ Officers still make biassed assumptions based on myths, biases and how survivors 'should' act.	☐ Basic training on CARSV stigma, holistic and non-stigmatising approaches provided to some officers. ☐ Early awareness of context impact on survivors. ☐ Basic training on how to interact with traumatised or vulnerable victims/ witnesses. Practice inconsistent, monitoring inconsistent. ☐ Officers trained on how to avoid secondary traumatisation or stigmatising behaviour. In practice some still exhibit stigma and rely on myths in survivor interactions. ☐ Minimising and discouraging behaviour during reporting sometimes flagged and addressed. ☐ Some survivors still report feeling disbelieved and discouraged to participate.	☐ Continuous training on CARSV stigma, holistic and non-stigmatising approaches provided to all officers interacting with survivors. ☐ Contextual knowledge prioritised in policy, practice inconsistent. ☐ All staff trained on how to interact with traumatised or vulnerable survivors. Practice monitored, regular KAP surveys. ☐ Practice screened for stigmatising behaviour, biases and myth attitudes. Transgressions addressed when flagged. ☐ Minimising or discouraging behaviour during reporting always flagged and addressed. ☐ Survivors report feeling comfortable, understood, accommodated. Isolated examples of disbelief and discouragement.	☐ Continuous and comprehensive training on CARSV stigma, holistic and non-stigmatising approaches provided to all staff, with specialist training to those who regularly interact with survivors. ☐ Contextual knowledge prioritised, all staff trained. ☐ All staff trained on how to interact with traumatised or vulnerable survivors. Practice monitored with regular and comprehensive KAP surveys. ☐ Practice screened for stigmatising behaviour, biases and myth attitudes. Zero tolerance for transgressions. ☐ Survivors report feeling encouraged, accommodated, supported, believed.

Key critical questions:

- **What do First Responders know about survivor communities, their contexts, power structure and dynamics, gender inequalities, and cultural attitudes relating to CARSV and stigma?**
- **What do First Responders and justice officers know about stigma, how it affects survivors, the barriers it creates to access and pursue justice? Can they give examples of these?**
- **What role and responsibility do First Responders and justice officers think they have in countering stigma and reducing barriers to reporting and pursuing justice?**
- **What steps do they take to tackle and counter stigma?**
- **What training, guidance and processes are in place to support First Responders and justice officers to counter stigma in their work with survivors or when survivors face stigma in their communities?**
- **What do first responders and justice actors understand about secondary victimisation and how this can happen to survivors? What steps do they take to avoid or mitigate the risks of this?**

Data sources:

Internal documents: First responder training materials, guidance and records, procedures or protocols.
External: Survivor feedback, external reviews/reports.
Interviews and focus groups: First responding officers, interviewing officers, survivor liaison officers, survivors groups, survivor advocates, support organisations.

Useful resources, exercises or tools:
- Brooks-Hay et al, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019).
- UNFPA, Stigma Against Survivors of Conflict-Related Sexual Violence in Bosnia: Research Summary (2015).
- Skinnider et al/UN Women, UNDP & UNODC, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017).
- DAI/EN, Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors (2021).
- Thiara & Roy, Reclaiming Voice: Minoritised Women and Sexual Violence Key Findings, Imkaan (2020).
- Valinas, 'The Colombian Special Jurisdiction for Peace: A Few Issues for Consideration When Investigating and Adjudicating Sexual and Gender-based Crimes', (2020) JICJ 18.
- IICI, The Murad Code, Principle 6.

Competency Indicator ATJ11: First Responders and justice actors employ trauma-informed, non-stigmatising interview and communication skills, and create an environment which is supportive, sensitive and helps facilitate safe CARSV disclosure by survivors at the point of reporting, providing a statement and during testimony.

The statement-taking process can be extremely challenging and lengthy, requiring survivors to tell of events in specificities or orders which are often at odds with the survivors' own narrative of their experiences. Most survivors give their statement alone, but most considered that having someone else present to support them would have been hugely beneficial.

"*Regardless of the recency of the assault, the need to remember accurately was difficult for many victim-survivors, [whose] memories of assault(s) took a range of forms, including image-based, non-verbal, non-linear and polymodal. Sometimes specific details could not be recalled, and some […] found it difficult to put their experiences into words: Pippa: I only told them what I remember. At this point […] I'd been thinking about what had happened and things were coming back to me, about sort of feelings and like hearing things […] I remember feeling him in my right ear, like breathing, and I could smell him. This is all coming back to me when I'm sitting speaking to the police.*"

"*For those reporting historic [sexual violence] there is an added level of difficulty to this part of the process insofar as they were not so much remembering, but rather re-encountering the abuse of years ago: 'I've gone through hell actually because I'm on medication now for the flashbacks because of having to unearth everything' (Eleanor). Revealing the cyclical nature of trauma that entered and then emerged from the experience of giving a police statement of historic events, the same victim-survivor commented: 'They [the police] have no concept of the mess that they leave behind.'*"[188]

It is also extremely challenging for survivors later in the process when prior statements are read back to them or they have a chance before testifying to review recordings of statements: "*Eleanor: The statement in total was 55 pages and then having to hear it being read back to you […] it was brutal […] afterwards I was a complete wreck. I was really quite unwell, sort of shaking and just feeling sick. The first time I'd been speaking to [police officer] I realised at the end of the day that I was over, like this, my body had just very slowly caved in.*"[189]

Elements of good practices include:

1. **Individuals working with survivors demonstrate competency in effective and non-discriminatory communication that considers survivors' differences, capabilities, gender-sensitivity, intersectional vulnerabilities, and special population support (e.g. refugees, asylum seekers, men, LGBTQI+, persons with disabilities, minorities, children).**
2. **Individuals working with survivors to record their statement or take their testimony in court have specialist training in survivor-centred, non-stigmatising interview skills and approach survivors in an encouraging, sensitive, and patient manner.**

"*Debbie: The special police officers couldn't have been more sympathetic, understanding. The whole team were absolutely fantastic at getting the story out and getting the reports done and talking to everybody. They had a lot of patience, they were kind, […] that was really the best part of it. And we felt supported and I felt like they believed me, they listened to me […]*"[190]

Interviewers plan and implement safe interview plans, which use open questions and help survivors recount what happened to them in their own words and at their own pace. They avoid closed questions, and questions which imply blame (such as […] 'Why didn't you […] cry for help, run away, tell anyone'? Or 'Why did you […] approach the man, go out alone, wear that dress, take birth control pills with you, etc.')[191]

188 Brooks-Hay *et al*, *ibid*, 6-7.

189 Brooks-Hay *et al*, *ibid*, 9.

190 Brooks-Hay *et al*, *ibid*, 9.

191 These examples are taken from CSRV and SV cases, as reported by survivors and from court transcripts.

3. **First Responders and justice actors must ensure they are mentally ready** (including ensuring their own self-care, wellbeing and resiliency) **to support a survivor's choice to disclose to them what happened, to actively listen and to respond appropriately.**

Murad Code Principle 9.1: "*Be ready: We recognise that working with a survivor requires us to be prepared to listen with undivided attention and an open mind without assumptions or judgement; without our own reactions impacting the interaction; and ready to build trust and give the survivor control over the way they tell their story. If we are not in that state of mind, we will not proceed at that time.***"**

First Responders and Interviewers must understand that disclosing SV is difficult and must be prepared to allocate time to listen without rushing the person.

4. **Justice actors must put themselves in the survivor's shoes and treat them the way they would want to be approached.**

Individuals working with survivors to record their statements ensure survivors feel heard and believed during the reporting process. Individuals interviewing survivors show sensitivity and respect towards the survivor, only asking questions that are relevant without requesting explicit details which are not relevant. Individuals working with survivors individualise their approach and process based on the individual circumstances of the survivor, including whether information should be obtained through other means and not by an interview.

5. **First Responders and justice actors apply Principles 9 and 10 of the Murad Code in all interactions with survivors to ensure they take the time, use the right processes and create safe spaces for safe and respectful interactions.**

Law enforcement officers/caseworkers need to know when, where and identify who should be in the room to ensure the space feels comfortable for the survivor. They ask the survivor whether they feel safe to engage in a particular space and avoid assumptions. They offer breaks during interviews, and ensure needs and concerns are met (e.g. hunger, thirst, childcare responsibilities, physical and emotional comfort, etc).

6. **Officers are aware of body language and other forms of non-verbal communication or expression of distress or discomfort during reporting.**

This includes the officers own body language and what they are communicating to the survivor. For example, the Stern Report (2010) indicated that a raised eyebrow by a police officer was enough for a survivor to feel disbelieved and to withdraw from the justice process.[192] In addition, critically, a survivor's body language may alert an interviewer to distress, discomfort and retraumatisation – markers which require acknowledgement and appropriate responses.

192 Stern/UK Home Office, *ibid.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Officers not trained or monitored for competencies related to non-discrimination, intersectionality, or other vulnerabilities. ☐ Officers not trained on interview or communications skills. ☐ Officers do not adapt interview techniques or environments based on individual survivors, seen as unnecessary or inconvenient. ☐ Officers exhibit stigmatising, apathetic or insensitive attitudes, myth-based questioning of survivor behaviour (e.g. 'why did you not fight back', 'why did you report late'). ☐ Officers feel openly uncomfortable or impatient engaging with CARSV survivors, discourage them from reporting. ☐ Survivors feel unsafe, uncomfortable and undermined engaging with officers. Avoid further engagement and withdraw from process.	☐ Officers receive basic training on non-discrimination and intersectionality, not specific to CARSV or special population vulnerabilities. No monitoring of competency in practice. ☐ Officers receive basic training on interview skills and communications, not specific to trauma or vulnerable survivors. ☐ Officers rarely adapt interview techniques or environments based on individual survivors. Isolated examples of consulting and accommodating survivor. ☐ Officers exhibit apathetic or disinterested attitudes towards survivors based on biassed assumptions. ☐ Officers feel uncomfortable or impatient engaging with CARSV survivors, exhibit negative body language. Avoid cases with CARSV and engagement with survivors. ☐ Survivors feel uncomfortable, not believed when engaging with officers. Thought of further engagement daunting, discouraging.	☐ Officers receive basic training on non-discrimination and intersectionality, with select few trained on CARSV or special population vulnerabilities. Not mainstreamed, no monitoring of competency in practice. ☐ Officers receive basic training on interview skills and communications, with some skills related to trauma or vulnerable survivors. Not monitored in practice, many do not implement. ☐ Officers sometimes adapt interview techniques or environments to accommodate individual survivors. No consistent practice, ad hoc. ☐ Apathetic or disinterested attitudes towards survivors still exhibited, but often challenged in practice. No consistent monitoring. ☐ Some officers feel uncomfortable engaging with survivors and display negative body language. Open expressions of discomfort or negative attitudes usually challenged.	☐ All officers receive training on non-discrimination and intersectionality with elements of CARSV and special population support. Competency measured through regular testing, inconsistent monitoring of practice. ☐ All officers receive training on interview skills and communications, including SCA, trauma-informed and non-verbal communications. Some monitoring in practice, transgressions usually addressed. ☐ Officers expected to adapt interview techniques or environments to accommodate individual survivors. Limited consultation with survivors in practice. ☐ Biassed, apathetic or stigmatising attitudes and interactions with survivors screened for and challenged. ☐ Officers trained and sensitised to comfortably interact with CARSV subject matter and survivors. Counselling to increase empathetic, understanding attitudes towards survivors.	☐ All officers trained and competent on non-discrimination and intersectionality with elements of CARSV and special population support, some with specialist knowledge. Competency regularly tested and consistently monitored in practice. ☐ All officers trained and competent on interview skills and communications, including SCA, trauma-informed and non-verbal communications. Competency regularly tested and consistently monitored in practice. ☐ Officers consult and adapt interviews techniques or environments to accommodate individual survivors. ☐ All officers trained and feel comfortable to interact with CARSV subject matter and survivors. Empathetic, understanding attitudes towards survivors standard practice. ☐ Zero tolerance for expressions of stigma. Officers exhibiting not allowed to interact with survivors and subject to disciplinary measures.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
		□ Survivors report mixed experiences, many still feel uncomfortable and not believed. Isolated examples of supportive, empowering experiences.	□ Expressions of discomfort, stigma attitudes or other discrimination challenged. Officers exhibiting not allowed to interact with survivors. □ Survivors generally report feeling comfortable and understood when reporting. Most find First Responders empowering and supporting, conducive for disclosure.	□ Survivors consistently find reporting process and environment comfortable, empowering and supporting, conducive for disclosure.

Key critical questions:

- **What training and expertise do first responders, interviewers and those taking testimonies of CARSV have? How are competencies tested and demonstrated? Are there any skills assessments, supervision or oversight to ensure these competencies?**
- **What communication skills training do first responders and interviewer have, including in relation to non-stigmatising, non-discriminatory, inclusive communications for different groups and intersecting characteristics and identities of survivors?**
- **What policies and checks are in place around first responder and interviewers' own mental state and readiness for the responsibility of sitting with a survivor, listening to what they say and accurately recording that. What policies and supports are in place for mitigating and managing first responder and interviewer vicarious trauma and burn-out?**
- **What interview plans, structures and methods are used by first responders and interviewers?**
- **Do they know what a trauma-informed interview is and how to conduct one? Have they been given any training or tools for this? How do first responders and interviews prepare for an interview? How do they select the space or interview room? How do they arrange the furniture? What do they wear? How do they decide when it will be and allocate time for each interview? How are personnel allocated for this work? How do they decide who is in the room? When do they take breaks? How is this decided?**
- **What is discussed and agreed with a survivor in advance - do they get any choice of personnel and who is present (including gender), location, space, time/date and duration, how the interview is conducted or what is discussed? Can the survivor determine when to take breaks or what questions they wish to answer and which ones they do not.**
- **What are the first responders/interviewers' main concerns about interviewing CARSV survivors?**
- **What do first responders/interviewers believe is the right tone and way of interacting with survivors?**
- **What do first responders/interviewers believe are their objectives and main responsibilities?**
- **What are the reactions of the officer when hearing about SV?**
- **What do survivors feel about the reporting and statement-taking processes? What did they feel about the officers' attitude and interaction with them? What would they have preferred to happen? Did survivors feel safe, supported and able to trust the person(s) in the room and involved in the process?**
- **Did survivors feel that their distress, discomfort and any pain from the interview was recognised and responded to by the first responder/interviewer?**

Data sources:

Internal documents: First responder and interviewing training materials, guidance and records, procedures or protocols, interview plan templates and records, vicarious trauma policies and exercises, burn-out assessments and monitoring, KAP surveys.
External: Survivor feedback, external reviews.
Interviews and focus groups: First responding officers, interviewing officers, survivor liaison officers, VWU officers, prosecutors, survivors groups, survivor advocates, support organisations,

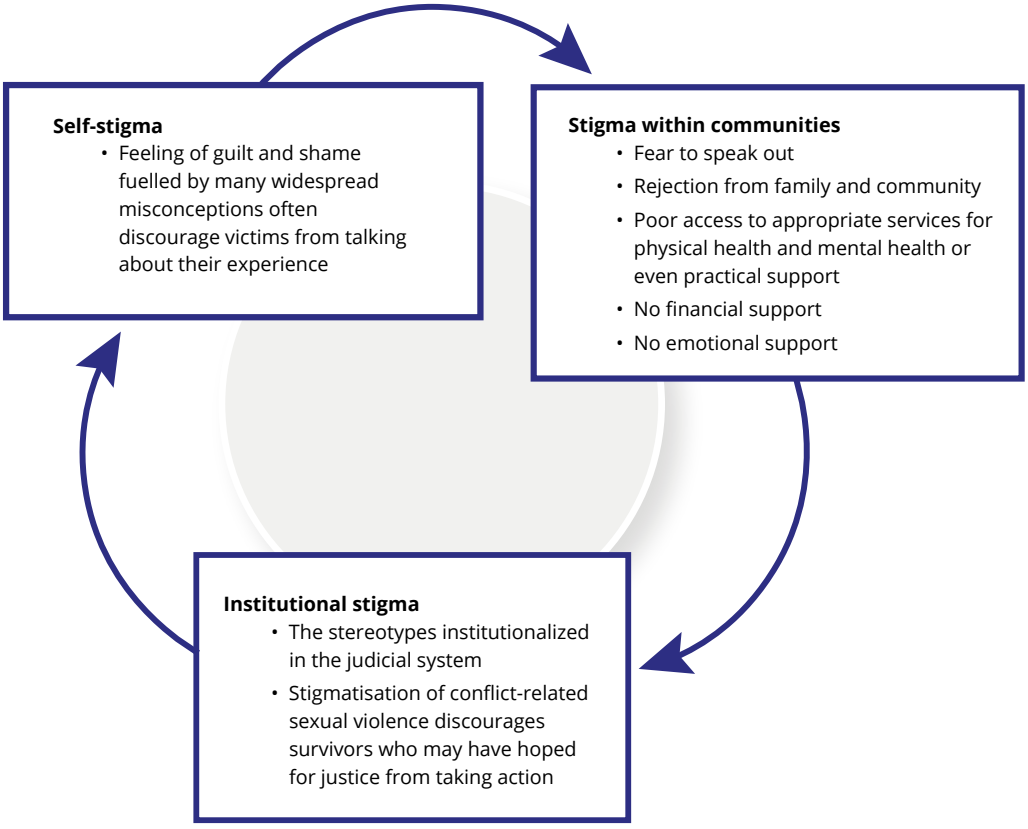
Useful resources, exercises or tools:

- Freedom From Torture, Beyond Belief: How the Home Office Fails Survivors of Torture at the Asylum Interview (2019).
- UNODC, Handbook on Effective Prosecution Responses to Violence Against Women and Girls (2014).
- New Zealand Law Commission, The Justice Response to Victims of Sexual Violence: Criminal Trials and Alternative Processes (2015).
- IICI The Murad Code, Principles 9 and 10.

CHAPTER THREE — SUPPORT SERVICES

Accessing comprehensive support services can assist survivors in dealing with the practical and emotional demands of the criminal justice process. However, the triple stigma of CARSV serves as a significant barrier to the criminal justice process.[193] The figure below provides some examples of these layers of stigma and its implications for the criminal justice process.

Furthermore, the stigma associated with CARSV has a devastating impact on every aspect of survivors' lives and makes them vulnerable to long-term physical and psychological problems, wider impacts including signs of post-traumatic stress, depression or anxiety (including insomnia), and other effects, such as physical disability related to fistula and other traumatic genital injuries. Similarly, chronic pain, a common consequence of CARSV injuries, may affect the ability to perform day-to-day tasks, e.g., parenting or caring for loved ones, for those with caring responsibility. It is, therefore, vital that supporting services dynamically coordinate support with community-based services including justice actors to ensure that survivors receive the appropriate and responsive support beyond criminal justice outcomes that would enable survivors to start their recovery journey. The model of response for survivors of CARSV must focus on the sequence of needs and risk factors. This is likely to involve a wide range of different services to respond to some of the serious effects such as long-term physical and psychological difficulties, and other interventions focusing on a reduction in survivors' ability to trust, difficulties with forging new relationships or maintaining positive relationships with family or friends, or at work or study. Failing to provide timely holistic support could potentially add external pressure or influence a survivor's decision to disengage from support services and/or withdraw from the justice process.



193 TRIAL International, 'Sexual violence: Stigma at all levels' (31 March 2020).

CARSV survivors are likely to encounter many complex physical health and mental health challenges in their justice journey, and they require input from various community-based services to meet their needs.[194] Otherwise, support services will have a much more limited focus, with much poorer support for survivors as a result. Community-based services are vital to encourage recovery, reintegration, and minimise the increased risk for continued emotional, physical and financial suffering at the end of the criminal justice process.

Who Provides Support Services to CARSV Survivors as They Access and Pursue Justice:

The availability and nature of CARSV support services varies hugely across different settings. In conflict and crisis settings, the national infrastructure of services may have been replaced by humanitarian response systems, coordinating a combination of international and community-generated services. The level of coordination and integration of services into one cohesive and comprehensive response varies, as does the range of quality and safety of services. In remote settings, there may be little organised, accessible structure for services within the vicinity, and barriers to accessing distant services can be a huge challenge.

Accessibility goes beyond just location and distance. There can be language barriers (when survivors are displaced across borders), eligibility restrictions (where services are offered for survivors of one type of violence and not another, or to one gender, etc.), suitability or responsiveness issues for special populations and the range of diverse intersectional individuals within those communities (e.g. children, adolescents, people with disabilities, people from LGBTQI+ communities, the elderly, etc.). Even in settings where there are well-established, coordinated sexual violence response services, CARSV survivors still face barriers to access. For example, where the violence took place in another country, national services where the survivor find themselves after displacement may not immediately recognise the applicability of peacetime sexual violence responses to CARSV survivors. Stigma, as described above, is a huge barrier to accessing support services, common across all settings.

For survivors who decide to pursue criminal justice, support services ideally be an integrated, coordinated system of support within the justice system and its functions and external support services in the community or otherwise accessible to the survivors beyond and outside the court process. For internal support, some court services or registries which administer courts may have "*Victim and Witness Units*" (VWU) which coordinate support for witnesses and survivors participating in court processes. There may also be internal support persons within other justice functions, such as law enforcement or investigation teams, who provide support at earlier stages in the justice process (before decisions about witnesses are taken). For external support, there may be support services which have integrated referral systems to access justice or who specifically work with survivors as they navigate the justice process.

It is important to note the increase in remote justice systems adjudicating CARSV. For international courts, relocated hybrid courts or courts utilising extra-territorial jurisdiction, justice actors and systems may be remote from the crimes, but also a long distance away from where survivors live. This can also be the case for any State court operating in a capital city, which may be far away from survivors living in rural or remote settings. Ensuring cohesive, consistent and culturally survivor-centred support before, during and after survivor's engagement with justice is a lot more challenging for actors at a distance and unfamiliar with the survivor's realities and communities.

194 See Part B Tool, Sequence of Needs and Risks for CARSV Survivors.

Within this range of potential support service systems and actors, this Chapter can be used by internal support teams, such as VWUs or support teams within investigation and other justice functions or by any external support service which works with survivors who chose to pursue justice. For all types of support services, this assessment and subsequent capacity and competency building efforts can improve survivor-centred and non-stigmatising services, which proactively challenge stigma within their own organisations or departments, and within the justice system as well.

INDICATORS AND ASSESSMENTS

This chapter is organised around three common themes:

A. Organisational Culture and Leadership

B. Survivor Interaction and Engagement

C. Technical Capacity and Competency

Indicators are numbered using the acronym **SS** for "*Support Services*", for example SS1, SS2, etc.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
SS1 Support service leadership appropriately prioritises and resources CARSV survivor-centred, stigma-reduction approaches in their services.
SS2 Support services have recruitment, selection and retention policies and processes which build teams that are diverse and representative, and support mainstreaming of CARSV and stigma reduction competencies.
SS3 Support services are part of a coordinated, integrated support system around survivors participating in justice.
SURVIVOR INTERACTION AND ENGAGEMENT
SS4 Support services adopt an inclusive approach to tackle barriers to access and support for all groups of survivors, without discrimination.
SS5 Support services pursue an empowerment approach, removing and/or minimising barriers to survivors' participation, providing information about their rights and ensuring informed consent and survivor agency in all their interactions.
SS6 Support services promote trauma-informed processes and interaction, understanding survivors as individuals through an intersectional awareness and risk assessing and mitigating risk/vulnerability at all stages of engagement including after trial.
TECHNICAL CAPACITY AND COMPETENCY
SS7 All support services for survivors are non-stigmatising and proactively counter internalised and experienced stigma by survivors.
SS8 Support services personnel working with survivors demonstrate CARSV, trauma and stigma competency (knowledge, skills, attitude, and practice) in all their actions and these competencies are mainstreamed, socialised, and rewarded across teams.
SS9 Support services are present and proactive during and throughout survivor interaction and engagement with the justice process, actively intervening to support, protect and mitigate the effects of stigma.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator SS1: Support service leadership appropriately prioritises and resources survivor-centred, stigma-reduction approaches in their services.

Organisational culture and values are set by leadership. In order to ensure survivor-centred, non-stigmatising services for survivors, leadership must ensure a culture of respect, dignity and survivor-centred values is embedded into all aspects of their work process and practice, and is upheld and embraced by their staff. Individuals supporting survivors should be a model of integrity for others and provide leadership to make sure survivors' wellbeing is protected and to reduce stigma in supporting services and external services including the justice system.

Elements of good leadership include:

1. **Instituting and enforcing codes of conduct, survivor commitments, standards of service, and standard operating procedures which require survivor-centred approaches, and non-stigmatising behaviour and practice.**
2. **Mainstreaming CARSV competencies and attitudes across leadership, management, teams and practice/processes.**
3. **Budgeting to resource survivor-centred approaches (including outreach, barriers to access strategies, language, and access assistance in locations remote from court/work).**
4. **Setting key performance indicators around CARSV competencies (including attitudes) and survivor-centred approaches, as well as implementing decision-making review points/supervision in CARSV cases.**
5. **Leadership setting good examples as role models through their actions on prioritisation, non-stigmatising language and messaging, survivor consultations, etc.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leadership awareness of importance indicated. ☐ No steps taken about CARSV or stigma. ☐ Leadership communications include stigmatising language and SV myths. ☐ No budget-lines. ☐ No SCA or stigma aspects in CoCs/SOPs.	☐ Some leadership awareness but not communicated. ☐ Leadership still uses stigmatising language and expresses SV myths. ☐ Isolated steps taken ad hoc at lower management or practitioner level. ☐ No budget-lines, but examples of ad hoc resourcing. ☐ Isolated examples of SCA aspects in CoCs/ SOPs.	☐ Some leadership communication about importance. ☐ The start of some basic policies and provisions around expectations. ☐ No KPIs focused on survivor experience, SCA and countering myths. ☐ No consistent data collection for leadership review. ☐ No review or checkpoints on decision-making around CARSV. ☐ Some budget lines allocated for some aspects.	☐ Leadership statements emphasise importance. ☐ Clear steps taken to establish a cohesive set of policies, codes of conduct and expectations. ☐ Budget and resources allocated. No monitoring, review or protection. ☐ KPI set but not consistently reported against or responded to. Not fully covering the issues. ☐ Inconsistent messaging or practice.	☐ Consistent leadership statements and practice. ☐ Established set of policies and code, well-known, welcomed and adhered to by staff across all levels. ☐ Established KPI which are actively reported, reviewed and responded to. ☐ Comprehensive budget-lines protected, reviewed and adjusted as necessary. ☐ Culture and practice of the service reflects leadership goals.

Key critical questions:

- **What is the leadership's understanding and position on CARSV? What matters or issues are prioritised ahead of CARSV?**
- **What language does the leadership use in relation to CARSV, survivors and perpetrators?**
- **What steps has the leadership taken to prioritise CARSV and tackling stigma?**
- **What is the leadership's attitude towards survivor-centred approaches?**
- **What is the staff level of awareness of those steps, including familiarity and application of policies, SOPs, codes, commitments, etc.? What is the staff's attitude towards these steps?**
- **What reporting and data does the leadership require on CARSV, survivor-centred approaches and stigma? What follow-up action have they taken?**
- **How is the budgeting process done each year? How are survivor-centred services reviewed and factored in each year? What are the identifiable budget lines for this? How are these protected and monitored?**
- **How often has the leadership met with survivor networks or groups or civil society organisations which support them?**
- **How has leadership instituted and enforced codes of conduct, giving prominence to survivor comments, standards of service and operating procedures that would involve survivor-centred approaches and non-stigmatising behaviour and practice? How do they and staff describe the benefits from this?**
- **Are CARSV competencies and attitudes mainstreamed across leadership, management, teams, and processes made more survivor-focused?**
- **Are key performance indicators focused on CARSV competencies and survivor-centred approaches as well as the implementation of decisions and supervision of CARSV cases?**
- **Does leadership set a good example through actions on prioritisation, non-stigmatising language, messaging, and survivor consultations?**

Data sources:

Internal: Organisational statements of values, codes of conduct, tools and training materials on survivor-centred and trauma-informed approaches, KPIs, PERs, KAP surveys on stigma and CARSV competency, budget documents, memoranda, notices and other internal communications directed for staff, budget documents.

External: Press releases, speeches, public notices or other external communications related to CARSV, survivor feedback, CSO reports.

Interviews and focus groups: Organisational leadership, support persons, survivors and survivors groups.

Competency Indicator SS2: Support services have recruitment, selection and retention policies and processes which ensure equality, diversity and inclusivity in their teams, workplace and cultures, and support mainstreaming of CARSV and stigma reduction competencies.

Recruitment for support services should prioritise candidates who are knowledgeable and experienced in dealing with stigma. In the selection process priority should be given to candidates who can deal comfortably with trauma related to CARSV, stigma, and its different manifestations. Prioritising these skills and experiences in recruitment and selection processes is the only way to effectively ensure support services have the specialist knowledge needed to guide the survivor through the justice process without exposing them to further victimisation.

Effective support also depends on a culture of inclusion where people's differences are truly valued, respected and fully utilised. Given findings that men are more likely to accept harmful gender narratives and rape myths than women, ensuring a diverse workplace and inclusive workplace culture where such beliefs are challenged and not accepted is key. Workplace culture becomes a critical element to reducing stigma, stigmatised attitudes and stigmatising behaviours among justice actors. Inclusive and diverse support personnel are also more well-positioned to support survivors and ensure they feel as comfortable and empowered as possible while navigating the justice process.

Elements of the best practice for this indicator:

1. **Support services prioritise significant experience in working to counter structural and internalised stigma, rape myths, and gender stereotypes in recruitment, these being specifically assessed in interviews by asking questions about stigma and sexual violence.**
2. **Support services select candidates with excellent interpersonal and professional skills and appropriate qualifications who can work with traumatised individuals and facilitate engagement. Candidates' attitudes towards stigma, sexual violence and rape myths are assessed, and they are interviewed about their comfort levels in dealing with sexual violence and survivors.**
3. **Composition of the support services team is diverse, representative and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. It includes support personnel familiar with different contexts, and aware of particular manifestations of stigma, rape myths, and gender stereotypes. Leadership has developed and implemented recruitment, selection, retention and advancement policies, processes and practices that promote and advance equality, diversity, and inclusion (EDI) throughout the support services.**
4. **Support service leadership has set policies on values, ethics, integrity, gender equality and sexual harassment. Clear policies and expectations counter discrimination, including intersectional discrimination in the workplace and in work practice. There is zero tolerance in policy and practice for language, behaviours and actions that discriminate against individuals, including any form of harassment, including sexual harassment or abuse.**
5. **Leaders consistently communicate and model expected behaviours. Active, engaged leaders are committed to fostering a work culture that actively promotes equity, diversity and inclusion and sets and sustains a tone of mutual respect. Leaders at all levels are prepared to challenge personal and organisational core beliefs, values, traditions, negative assumptions and harmful language. Reporting procedures in place and accessible to any staff experiencing discrimination or harassment.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness of the need for diversity or representative teams. ☐ No diversity, equality and inclusion in recruitment policy. No measures to recruit and retain women or persons from minority groups. ☐ No data collection, monitoring or review. ☐ No mention of or encouragement for different genders and groups to apply in vacancies. ☐ Support services' selection committee does not prioritise CARSV or stigma competencies in recruitment. ☐ Candidates interviewed or selected include no specialists with relevant expertise, have no diversity (ethnic, racial, gender or otherwise). ☐ Candidates interviewed or selected are not tested for their ability and comfort-level to talk about CARSV, stigma or other trauma experiences.	☐ Basic statements by leadership recognising gender and diversity but no organisational response or policies. ☐ Nothing monitored or reviewed. Little data available. ☐ Recruitment process and records not transparent, consistent or objective. ☐ Isolated, small pockets or examples of diversity. ☐ All male leadership, perhaps ad hoc isolated female team leader. ☐ The candidates have no knowledge or familiarity with stigma, CARSV or gender issues. ☐ Candidates interviewed or selected include no specialists with relevant expertise, have no diversity (ethnic, racial, gender or otherwise).	☐ Basic diversity and equality measures in recruitment and retention policy. No proactive measures to recruit or retain women or persons from minority groups. ☐ Basic data on gender diversity available. ☐ Formal, transparent recruitment processes, criteria and records. ☐ Questions on gender attitudes included in interviews. Not seen as important or influential in outcome. ☐ More diversity in teams, still little diversity in leadership. Selected candidates show some diversity and experience but inability to apply it to particular situations. ☐ Some psychologists or counsellors hired. ☐ Candidates need some help in discussing trauma issues and stigma.	☐ Diversity and inclusivity measures in recruitment and team selection policy. ☐ Data on gender and some diversity available. ☐ Focal points or advisors for gender or CARSV. Not mainstreamed. ☐ No expectations or testing of CARSV and gender competencies in recruitment unless for specific CARSV position. ☐ More representative recruitment panels. ☐ Organisational responses have yet to achieve gender parity or diversity. ☐ Still predominantly male leadership and decision-making, more diverse at service delivery level.	☐ Well-established diversity and inclusivity measures in recruitment and retention policies with proactive measures to recruit and retain diverse team members. ☐ Disaggregated data across teams, intersectional/ full human dimensions captured and monitored. ☐ Gender parity and diversity reflected across all teams and leadership positions. ☐ Candidates tested for understanding of CARSV stigma and effects of traumatisation. ☐ Psychologists or counsellors hired are able to help translate esoteric knowledge into practical applications.

Key critical questions:

- **What is the recruitment process for service providers? What are the selection criteria? Are they objective? Do they focus on competence and integrity, and include EDI, SCA, trauma-informed and CARSV competencies? Is CARSV and stigma experience prioritised in selection processes and shared by leadership?**
- **Do selection processes test the candidates' abilities to relate and communicate with interviewing staff, abilities to answer questions such as what are the effects of stigma, whether candidates are comfortable dealing with strong feelings, the candidates' knowledge about gender and gender inequality, the candidates' attitudes about central issues of CARSV?**
- **What specific measures are in place to ensure recruitment and staffing processes are based on merit rather than on personal opinion, preference, bias or stereotypes?**
- **What is the level of diversity in the support service personnel, for instance in terms of gender, LGBTQI+, race/ethnicity, faith? Is the level of diversity different at general staff, management and leadership levels?**
- **What is the level of contextual awareness in teams? Does the team include persons representing the context community/ country, speaking the native language and with cultural competency of the specific context? How is this factored into team selection, recruitment and induction training?**
- **How does leadership view the importance of EDI in organisational practice? Is it seen as relevant to accessible justice and a safe reporting environment? Is it seen as relevant to how support services are able to engage with survivors?**
- **What are the policies, procedure and enforcement relating to sexual harassment, abuse, non-discrimination, and EDI in the support service? What do staff know about it? How do staff feel about reporting deviations from policies or procedure?**
- **What beliefs, attitudes, behaviours, actions, gender and other forms of discrimination are present in the organisation? For example, against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, persons with criminal records?**
- **What steps are being taken to eliminate these biases, beliefs, attitudes and discriminatory practices?**
- **What complaint mechanisms are available to staff to lodge concerns?**

Data sources:

Internal: Organisational EDI documents, strategic plans, diversity and workplace policies and reviews, human resources records, recruitment strategies, policies and practices, vacancy advertisements, PER and promotion records, harassment and non-discrimination policies and practices, EDI training, induction and CPD materials and records, complaint mechanism reports and reviews.
External: Survivor feedback, external reviews and focal points on organisational diversity.
Interviews and focus groups: Organisational leadership, EDI officers and staff, diverse samples at all levels.

Competency Indicator SS3: Support services are part of a coordinated, integrated support system around survivors participating in justice.

It is vital that supporting services dynamically coordinate support with external services including justice actors to ensure survivors' participation and consistent support throughout.

'One-stop shops' are best practice in national settings, so that a survivor-centred specialised response can be delivered in one place, without unnecessary repetition, multiple locations and appointments, and other undue challenges. In displacement, conflict or crisis setting, support services may be coordinated through single access points, skilled case manager focal points and safe and confidential referral systems. However, it is rare that justice actors and justice systems are part of these integrated responses. That means that while support systems may be accessible, survivors then have to step out of this integrated support to access justice, or justice actors may have to come to them outside this system. It is the responsibility of the justice actors to integrate coordinated support for survivors into all steps of their process and work, or to work to plug into integrated support systems.

Elements of good practice for this indicator include:

1. **Being coordinated and integrated in survivor justice engagement, with MoUs and agreements, joint protocols and shared tools, regular joint meetings and reviews to ensure survivors' interests and rights are protected in the course of the justice process. This applies to internal justice actors and support, as well as external support services.**
2. **Establishing information-sharing and coordination protocols with a range of partner agencies and services to respond to the multi-faceted needs of survivors.**
3. **Survivors have access to psychosocial services, including specialist support concerning CARSV, discreetly and through the same point of contact as general legal services to minimise the possibility of them being singled out and stigmatised as CARSV survivors.**
4. **External support services monitor and track justice actors' performance with survivors, particularly the level to which justice institutions adopt survivor-centred, non-stigmatising and empowering approaches.**
5. **A single point of contact who provides tailored specialist support to survivors.**
6. **An appropriate coordination plan with understandable detailed information regarding support services to reduce vulnerability and powerlessness, and provide ongoing risk management.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support services do not coordinate with other justice actors. agreements. ☐ Points to access psychosocial services and legal services scattered. Survivors must seek services at specialised locations. ☐ Support services do not monitor or evaluate other justice actors' performance on SCA, non-stigmatising treatment and survivor experiences. Responsibility for monitoring seen as someone else's job. ☐ No coordination for risk management, assessment or continuing support/ protection for survivors. ☐ Survivors must retell their story repeatedly at different points of the process due to lack of coordination.	☐ Support services have limited coordination with some other justice actors, namely on a personal/team level with closely related services/ colleagues. ☐ No formal cooperation or efforts to conclude MoUs or framework agreements. ☐ Access points for some psychosocial and legal services grouped together in urban centres, though still scattered in some especially rural/remote areas. Survivors must seek services at specialised locations. ☐ Support services do not monitor or evaluate other justice actors' performance on SCA, non-stigmatising treatment and survivor experiences. No formal coordination for risk management, assessment or continuing support/ protection. Isolated examples of ad hoc coordination on personal/individual level. ☐ Survivors must retell their story repeatedly at different points of the process. Isolated examples of individual personnel trying to mitigate lack of formal coordination.	☐ Support services have some coordination with other justice actors, with isolated examples of formal cooperation through MoUs or framework agreements. ☐ Access points for psychosocial and legal services grouped together in urban centres and some remote areas, increasing efforts to disseminate services to remote/rural areas. ☐ Support services conduct some monitoring of other justice actors' performance on SCA, non-stigmatising treatment and survivor experiences. Some formal coordination for risk management, assessment or continuing support/ protection (no full continuity). ☐ Some efforts to limit survivors having to retell their story repeatedly at different points of the process due to lack of coordination, though in practice experiences vary and no consistency.	☐ Support services have formal procedures for coordination with other justice actors (MoUs or framework agreements). ☐ Access points for psychosocial and legal services grouped together in urban centres and remote areas, though in practice accessibility and experiences vary. Services offered at non-specialised locations ☐ Support services monitor and evaluate other justice actors' performance on SCA, non-stigmatising treatment and survivor experiences, though follow-up lacking. ☐ Formal coordination for risk management, assessment or continuing support/protection implemented as a matter of standardised procedure and monitored, in practice interruptions occur.	☐ Support services have formal procedures for coordination with other justice actors (MoUs or framework agreements), habitually implemented and monitored in practice. ☐ Access points for psychosocial and legal services grouped together in urban centres and remote areas. Services offered at non-specialised locations. Performance and survivor experiences monitored. ☐ Support services monitor and evaluate other justice actors' performance on SCA, non-stigmatising treatment and survivor experiences, recommendations provided where performance found insufficient. ☐ Formal coordination for risk management, assessment or continuing support/ protection, in practice continuous and habitually monitored.

Key critical questions:

- **What relationships, cooperation and coordination agreements have been established between justice functions and health, support and other government services, NGOs and human service providers to drive and support coordination of effective trauma-informed, survivor-centred support for CARSV survivors engaging with justice actors or participating in justice processes?**
- **What joint procedures and tools have been adopted in relating to integrating support for survivors before, during and after justice processes? What shared tools are used?**
- **How often do justice functions, including VWU, meet at the leadership level with support services? How often do the investigation authorities meet with other functions at the working level on cases?**
- **What structures, policies, processes and procedures are in place to:**
  - **coordinate referrals and responses to best meet the needs of CSRV survivors?**
  - **maintain confidentiality in communications, documentation and information sharing?**
  - **permit CSRV survivors, government and civil society to ask questions, offer insights, voice concerns or make complaints about if and how CSRV services are being tailored and delivered in impartial, supportive ways?**
- **How is implementation of and adherence to such agreements, procedures and tools monitored and reviewed? At what level and how often does this occur?**
- **How do survivors describe their interaction with different functions during the process? How many times do survivors have to recount their experience to different functions? How many different liaison and contact points are there for survivors? Are there gaps at handover points or where functions intersect or overlap? Are there unnecessary or uncoordinated interactions or engagements?**
- **What mapping of support services do justice actors undertake? When? Does it include vetting?**
- **What tools or databases or guidance are available for this preparation work?**
- **How is stigma addressed in the principles that serve as the foundation for shared service delivery?**
- **What communication systems are in place to inform community partners, stakeholders, decision-makers, donors and others about advances being made to strengthen responses and services for CARSV survivors?**
- **How does leadership ensure that survivor access to psychosocial services, including specialist support concerning CARSV, general legal services designed to minimise the possibility of them being singled out and stigmatised as CARSV survivors, be made more readily available?**
- **How could a single point of contact be strengthened and enriched to provide tailored support for survivors?**

Data sources:

Internal: Interagency coordination agreements, memoranda of understanding, meeting minutes and notes, joint policies, SOPs, tools, information sharing and confidentiality tools, survivor liaison strategies and plans, practice guidelines and referral agreements, stakeholder and community communication strategies.

External: Survivor feedback, stakeholder and community feedback.

Interviews and focus groups: Organisational leadership, support persons and other staff, other coordinating service providers, service providers, survivors and community representatives.

B. SURVIVOR ENGAGEMENT AND INTERACTION

Competency Indicator SS4: Support services adopt an inclusive approach to tackle barriers to access and support for all groups of survivors, without discrimination.

Experience of CARSV stigma intersects with other oppressions originating from the various social inequalities based on, for instance, SOGIESC, race, economic status, immigration status, national origin, and disability, among other aspects of one's identity. This systemic discrimination inevitably impacts access to support services. Therefore, a survivor-centred approach to CARSV must be intersectional.

Elements of good practice in promoting an inclusive survivor-centred approach in CARSV include Support Services:

1. **Combining work with educational outreach programmes to battle stigma attitudes and help communities understand and empathise with survivors regardless of their diverse background and social status.**
2. **Ensuring that survivors have access to linguistic and cultural mediation services/interpreters to tackle stigma and self-stigma.**
3. **Ensuring outreach also in rural and remote areas and closed communities to combat attrition caused by internalised stigma or fear of communal rejection, ostracisation, and stigmatisation.**
4. **Ensuring outreach is interdisciplinary and inclusive, purposefully taking into account the full range of survivor identities and different manifestations of stigma, including intersectional vulnerabilities and special population support (e.g. women, men, people from LGBTQI+ communities, persons with disabilities, children).**
5. **Ensuring widespread, accessible and varied outreach delivered in a culture-sensitive manner, in a language understood by the target community, and via different media (e.g., radio, internet, leaflets, and CSO involvement).**
6. **Having follow-up outreach targeting survivors after their formal involvement in the justice process to ensure they do not feel abandoned or used after their participation.**
7. **Including educational anti-stigma interventions, presenting factual information about intersectional awareness in CARSV and correcting misinformation or contradicting negative attitudes and beliefs in pursuing justice.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support services are not aware of and do not employ intersectional approaches in CARSV responses. ☐ No specific CARSV outreach programmes for survivor-engagement or community anti-stigma education. ☐ No consideration of different survivor identities in the design or implementation of general survivor outreach programmes. ☐ Services designed and accessible only to some survivors, namely those representing the majority race/ethnicity/culture in urban areas. Marginalised survivors (men, LGBTQI+, disabled persons) in remote areas feel excluded and unable to access.	☐ Isolated examples of intersectional approaches in support services by individual support persons, ad hoc. ☐ Some efforts for CARSV outreach programmes for survivor-engagement but without consideration for different survivor identities or intersectionality. Limited media (e.g. only online) restricting reach of audience. ☐ Services designed and accessible only to some survivors, with survivors in marginalised groups feeling excluded and unable to access.	☐ Support services employ some intersectional approaches towards CARSV, but not as a matter of organisational policy. ☐ CARSV outreach programmes designed for survivor-engagement with some efforts for intersectionality, not comprehensive. Various media used. ☐ Some services designed to be accessible to a range of different survivor identities; in practice some marginalised groups still struggle to access.	☐ Support services seek to employ intersectional approaches towards CARSV survivors as a matter of organisational policy, not fully implemented in practice. ☐ CARSV outreach programmes designed to engage with the full range of different survivor identities, with specific efforts made to cater to intersectional vulnerabilities and marginalised groups. Various different media used, including CSO engagement and outreach in rural and remote areas.	☐ Support services have intersectional approaches towards CARSV survivors firmly embedded into organisational policy and practice. ☐ CARSV outreach programmes designed to engage with the full range of different survivor identities, with specific efforts made to cater to intersectional vulnerabilities and marginalised groups. Various media used, including CSO engagement and outreach in rural and remote areas. ☐ Specific outreach programmes employed for community education concerning CARSV, stigma and its impact on survivors.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No follow-up outreach to assist survivors after their formal involvement in the justice process. □ No linguistic or cultural mediation services provided.	□ Survivors have access to some cultural and linguistic mediation services, but not as a matter of consistent practice, limited understanding of stigma and its impact on survivors.	□ Survivors have access to some cultural and linguistic mediation services that are trained in stigma and its impact on survivors, still not covering or catering to the full range of different survivor identities. □ Follow-up outreach efforts provided, though many survivors unaware and therefore do not access.	□ Survivors have access to cultural and linguistic mediation services that are trained in stigma and its impact on survivors. Efforts to cater to a broad range of different survivor identities, though not always practically available. □ Follow-up outreach efforts provided, with information provided to survivors to ensure their ability to access.	□ Survivors have access to cultural and linguistic mediation services with specialist training in stigma and its impact on survivors. Services cater and are available to full range of different survivor identities. □ Support services proactively inform survivors and implement follow-up outreach.

Key critical questions:

- What awareness is there about intersectional barriers to access and how do services adapt to ensure inclusive access for all different groups and unique individuals? What have they done to reduce these barriers?
- What preparations, understanding and strategies to support services have to tackle CARSV stigma (all three layers)?
- What priority is given to outreach? How is outreach resourced and funded? Is it part of the core budget or does it rely on specific donors or funding calls? What kind of community engagement and outreach activities have been undertaken? What steps have been taken to ensure this is inclusive and reaches marginalised, closed or persecuted groups? What steps have been taken to reach remote, rural, low literacy and low resource/limited accessibility CARSV survivor communities?
- What reasonable accommodation assessment and measures have been taken to ensure accessibility for persons with disabilities?
- What measures and processes are in place to ensure access for children of all ages, all genders, people with evolving capacities, taking into account their intersectional and situational/cultural realities?

Data sources:
Internal: Policies, guidance and tools on survivor interactions and CARSV competency, non-discrimination and intersectionality training policies, tools and evaluations, community outreach plans and strategies, data on different access points and services accessible in different areas, referral policies, budget documents.
External: Survivor feedback, CSO feedback, community feedback.
Interviews/focus groups: Survivors groups, leadership, support persons, community representatives.

Competency Indicator SS5: Support services pursue an empowerment approach, removing and/or minimising barriers to survivors' participation, providing information about their rights and ensuring informed consent and survivor agency in all their interactions.

Without survivor participation, it is impossible to promote empowerment in pursuing justice. Hence, survivor empowerment is a personal process that one completes independently; support service providers can only aid in this process by involving survivors in decisions that affect their journey through the justice system.

The informed consent process is crucial. It is much more than simply providing a form for survivors to read and sign. It should consider issues of power and control, and ensure that the survivor is not influenced by the supporting individual's authority or attitude. It is important that a survivor is given information about each of the following:

- The nature of questions that may be asked, e.g., personal, possibly upsetting;
- The subject matter(s) to be discussed;
- The potential risks and benefits involved in pursuing justice (bearing in mind that survivors may misinterpret the possibility of personal benefit or other forms of data collection and medical examination etc.);
- The precautions being taken to protect confidentiality;
- Whether the information will be shared, and if so, how and with whom (if identifiable information is going to be shared with third parties, the identity of these third parties must be disclosed);
- Their rights to refuse to take part in the interaction and/or to answer any particular questions or parts of the interaction and their right to put restrictions on how the information they have given is used;
- Clear information-sharing protocols and confidentiality statements, such as sharing a piece of written information and allowing the survivor time to read and ask questions.

Elements of good participation and survivor empowerment to reduce stigma in CARSV require support services to have:

1. **Dialogues around survivor-centred approaches, enhancing survivors' competencies and active participation, survivor education, and survivors' knowledge.**
2. **An enabling process resulting in personal change, self-determination, growth and activation.**
3. **Support for survivors' integrated self-sense of mastery and control, self-efficacy, self-management, control, coping and decision-making.**
4. **Practice providing impartial information to empower survivors to make informed decisions.**
5. **Individual support to engage with survivors based on informed consent, dignity, and respect.** Support persons ensure survivors have sufficient information about their rights throughout the process, including being informed about the progress of the case before and during the trial.
6. **Individual support to actively inform survivors about their right to fair and dignified treatment during the trial, including their right to not answer stigmatising or victim-blaming questions.** This includes support to dynamically engage with survivors to explain what stigmatising or victim-blaming questioning is, how it may lead to internalised feelings of shame, and how survivors can refuse or challenge stigmatising questions in practice during the trial.
7. **Individual support to proactively inform survivors about different protective measures and their consequences to ensure the survivor can make an informed choice based on their individual needs.**
8. **Individual support to understand that survivors have different experiences and preferences for protective measures, including variables associated with gender, situational and intersectional resilience and vulnerabilities.** For example, not all women feel disempowered and in need of protective measures; not all men feel powerful and not in need of protection. Communication and coordination with other court actors, including judges, is needed to ensure the survivors' preferences for or against specific protective measures are heard and taken into account. Ensuring judges do not automatically grant or impose protective measures without survivor consultation or consent based on assumptions (and which may be paternalistic or infantilise survivors). It is important to ensure protective measures do not inadvertently mark out CARSV survivors in their communities or disempower those who want to testify openly.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support services do not involve survivors in decision-making related to their participation. ☐ Support services engage with survivors based on general practices that are not tailored to CARSV stigma, different survivor identities or individual preferences/ needs. Service providers make assumptions about necessary measures based on gender stereotypes and other generalisations. ☐ Support services provide little to no information to survivors concerning key procedure, consequences and risks. ☐ No information sharing protocols, no checks on confidentiality practices. ☐ No consistent practice on advising survivors about their rights and protective measures. Survivors unable to make informed decisions and feel unsafe/caught off guard during trials. ☐ Survivors gain no sense of agency or justice from their participation. Most feel used, disempowered or confused through their participation.	☐ Survivors sometimes involved in decision-making related to their participation, but practice varies, is ad hoc. ☐ Support services engage with survivors based on general practices, not tailored to CARSV stigma. Some awareness of different survivor identities but no consultations regarding individual preferences/needs. Some assumptions still made based on generalisations. ☐ Support services provide limited information to survivors concerning key procedures, consequences and risks. ☐ No information sharing protocols, no checks on confidentiality practices. ☐ Survivors given some information about their rights and protective measures available to them during trial, but no consistent practice/ format. Many still not able to make informed decisions. ☐ Some survivors gain a sense of agency from their participation, namely through their active involvement with individual support persons. Many still feel used, disempowered or confused.	☐ Survivors often involved in decision-making related to their participation but no organisational practice, standard or monitoring. ☐ Support services engage with survivors based on practices adjusted to CARSV stigma and different survivor identities. No consistent practice on individual consultations. Some assumptions still made. ☐ Support services generally inform survivors concerning key procedures, consequences and risks. No follow-up to check if survivors genuinely understand their role and consequences. ☐ Information protocols guide what survivor information is shared and how, with basic checks on confidentiality practices. Survivors receive some advice on who gets access to their information, but generally do not feel fully informed. ☐ Survivors advised on their rights and protective measures available to them. Many still feel they are unable to make informed decisions and feel uncomfortable, not in control during trial.	☐ Support services have standard practices to involve individual survivors in decision-making, with monitoring checks in place. Inconsistencies in practice addressed by leadership. ☐ Support services have practices specialised to address CARSV stigma and different survivor identities. Individual consultations are standard practice. Active efforts to minimise assumptions on survivor needs. ☐ Support services inform survivors concerning key procedures, consequences and risks as a matter of monitored organisational practice. Follow-up checks ensure survivors are able to make informed choices. ☐ Information protocols guide what survivor information is shared and how, with comprehensive confidentiality checks. Survivors informed on who gets access to their information. ☐ Survivors advised on their rights and protective measures as a matter of general practice. Most feel able to make informed decisions, have a sense of control and know what to expect during trial.	☐ Support services habitually involve individual survivors in all decision-making related to their participation, with standard practices and regular monitoring checks in place. ☐ Support services have practices specialised to address CARSV stigma and different survivor identities. Individual consultations prioritised. No assumptions made or tolerated. ☐ Support services habitually inform survivors concerning key procedures, consequences and risks as a matter of monitored organisational practice. Follow-up checks ensure survivors are able to make informed choices and feel empowered, including after the end of their formal involvement. ☐ Information protocols guide what survivor information is shared and how, with comprehensive confidentiality checks. Survivors informed on who gets access to their information.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
		□ Survivors generally gain a sense of agency and justice from their participation. Many still feel disempowered or confused.	□ Most survivors gain a sense of agency, empowerment and justice.	□ Survivors advised on their rights and protective measures, with allowances made to individual needs (also informed to adjudicator). Survivors feel able to make informed decisions, have a sense of control and know what to expect during trial. □ Most survivors gain a sense of agency, empowerment and justice. Support services habitually collect survivor feedback to monitor experiences and performance.

Key critical questions:

- **What do support service personnel understand about survivor-empowering approaches? How do they say they employ or achieve these approaches in their work?**
- **How do support services understand individual needs and strengths of survivors? Do support services start with or focus on trauma and vulnerabilities, or strengths and resilience?**
- **How do service providers gauge whether the survivor is happy with the process of participation?**
- **What do survivors feel about the justice process and the support they received? What words do they use to describe how the support impacted them (e.g. empowered, enabled, infantilised, marginalised, coerced, supported or disenfranchised, discouraged)?**
- **Do survivors feel that they had sufficient understandable information that helped them make informed decisions?**
- **What choices and control over their support and participation in justice can the survivors exercise? How do service providers ensure that survivors can withdraw some elements of consent for participation?**
- **What are the potential indicators of coercive tendencies by those leading the process?**
- **In what ways do service providers remind survivors about their rights and ensure informed consent in all their interactions?**
- **How is biased reasoning emanating from stereotypical/stigmatising thinking dealt with?**
- **What information, choices and discussion do support services provide survivors with around potential protective measures? What role do support services play in relation to vulnerability assessments and recommendations for measures to justice actors including judges? How do they make those assessments and what kinds of recommendations do they make? What other activities to support services take to educate justice actors on trauma, survivor-centred support and protections?**

Data sources:

Internal: Organisational policies, guidance and tools on survivor-empowerment, training policies, tools and evaluations, guidance on informed consent and empowerment techniques, informed consent standards, procedures and template, vulnerability or risk assessment templates and processes.

External: Survivor feedback, CSO feedback.

Interviews and focus groups: Survivors groups, survivor advocates, external service providers, leadership and support persons, other coordinating justice actors.

Competency Indicator SS6: Support services promote trauma-informed processes and interaction, understanding survivors as individuals through an intersectional awareness and risk assessing and mitigating risk/vulnerability at all stages of engagement, including after trial.

Stigmatisation reinforces the trauma of CARSV, and hampers survivors' disclosure and help-seeking. A trauma-informed approach that addresses stigmatising attitudes in survivors' social environments can help reduce risk and vulnerability.

Elements of the best practice in risk reduction and trauma-informed approaches in CARSV:

1. **Support persons realise the widespread stigma and impact of trauma and understand potential paths for recovery.**
2. **Support persons work from the core principles of trauma awareness: safety, trustworthiness, choice, and collaboration, and adopt a strengths-based approach and building skills.**
3. **Support persons ensure accurate records for continuity of care and support (to avoid risks, gaps or duplication), including identification of any risks or problems that have arisen and the steps taken to deal with them, so that individuals who use the records have all the information they need.**
4. **Support persons discuss the connections between trauma, CARSV and complex needs, and offer support strategies that increase safety and support connection to services.**
5. **Support persons operate in a trauma-informed environment and focus on treating trauma through non-stigmatising therapeutic interventions involving individuals with specialist skills.**
6. **Support persons provide a holistic initial individual risk, safeguarding and needs assessment that includes physical health needs, psychological needs, safety needs and social needs as well as other issues related to SOGIESC, disability, race, religion or belief, social class, occupation/profession, culture, the impact of CARSV stigma and its internalised effects.**
7. **Support persons offer services that are based on a detailed assessment of survivors experiencing trauma and/or complex needs, including cultural considerations and language, and special vulnerabilities (e.g. age). Assessments are conducted by qualified professionals and all assessors sufficiently understand the boundaries of their qualifications.**
8. **Support persons help survivors relocate the source of shame and stigma into the external world rather than the internal one.**
9. **Support persons respond by fully integrating CARSV stigma knowledge about trauma into policies, procedures and practices, and seek to actively resist retraumatisation.**
10. **Support persons offer survivors guidance and counselling by qualified professionals on coping strategies that help them reintegrate into their communities and return to normal life after trial, including how to cope when faced with stigmatising treatment or feelings of internalised stigma.**
11. **Support persons maintain contact and engage with survivors at each stage of the justice process, including a follow-up contact after the end of the formal trial process.**

"*There should be someone who contacts you after sentencing, to help you get money if you can't work, to help you deal with nightmares, tells you where to get support if your family can't support you, all those sorts of things.*"[195]

195 Gravitas, Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences (2018), 110.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness, experience or training on trauma or trauma informed approaches. ☐ Little or no understanding or actions around shame/ stigma as risks. ☐ Little or no understanding of intersectional and situation risk assessments for individuals. ☐ No continuity, little record keeping.	☐ Isolated pockets of awareness, experience and understanding of trauma, and trauma informed approaches. ☐ Isolated pockets of understanding and responses to shame/ stigma as risks. ☐ Isolated pockets of individual risk assessments experience. ☐ Some examples of good record keeping. ☐ Little continuity demonstrated though.	☐ Basic framework for trauma understanding in systems of work. Stigma and shame not integrated into this ☐ Familiarity with basic issues of traumatisation for a particular survivor, recognising the uniqueness of each person. ☐ Basic risk assessment guidance and tools. Not individualised, not including stigma risks. ☐ Basic record-keeping requirements. ☐ Basic continuity procedures on paper.	☐ Good system of policies and tools for trauma-informed organisation and work processes. Not fully established or well-practised yet. ☐ Good competencies around trauma, resisting retraumatisation, with some specific skills around CARSV and stigma. ☐ Tools and templates around individual risk assessments, include stigma/shame, but not fully operationalised or utilised. ☐ Good record keeping system but not full adherence or monitoring. ☐ Continuity system in place, but not always adhered to.	☐ Full integrated trauma-informed work process and trauma-informed organisation. ☐ Core competencies around trauma-informed responses for CARSV specific issues. ☐ Full multidisciplinary individualised and survivor informed risk assessment process. ☐ Specific work with survivor on shame/ stigma reduction. ☐ System-wide standardised full records keeping system, fully maintained in practice. ☐ Continuity system well-established into work processes.

Key critical questions:

- What awareness, attitude and practice do support services have about trauma, trauma-informed approaches, risk, impacts, needs and stigma in relation to CARSV survivors? What do they know about intersectional dimensions of all these?
- How and when are needs assessments made? How and when are risk assessments made? Who is involved in these processes? How is the survivor involved? How holistic are these assessments? How do they take into account the intersectional and situational realities of the survivor?
- Explain the processes and procedures used to arrive at the most ideal approach to identifying a measurement yardstick for assessing survivors.
- How do support services know that the intervention is going to plan? If the intervention is not going to plan, what are the corrective measures put in place to take it back to track? How will the intervention be made abuse-proof? Who will check the interventionist?
- What records are kept to ensure consistency, accuracy and continuity of care? How are these kept confidential within the service or within case multisector teams?
- How effective is the support person in the process of a therapeutic relationship?
- How insightful are they about their own behaviour? How open are they to critical feedback and growth?
- How are support persons monitored, mentored and have their capacities and competencies enhanced?
- What are their attitudes about stigma, sexual violence and gender stereotypes?
- What role to support persons have or believe they have about countering stigma (all three layers)?
- What stages of the process does the support person become involved? How long are they involved?
- What role do they play in terms of the survivor's life and integration within their communities — before, during and after any interaction with justice actors or processes?

Data sources:

Internal: Organisational policies, guidance and tools or training policies, tools and evaluations, guidance on trauma-informed approaches and techniques, risk and needs assessment policies and templates, case records, support person performance reviews.
External: Survivor feedback, CSO feedback.
Interviews and focus groups: Survivors groups, organisational leadership and support persons, other coordinating justice actors.

C. TECHNICAL COMPETENCY AND CAPACITY

Competency Indicator SS7: All support services for survivors are non-stigmatising and proactively counter internalised and experienced stigma by survivors.

In order to successfully work with traumatised individuals, it is essential that support persons have knowledge of stigma and its effects on survivors, and how to counter it. Without appropriate competency, survivors will remain feeling stigmatised and experience misplaced guilt for their victimisation. Stigma must be contextualised and support services must be clear about the uniqueness of each survivor and the different manifestations of stigma and shame, including differences in how it affects different genders or identities. Support persons must also have considerable insight into their own feelings, in order to be able to differentiate between themselves and the survivors they are supporting. Support persons must be able to communicate easily with others and show warmth and firmness in doing so.

It is essential that support persons have experience in and sound contextualised knowledge of stigma, sexual violence, rape myths, and gender differential impacts along with excellent interpersonal skills. The expected outcome is to empower the survivor and alleviate the effects of trauma and stigma by helping them to continue recognising, questioning and rejecting self-blame, rape myths and stereotypes. A significant awareness of gender issues is equally essential.

Educational anti-stigma interventions are needed to present factual information about the stigma related to CARSV with the goal of correcting misinformation or contradicting negative attitudes and beliefs in pursuing justice.

Elements of good practice for support persons working with survivors include support persons:

1. **Having a sound understanding of the structural root causes behind CARSV stigma as well as of the different manifestations of stigma, including a gender perspective, and cultural and contextual variables.**
2. **Understanding the impact that structural/social stigma has on survivors, including the process and effects of internalised stigma.**
3. **Informing and counselling survivors to ensure they understand CARSV stigma, its common manifestations and how it may lead them to experience unwarranted shame and internalised stigma; they also make survivors aware of gender issues.**
4. **Using non-stigmatising language and communications. Survivor-centred, non-stigmatising communication includes:**
   - Eliciting and understanding survivor perspectives (e.g., concerns, ideas, expectations, needs, feelings, and how they are functioning).
   - Understanding the survivor within their unique psychosocial and cultural context.
   - Reaching a shared understanding of survivor problems and the support that is concordant with survivor values.
   - Using all forms of spoken, written and digital communication (including social media and networking sites) responsibly, respecting the survivor's right to privacy at all times.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support services display no awareness of CARSV stigma or its impact on survivors. ☐ Support persons rely on stigmatising and victim-blaming attitudes when engaging with survivors. ☐ Survivors feel shame and discomfort when engaging with support services. ☐ Survivors receive no information about CARSV stigma or its internalised effects.	☐ Support services display a limited degree of awareness of CARSV stigma and its impact on survivors. ☐ Support persons use stigmatising language when engaging with survivors. ☐ Survivors feel shame and discomfort when engaging with support services. ☐ Isolated examples of survivors receiving basic information about CARSV stigma and its internalised effects.	☐ Support services have a degree of awareness of CARSV stigma and its impact on survivors. ☐ Support persons understand basic notions surrounding CARSV stigma. ☐ Survivors receive some information about CARSV stigma and its internalised effects on an ad hoc basis. ☐ No follow-up on survivor experience or counselling for internal stigma.	☐ Support services are cognisant of CARSV stigma and its impact on survivors and prioritise knowledge among support persons. ☐ Support persons have an understanding of CARSV stigma, its root causes and impact on survivors. ☐ Survivors receive info and counselling about CARSV stigma and its internalised effects as a matter of organisational policy, not consistent in practice. ☐ Some follow-ups on survivor experience and feedback.	☐ Support services are cognisant of CARSV stigma and its impact on survivors and prioritise knowledge among support persons. ☐ Support persons have specialist knowledge of CARSV stigma, its root causes and its impact on survivors. ☐ Survivors consistently and continuously receive info and counselling to address CARSV stigma and its internalised effects. ☐ Thorough follow-up on survivor experiences and feedback.

Key critical questions:

- What is the level of understanding of CARSV stigma among support persons? Do individuals engaging with survivors have specialist training in stigma and its internalised effects? How knowledgeable and experienced are support persons about structural and internalised stigma and sexual violence? Can they describe root causes, manifestations (particularly during support and access to justice) and cultural variables relevant to the survivors groups they are working with?
- What do support persons say are the impacts of stigma, including their understanding of how stigma impacts justice for survivors, including creating barriers to access justice and how institutional stigma can affect justice outcomes as well as survivor experiences in justice processes?
- What role or responsibility do support persons believe they have in terms of countering and educating justice actors about stigma and its impact on survivors?
- What is the level of understanding of stigmatising language among support persons? Can they give examples? Can they demonstrate non-stigmatising language and communications? Have they been given training or guidance from their organisation/department on this?
- How often have they seen or heard stigmatising communications within their support services within the last 12 months?
- What is the vetting system of the lead personnel interacting with survivors?
- Is counselling and countering stigma written into job responsibilities and performance expectations?
- Do support services conduct data gathering for survivor feedback in order to monitor for stigmatising experiences? If so, what is that feedback, and has it been acted upon?
- Are survivors informed about the effects of internalised stigma? If so, how (ad hoc or policy basis)?
- Will they have regular supervised meetings to discuss cases and additional opportunity to address situations where they do not know how to proceed?
- How well internalised are interpersonal skills?
- How are counsellors monitored on the impact their conduct may have on the survivors they interact with?
- What is the likelihood that a counsellor's culture negatively or positively impacts the CARSV survivors?

Data sources:

Internal: Organisational policies, guidance, tools training policies, tools and evaluations on CARSV stigma knowledge and counselling skills, support person performance reviews.
External: Survivor feedback, CSO feedback/reviews.
Interviews and focus groups: Survivors groups, survivor advocates, external training providers, leadership and support persons, other coordinating justice actors.

Competency Indicator SS8: Support services personnel working with survivors demonstrate CARSV, trauma, and stigma competency (knowledge, skills, attitude, and practice) in all their actions and these competencies are mainstreamed, socialised and rewarded across teams.

Emotional support and alleviation of fear, stigma, trauma and anxiety is key to enable survivors to navigate the justice process in a positive, empowering way. Support persons working with survivors should pay particular attention to:

- anxiety over the physical and mental status;
- anxiety over the impact of stigma and self-stigma on themselves and their family;
- anxiety over the stigma of parenting as a survivor of CARSV, e.g., when a child is a witness;
- anxiety/stigma related to children who witness the CARSV of their parents or family members;
- stigma related to accessibility and location of specific sexual health clinics;
- availability of transportation;
- ease of scheduling appointments and availability of appointments when needed;
- clear instructions on when and how to get referrals;
- accessibility/facilitating access to specialists or specialty services when a referral is made.

Elements of good practice include:

1. **Support persons provide information regarding access to practical support on a continuing basis, e.g., financial, independent/external advocacy service, etc.**
2. **All support persons receive training on key principles and ethical duties related to survivor-engagement, including informed consent, confidentiality, gender sensitivity and the impact of structural gender inequalities, dynamics of CARSV, and the psychosocial impact of internal and external stigma.**
3. **Support persons receive training that sensitises them to stigma variables and manifestations specific to culture, ethnicity, and social contexts, as well as interdisciplinary and intersectional vulnerabilities and special population support (e.g., men, persons from LGBTQI+ communities, persons with disabilities, minorities, children).**
4. **Support persons receive training prioritising engagement techniques that minimise trauma, distress and secondary victimisation while maximising the quality of support and information provided to survivors, including skills to deal with vulnerable survivors in a sensitive, understanding and non-stigmatising manner.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support persons don't provide information on accessing support. ☐ No training or CPD on survivor engagement, stigma variables or minimising trauma. ☐ Support persons lack the interpersonal skill to establish a therapeutic relationship. ☐ Support persons have difficulty in asking questions about SV and stigma and how the survivor has internalised the experience.	☐ Isolated examples of support persons giving limited one-off information about accessing services. ☐ Isolated one-off examples of very basic training to isolated individuals on limited aspects of survivor engagement, minimising trauma and stigma variables. ☐ Support person recognises non-facilitating interventions. For example, constant interruptions, not allowing survivor to talk about own experience and sharing some of their own trauma, telling them not to feel the way they do.	☐ Basic protocols for one-off basic information about accessing support. ☐ One-off basic knowledge trainings/ lectures on basic elements of survivor engagement, minimising trauma and stigma variables available only to certain 'specialised' positions. ☐ Initial awareness of skills necessary to connect effectively with the survivor and learn the importance of listening. ☐ Recognises personal difficulties in dealing with painful material. ☐ Lowers the number of non-facilitating intervention. ☐ Beginning to learn basic rules of maintaining a supportive relation and focusing on internalised stigma, rape myths and gender stereotypes.	☐ Full information protocol requiring adaptive and continual information about accessing services attuned to needs. Not fully practised. ☐ Good training programmes developing skills and clinical practice on survivor engagement, stigma variables and minimising trauma open to all staff working with survivors. ☐ Support person utilises skills to connect effectively and empathically and offers specific support and validation of trauma experiences around internalised stigmatisation and sexual violence. ☐ Survivor reassured by support person about any internalised stigmas or concerns about mental health and helps counter self-blame and self-doubt.	☐ Full information protocols and packages, attuned to survivors changing needs, fully embedded in work practice and processes. ☐ Iterative competency-based training programme for clinical practice and integrated work processes and tools for advancing skills around survivor engagement, stigma variables and trauma-informed approaches expected attendance for all staff with interactions with survivors. ☐ Support person has skills to connect with survivors and helps the person stay focused on stigma, rape myths and gender differential effects. Survivor is comfortable and trusts support person by finding it easy to disclose. ☐ Support person helps survivor to stay focused and significant improvement of symptoms are achieved.

Key critical questions:

- How are trauma-informed approaches and survivor-centred competencies regarded by leadership and service providers? Are they thought to be highly specialised? Or at the other end, are they seen to be core skills necessary for all service provision?
- To what extent are these competencies mainstreamed across all roles and teams? If there are focal points or expert advisors appointed on CARSV or SCA or trauma, how are they integrated into service teams and their work?
- To what extent are these competencies required in team leader roles?
- To what extent do male service providers have CARSV, SCA and trauma-informed competencies?
- What is the content of induction trainings or briefings? To what level are CARSV, SCA and trauma-informed competencies and demonstrated skills included in induction training? Who is required to attend these parts? To what extent are policies, procedures, tools and templates for these issues included so that training embeds and simulates work processes and flows?
- What CPD is provided and supported for support services? How often are service providers required/allowed to take time for CPD? To what extent does CPD include CARSV, trauma-informed and survivor-centred approaches? Who is encouraged or assigned for CPD related to these competencies?
- What do KAP surveys show about levels of stigma and stigmatising practices among service providers, including about working with survivors from different groups with different intersectional identities?
- What are the performance indicators for service providers? Are they qualitative and external client-focused?
- How effective are support persons in the process of a therapeutic relationship, legal representation, protection service or other form of support?
- How insightful are they about their own behaviour?
- How much support and training are they receiving? Can they accept critical feedback?
- How do service providers institute confidentiality by deed, not just by paper?

Data sources:

Internal: Organisational policies, guidance and tools on survivor-centred interactions and trauma-informed approaches, training, KPIs, PER and KAP surveys on stigma and CARSV dynamics, CPD records and attendance data (mainstreaming), support person performance reviews, case assignment data.
External: Survivor feedback, CSO feedback.
Interviews and focus groups: Survivors groups, survivor advocates, external training providers, organisational leadership and support persons, other coordinating justice actors.

Competency Indicator SS9: Support services are present and proactive during and throughout survivor interaction and engagement with the justice process, actively intervening to support, protect and mitigate the effects of stigma.

Supporting services should be proactive in facilitating support to ensure a meaningful justice process and intervene to resolve any issues/challenges faced by survivors or advocate on their behalf when necessary.

Elements of good practice include:

1. **Support persons coordinate with other court actors to support and report on survivor-engagement during CARSV trials and highlight needs for improvement.**
2. **Support persons attend trial proceedings and monitor how other court actors, including prosecutors, defence attorneys and judges, engage with CARSV survivors.**
3. **Support persons monitor judges, prosecutors and defence attorneys during CARSV trials to assess stigma, victim-blaming attitudes and affinity biases. They intervene where court actors engage with survivors in a stigmatising or disrespectful manner, particularly where they use stigmatising or victim-blaming language, overtly repeat questions to pressure the survivor or otherwise harass the survivor.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Support persons not allowed to accompany survivors to trial proceedings. ☐ Support persons do not monitor other court actors' interactions with survivors during trial proceedings. No efforts to intervene regarding stigmatising or victim-blaming practices or judicial reaction. ☐ No trial monitoring for survivor-centred or non-stigmatising practices. No formal coordination with other court actors to implement good practices.	☐ Support persons allowed to accompany survivors to trial proceedings, in practice limited due to procedural requirements, lack of prioritisation (not considered necessary). ☐ Support persons allocated, namely only to some on an ad hoc basis with no structure. ☐ Support persons do not monitor other court actors' interactions with survivors during trial proceedings. Isolated examples of support persons intervening regarding stigmatising or victim-blaming practices or judicial reactions, namely after proceedings (not active during proceedings). ☐ No trial monitoring for survivor-centred or non-stigmatising practices. No formal coordination with other court actors to implement good practices. Isolated examples of monitoring and consultations on individual/team level.	☐ Support persons allowed to accompany survivors to trial proceedings; practice varies. Support persons allocated only to some based on vulnerability assessments. ☐ Support persons monitor other court actors' interactions with survivors during trial proceedings. Interventions for most stigmatising or victim-blaming practices or insufficient judicial reactions, but only after proceedings (not active during proceedings). ☐ Limited trial monitoring for survivor-centred or non-stigmatising practices, but no formal coordination with other court actors to implement good practices. Early efforts to implement formal procedures for monitoring and consultations at leadership level.	☐ Support persons accompany survivors to trial proceedings on most occasions, attendance prioritised by leadership/policy. Some inconsistencies in practice persist (e.g., due to insufficient number of competent support persons); efforts made to correct. ☐ Support persons monitor other court actors' interactions with survivors during trial proceedings as a matter of standard procedure and intervene regarding stigmatising or victim-blaming practices or insufficient judicial reactions. Examples of active interventions during proceedings. ☐ Trial monitoring for survivor-centred or non-stigmatising practices with formal coordination with other court actors to implement good practices and recommendations.	☐ Support persons accompany survivors to trial proceedings as requested by the survivor (based on survivor preference). Leadership prioritise attendance, resources provided to ensure sufficient number and availability of support persons. ☐ Support persons monitor other court actors' interactions with survivors during trial proceedings as a matter of standard procedure and actively intervene regarding stigmatising or victim-blaming practices or insufficient judicial reactions. Interventions are made proactively whenever necessary during proceedings with follow-up interventions afterwards. ☐ Trial monitoring for survivor-centred or non-stigmatising practices with formal coordination with other court actors to implement good practices and recommendations.

Key critical questions:

- What role does the support person who accompanies survivors through justice processes have in terms of protection and support in the face of retraumatisation, revictimisation and stigmatisation?
- What steps do support persons take to try to prevent these from happening, and how do they respond when they do?
- How do support persons support CARSV survivors to enable them to attend trial proceedings and give evidence with ease?
- What do support persons do to ensure court actors, including prosecutors, defence attorneys and judges are sensitised against breaches of a survivor's rights, especially stigmatising and disrespectful behaviour?
- How do support persons monitor court officials, including judges, to ensure they are more sensitive to identify stigmatisation, disrespectful behaviours, victim-blaming language and repetition of questions constituting harassment towards survivors?

Data sources:

Internal: Organisational policies guidance and tools on support during trial, monitoring stigmatising or otherwise harmful interactions and intervening, support person performance reviews, case assignment data, in-court support data, trial transcripts, in-court monitoring, communications with other justice actors (prosecutors, defence counsel, judges).
External: Survivor feedback, CSO feedback, trial monitoring reports.
Interviews and focus groups: Survivors groups, survivor advocates, external training providers, organisational leadership and support persons, other coordinating justice actors (prosecutors, defence counsel, judges).

USEFUL RESOURCES FOR ASSESSMENT OF SUPPORT SERVICES:

- Amnesty International, 'I Don't Know If They Realized I Was A Person': Rape and Other Sexual Violence in the Conflict in Tigray, Ethiopia (2021)
- ASP, The Health of Male and LGBT Survivors of Conflict-Related Sexual Violence (2020).
- Center for Human Rights, Gender and Migration, The Silence I Carry: Disclosing gender-based violence in forced displacement: Practitioner's Toolkit for Mexico (2020).
- Hester & Lilley, 'More Than Support to Court: Rape Victims and Specialist Sexual Violence Services' (2018) International Review of Victimology 24(3).
- IICI, The Murad Code (2022).
- OSCE and ODIHR, Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: Standards, Approaches and Examples from the OSCE Region (2019).
- UN Women/FCO, CRSV in Asia-Pacific: Putting Victims/Survivors First (2017).

CHAPTER FOUR — INVESTIGATION

Much capacity-building support and attention has focused on evidence-gathering for CARSV. There are an array of guidance, protocols and tools for information gathering about CARSV. Yet very little attention has been given to how knowledge and attitudes, including stigma and myths, affect the CARSV investigation process. This includes influencing decisions on resources, priorities, planning and strategies, what to investigate and what gets overlooked or addressed too late, where, who to speak to, who to allocate statement-taking and evidence gathering activities, what evidential leads to follow up, how analysts search for and process information and assess evidence, how cases are built and what is reported and recommended in terms of charges.[196] There has also been little attention on whether investigation work processes and tools proactively counter such myths and facilitate survivor-centred processes.

Some other considerations and factors impacting CARSV in the investigation phase include:

- Investigators may rely on what has already been documented or reported so if little has been done on CARSV before them, little might be done by them as well.
- What are the attitudes of investigators when survivors try to report? Survivors may decide not to tell or not to tell all based on the investigator's attitude and response.
- What is the composition of investigation teams who engage with survivors – are they experienced, trained and sensitive? Does it include diverse perspectives and gender representation.
- Do investigators consider CARSV early in the investigation and integrate it with the entire investigation so everyone knows to look for evidence? Is it one investigator on their own doing the CARSV investigation? Does the whole team understand where CARSV fits into the whole investigation/charging? Is it treated as an ad hoc isolated crime and therefore investigation? Is it separated out and left until later?
- What are the power differentials within investigations teams? If CARSV is investigated by junior female investigators, for example, are their voices heard in decision making and assessments?
- Do investigators feed the CARSV evidence into the analysis, evidence reviews and recommendations for prosecution so full attention can be paid to it for emerging patterns or linkage evidence?
- What drives decisions to move from investigation to recommendations for charge? When this happens, has enough evidence been gathered to fully assess the crimes and are the crimes charged? How are assessments of witnesses by investigations, often fed into prosecution charging decisions and witness lists? Do CARSV survivors, especially women, get dropped at this stage?
- Do investigators continue to support and liaise with survivors as the case moves to the prosecution preparation and trial phase? This all affects a survivor's experience of the process and the continuity of people and trust is important.

Note on remote investigations, outside the territory of the investigating authority:

In light of the growing diversity of avenues for criminal justice, there has been an increase in investigations conducted in countries or contexts

196 Some work and understanding has been done for sexual violence cases in domestic, peacetime settings. See *e.g.* Pattavina *et al*, 'Pathways to Sexual Assault Case Attrition: Culture, Context and Case Clearance' (2021) Victims & Offenders; Wentz & Keimig, 'Arrest and Referral Decisions in Sexual Assault Cases: Influence of Police Discretion on Case Attrition' (2019) Social Sciences 8; Hohl & Stanko, 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', (2015) European Journal of Criminology 12(3); Skinnider *et al*, UN Multi-Country Study: The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017).

outside the Investigator's home jurisdiction or away from the headquarters of some investigation teams. For example, international criminal investigators from the ICC investigate crimes which happened away from its seat in the Netherlands. Similarly, if hybrid courts are located in third countries or investigations are based on extraterritorial forms of jurisdiction,

their investigation teams will face similar challenges. This can require additional care to understand the culture, gender norms, stigma and repercussions for survivors, and to build safe systems for survivor-engagement. It can also produce challenges for continuity and time pressures for short investigation visits.

Understanding of the context and culture is critical, particularly to ensure survivor-centred and non-stigmatised/non-stigmatising investigations. Remote settings, resource-scarce settings, conflict and crisis settings also all present different challenges for national and international investigators in terms of confidentiality, discreet inquiries, safe systems of survivor support, continuity, follow-up, safety and other aspects of survivor-centred approaches.

This Toolkit recommends and uses **The Murad Code — The Global Code of Conduct for Gathering and Use of Information about Systematic and Conflict Related Sexual Violence** as a critical foundational resource, against which investigating authorities should measure their systems, culture, competencies and survivor-centred practice. The Toolkit assessment should consider all investigative functions, including information/evidence gathering, analysis, case building, referral for charging, and trial support in terms of testimony and preservation/presentation of evidence.

Note on Institutional Home of Investigators in Different Jurisdictions:

In different jurisdictions and courts, Investigators can be independent, as part of a police force or law enforcement agency with the primary responsibility to investigate crimes. In other systems, the investigation function can sit under a prosecution agency or in assistance to investigating magistrates. Whatever their ultimate institutional home or oversight, police or investigation leadership should use this chapter to assess their systems, culture and practise in relation to CARSV investigations.

Note: While this chapter is primarily concerned with mandated official criminal Investigators who are part of an active criminal justice process and system, we note that there are many conflict or crisis settings in which there are no functioning police force or official Investigators, or where the police themselves may be part of State-perpetrated crimes. While this Toolkit is not designed to review informal or non-mandated investigation work, some organisations may still find it useful to review their processes, systems and competencies for survivor-centred and non-stigmatised CARSV investigation work.

INDICATORS AND ASSESSMENTS

This Chapter is organised along the three common themes:

A. Organisational Leadership and Culture

B. Survivor Engagement and Interaction

C. Technical Capacity and Competency

Indicators are numbered using the abbreviation INV for "*Investigation*", e.g. INV1, INV2, etc.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
INV1 Investigative bodies have a healthy, safe, inclusive workplace that respects individual differences in all forms, and an ongoing commitment to valuing individuals and to encouraging and maximising the use of their diverse capabilities.
INV2 Investigative leadership values and resources effective, safe and timely survivor-centred conflict-related sexual violence investigations.
INV3 Leaders in investigative authorities build survivor and public trust and confidence by holding all staff accountable for timely, ethical, equitable, survivor-centred, and high-quality service delivery to all survivors of CARSV.
INV4 Investigators ensure that they are part of a coordinated and integrated justice process from the point of accessing justice or reporting the crime for survivors in relation to their engagement, information/communications, protection, support and participation.
INV5 Investigative authorities collect and use disaggregated data to understand, monitor and improve practice on CARSV, stigma, survivor-centred and trauma-informed approaches.
SURVIVOR ENGAGEMENT AND INTERACTION
INV6 Investigating authorities, in concert with others, maximise opportunities for survivors of CARSV to access justice, regardless of their personal circumstances, nationality, legal status, place of residence, economic status, cultural and social background, ethnicity, religion, gender, culture, or language.
INV7 Investigators value and ensure they follow a survivor-centred, non-stigmatising methodology in all their work preparing for and interacting with survivors.
INV8 Investigators provide survivors with clear understandable information about the justice process and available options to allow them to make informed choices, prioritise, respect, and support survivor rights and wishes, and maximise opportunities for survivors to make decisions about their interaction and engagement.
INV9 Investigators and investigative staff all use non-stigmatising language and terminology about CARSV and CARSV survivors and recognise and counter stigma when they encounter it.
INV10 Investigators build and maintain an emotionally and physically safe and supportive environment for all interactions and communications with CARSV survivors.
TECHNICAL CAPACITY AND COMPETENCY
INV11 Investigators are guided by a set of organisational CARSV policies, procedures, templates and tools that promote accurate assessment and work on CARSV cases.
INV12 Trauma-informed, survivor-centred CARSV and CARSV stigma competencies are mainstreamed across all CARSV investigative services.
INV13 All investigative decision-making is based on an accurate understanding of CARSV contextual and intersectional dimensions, including gender, and are not influenced by stigmatised attitudes, myths or assumptions that have the potential to reduce the credibility or reliability of evidence.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator INV1: Investigative bodies have a healthy, safe, inclusive workplace that respects individual differences in all forms, and an ongoing commitment to valuing individuals and to encouraging and maximising the use of their diverse capabilities.

"*The visible commitment of the leadership to support diversity, challenge status quo and hold others accountable is one of the most important traits when trying to gain commitment from employees.*"[197]

Investigative organisational effectiveness requires a culture of inclusion where employees' differences are truly valued, respected and fully utilised. Given findings that men are more likely to accept harmful gender narratives and rape myths than women, ensuring a diverse workplace and inclusive workplace culture where such beliefs are challenged and not accepted is key. This includes ensuring that the voice and professional opinions of more junior female members of staff, who are often assigned to CARSV work, are also respected and valued. Workplace culture becomes a critical element to reducing stigma, stigmatised attitudes and stigmatising behaviours among justice actors.

For example, based on concerns about gender bias at the ICTY, Richard Goldstone noted about the almost all-male investigation and prosecution team at the start, "*their culture was not such as to make them concerned about gender-related crime.*"[198] Patricia Sellers has also discussed the 'smouldering sexism' and backlash to gender prosecution strategies aimed at more effective and representative cases.[199]

Studies on attrition rates for SV also demonstrate the role of racism. "*Including an interaction effect between suspect and victim ethnicity in the analysis shows that compared to a non-white suspect, a white suspect has twice the odds of no-criming if his victim is white and 11 times higher odds if the victim is non-white (results not displayed). This finding suggest that white suspects are significantly and substantially more likely to avoid further investigation than non-white suspects, in particular if their victim is non-white.*"[200]

Elements of good leadership include:

1. **Leadership has developed and implemented recruitment, selection, retention and advancement policies, processes and practices that promote and advance equality, diversity, and inclusion (EDI) throughout the investigation department. EDI are essential elements of core competencies for all positions.**
2. **Development, maintenance and advancement of an equitable and adaptive work environment where every employee can feel valued and respected, included and comfortable in work and social interactions with colleagues, and can contribute to the organisation's priorities, free from systemic barriers, negative behaviours and discrimination, throughout their career.**
3. **The organisation has policies on values, ethics, integrity, gender equality and sexual harassment. There is a zero tolerance in policy and practice for language, behaviours and actions that discriminate against individuals, including any form of harassment, including sexual harassment or abuse.**
4. **Leaders consistently communicate and model expected behaviours. Active, engaged leaders are committed to fostering a work culture that actively promotes EDI, and sets and sustains a tone of mutual respect. Leaders at all levels are prepared to challenge personal and organisational core beliefs, values, traditions, negative assumptions and harmful language. Reporting procedures in place and are accessible and responsive to any staff experiencing discrimination or harassment.**
5. **A thorough analysis of organisational and unit structures, policies and practices regularly undertaken to determine where discrimination, biases, myths and stereotypes lie, how they are supported, and by whom they are supported.**
6. **Leadership and composition of the investigation team is diverse and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. Full diversity of thoughts and perspectives is welcomed as a positive contribution.**

197 Bourke & Titus, 'The Key to Inclusive Leadership', Harvard Business Review (6 March 2020) (accessed 24 March 2022).

198 Brammertz & Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (2016).

199 Sellers, 'Gender Strategy is Not Luxury for International Courts' (2009) *Journal of Gender, Social Policy & the Law* 17(2).

200 Hohl & Stanko, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leader recognition of the need and value of diversity in addressing CARSV. ☐ No efforts are made to mainstream and advance EDI at entry, management and leadership levels. ☐ There is no/very limited diversity of individuals and thoughts in the organisation. Leadership is almost entirely male, those working on CARSV, if any, are more junior females who are not included in decision making. ☐ No organisational funds or human resources allocated for EDI. ☐ No policies or reporting systems on discrimination, including gender. ☐ Disrespectful communication and behaviour common. ☐ Staff belonging to a minority feel undervalued, disrespected, stigmatised; punished for reporting harassment. ☐ No leadership follow-up or disciplinary measures for discrimination in the workplace.	☐ Leaders acknowledges the need to mainstream EDI throughout the organisation, but not a priority. ☐ Some isolated pockets of diversity and EDI practices exist in the organisation, mainly at lower levels ☐ Isolated pockets of more junior CARSV staff being consulted or heard in decision-making. ☐ There is no consideration given to how diverse staff are impacted by management decision-making and practices. ☐ Expression of bias and stigma are common in the workplace. ☐ No organisational EDI expectations set, or structures, policy or practices implemented. ☐ Many staff belonging to a minority feel undervalued, reports of abuse and harassment often unaddressed or minimised.	☐ Leaders recognises the potential value of a diverse workforce. ☐ Some efforts are made to increase diversity, but no one is held accountable. ☐ Leaders sets some basic expectations around organisational EDI. Not consistently enforced, no performance indicators in place to gauge effectiveness. ☐ No data collection, monitoring or evaluation of organisational policy, procedure and practice. ☐ Some basic budget lines allocated for EDI. ☐ Reports of staff being undervalued, disrespected, unequally treated occur. Reporting systems unclear and inconsistent.	☐ A human resource management framework supports recruiting, hiring, placement and advancement of diverse, gender sensitive staff. ☐ Some human resource policies are established to guide organisational practice. ☐ Management team responsibilities for advancing EDI are identified. ☐ Efforts are made to identify systemic barriers that are negatively impacting recruiting, hiring, placement and advancement of diverse staff. ☐ Some human resource management data is collected, but analysis is limited. ☐ EDI policies and practice guidelines are developed. ☐ Budgets are allocated to enable expectations to be met. ☐ Some performance indicators are established. ☐ Messaging and practice are not consistent. ☐ Rare expressions of discrimination, disrespectful language, or conduct. Reporting systems in place.	☐ Strategic organisational human resource management structures, policies and processes have been formalised and are regularly reviewed and updated. ☐ Advancing EDI is mainstreamed throughout all human resource decision-making. ☐ The level of diversity of individuals and thought is evident, valued, and promoted. ☐ Systemic barriers to EDI have been identified, and steps taken to eliminate them. ☐ Leaders model exemplary language and EDI practices. ☐ Expectations, code of conduct, internal and external governance structures, and EDI policies, procedures and practices are aligned. ☐ Diversity in all forms is sought and valued. ☐ Budgets are allocated and adjusted as required to enable the organisation to meet EDI objectives. ☐ Data is collected, performance is monitored against clearly defined indicators. ☐ Internal and external messaging about EDI is regular, consistent and aligned. ☐ Reporting systems easy to access. ☐ Expressions of gender inequality or discrimination are identified and challenged.

Key critical questions:
- Does management lead by example in expressing a commitment to equity, diversity and inclusion, and demand the same from all employees?
- What checks and balances are in place to identify and address systemic barriers, biases, prejudices and discrimination in recruiting, staffing and promotion?
- What specific measures are in place to ensure recruitment and other staffing processes are based on merit rather than on personal opinion, preference, bias or stereotypes? Are efforts in place to combat gender or other stereotypes, increase diversity and recruit employees from under-represented groups?
- Who gets access to development opportunities necessary to advance to senior leadership roles?
- Where is CARSV work done — is it done by junior female staff members? How do their professional opinions and recommendations influence decision-making by leadership?
- What are the policies, procedure and enforcement relating to sexual harassment, abuse, non-discrimination, and EDI in the investigation workplace? What do staff know about it? How do staff feel about reporting deviations from policies or procedure?
- Does the organisation have an EDI office/officer that provides oversight and direction on these issues, to promote EDI principles across the organisation? How is progress towards these goals monitored?
- Have policies, processes and practices been analysed to identify biases, stereotypes, prejudices, discrimination and systemic discrimination that can negatively impact the individual investigators' and the organisation's ability to effectively respond to the unique needs and desires of survivors?
- What beliefs, attitudes, behaviours, actions, gender and other forms of discrimination are present in the organisation? For example, against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, persons with criminal records?
- What steps are being taken to eliminate these biases, beliefs, attitudes and discriminatory practices?
- What kinds of language, stories and jokes are expressed in work related and social interactions? What is the organisational tolerance for communications exhibiting discriminatory biases, beliefs or attitudes?
- What steps have been taken by investigative leadership to address these issues?
- What complaint mechanisms are available to staff to lodge concerns?
- Who investigates complaints? How are they trained? Who monitors investigations and outcomes?

Data sources:
Internal: Organisational EDI documents, codes of conduct, strategic plans, diversity and workplace policies and reviews, human resources records, recruitment strategies, policies and practices, harassment and non-discrimination policies and practices, EDI training materials and records, complaint reports and reviews.
External: Survivor feedback, external reviews on organisational diversity.
Interviews: Organisational leadership, EDI officers and staff, diverse samples at all levels.

Useful resources, exercises or tools:
- DCAF, Gender Self-Assessment Guide for the Police, Armed Forces and Justice Sector. Chapter 3 (2011).
- UNODC, IAWP & UN Women, The Handbook on Gender Responsive Police Services for Women and Girls Subject to Violence (2021).
- Ottawa Police Services Board, OPS Gender Project: Final Report (2017).
- DCAF, OSCE & ODIHR, Integrating Gender into Internal Police Oversight (2014).

Competency Indicator INV2: Investigative leadership values and resources effective, safe and survivor-centred conflict-related sexual violence investigations.

Effective leadership is critical for setting the direction for CARSV investigations. Without the necessary foundations in place, survivors are at risk of not receiving the survivor-centred approaches and investigative services they need and deserve.

Long-standing traditions, valued by many investigators, often shape assumptions, conformity and can feed stigmatised assumptions and SV myths into investigative decisions and outcomes. Leaders are responsible for driving positive change and challenging all staff in their organisation to confront and address these assumptions, biases, stereotypes and discrimination. Only then can investigative bodies effectively meet the unique needs of diverse populations in their communities, and, in particular, of CARSV survivors.

"*The failure of the [ICC] Lubanga and Mbarushimana cases with respect to sexual violence demonstrates that a consideration of the gendered dimensions of international crimes is imperative from the outset of investigations. If the collection of evidence concerning sexual violence is not prioritized, cases are likely to fail at an early stage of the proceedings.*"[201]

Elements of good leadership include:

1. **Public and internal commitment as a high priority to prompt and complete investigation of CARSV meeting investigative standards.**
2. **Organisational strategy, decision-making, operations, work processes, procedures and tools are aligned with the organisation's commitment to providing trauma-informed, survivor-centred approaches and investigations.**
3. **Human rights based, ethical standards are advanced and institutionalised in all approaches, relationships and actions related to CARSV investigations. CARSV survivor protection, safety and security are a primary focus throughout all contacts, interactions and the investigative process.**
4. **A code of conduct and policy framework support inclusive, non-discriminatory investigative processes and practices, sets values and creates expectations for behaviour.**
5. **Leaders at all levels drive development and implementation of strategies and actions to build, enhance and support survivor-centred approaches, non-judgmental and non-stigmatising behaviours and practices.**
6. **Adequate human, financial, physical and information resources are provided to meet these priorities and practices, and build and sustain structurally inclusive investigations.**

201 Altunjan, 'ICC and Sexual Violence: Between Aspirations and Reality', (2021) *German Law Journal* 22, 884.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Leaders do not perceive value to advancing bias-free, trauma- informed and survivor-centred CARSV responses. ☐ No appreciation that investigations and Investigators may reflect CARSV myths and stereotypes in their investigations. ☐ No leader commitment publicly or within the organisation to prioritisation for CARSV investigations defined. ☐ No resourcing allocated for CARSV survivor-centred investigations. ☐ Organisational priorities, strategy, decision-making, and investigations are not aligned with providing trauma-informed, survivor-centred investigations.	☐ No demonstrated leadership or organisational expectations set for bias-free, trauma-informed, or survivor-centred approaches to CARSV investigations. ☐ No structures, human resource policies or practices to advance survivor-responsive services implemented. ☐ Ad hoc funds and human resources allocated for high profile CARSV issues. ☐ Leader still uses stigmatising language and sexual violence myths, publicly and within the organisation.	☐ Internally, leader sets some basic expectations around response to CARSV. ☐ Some management and accountability structures are established for CARSV investigations. ☐ No commitment to investigative standards for CARSV. ☐ Some basic budget lines allocated for CARSV training and investigations.	☐ Expectations, a code of conduct and internal governance structures around CARSV investigations are being or have just been developed. ☐ Investigative guidelines are being developed for trauma-informed, survivor-sensitive investigative practices. ☐ Budgets are allocated to enable service expectations to be met. ☐ A chain of command for CARSV investigations is being developed. ☐ Messaging and practice related to bias-free services are not consistent.	☐ Leader publicly commits to ethical, human right-based investigations that address survivor needs and follows through with institutionalising these responses. ☐ There is zero tolerance for use of stigmatising language or practice. ☐ Budgets are allocated, monitored, and adjusted as required to enable the organisation to meet CARSV objectives.

Key critical questions:

- What is leadership's understanding and position on CARSV? What language does leadership use in relation to CARSV survivors and perpetrators? What has the leadership said publicly and internally about CARSV and stigma? To what extent is addressing CARSV and related stigma valued in the organisation? What else has a higher priority?
- To what extent are organisational guiding statements (mission, vision, values) aligned with CARSV strategic commitments, strategies and action plans? Do they include objectives to identify and reduce stigmatising practices in the organisation?
- What monitoring mechanisms are in place to gauge progress toward achieving those objectives?
- What actions has the leadership taken to advance survivor-centred approaches in CARSV investigations? What is the public and staff level of awareness of those steps, including familiarity and application of related policies, plans, codes and commitments? What CARSV data does the leadership require on CARSV, survivor-centred approaches and stigma? What follow-up actions have they taken?
- How are the needs of survivor-centred CARSV investigations established annually? Factored into the budgeting process? What are the identifiable budget lines for CARSV investigations? How are these protected and monitored?

Data sources:

Internal: Internal memoranda or other communications, strategic plans, policies and practices, codes of conduct, guidance and expectations around CARSV and survivor interactions, budget records.
External: Press releases, speeches, interviews, articles, public notices or other external communications.
Interviews and focus groups: Survivors and survivors groups, investigative leadership and staff.

Competency Indicator INV3: Leaders in investigative authorities build survivor and public trust and confidence by holding all staff accountable for timely, ethical, equitable, survivor-centred and high-quality service delivery to all survivors of CARSV.

A study by a Canadian provincial government on unbiassed policing highlights the critical responsibility leadership has for building survivor and public trust and confidence in the quality of work produced by the investigative agency. It found that, "*the public must have trust in the police for policing to be effective, just, and safe*" and "*People's trust in the police is enhanced when people are confident that policing is fair and impartial.*" [202]

Holk and Stanko (2015) identified the lack of trust in the police and the criminal justice system as a significant barrier to reporting rape, stating that: "*The barriers to reporting a rape and reasons to withdraw are numerous. One frequently cited reason is a lack of trust in the police and criminal justice system, a fear of not being believed and taken seriously, and feeling 'raped all over again' by the way the police question both the victim and their account.*" They go on to note that the "*tentative trust required to report the rape is quickly lost when police officers communicate disbelief and disrespect or when the victim loses faith in the police to effectively investigate the case, leading victims to withdraw from the process or retract the allegation altogether.*"[203] It is therefore essential that all staff, including Investigators, are held accountable for conducting high quality, fair and impartial investigations that do not stigmatise or cause further harm to CARSV survivors.

Elements of good leadership includes:

1. **Leaders hold themselves and all staff accountable for meeting or exceeding expectations and standards set using key performance indicators (KPI) and role-related performance indicators which are qualitative, and support survivor-centred values and CARSV competencies.**
2. **Investigative teams and individual Investigators are held accountable for the quality, impartiality and timeliness of their work through regular operational reviews of progress on cases, interactions with survivors, evidence collection, case file conclusions, attrition and coordination of responses with other service providers.**
3. **There is ongoing data collection, analysis, and regular reporting on CARSV investigations and related activities. Opportunities to improve practices and services for CARSV survivors are given high priority.**

Data on incoming calls for service, length of investigations, outcomes and attrition is collected and regularly analysed to determine if policies, practices and resourcing requirement adjustment. Budgets and resources are adjusted accordingly.

4. **Leadership meets with justice, government and civil society groups to gain their perceptions on the quality and timeliness of investigations, and to obtain insights on improvements that could be made to augment public trust and confidence in investigations.**

External stakeholder involvement in the oversight of CARSV investigations assists in demonstrating transparency, accountability and legitimacy of justice organisations.

5. **Complaint mechanisms are available to CARSV survivors who question investigator conduct or investigations practices.**

CARSV survivors are offered an interview by an independent person at the conclusion of their case to obtain their perspectives on their level of satisfaction with the case and how it proceeded, and to determine their views on what could have been done to improve the service and outcomes.

202 Government of British Columbia, Unbiased Policing: What We Heard Report (2018).

203 Hohl & Stanko, *ibid*, 329.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leadership awareness of the need to build public trust and confidence is required. ☐ Publicly justify non-participation of survivors on external factors, uses stigmatised language and concepts in doing so. ☐ No expectations set for holding the organisation and individuals accountable for meeting survivor-centred investigative standards. ☐ No KPIs or role-related performance expectations for CARSV and survivor-centred investigations. ☐ No operational case reviews relating to CARSV, stigma, attrition or survivor participation. ☐ No socialisation or rewarding good practice. ☐ No data collection. ☐ No external engagement with partners, civil society, support services or survivors groups to gain feedback and improve. ☐ No safe avenues for survivor complaints.	☐ Leadership becoming aware of need to build trust and hold staff to account. ☐ No organisational expectations set for bias free, trauma informed, or survivor centred approaches to CARSV investigations. ☐ Isolated examples within teams for role-related expectations. Little accountability. ☐ Isolated examples within one or two teams of operational reviews. ☐ Isolated ad hoc data collection or responses to failed investigations or cases or survivor withdrawal. ☐ Little or only occasion external engagement, usually initiated spontaneously by civil society when they get a chance in public settings. ☐ Isolated examples of asking for survivor feedback or listening to informal complaints.	☐ Leadership sets some basic expectations for accountability around CARSV responses. ☐ Some management and accountability structures are established for CARSV investigations. ☐ Some basic KPIs but not CARSV or survivor focused. ☐ Operational reviews only basic considerations, do not include much on CSRV or survivors specifically. ☐ Basic data collection, monitoring or evaluation of organisational policy, procedure and practice, but very little data on CARSV specifically. ☐ Some relationships established with justice, government and civil society organisations. Mainly rely on prosecution feedback on investigation quality. ☐ Basic public complaints process, but not properly resources or supported.	☐ Expectations, a code of conduct and internal governance structures around CARSV investigations are in place but inconsistently enforced. ☐ KPIs and operational case reviews for CARSV and survivor-centred investigations put in place but are not well known or enforced yet. ☐ Some data collection, monitoring and evaluation is being conducted; however information is not shared publicly. ☐ Messaging and practice related to stigma and bias free services is not yet consistent. ☐ No external or CARSV survivor input on development of CARSV investigative governance sought. ☐ Survivor complaint system resourced and supported but no outreach and accessibility issues remain.	☐ Leader consistently, both internally and publicly, models language and behaviour that promotes stigma-free CARSV responses. ☐ Leader publicly commits to ethical, human right-based investigations that address survivor needs. ☐ Internal and external messaging on expectations and accountability about CARSV policies and practices is regular and consistent. ☐ Expectations, code of conduct, and governance roles and responsibilities are clearly defined and enforced. ☐ Management, supervisors, and investigators are held to account for meeting standards set. ☐ Performance data is collected and monitored against clearly defined indicators; adjustments are proactively made based on findings. ☐ Leader meets regularly with justice, government and civil society actors involved in supporting and protecting CARSV survivors. ☐ External partners and survivors have the opportunity to provide input on their perceptions of investigations.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
				□ Well-established accessible safe and confidential mechanism for survivor complaints. Investigators actively seek feedback and check in with survivors about their experience and concerns.

Key critical questions:

- How does leadership define survivor-centred service delivery? Are investigations aligned with international standards? How does this definition incorporate the requirement for Investigators to identify and consider the unique needs and desires of survivors of CARSV?
- What internal and external accountability structures, policies, measures and practices are in place to determine and monitor investigation quality, timeliness, and adequacy of support for survivors? How are these fed into supervision of staff and performance reviews?
- How is survivor satisfaction with investigative process, timelines, communication and linkages with support measured?
- What data is collected on the length of investigations from initial contact to conclusion of court processes, including information on outcomes and attrition?
- Is the collected data regularly used and analysed to determine if policies, practices, and resources are adequate or need to be adjusted? How are findings used?
- How often does leadership meet with justice, government and civil society groups to gain perceptions on the quality and timeliness of investigations and improvements that could be made to augment public trust and confidence in investigations?
- How does the investigative body support public education about gender stereotypes, myths and misconceptions about CARSV, and steps that can be taken to reduce them?

Data sources:

Internal: Codes of conduct, guidance and expectations, survivor liaison and TORs for survivor liaisons, strategic CARSV outreach plans and practices, investigation reviews, KPIs, PERs, monitoring reports.
External: Survivor feedback, CSO reviews.
Interviews: Organisational leadership, investigative staff, diverse samples at all levels, survivors groups, survivor advocates, support organisations, external service providers.

Useful resources, exercises or tools:

- UNDPKO, Gender Equality and Women, Peace and Security: Resource Package (2020). *Includes considerations for justice organisations to communicate with the public and other service providers to advance knowledge and information about CARSV, its impacts and available service providers.*

Competency Indicator INV4: Investigators ensure that they are part of a coordinated and integrated justice process from the point of accessing justice or reporting the crime for survivors in relation to their engagement, information/ communications, protection, support and participation.

The scope and quality of a justice response to CARSV is directly related to the ability and commitment of governments, justice systems and civil society to work collaboratively to provide fair, impartial and appropriately tailored and integrated investigative and support services for survivors of CARSV, their families and other relevant persons.

"*Victims and witnesses are the most important people in the [...] criminal justice system. Every part of that system shares the responsibility to improve the rights, support, protection and participation of victims and witnesses in criminal proceedings. The experience of victims and witnesses is a measure of the effectiveness of our justice system and of our society as a whole. Victims and witnesses have legitimate interests and needs, and must feel confident that their contribution to the criminal justice process will be worthwhile, valued and supported.*"[204]

204 'Working Together for Victims and Witnesses' Protocol agreed between the Crown Office and Procurator Fiscal Service, Victim Support Scotland, the Scottish Courts and Tribunals Service and Police Scotland.

Coordination and collaboration serve to standardise and unify the justice process for survivors. Coordination should reduce unnecessary duplication, gaps or omissions between functions or service providers. It should ensure a solid support system surrounding a survivor to ensure they can interact with and participate in the justice process and give their best evidence in a safe and supported environment.

Elements of good practice for this indicator includes:

1. **Multidisciplinary inter-agency teams and integrated work processes are supported and resourced by strong leadership and formalised through:**
   - joint agreements or Memorandums of Understanding (MoU);
   - joint processes and tools shared with and worked on together;
   - joint evaluations and reviews of how systems and processes are working; and
   - regular joint meetings;

   between key functions which relate to survivor engagement, communication, protection, support and participation, including:
   - Prosecutors;[205]
   - Support Services/System;
   - Medical Forensics;
   - Court Services, including witness support unit around attendance at court;
   - Interpretation and translation services;
   - Any Victim Representation or Advocates.
2. **Collaboratively developed protocols for coordinated multidisciplinary responses:**
   - are inclusive and equitable to all people accessing services, and are particularly sensitive to circumstances, issues and characteristics that could stigmatise CARSV survivors;
   - clearly define roles and responsibilities of all involved service providers;
   - identify and set service standards and expectations;
   - delineate the approaches and agreed upon principles of tailored response to survivors of CARSV, based on their unique circumstances, needs and desires;
   - help to avoid duplication or contradiction by multiple justice agencies and thereby reduce the risk of secondary victimisation to the CARSV survivor; and
   - assist in managing CSRV survivor expectations through consistent messaging across involved service provider organisations.
3. **Mapping and preparation work to understand:**
   - environmental and contextual research to identify CARSV survivor movements and relocation patterns to determine where survivors of CARSV are likely to be located;
   - actor mapping and existing investigation/documentation efforts and products, noting that an absence of CARSV information does not necessarily mean it didn't happen; and
   - national, local and regional service providers, available services, and capacities of service providers have been identified and contacted to determine their capacity, capability and commitment to trauma-informed and survivor-centred services.
4. **Investigative authorities work in concert with other service providers (e.g., medical facilities, one stop centres, rape crisis centres, sexual assault centres, women's support services) to develop and implement strategies and plans to:**
   - identify CARSV survivors and to assist them in coming forward to seek justice.
   - offer a range of options for CARSV survivors to report at any time, and at a location that is safe, private and agreeable to them.
   - ensure survivors have access to immediate, urgent or long-term protection measures tailored to their specific needs.
   - ensure safe pathways for survivors of CARSV to safely maintain their health, safety and security while pursuing justice.
5. **Justice agencies recognise and support local actors who provide continued support for survivors and who tackle negative attitudes and discriminatory practices in the community towards survivors.**
6. **Investigative efforts are aligned and coordinated with protection and support services to avoid multiple statements to multiple actors with appointments at multiple locations.**
7. **Investigative authorities work cooperatively with government, NGOs and human service organisations to educate the public about the importance of acknowledging and addressing stigma related to sexual violence, and to build public trust that Investigators can and will capably address CARSV.**

*See also **Chapter Two — Access to Justice and Survivor Pathways**, **Chapter Three — Support Services** and **Chapter Five — Witness Protection**.*

205 Rt Hon Dame Angiolini, Report of the Independent Review into the Investigation and Prosecution of Rape in London (2015): "Early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified'.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No understanding of need or value of protocols for coordinated responses to CARSV survivors. ☐ Asserts independence, confidentiality and works on own or in isolation on investigation functions. ☐ No interactions with other justice, health or support services on CARSV-related issues. ☐ No or very limited interactions with relationships with prosecution, judiciary, or other court services. ☐ No agreements or MoUs with other actors, even where handovers, intersections or duplication in function or process. ☐ No formal meetings with other actors. ☐ Voices criticism of other actors and functions without engagement. ☐ Survivors consistently report disjointed process, with multiple contact points, irregular and inconsistent communications, support, with overlaps and gaps. ☐ No mapping or understanding of other actors, documenters, support services or protection services. ☐ No efforts to ensure integrated and coordinated access to justice and response to needs.	☐ Isolated pockets of informal contacts between justice and other service providers emerging at lower levels. ☐ CARSV managers, supervisors and Investigators work in relative isolation. ☐ Prosecutors are rarely contacted regarding investigations. ☐ Some ad hoc working level meetings to try to improve. ☐ Survivors frequently report disjointed process, with multiple contact points, irregular and inconsistent communication, support, with overlaps and gaps. Some isolated examples of better practice and coordination happening ad hoc through some teams. ☐ Some isolated pockets of Investigators undertaking mappings and trying to work with services.	☐ Some basic agreements with most of the other key actors. ☐ Leadership meetings sporadically or responsive to crisis or criticism. ☐ No joint processes or shared tools. ☐ Investigators have limited knowledge and understanding of court processes and do not regularly contact or work with prosecutors. ☐ Informal contacts between justice and other service providers are increasing. ☐ Some survivors report areas of collaboration and coordinated support or communications, but mostly still overlapping, inconsistent, conflicting and confusing interactions with different persons in different functions or departments. ☐ Very basic mappings, no vetting, not updated. ☐ No integrated work with support and protection services, offer only address or contact number to survivors.	☐ Agreements with all key actors with some joint processes. No shared tools or regular day-to-day collaboration on cases. ☐ Leadership meetings and reviews more regular. ☐ Some good working relations emerging but not integrated working. ☐ Role and responsibilities on paper but in practice some confusion, gaps or competition. ☐ Mixed reports by survivors, with still significant issues around overlapping, conflicting or multiple contact points or gaps. Some still report disjointed, confusing process. ☐ Good mapping and vetting process undertaken but inconsistent not fully cohesive coordinated work.	☐ Fully integrated cooperation and collaboration to ensure seamless, deconflicted and consistent process for survivors. ☐ Includes joint agreements, with joint processes and shared tools with all other actors. ☐ Roles and responsibilities of all involved service providers are clearly defined. ☐ Includes day-to-day working level team meetings for individual cases, and regular leadership review meetings. ☐ Survivors mostly report a simple, streamlined, coordinated system which meets their communication, information, preparation, support and preparation needs. ☐ Full updated and vetted mapping of support and protection services, integrated pathways working in lockstep with justice processes. ☐ External stakeholder involvement in the oversight of CARSV investigations assists in demonstrating transparency, accountability and legitimacy of justice organisations ☐ Local actors who provide continued support for survivors in the community recognised and supported.

Key critical questions:

- What cooperation and coordination agreements, joint procedures and shared tools do the investigative authorities have with other functions?
- How often do the investigative authorities meet at the leadership level with other functions? How often do the investigation authorities meet with other functions at the working level on cases?
- What is the relationship between the investigative authorities and the prosecution service? What joint tools, such as joint investigation plans, do these functions share and work on together? How early in the investigative process do prosecutors provide advice and input into cases?
- How is implementation of and adherence to such agreements, procedures and tools monitored and reviewed? At what level and how often does this occur?
- How do survivors describe their interaction with different functions during the process? How many times do survivors have to recount their experience to different functions? How many different liaison and contact points are there for survivors? Are there gaps at handover points or where functions intersect or overlap? Are there unnecessary or uncoordinated interactions or engagements?
- What research, mapping and contextual understanding do Investigators undertake? Does this include an assessment of how inclusive, accessible and safe support services and other actors are?
- What tools or databases or guidance is available for this preparation work?
- Do Investigators map and vet services? How do Investigators work with vetted services? How do Investigators ensure survivors are aware of and can access services if they choose to?
- What relationships have been established between investigative authorities, prosecution, the judiciary and health, other government services, NGOs and human service providers to drive and support coordination of effective trauma-informed, survivor-centred services and service delivery to CARSV survivors? Are these relationships continuous or formalised?
- How is stigma addressed in the principles that serve as the foundation for shared service delivery?
- What structures, policies, processes and procedures are in place to:
    - coordinate referrals and responses to best meet the needs of survivors?
    - permit survivors, government and CSOs to ask questions, offer insights, voice concerns or make complaints about if and how CARSV services are being tailored and delivered in impartial, supportive ways?
    - assess the effectiveness and impact of the multi-disciplinary, coordinated responses on eliminating and reducing stigma for survivors?

Data sources:

Internal: Interagency coordination agreements, MoUs, meeting minutes and notes, joint policies, SOPs, tools, information sharing and confidentiality tools, survivor liaison strategies and plans, practice guidelines and referral agreements.
External: Survivor feedback, CSO reviews/reports.
Interviews and focus groups: Organisational leadership, investigative staff, survivor support services, survivor advocates, external service providers.

Useful resources, exercises or tools:

- Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017). *This package contains tips and tools on working with service partners to provide CARSV survivors with the best possible care and support*.
- UN Women, Safe and Fair: Violence against Women Service Directory for Women Migrant Workers in the ASEAN region (2021). *This is an example of a regional service directory used to coordinate referrals and responses to address the needs of women migrant workers subject to violence*.

Competency Indicator INV5: Investigative authorities collect and use disaggregated data to understand, monitor and improve practice on CARSV, stigma, survivor-centred and trauma-informed approaches.

Data collection and analysis is foundational for developing an understanding of what is working well and what needs to be improved. It also permits understanding of the level of service provided and provides indicators of where and when investments in human, operations and administrative resources are needed and the impact such investments would have on achieving organisational goals to provide superior responses to CARSV.

Critically, data collection can support better understanding of attrition or pressure points where fully effective, inclusive, cohesive and representative CARSV investigations are not pursued, are reduced or are ceased. This can help identify system, culture and human factors which are feeding into attrition or reduction of CARSV investigations, and can signpost where work and reform is needed.

Elements of good practice include:

Internal data collection and management are integrated, and:

- support reliable analysis of the effectiveness of functions, processes, and services;
- inform sound decision-making;
- provide foundations for determining how polices, processes and procedures can be modified to improve service delivery; and
- help to build consistent definitions, terminology, and practices across and between organisations.

Failure to do so can:

- hamper effective collaboration;
- increase the risk of information loss; and
- decrease trust in the ability of justice services to provide the correct and adequate investigations, supports and referrals for CARSV survivors.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No organisational CARSV data collection, monitoring or evaluation to determine number of cases, types of responses, diversity of complainants, effectiveness of responses, or attrition.	☐ Isolated pockets of individual or team attempts to monitor and understand attrition, why CARSV are reduced or ceased along the investigation process.	☐ Some rudimentary monitoring and collection of data, with no or limited analysis. ☐ No baselines in place against which to measure progress. ☐ No performance indicators identified.	☐ Data, monitoring and evaluation guidelines have been developed. ☐ Data collection, monitoring and evaluation is being conducted. ☐ Analysis conducted is often superficial and does not provide the organisation with sufficient information to make strategic, operational and administrative decisions. ☐ Performance indicators are identified, and progress against baselines is occasionally evaluated. ☐ All information and data related to survivors and their cases is confidential.	☐ Data, monitoring and evaluation guidelines are in place, and are regularly reviewed to ensure they are meeting the needs of the organisation. ☐ Where agreements and protocols permit, data can be shared with other service providers to meet integrated and shared service objectives. ☐ Rigorous analysis is conducted to provide the organisation and its partners with sufficient information to make strategic, operational, and administrative decisions. ☐ Performance indicators and baselines have been developed, and progress is regularly evaluated to determine progress towards objectives set.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
			□ All information and data related to survivors and their cases is securely stored and managed, and is accessible only to designated individuals on a "*need to know*" basis. □ Electronic and physical transfer of data is secure.	□ Data on requests for service, length of investigations, outcomes, and attrition is collected and regularly analysed to determine if policies, practices, and resourcing requirement adjustment. □ Data is used also to inform financial and human resources, and investigative processes and practices. □ Data storage, access, retention, management and transfer are secure. □ Data is shared only with persons authorised to receive it. □ Survivor data is confidential, and is shared only with the permission of the survivor.

Key critical questions:

- What CARSV data is currently being collected? What is the purpose of collecting this data? How does it further the achievement of organisational commitments, strategic priorities or operational needs?
- What analysis is being done, and what is done with the findings generated? Does it prioritise understanding where attrition and pressure points reduce the potential scope and outcome of CARSV investigations and prosecutions which follow? How is it used for decision making? For example, planning, human resources and financial allocations? Operations? Administration?
- How could data collection and analysis benefit survivors?
- What policies and practice guidelines are in place for monitoring, analysing and using findings?
- What are used as baselines and performance indicators? How are they determined? By whom?
- How regularly is progress towards goals related to improving services for survivors assessed, for example in relation to the number of complaints, number of investigations initiated, length of time from initial contact to case closure and attrition? Where, when and decided by whom?
- What policies are in place to govern who can access data and with who and how data can be shared?
- What roles does the survivor play in determining how data is used and shared?

Data sources:

Internal: Team data collection related policies, procedures and processes; Reviews, analyses, assessments and recommendations from CARSV data; survivor attrition reports and studies; Case file and investigative process reviews; data collection, storage, preservation, sharing, retention, retrieval, destruction and disposal policies and reports. Information Sharing Agreements.
External: Oversight or Evaluation Reports
Interviews/Focus Groups: Leaders, investigators, Data Officers, Survivors Groups, Oversight Mechanisms staff.

Useful resources, exercises or tools:

- UN Women, ASEAN Regional Guidelines on Violence against Women and Girls Data Collection/Use (2018).
- Benetech & Corporation PuntadeVista, Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities (2011). *Includes recommendations for a more comprehensive, contextually driven approach that uses qualitative, multi-disciplinary approaches to understanding and addressing CARSV issues*.

B. SURVIVOR ENGAGEMENT AND INTERACTION

Competency Indicator INV6: Investigating authorities maximise opportunities for CARSV survivors to access justice, regardless of their personal circumstances, status, place of residence, economic, cultural and social background, ethnicity, religion, gender, culture or language.

CARSV survivors encounter significant societal, legal and institutional policies and practices that act as barriers to justice. If contacting and dealing with police is physically challenging, time-consuming or expensive, and good reception and assistance are not available, survivors may not report to criminal justice actors.[206]

Bias that starts at the initial contact stage often continues and is reflected throughout the justice system. For example, a study on the impact of testifying at the ICTY found that women, who make up the majority of CARSV survivors, comprised only 17% of all witnesses who appeared at the Tribunal.[207] It is crucial that investigative bodies, in concert with other service providers, ensure CARSV survivors can readily and easily report CARSV, and that they are welcomed and treated with dignity and respect when they initially contact an investigative authority and throughout their interactions with justice service providers. Access points should be safe, stigma-free and accessible for all groups of victims.

*See **Chapter Two — Access to Justice and Survivor Pathways***. There are many different ways that survivors come into contact with the justice process and justice actors. This varies depending on context, situation, laws, facilities, etc. As a result, there are a myriad of potential access points or 'reception centres' through which a survivor may begin access to justice.

Elements of good provision of barrier free access to justice include:

1. **A commitment to survivor-centred and trauma-informed, respectful and sensitive interactions guide actions at all initial contact points and reception services.**

All survivors reporting to an investigative authority are welcomed and treated with compassion. They are not turned away, sent to another location, forced to wait for excessive periods of time, or treated poorly, nor are they urged to seek mediation or other forms of settlement outside of the formal justice system. They do not face any form of stigma or revictimisation.

2. **Policies, processes and practices for initial contact points and reception services prioritise survivor-centred approaches to ensure that embedded discriminatory social and cultural narratives and behaviour are not perpetuate on initial contact or afterwards.**
3. **Examination and assessment of how violence, political situations, religion, cultural factors, migration, language, special interest groups and power dynamics have impacted inclusive access to justice and support services in the area/region.**

Proactive data collection and tackling barriers to access to justice for all survivors. Monitoring, evaluation and documentation of strategies that work and what requires improvement inform and support future actions. Special emphasis is placed on identifying how biases, stereotyping, prejudice and discrimination impact CARSV survivor willingness and ability to access and report to investigating authorities, and steps are taken to eliminate/reduce those barriers to reporting.

4. **Risk assessments form the foundation for safety planning and the development of integrated protocols and safe referral networks.**

Risk assessments and processes are unbiassed, impartial and fair and are not informed by biases and stereotypes. See also Witness Protection.

5. **Integrated support services are part of any access and reception point and process, including medical, mental health, psychosocial, economic livelihoods and safe housing, protection and legal advice or representation.**

Steps are taken to ensure survivors have access to needed services such as medical examinations and psychosocial support services.[208]

6. **Investigative services are provided free of charge and accessing service does not place an undue financial or administrative burden on the survivor. See also Indicator ATJ10.**
7. **Investigators endeavour to create pathways for survivors to initiate contact with them through supported referrals. Investigators are extremely careful about identifying survivors as potential witnesses and initiating any contact directly or unexpectedly with them.**

Murad Code Principle 2.1: "*Avoid approaching survivors unexpectedly: Whenever possible, we will work through existing and vetted access or referral points or we will create safe pathways so that a survivor can decide to approach us or be placed in contact with us. We recognise that approaching survivors ourselves or through someone else (rather than creating safe ways for a survivor to choose to come to us), can heighten risks of harm and pressure survivors to cooperate, reducing genuine free choice.***"**

206 UNSG, Report of the Secretary Gender on CRSV (30 March 2021); Skinnider *et al*, *ibid*.

207 King *et al*, 'Bearing Witness: The Impact of Testifying at War Crimes Tribunals', conference paper for International Studies Association Joint International Conference in Ljubljana, Slovenia (22-26 June 2016).

208 UNFPA, UN Women, WHO, UNDP & UNODC, Justice and Policing Module (Essential Services Package for Women and Girls Subject to Violence) (2015).

In investigator-initiated approaches, especially in crisis-displacement settings, there are very high risks of violating confidentiality and privacy, and exposing survivors to unwanted attention or negative community or family reactions. Such an approach can be retraumatising. The dynamics of it also add pressure on survivors, compounding any power differentials, to participate or provide information, and it can significantly impact survivors' free choice.

"*The victim reported finding being approached this way very confronting: 'I was pretty shaky, tearful, I thought I was going to throw up. I was just so out of my realm of experience or expectation.*"[209]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Leadership does not acknowledge or understand their role in increasing and improving opportunities for survivors to access justice. ☐ Environmental and contextual factors that can prevent, inhibit or negatively impact survivor seeking justice are not considered. ☐ There are no policies, processes, and practices to prioritise and guide safe, trauma-informed, and survivor-centred access to justice. ☐ Survivor safety is not considered. ☐ There is no assessment of the quality of access services. ☐ No referral pathways have been developed.	☐ There is very limited understanding of the role of justice staff in increasing and improving opportunities for survivors to access justice. ☐ There is some consideration of discriminatory values and practices vulnerable survivors have experienced, and some regard that accessing justice must be culturally sensitive and bias free. ☐ There is some consideration of survivor safety needs.	☐ Leadership acknowledges their role in maximising opportunities for survivors to access justice. ☐ Some investigative staff are familiar with environmental and contextual factors that can prevent, inhibit or negatively impact survivors seeking justice. ☐ Some policies, processes and practices to guide safe, trauma-informed and survivor-centred access to justice are being developed. ☐ Survivor safety is occasionally considered. ☐ Quality access to services is being defined. ☐ No formalised referral pathways have been developed.	☐ Leadership taken some steps to develop improved access strategies, policies and practices for survivors seeking to access justice. ☐ Staff consideration of environmental and contextual factors that impact survivor survival is defined competency. ☐ Policies, processes and good practice guidelines have been developed to guide safe, trauma-informed and survivor-centred access to justice. ☐ Supervisory and management structures are being implemented to support CARSV Investigators and investigations. ☐ Safety of survivors, their families and relevant others is a priority. ☐ Quality services and practices have been defined. ☐ Receiving staff are held to account for the quality of information and services they provide to survivors.	☐ A commitment to survivor-centred and trauma-informed, respectful and sensitive interactions guides actions at all reception services. ☐ Current environmental and contextual factors that can prevent, inhibit or negatively impact survivor seeking justice are considered. ☐ Survivor safety is prioritised in all interactions with justice personnel. ☐ Policies, processes and practices place a high priority on safe, trauma-informed, and survivor-centred access to justice. ☐ Justice service providers don't turn complainants away. They are welcoming, treat survivors with dignity and respect at initial contact and throughout their interactions. ☐ Access strategies are regularly monitored and evaluated to determine the extent to which they meet survivor needs, and to identify what needs to be improved.

209 Gravitas, Improving the Justice Response to Sexual Violence: Victims' Experiences, Research Report (2018), 26-27.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
			□ Work is underway to develop referral pathways to support survivor decision-making and ensure needed services provided. □ Access related policy, practice and services are monitored within justice organisations.	

Key critical questions:

- What is the leadership's understanding and position on their role in maximising opportunities for CARSV survivors to access justice?
- What do survivors of CARSV view as the biggest barriers to accessing investigative services? How is that determined?
- What environmental and contextual factors can inhibit or negatively impact survivor access to justice?
- What special measures are taken to remove barriers to access for survivors who:
  - have criminal records, are involved in criminal activity or are in the country without legal residency?
  - have experienced bias and social norms that have led them to fear how they will be treated by the justice system?
  - fear further societal stigma?
- What organisational policies, strategies and practices are in place to minimise negative impacts on survivors of CARSV seeking to access justice?
- What reporting options are available CARSV survivors seeking to report incidents of sexual violence (e.g. hospital/medical facility, one-stop centre, police, other?)
- How is the effectiveness, impartiality and the extent to which policy, procedures and practices minimise bias, stereotyping, prejudice and discrimination determined?

Data sources:

Internal: Policies and guidelines for survivor interactions, guides to non-stigmatising language, trauma-informed and survivor-centred standards, training records and materials, survivor liaison strategies and plans, referral policies and practices.
External: Survivor feedback, survivor support services, external service provider partners, external reviews on accessibility of services and barriers.
Interviews and focus groups: Survivors and survivors groups, survivor support services, survivor liaison officers.

Useful resources, exercises or tools:

- Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017).

Competency Indicator INV7: Investigators value and ensure they follow a survivor-centred, non-stigmatising methodology in all their work preparing for and interacting with survivors.

Murad Code Foreword: "*The Code emphasises the need to recognise the individuality of survivors and to avoid making assumptions based on the groups that they belong to or on any single facet of their identities. For example, "children***" are not a homogenous group and include people who are very diverse in terms of their age, maturity, resilience, education, gender, other identities and situations. Tailoring our approach to the individual strengths, needs and realities of survivors facilitates more effective and survivor-centred information-gathering and use. Preparation is essential. We should actively avoid unplanned information-gathering and use, especially if we do not have the necessary systems, policies, procedures, risk assessments and plans in place. We must also address our over-reliance on survivor information. If we all decide that we need information from survivors, we create multiple demands and pressures on survivors and amplify risks of exposure and retraumatisation. Whenever we can, we should look for [...] CRSV information from sources other than survivors (such as fact-pattern witnesses and expert reports) to reduce pressure on survivors. The Code reflects that if done properly, those who gather and use [...] CRSV can avoid the false choice between being either survivor-centred or effective."**

Minimum elements of safe, survivor-centred, and trauma-informed investigative practices include:
We would recommend assessment against all Principles and Commitments in the Murad Code as it represents minimum standards for safe, effective and ethical information gathering from or about survivors of CARSV. Of note specifically:

1. Murad Code 1.1 ***"Adapt to survivor's individuality: We respect that each survivor is unique. We will tailor our approach to their specific identities, characteristics, groups and contexts, such as their age, gender, evolving capacities, resilience, relationships with and connections to others, socio-economic and political situation, and the discrimination they face. We recognise that such elements change over time and context and that our approach may have to be adjusted accordingly."***[210]

Investigators are cognisant that investigative methods and practices that do not consider the unique characteristics and requirements of individual victims can be harmful, unsafe, and ineffective. Investigators understand and are trained to treat each survivor as a unique individual, recognising that:

a. achieving justice may have many different meanings to them, and may or may not be important to them;
b. their rights, needs, wishes and the amount of risk they are prepared to assume are primary considerations in all cases; and
c. each individual's lived experiences, diverse abilities, challenges and vulnerabilities will inform their information, justice, safety and protection needs.

2. **All staff are acutely aware and constantly consider the significant trauma that survivors of CARSV have experienced, knowing that in many cases that trauma is exacerbated by additional stigma, discrimination and personal challenges and uncertainties they are facing as a result of conflict, displacement and local cultural, religious and social norms.**
3. **Investigators make no assumptions about a survivor's appearance, conduct, personal characteristics or willingness to proceed with a complaint.**
4. **Investigator interactions with CARSV survivors do not shame, blame or otherwise stigmatise them. Investigators demonstrate caring, ethical and supportive attitudes and ask how they can help. Investigators start by believing the CARSV survivor.**
5. **Investigators work with CARSV survivors to assist them in achieving the outcomes the survivor is seeking, rather than being driven by their need to initiate a justice process.**
6. **All investigative work with CARSV survivors is carefully risk assessed and risk mitigated. Survivors' safety is prioritised. Confidentiality protocols and measures are in place to protect all survivor personal and case file information.**

210 IICI The Murad Code (2022).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No consideration of how personal challenges, stigma, discrimination and uncertainties impact each individual. ☐ No thought is given to language, terminology used or if interpretation could assist in helping the survivor make decisions. ☐ Investigator actions often shame and blame survivors for the sexual violence perpetrated on them. ☐ No vulnerability assessments are conducted. ☐ No safety plans are developed. ☐ There is no requirement for confidentiality.	☐ Isolated investigations take survivor needs into account. ☐ No consideration of how stigma, discrimination and uncertainties impact each individual. ☐ Investigator language still reflects sexual violence myths and stereotypes. ☐ No consideration is given to steps that could be taken to assist the survivor make decisions about the best way to move forward. ☐ No vulnerability assessments are conducted and no safety plans are developed. ☐ Confidentiality is not prioritised.	☐ Investigators acknowledge unique needs and risks of survivors, but have limited ability to consider and address them. ☐ Consideration of the impacts of stigma and discrimination for survivors is limited. ☐ Investigator language is somewhat trauma-informed and survivor-centred. ☐ The need for maintaining confidentiality of the CARSV survivor discussed, but not formalised as a requirement. ☐ Basic vulnerability assessments conducted by the Investigator are sometimes informed by sexual violence myths and stereotypes.	☐ Efforts are made to identify, consider and address the unique needs of each survivor. ☐ The impact of stigma each individual has suffered is considered throughout the investigation. ☐ Investigator language is trauma-informed and survivor-centred. ☐ Confidentiality of the CARSV survivor and their case is generally maintained. ☐ Vulnerability assessment tools are not informed by sexual violence myths and stereotypes. ☐ Some external service providers are involved in safety planning.	☐ Methods and practices are adapted to the unique needs, wishes, risks, diverse abilities, challenges and vulnerabilities of every survivor. ☐ Personal challenges, stigma, discrimination, and uncertainties and their impact on each survivor is considered and addressed. ☐ No assumptions are made about a survivor. ☐ Responses are caring and do not shame, blame or further stigmatise survivors. ☐ Protection measures are considered and implemented. ☐ Sound vulnerability assessments and safety plans are developed in cooperation with each survivor and other service providers. ☐ Complete confidentiality is maintained.

Key critical questions:

- What policies and practices are in place to guide investigative behaviour and practice?
- What steps are taken to ensure that each survivor is treated humanely and fairly, and that their human rights and dignity are upheld regardless of their gender, age, ethnicity, religion, cultural, language skills, cognitive and physical abilities and vulnerabilities?
- What policies, SOPs, work tools address intersectionality and individuality of survivors?
- How are vulnerability assessment tools developed and used when working with survivors? What has been done to ensure the vulnerability assessment tools are not informed by stigma and myths?
- What consideration is given to the local context and its impact on the survivor?
- What are the consequences for Investigators who treat survivors without appropriate consideration for their circumstances and needs, or who make biassed assumptions about survivors?
- What feedback is sought from survivors about how they are treated by investigators — how far they face assumptions, stereotyping or standardised approaches which are not tailored to their needs or realities?
- How are investigative practices monitored to determine how they impact survivors? By whom?

Data sources:

Internal: Policies, guidelines, SOPs and tools on work with survivors, training records and materials, codes of conduct and expectations around CARSV investigations and stigma, investigation and case file reviews.
External: Survivor feedback, reports/reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, investigative staff.

Useful resources, exercises, or tools:
- IICI, The Murad Code.
- Atenco v Mexico, IACHR — see B.3 Gender-based discrimination based on the flaws in the investigation at 110. *Explains how stigmatised responses by investigators denied access to justice for survivors*.
- Council of Europe, The Istanbul Convention (CETS 210) Articles 49 and 51.
- Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017).
- UN Women/FCO, Conflict-Related Sexual Violence in Asia-Pacific: Putting Victims/Survivors First (2017). *Provides a framework for understanding the context and experiences of CARSV survivors to develop accountable context-specific approaches. Includes case studies and recommendations*.

Competency Indicator INV8: Investigators provide survivors with clear understandable information about the justice process and available options to allow them to make informed choices, respect and support survivor rights and wishes, and maximise opportunities for survivors to make decisions about their interaction and engagement.

Survivors have the right to make a choice about whether or not to participate in the justice system. This includes the right to change their mind at any time in the process, and to withdraw if they choose. Investigators should ensure they fully respect

Murad Code Principle 2: Respect Survivor Control and Autonomy.

Elements of good practice include:

1. **It is the survivor who decides whether or not they wish to participate in any process in the criminal justice system.**

The survivor's final decision is respected, as is a choice to withdraw later in the process. Filing a formal report or proceeding with a complaint is not required. If a survivor chooses to file a complaint, investigators must take this seriously and respond with effective, safe and efficient investigations. If the complaint describes a crime outside the jurisdiction of an investigator (for example one from an international court, hybrid court or with limited extra-territorial jurisdiction), the investigator must explain the limits of their mandate and make best efforts to find available avenues or justice actors who can help them pursue justice.

2. **All investigative staff are fully trained in informed consent elements and practice to ensure survivors are given the right amount of information in an understandable way to assist them to make informed choices.**

Investigators explain justice and investigation processes to survivors, using language and terminology that the survivor can understand and relate to. Investigators:

- speak in language that is used and understood by survivors. If this is not possible, well-trained interpreters are used to interpret all interactions.
- reflect terminology used by survivors, recognising that they are unlikely to be versed in legal procedure and may have a minimal educational background.[211]

Survivors are provided with information on the full range of options available to them and the risks associated with each option.

3. **Steps are taken to counter status and power imbalances between the Investigator, survivor and community influences to maximise opportunities for CARSV survivors to make informed choices about if and how they wish to proceed.**

Compulsion, coercion, pressure, inducements and incentives to provide information or participate in justice processes are avoided. Survivors have time and space to make decisions.

4. **Investigators follow-up and confirm choices made, and provide opportunities to discuss options and opportunities for survivors to change their minds.**
5. **Initial contact files and actions are reviewed to ensure fully voluntary, fully informed consent and choices were made by survivors.**

211 Yusree & Sharbawi, Protection of Victims, Particularly Women and Children Against Domestic Violence, Sexual Offences and Human Trafficking — The Brunei Experience, ASEAN Law Association (date unknown).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Decisions taken by Investigators regardless of the wishes of survivors. Survivors are compelled to participate or provide information. ☐ Investigators do not understand informed consent and do not think it is relevant for their work. ☐ No support considered for survivor engagement with Investigators. ☐ No translation of print or electronic communications available. ☐ No use of interpreters indicated.	☐ Some inadequate informed consent procedures performed, survivors still get compelled or pressured into participating in justice processes, including providing information to Investigators. ☐ Investigators receive no training on informed consent. ☐ Isolated pockets of Investigators who are able to provide the right information for informed consent. ☐ Generally survivors are not given the time and information needed to make informed choices. ☐ Community influences and power imbalances between survivors and Investigators is not recognised. ☐ Isolated examples of support around survivor decision-making. ☐ No follow-up to ensure survivors have the necessary information to make informed choices about how they wish to proceed. ☐ A few translated print or electronic CARSV information communications are available. ☐ No use of interpreters indicated.	☐ Some guidance developed to assist Investigators informed consent processes. ☐ Training on informed consent limited. ☐ Limited recognition of influences and pressures on decision-making. Little or no effort to mitigate. ☐ Occasional contacts with support services around survivor decision-making. ☐ Informed consent processes usually rushed and decisions required immediately. ☐ Follow-up with survivors is an Investigator choice rather than an expected practice. ☐ Many survivors still pressured or compelled into providing information. Most do not fully understand risks or processes. ☐ Some pamphlets and information packages for survivors in a number of their languages are available in print and electronic formats. ☐ Interpreters are used more broadly for information sharing and interviews.	☐ Clear policies and procedures define expectations and guide investigative behaviour and actions. ☐ Investigators receive some training on informed consent from survivors. ☐ While informed consent processes are standard practice, decisions are not always fully informed or fully voluntary. ☐ Some time and space provided around decision-making, but inconsistent practice. ☐ Some support available around decision-making but not integrated into the process. ☐ Informed consent and decisions to participate and provide information not always reviewed or followed-up. ☐ Interpreters regularly used to communicate with survivors. Most materials translated into survivors' languages.	☐ Investigation and support services are fully integrated. ☐ Policy and procedures are in place to define and guide informed consent processes and renewal times. ☐ Investigators have been trained to recognise the power imbalance between the survivor and themselves and to respond accordingly. ☐ Informed consent processes take place with time and space, as interactive conversations during which survivors ask questions. ☐ Survivors are referred to legal and psychosocial support workers who can help them make an informed decision about what is best for them. ☐ Survivor provision of information and participation in investigations/justice processes only happen with fully informed consent and expressed desire of the survivor. ☐ Follow-up is conducted with survivors to determine if their circumstances have changed, if they require more information to make a decision, and what they need to be safe and secure. ☐ Survivor agency and decisions are fully respected.

Key critical questions:
- What policies, practices, training and supports are in place to ensure Investigators undertake fully informed voluntary consent processes? What SOPs, training and tools help investigators avoid making inducements or offering incentives to survivors to speak with them or to initiate a justice process?
- What guidance is available to Investigators to assist them in providing complete information about justice processes to survivors in an impartial, non-judgmental way that takes into account the trauma and stigma they have suffered, their unique circumstances, their personal capabilities and capacities, wishes?
- What steps do Investigators take to give survivors time and space to make decisions about how they want to move forward?
- What requirements are in place for Investigators to follow up with survivors after their initial contact?
- What action has been taken to ensure any intermediary or referring entity also undertakes a fully informed voluntary consent process with accurate information, including of the risks?
- Who monitors this requirement for completion and survivor satisfaction?
- What is survivor feedback about informed consent? Were they given the right level of information in a digestible, understandable form, with time and no pressure to consider their choices?

Data sources:
Internal: Organisational Policies, guidelines, SOPs, informed consent templates, tools and records, training materials, standards and reviews for informed consent, survivor information/communications.
External: Survivor feedback, reviews/reports.
Interviews and focus groups: Survivors groups, support services, first responding officers, interviewing officers, survivor liaison officers, investigative staff.

Competency Indicator INV9: Investigators and investigative staff all use nonstigmatising language and terminology about CARSV and survivors, and recognise and counter stigma when they encounter it.

How criminal justice leaders, decision-makers and investigators speak and the language they use, publicly, within their organisation and with survivors about CARSV can positively or negatively shape perceptions, beliefs, attitudes, behaviours and actions of survivors, staff within the organisation, and people in the community. Use of stigmatising comments and language decreases the likelihood that survivors will report and follow through on their complaints in the justice system and that a positive outcome can be realised in justice processes.

Elements of good practice on language and terminology include:

1. **Policy and guidance clearly define expectations and requirements for all investigative staff, to use non-biassed, non-stigmatising language in their work.**
2. **Staff are provided with training and support that define stigma and the impacts of stigma and provide guidance to assist managers and Investigators in meeting expectations for non-stigmatising communications. Care is taken to:**
   - use ethical, respectful, bias-free, non-derogatory language that respects survivor rights and takes into account their diversity, individual needs, capabilities and strengths.
   - not misinterpret or question a survivor's credibility or blame them for their behaviours, reactions of anger or anxiety.
   - not treat survivors with disbelief or inappropriate or insensitive behaviour or language.
3. **Leadership sets clear expectations that all staff are required to use non-stigmatising impartial language in all oral, written and electronic communications.**

The investigative service has zero tolerance for stigmatising language and terminology about CSRV and survivors. Leadership, management, supervisors and Investigators model correct language and non-stigmatising concepts.

4. **Supervisors and managers regularly monitor and review interactions, investigative interviews, reports and evidence presented by investigators for stigmatising language. Deficiencies are quickly addressed, and where appropriate corrective action is taken and/or disciplinary penalties applied.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness of stigma indicated. ☐ No steps taken to identify and address stigma related communications with survivors. ☐ No value assigned to the use of bias free, non-stigmatising language. ☐ Investigator communication includes stigmatising language and advances sexual violence myths and stereotypes. ☐ Stigmatising biassed or harmful language is not identified or challenged. ☐ No complaint mechanisms in place to receive and investigate complaints about justice personnel's inappropriate or insensitive use of language.	☐ No expectations set, and no policy or practices requiring bias-free, blame-free, non-stigmatising, inclusive language. ☐ Limited awareness of how stigmatising language can impact traumatised, vulnerable survivors. ☐ Investigators still uses stigmatising language that advances sexual violence myths and stereotypes. ☐ Some isolated examples of non-stigmatising language that considers the trauma, diverse needs, capacities, capabilities and vulnerabilities of survivors. ☐ Limited recognition that care must be taken not to misinterpret the language and terminology used by survivors.	☐ Leader sets some basic expectations around the use of non-stigmatising language when conducting CARSV investigations. ☐ Sexual violence myths and stereotypes are not countered. ☐ Some recognition of the impacts of stigmatising language on survivors. ☐ Investigators acknowledge but do not model non-biassed, stigma-free language. ☐ Most investigators recognise that care must be taken not to misinterpret the language and terminology used by survivors.	☐ Expectations are set, and a code of conduct, communications policy and procedures governing all organisational communications are in development. ☐ Leaders, managers, supervisors and investigators model bias free, trauma-informed communication skills, and demand the same of Investigators. ☐ Investigators, interpreters and translators are provided with basic training around: ☐ using bias-free, non-stigmatising language to identify, understand and meet diverse survivor needs and expectations. ☐ reading and interpreting non -verbal cues accurately. ☐ speaking with survivors in a caring and sensitive manner. ☐ Investigators often work with other service providers to ensure all parties understand language and terminology in the same way. ☐ Supervisors and managers provide some recognition for good communications skills and practices.	☐ A formal code of conduct, expectations, policies and procedures define and regulate bias-free, trauma-informed communications between justice and survivors, their partners, other service providers and the public. ☐ All staff are expected to use exemplary, superior, caring language at all times. ☐ There is zero tolerance for the use of stigmatising language or practice. ☐ Persons using stigmatising or biassed language are immediately challenged. ☐ Investigators do not question a survivor's credibility ☐ Survivors are believed and are not shamed or blamed or in any way held responsible for the sexual violence perpetrated against them. ☐ Investigators are aware that reactions of anger or anxiety must not be misinterpreted. ☐ All internal and external messaging meets quality guidelines set by the organisation.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
				□ Investigators receive training, coaching, guidance and support to assist them in becoming more proficient in the use of trauma-informed, survivor-centred communications. □ Good communications skills and practices are recognised and rewarded. □ Supervisors and management hold all staff accountable for non-biassed communications.

Key critical questions:

- What is leadership's position on the use of non-stigmatising language? What is the level of tolerance for use of stigmatising language in oral, written and electronic communications? What are the consequences for not meeting the standards set? How does organisational leadership model good use of non-stigmatising language in oral, written and electronic communications?
- What policies, practices and supports are in place to provide Investigators with the right linguistic and cultural interpretations of key words, behaviours and expressions associated with sexual violence in a particular setting? What guidance, training, coaching and support are available to assist supervisors and staff to become more proficient in the use of non-stigmatising language?
- What specific expectations has the leadership set for use of non-stigmatising language in investigations? How about when providing evidence in court, when interacting with survivors, with the public, with other staff within the organisation or with other service providers?
- How are supervisors and staff held accountable for use of non-stigmatising language?
- Are all staff are educated on biases, stereotyping, prejudice and discrimination and on the negative impacts they have on survivors?

Data sources:

Internal: Organisational codes of conduct, communications tools and training materials, standards and reviews for non-stigmatising and bias-free language, management communications, survivor communications, training and disciplinary records.
External: Survivor feedback, reviews/reports.
Interviews/focus groups: Survivors groups, support services, investigative leadership and staff, first responding officers, interviewing officers, survivor liaison officers.

Useful resources, exercises or tools:

- Guide to Non-Stigmatising Language for Investigators, training exercises.
- IICI The Murad Code, Commitments 1.7, 3.3, 6.4, 6.8.

Competency Indicator INV10: Investigators build and maintain an emotionally and physically safe and supportive environment for all interactions and communications with CARSV survivors.

Investigators should adhere to

Murad Code Principle 9: Take the Time, Create the Space and Principle 10: Safe and Respectful Interactions.

Investigators need to undertake preparation and work with survivors to understand what a safe space means for them. The specific circumstances, needs and desires of the individual survivor define the parameters of "*emotionally and physically safe and supportive*". This is vital for safe disclosure and to avoid retraumatisation and revictimisation.

Murad Code Principle 9.1: "*Be ready: We recognise that working with a survivor requires us to be prepared to listen with undivided attention and an open mind without assumptions or judgement; without our own reactions impacting the interaction; and ready to build trust and give the survivor control over the way they tell their story. If we are not in that state of mind, we will not proceed at that time.***"**

Critical to this is an understanding of how internalised stigma, fear of stigma and experienced stigma impact survivors. It is crucial that all investigative authority managers, supervisors, and Investigators' thoughts, language, interactions and actions are guided by the knowledge that all survivors have experienced stigma and being a survivor can in itself be stigmatising.

Elements of good practice include:

1. **Policies and procedures governing interactions between investigative authorities and survivors are designed to strengthen investigations, increase the survivor's dignity, sense of control and understanding of the criminal justice system, and reduce their anxiety.**
2. **All investigative authorities' contacts and interactions with survivors are respectful of their personal circumstances and experiences, recognising that the vast majority have been exposed to multiple biases, stereotyping, prejudice and discriminatory practices.**
3. **Investigative authorities acknowledge that survivors have suffered significant trauma and commit to working in a trauma-informed and survivor-centred manner.**
4. **Interviews and interactions are conducted in a supportive, physically and psychologically safe environment that is agreeable to the survivor. The interview spaces (as well as access points) are private and discreet.**
5. **The number of people present during an interview is limited and who is present is determined by the survivor.**

Support persons are permitted to be present at interviews when requested by the survivor. The survivor's preference regarding the gender of the interviewer and interpreter is accommodated wherever possible.

Murad Code Principle 9.5: "*We will discuss in advance with a survivor who they would like to be present and who may be taking part from our team (providing information such as their roles, gender, age and affiliation). If we cannot honour the survivor's choices, including for a support person, guardian or legal representative to be present, we will discuss the reasons for this with them and will respect their choice if they decide not to proceed.***"**

6. **Interviewers remain on the look-out for signs of emotional or physical distress throughout interactions and provide referrals to support persons.**
7. **Time pressures are removed to allow survivors to tell their story at their own pace, and when they are ready to do so.**
8. **Care is taken to conduct interviews and gather and document evidence in a neutral, bias-free and non-judgmental manner to prevent further harm and retraumatisation.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No policies and procedures specify requirements for physically and emotionally safe environments for Investigator interactions with survivors. ☐ Investigators exhibit biases, stereotypes, prejudices and discriminatory attitudes. ☐ Interview locations are selected without regard for the health, safety and wellbeing of the survivor. ☐ Survivors are prohibited from bringing support persons or other relevant persons to interviews or meetings. ☐ Investigators, interpreters and translators are not: ☐ pre-screened for biassed beliefs, thinking and action. ☐ cognisant of their own discomforts with sex and sexual violence. ☐ No steps are taken to avoid secondary victimisation by justice service providers.	☐ Some awareness that survivors have been traumatised. ☐ No awareness of stigma indicated. ☐ Some isolated interview procedures developed but no regard for emotional and physical security. ☐ Investigator attitude is that they are in charge and make decisions regarding the timing and location of interviews. ☐ Survivor context, lived experience not considered. ☐ No one else allowed in interview room or meeting to support survivor. ☐ No responsibility taken for increasing survivor's sense of dignity, helping them feel more in control, or reducing their anxiety. ☐ No understanding of the impact Investigator attitudes have on survivors.	☐ Awareness drives need for structures, policy and procedures to guide trauma-informed interviewing. ☐ Some awareness of stigma indicated. ☐ Investigators recognise that survivors need to feel physically and emotionally safe, secure and comfortable to be able to speak about the sexual violence perpetrated against them. ☐ Occasionally a support person is admitted to the interview. ☐ Investigators, interpreters, supervisors, and managers acknowledge that their attitudes and actions or inactions can influence whether survivors stay safe and continue with justice processes.	☐ Policies and procedures are developed for creating and maintaining emotionally and physically safe environments for interactions with survivors. ☐ Survivors occasionally provide input into decisions about interview locations, timing and maintaining their safety and security. ☐ Policies and procedures include considerations around stigma, survivor history, fears and vulnerabilities when selecting venues for interviews and interactions. ☐ Preserving survivor dignity, sense of control and reducing anxieties is generally considered. ☐ Support persons are permitted to accompany survivors to interviews. ☐ The survivor's request for a preference for a female or male Investigator and/ or interpreter is accommodated wherever possible. ☐ Interviewers, Investigators and interpreters are carefully screened for biassed and stigmatising beliefs and attitudes.	☐ Well-established policies and procedures prioritise a safe environment as foundation for increasing survivors' dignity, sense of control and reducing their anxiety. ☐ Policies and procedures are monitored and regularly evaluated. ☐ All investigative staff, supervisors, managers and leadership are guided by the knowledge that survivors have been stigmatised, and that being a victim can in itself be stigmatising. ☐ The specific circumstances, needs, and desires of the individual survivor define what is "*emotionally and physically safe and supportive*", including where an interview or interaction takes place, who is present at the meeting. ☐ The survivor's request for a preference for a female or male Investigator and/ or interpreter is accommodated wherever possible. ☐ Interviewers, Investigators and interpreters are carefully screened for biassed and stigmatising beliefs and attitudes.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
			□ All interviews, documentation, and evidence gathering is done in a neutral, bias	□ All interviews, documentation, and evidence gathering is done in a neutral, bias free manner to ensure no further harm is caused. □ Investigators are on the lookout for signs of emotion or physical distress at all times, and have to make referrals to appropriate psychosocial and human service providers as required.

Key critical questions:

- What steps are taken to screen Investigators, interviewers and interpreters for biases, prejudices, and discrimination, as well as other aspects of mental readiness?
- What do interviewers and interpreters understand about stigma, and fear of stigma, and how that may impact an interview? How do they believe they can help counter or mitigate these issues?
- What do interviewers and interpreters consider to be the elements of safe space? What makes a space unsafe for survivors?
- What is expected of an Investigator if/when they observe that an interviewee is showing signs of fear, or emotional or physical distress?
- What policies, procedures and guidelines are there for interview preparation and the creation of safe space conducive for safe disclosures? What escalation, emergency or acute needs responses are in place?
- What resources are available for ensuring safe spaces and sufficient time?
- What information do Investigators seek, and what actions do they take in advance of an interaction with a survivor to:
  - prepare themselves?
  - to understand the individual's context, circumstances, needs and desires, and to understand the stigma they face?
  - determine what constitutes a physically and emotionally safe environment?
- What criteria are used to determine the suitability of a survivor interview location?
- Who provides input, and who makes decisions on who will be in the interview room besides the investigator and the survivor?
- What consideration is given to the gender of the interviewer and interpreter?
- How are CARSV related investigative policy, procedure and practice monitored and evaluated for their impact on diverse survivors?
- What feedback is sought from survivors, interpreters and support persons present in interactions and interviews about their experience?

Data sources:

Internal: Organisational codes of conduct, guidance, SOPs, tools and training materials on survivor interactions, investigation and case management reviews, reviews on complaints for investigative conduct, standards for safe spaces, interview techniques and environment.

External: Survivor feedback, external reviews on investigative practices.

Interviews and focus groups: Survivors groups, survivor advocates, support services, investigative leadership and staff, first responding officers, interviewing officers, survivor liaison officers.

C. TECHNICAL CAPACITY AND COMPETENCY

Competency Indicator INV11: Investigators are guided by a set of organisational CARSV policies, procedures, templates and tools that promote accurate assessment and work on CARSV cases.

Organisational policies and procedures provide all managers, supervisors and investigators with guidance to conduct and manage consistent, effective and accountable survivor-centred CARSV investigations. CARSV competency and understanding should be embedded into the working system so that work processes, templates and tools prompt and remind all investigative staff and analysts about accurate understandings of CARSV and guard against assessments or use of discretion influenced by stigmatised attitudes and myths.

Elements of good practice include:

CARSV policies, procedures, tools and guidelines for all investigative staff:

1. **define Investigator and supervisor responsibilities and accountabilities to mainstream survivor-centred service delivery, including decision-making reviews at CARSV pressure points;**
2. **reflect and promote an accurate understanding of CARSV in all its forms and with its full range of survivors, and contextualise CARSV in relation to the conflict, broader forms of violence and inequalities;**
3. **prompt and build inclusivity into CARSV investigations and methods for adapting processes to reduce barriers (e.g., in interviews, use terminology the survivor uses);**
4. **infuse gender, intersectional and contextual perspectives into planning, information gathering, analysis, case building;**
5. **encourage and illustrate alternative and additional source of evidence to reduce pressure on survivors;**
6. **use methods to minimise further physical and psychological trauma and prompts for accurately assessing survivor risks;**[212]
7. **respect and protect human dignity and maintain and uphold the rights of all; and**
8. **are current and regularly reviewed to identify and remove drivers of ineffective and harmful practices and strengthen incentives for survivor-centred work.**[213]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No written policies, tools or templates with reference to CARSV. No induction, training or supervision based on these.	☐ Isolated pockets of useful tools developed at team practice level. ☐ Any training or supervision on CARSV ad hoc at the team level depending on team leaders.	☐ Basic CARSV policy which is not comprehensive. ☐ No tools for work which prompt CARSV competency and good practice.	☐ Full set of tools but not yet well understood, fully implemented into day-to-day workflow or consistently used by Investigators. ☐ Some induction or continuing training based on these tools but no supervision or file review.	☐ Full set of well-established policies, processes, guidance, templates and work tools which all prompt inclusive and accurate understandings of CARSV. ☐ Gender and intersectional lens applied to all cases across investigation functions and roles. ☐ Tools fully integrated into the workflow and day-to-day work. Supervised and on file. ☐ Well understood and consistently used by investigation staff.

212 IACP, *ibid*, 3.

213 UNODC, Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (GLO.ACT Asia and Middle East) (2021).

Key critical questions:
- What policies, procedures, work tools and guidelines are in place to guide CARSV investigations?
- To what extent do these documents reflect and promote an accurate understanding of CARSV, the need for sensitivity to diverse populations, and respect and protection of human rights in investigative processes, actions and decision-making?
- How are these documents institutionalised? Is there training and skills practise using them? Are they part of work process, the investigative file and record-keeping? How is compliance monitored and enhanced?
- Who can access these documents? How can they access them? How do investigative staff use these documents?
- How often are these policies, procedures, tools and guidelines reviewed and updated?
- How is the adequacy and value of policies, procedures, tools and guidelines for investigative staff determined?
- How is the effectiveness of CARSV policies for diverse populations determined? Who is involved?
- What role(s) do managers and supervisors have in:
    - assisting Investigators to effectively use policies, procedures, tools and guidelines to guide their investigations?
    - reviewing and making recommendations for additional guidance to assist them and their members in meeting the needs of diverse survivors?
    - monitoring and evaluating Investigator CARSV competencies and work practice?

Data sources:
Internal: CARSV policies, guidance, work tools, work processes and SOPS, investigation and case reviews, complaints, investigator performance reviews, KPIs, PERs.
External: Survivor feedback, survivor advocates, support organisations, partner service providers, external reviews on investigative practices.
Interviews and focus groups: Survivors groups, support services, investigative leadership and staff, first responding officers, interviewing officers, survivor liaison officers.

Useful resources, exercises or tools:
- IACP, Sexual Assault Response and Training Guidelines (2017).

Competency Indicator INV12: Trauma-informed, survivor-centred CARSV and CARSV stigma competencies are mainstreamed across all investigative services.

"*The police are the critical gatekeepers of the criminal justice system and the first point of contact with the criminal justice process for women who have been raped and seek formal justice. A dual role thus falls to the police: to investigate the complaint, and since in rape the victim is usually the key witness, to keep the victim engaged in the criminal justice process.*"[214]

Each survivor's unique contexts, circumstances, experiences and trauma shape their fears, needs and desires. It is therefore critical that investigative authority staff work with each survivor to identify, acknowledge and adequately address their immediate safety and security needs at the outset. Gaining survivor confidence and trust and meeting their unique needs requires that investigative supervisors, investigators and support staff are conversant with and demonstrate trauma-informed and survivor-centred competencies in all interactions with survivors.

Using Investigators with limited experience and understanding of the dynamics and complexities of CARSV can lead to poor decision-making and insensitive, ineffective investigations and practices that impact negatively on survivors. On the other hand, relying on a small number of 'specialists' can lead to CARSV being separated out from the broader forms of violence and heightens the risk of it being treated differently in an unhelpful way. Requiring CARSV awareness and competencies across all staff maximises flexibility and adaptability, including when a witness discloses CARSV to an unexpecting investigator who was only intending to ask about other crimes.

Elements of good practice include:

1. **Teams working on international crimes mainstream CARSV competencies and contextual understanding into team practice and across cases.**
2. **CARSV competencies, SCA and trauma-informed approaches are part of induction training for all investigative staff, including training on stigma and myths,[215] investigative and interview techniques, meeting safety and security needs, providing referrals for physical and psychosocial supports, decision-making, documenting investigations, and providing evidence in court.**
3. **Ongoing supervision and mentoring around these competencies to ensure demonstrated, consistent practice across all investigative staff.**
4. **Investigative staff have their performance evaluated based on qualitative indicators such as survivor-engagement and experience (outward-facing indicators); demonstration of values such as EDI, non-stigmatising communications, and CARSV competent approaches to investigation.**
5. **Investigators undertake continuing professional development (CPD) around CARSV competencies, trauma-informed and survivor-centred approaches, and improvements in CARSV investigation practices. CPD available, supported and resourced.**
6. **All investigative staff are conscious of their attitudes and behaviours and their possible effect on others in their daily work.**
7. **All investigative staff feel competent and well prepared to work on cases involving all forms and survivors of CARSV.**
8. **All Investigators are encouraged to engage in discussions related to CARSV, trauma-informed and survivor-centred approaches.**
9. **Monitoring Knowledge, Attitude and Practice (KAP) across practice and teams. Case reviews to assess CARSV and survivor-centred/trauma-informed competency is demonstrated.**

214 Hohl & Stanko, *ibid*, 329.

215 OHCHR, Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice (2018).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No specific competency in CARSV in any staff. Often women are asked to deal with survivors if they report, without checking competencies. ☐ No supervision, monitoring, mentoring, CDP or performance reviews related to CARSV competencies. ☐ No monitoring or assessing of KAP on CARSV or levels of stigma. ☐ No investigative staff-wide engagement on CARSV. Very few if any feel confident to do this work.	☐ Isolated pockets of CARSV competencies, mostly women gained through experience upon assignment. ☐ Little supervision, monitoring or mentoring. Ad hoc inclusion in individual performance reviews. ☐ Ad hoc assessment of CARSV knowledge and very limited basic CPD. ☐ Little staff-wide engagement on CARSV. A small number feel confident to do CARSV work.	☐ Basic competencies around trauma informed approaches and SCA in isolated survivor liaison officer roles only. Still largely seen as a woman's role. ☐ Basic training provided to survivor liaison roles only. ☐ Assessments are not team or department wide, only on isolated roles. ☐ Survivor liaison officers confident in their duties and roles. Others lack confidence or do not see it as their role.	☐ Expectations set and formal organisational competencies are established, but limit CARSV competencies to specialist roles or focal points. ☐ Training is provided for all staff on an ongoing basis in ethics, values, and CARSV related priorities. ☐ Investigations are monitored more regularly for CARSV quality. Wider levels of quality is improving. ☐ Investigator confidence in their abilities to meet expectations is increasing.	☐ All investigative roles include responsibilities, competencies and duties relating to CARSV. ☐ Ongoing training is provided for all staff to assist them to achieve superior trauma-informed, survivor-centred response CARSV competency goals. ☐ Performance reviews and assessments include all KAP aspects of CARSV. ☐ Staff feel competent, comfortable and well prepared to meet expectations set. CARSV assignments considered desirable.

Key critical questions:
- What training is provided to staff to assist them in understanding and incorporating trauma-informed, SCA and other CARSV competencies into their work? What training do investigators receive to enable them to work effectively with CARSV survivors?
- Who are these trainings available to? Who is encouraged or supported to attend? How many men have undertaken this training?
- How is the effectiveness and impact of CARSV-related training measured and evaluated?
- How do all investigative staff performance appraisals incorporate consideration of CARSV competencies, survivor experiences and satisfaction?
- How confident do investigative authority staff feel in their competence and ability to use trauma-informed and survivor-centred practices? How do you know? How desirable is CARSV work across the investigative teams? How is it assigned? Who usually gets assigned and on what basis?

Data sources:
Internal: Training materials on survivor-centred and trauma-informed approaches, training records and attendance data (mainstreaming), investigation and case reviews, investigator performance reviews, KPIs, PERs, KAP surveys.
External: Survivor feedback, survivor advocates, external reviews on investigative practices, external training providers and feedback.
Interviews and focus groups: Survivors groups, support services, investigative leadership and staff, trainers.

Useful resources, exercises or tools:
- ISAAT DCAF, CRSV Scenario Exercise Tools (2017).
- ISAAT DCAF, Interacting with Survivors of CRSV.
- UNDPKO, Gender Equality and Women, Peace and Security: Resource Package (2020).
- IACP, Trauma Informed Sexual Assault Investigation Training.
- UNITAD, Trauma-Informed Investigations Field Guide (2021).

Competency Indicator INV13: All investigative decision-making and assessments are based on an accurate understanding of CARSV contextual, gender and intersectional dimensions, and are not influenced by stigmatised attitudes, myths or assumptions that can reduce the credibility or reliability of evidence.

"*Policing based on stereotypes or discriminatory policing practices is ineffective, unjust, and unsafe.*" [216]

A number of studies highlight that survivors of sexual violence are hesitant to report the crime perpetrated against them to the police. Tanner, among others, notes that the way police speak with a survivor can cause further trauma and can discourage them from filing a complaint. He encourages investigators to 'start by believing'.[217]

Police investigative decisions have also been found to lead to attrition. For example: "*A police decision to take no further action rather than to refer the case to the prosecution accounts for 67% of attrition in non-withdrawn cases and is thus the biggest attrition point on the criminal justice agent decision pathway to attrition [...]*" Another example notes that inconsistencies in the survivor's account increase the odds of a police officer 'no further action' decision by 295%" and that "*the odds of attrition at this stage are halved if the victim physically resisted the assault but increase by 470% if the victim delayed reporting of the rape.*" "*Providing an inconsistent account of the incident is associated with a 443% increase in the odds of no-criming. If a victim is deemed to show 'a lack of understanding of consent' the odds of no-criming increase by 540%. Victim mental health issues are associated with 2.3 times higher odds of attrition, and victims with learning difficulties are 4.4 times more likely to have their case no-crimed.*"[218]

These findings lend at least "*partial support to the influence of classic rape myths and stereotypes on attrition*" and show that "*a further central factor in attrition is what police and prosecutors perceive as evidence against the victim's allegation.*" Samples further showed that if the police record notes a previous false allegation by the survivor, inconsistencies in the survivor's recollection of the rape, and evidence or police opinion casting doubt on the allegation that "*none of the allegations with any of these features were prosecuted.*"[219]

Elements of good practice include:

1. **Data is collected to identify and target pressure points and attrition points in the investigation process where CARSV cases end or are negatively impacted or narrowed.**
2. **Steps are taken to guard against bias and adapt processes and work tools to remove and offset bias, and to prompt accurate decision-making which recognises and prioritises inclusive, gendered and intersectional investigations into CARSV.**
3. **A system of checks, concurrent reviews and oversight over investigative decision-making are in place, particularly around pressure and attrition points.**

Supervisors and case managers consistently review investigative activities and decisions that could lead to the CARSV survivor withdrawing from their case or to prosecution challenges and hold investigators to account for actions and decisions not in keeping with these objectives.

Investigative staff work with prosecutors early in the case to develop joint investigative plans which would maximise evidence gathering and case building in support of inclusive, gendered and intersectional prosecutions. *See also* ***Indicator P4***.

Processes for concluding investigative files with charge are reviewed for potential biases by a supervisor or manager, who pays specific attention to myths, biases, stereotypes or discrimination that could have played a role in concluding the file. Regular performance reviews and case audits are used to monitor effectiveness and quality of investigations and decisions.

4. **Clear expectations are set for zero tolerance for investigators and other staff who take actions and make decisions, consciously or unconsciously based on sexual violence myths, stereotypes or personal beliefs, or any other assumptions without checking facts.**

Investigators who are not in compliance with organisational requirements are challenged, and are closely monitored and coached, and take remedial training as required.

216 Provincial Government of British Columbia, ibid, 7.

217 Tanner, 'Start by Believing to Improve Responses to Sexual Assault and Prevent Gender Bias', End Violence Against Women International (2020), 17.

218 Hohl & Stanko, *ibid*.

219 Hohl & Stanko, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No data collected. No recognition of attrition points. ☐ No steps or tools to aid decision-making. ☐ No checks, supervision or early work with prosecutors. ☐ No expectations set around CARSV accurate and stigma/myth free investigations.	☐ Isolated pockets of Investigators trying to understand why CARSV investigations fail. ☐ Isolated ad hoc tool development within individual or single-team work. ☐ Isolated examples of individual team leaders checking decision-making at critical stages, and occasional prosecution liaison in investigation phase. ☐ Isolated pockets of investigation team leaders who set clear expectations.	☐ Basic data collection, but not specifically for CARSV. ☐ Basic decision aids but not CARSV specific. ☐ Supervision processes but not specifically targeting CARSV attrition points or decision-making. ☐ Basic expectations for broad and inclusive, thorough investigation but not CARSV specific.	☐ Data collection required by leadership but not fully integrated into improvement or tackling attrition points. ☐ Decision aids and guidance but not fully integrated into workflow and inconsistent use. ☐ Early prosecution liaison required but not always followed. Investigators sometimes resist. Also some residual resistance to oversight and checks on investigative decisions. ☐ Clear expectations on CARSV investigations and practice but not consistently enforced.	☐ Integrated data collection and response to attrition and pressure points. Well established system of learning and improvements. ☐ Decision guidance, aids and prompts at all attrition points and built into work streams and processes. Consistent use. ☐ Early and close collaboration with prosecution, with mutually respectful and constructive practice. ☐ Checks and supervision routine and built into critical decision points. ☐ Well-established and clear set of expectations around CARSV investigations through which good practice always rewarded and bad practice always tackled.

Key critical questions:

- Who are the decision-makers at each stage and step of the investigation? When are decisions overseen or require sign-off or review? Are decisions which reduce or cease CARSV lines of inquiry ever recognised or covered by a system/senior check?
- Are there any tools or guidance which help ensure decisions maximise the chances of CARSV inclusion and successful outcomes?
- What are the Investigators' attitudes towards checks and aids to decision-making? How do they feel about early prosecutor interventions?
- Is there any data collected on CARSV within investigations, assessing when decisions and pressure points lead to its non-recognition, non-inclusion, non-pursuit, reduction, minimisation, inaccurate reflection, decontextualisation, or any other decision which reduce the chance of justice for survivors of CARSV?
- What do the Investigators say are the expectations of them about CARSV investigations? Why do they think they fail? Do they recognise decision-making in investigation as a contributor to attrition rates?

Data sources:

Internal: Decision-making tools, checklists or record keeping, supervision or review procedures, investigation and case reviews, reports on attrition rates.
External: Survivor feedback, external reviews on investigative practices.
Interviews and focus groups: Survivors groups, support services, investigative leadership and staff.

USEFUL RESOURCES FOR ASSESSMENT OF INVESTIGATIVE SERVICES:

- Center for Human Rights, Gender and Migration, The Silence I Carry: Disclosing gender-based violence in forced displacement: Practitioner's Toolkit for Mexico (2020).
- CoE, Equality Now & UN Women, Effectively Investigating, Prosecuting and Adjudicating SV Cases (Georgia) (2021).
- DCAF, Gender Self-Assessment Guide for the Police, Armed Forces and Justice Sector (2011).
- de Brouwer, 'The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes' (2015) Cornell International Law Journal 48(3).
- Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017).
- IACP, Sexual Assault Response Policy and Training Content Guidelines (2017).
- IACP, Investigative Strategies: Sexual Assault Incident Reports (2005).
- IICI, Guidelines for Investigating CRS and Gender-Based Violence against Men and Boys (2016).
- IICI, The Murad Code (2022).
- IICI, Tool for SGBV-investigation/documentation trainers: training materials for IP2 (2017).
- Lamonaca *et al*, Good Practice Tool for Police Hearings with Migrant, Applicant for International Protection, Refugee (MAR), Trafficked and LGBT+ Victims of Sexual Violence (2021).
- OHCHR, Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice (2018).
- OSCE and ODIHR, Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: Standards, Approaches and Examples from the OSCE Region (2019).
- UN, Early Warning and Threat Analysis to Conflict Related Sexual Violence: Powerpoint lesson (2017).
- UN, Handbook for UN Field Missions on Preventing and Responding to CRSV (2020).
- UNDPKO, Gender Equality and Women, Peace and Security: Resource Package (2020).
- UNODC, Gender Dimensions of Criminal Justice Responses to Terrorism (2019).
- UNODC Handbook on Gender Responsive Policing for Women & Girls Subject to Violence: Chapt. 8 (2021).
- UNODC, Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (GLO.ACT Asia and Middle East) (2021).
- UNODC & UN Women, Facilitation Handbook for Gender Awareness for Front Line Officers and Law Enforcement Teams: Module 1 (2021).
- UN Women/FCO, Conflict-Related Sexual Violence in Asia-Pacific: Putting Victims/Survivors First (2017).
- UN Women, UNODC *et al*, Essential Service Package for Women and Girls Subject to Violence (2015).

CHAPTER FIVE — WITNESS PROTECTION

'Witness Protection' is often used in a formal and restricted sense to refer to court ordered measures for the safety of a witness who testifies in court. In this Toolkit, we use witness protection in its broad sense, to include the prioritisation and operationalisation by all justice actors of measures and approaches which seek to protect the safety and wellbeing of survivors and witnesses engaged by justice actors (not necessarily limited to those who testify), as well as their immediate families. In the most part, the chapter will focus on and reference survivor protection, but these points equally apply to witnesses of CARSV.

In this broad sense, protection starts before a survivor is engaged in the justice process, since responsible risk assessment and mitigation measures should begin before any interaction. It also relates to harm and repercussions in the community and environment around survivors, not just while they are attending court but also as a result of any engagement with justice actors or court processes. An initial phone call, a visit to their house or work, or the return to their community after their identity and experience have been publicly revealed can all have a life-threatening, life-changing impact on survivors and their loved ones.

Recall from the Toolkit Introduction the experience of Witness [TA] at the ICTR: "*When I returned, everyone knew I had testified. My fiancé refused to marry me once he knew I had been raped. He said, 'you went to Arusha and told everyone that you were raped.' Today I would not accept to testify, to be traumatised for a second time. No one apologised to me [...] When you return you get threatened. My house was attacked. My fiancé has left me. In any case, I'm already dead.*"[220]

> *"Stigma kills: it is possible to survive sexual violence but not survive the ensuing ostracism, abandonment, poverty, 'honour crimes', trauma that can lead to suicide or self-harm, unsafe pregnancies and untreated medical conditions, including STIs and HIV, that may result. There needs to be a heightened sense of urgency fighting stigma because rape survivors are literally dying of shame."*
>
> Letitia Anderson, Office of the UN SRSG Sexual Violence in Conflict[221]

Protection must include protection from all layers of stigma, including:

- direct impact from institutional stigma in the justice process or from justice actors.
- perpetuation or amplification of community and interpersonal stigma against survivors based on the justice process or breaches of confidentiality in the justice process.
- perpetuation or amplification of internalised stigma, and the fear of stigma, through the words or actions of justice actors.
- any revictimisation during or because of the justice process.

Witness protection is also fundamental to the effectiveness of courts and justice processes. People choose to participate with faith and trust in a system to keep them safe from repercussions. Without adequate witness protection "*there can basically be no trials. Without witnesses coming forward to testify, the ability to bring justice and not*

220 See ***Introduction***, fn11.

221 FCDO, Principles for Global Action: Preventing and Addressing Stigma Associated with CRSV (2017), 14.

allowing the impunity 'that feeds upon fear' to prevail is thus seriously reduced. […] As a fundamental concern of international criminal justice, adequate witness protection guarantees the safety and support of witnesses and victims but also determines the efficiency and existence of a court."[222]

Each function chapter of this Toolkit includes indicators which relate to survivor safety and wellbeing, the creation of safe court environments and interactions which do not harm survivors nor perpetuate stigma. Those indicators complement the indicators in this Chapter. ***Chapter Three — Support Services*** is the primary chapter about survivor support and wellbeing through the justice process. Support during and after the justice process is key to ensure the wellbeing of survivors, and therefore is an integral part of protection. However, to avoid duplication, this chapter will focus on aspects of i) **physical security and safety**, ii) **privacy and confidentiality** as a fundamental foundation for safety and protection, particularly in relation to stigma, and iii) **community interactions and reactions**. In terms of protection of survivor rights, this is primarily addressed in ***Chapter Two — Access to Justice and Survivor Pathways***.

Protection measures are designed to empower people's access to justice, enable them to stay safely engaged in justice processes and to prevent further harm. This principle is foundational for the delivery of a full range of protections that survivors may need. Responding to survivors through a trauma-informed, survivor-centred and stigma-free lens that considers and addresses the unique protection requirements of individual survivors can also assist in preventing recurrences, escalation and threats of violence.

The **United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** (1985) calls on nations to "*minimise the inconvenience for victims*" in the judicial and administrative process, to "*protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.*"

Survivor rights to protection include the right to:

- life and their physical integrity and safety, and to have protection measures implemented for their safety.
- be provided with all information that may affect their security, including outcomes of custody proceedings or the release of the accused from custody.
- have their participation and interaction with justice actors and the process informed by a risk assessment and protected by protection and mitigation measures, which are attuned to individual risk and realities of each survivor/survivor and their loved ones.
- privacy and confidentiality measures (balanced with the rights of the accused and the need for transparent justice processes) to include de-identification measures, including non-disclosure orders to the public, delayed disclosure to defence orders, anonymity (in some jurisdictions but with lesser weight given to their evidence/unable to convict on their evidence alone), and to have the location of their domicile concealed.
- be heard or represented in matters relating to their safety and directly impacting their rights to privacy and confidentiality, and by request, to be assisted by legal representatives of their choice, appointed or referred by the State, at no cost to the survivor.
- upon a victim's family's request, have diplomatic and consular assistance, necessary visas and travel documents, and contact tracing provided.[223]

222 Beqiri, 'Reflections on Certain Witnesses Protective Measures Under the Rome Statute of the International Criminal Court', (2017) European Scientific Journal 13(34), 342-344.

223 UN SRSG SVC, Model Legislative Provisions and Guidance on Investigation and Prosecution of CRSV (2021).

Protection needs and risks can change over time and place, and differ between individual survivors based on intersectional and situational factors.[224] At different stages of the justice process, there may be different protection risks and therefore, different responses and measures required. Accessibility and effectiveness also depend on specific and unique individual realities and needs. The duty of care on justice actors requires responsible informed risk assessments in relation to all interaction with survivors, and their potential repercussions, based on a deep understanding of context, culture and individual realities. There are different sets of risks and protection needs based on whether the court process is remote from the survivor's community, whether the survivor remains in proximity to perpetrators and their associates, whether justice is more proximate and visible to survivor communities, and so forth.

There are four sources of protection which should be available and used:

1) Operational measures and practices informed by risk assessment and mitigation.
2) Protection measures and procedures which are available for the survivor to consider and choose, without the need for an application or order from the court.
3) Court-ordered measures about survivor attendance in court and their protection outside court based on the risks created by their engagement with the justice process.
4) Protection services which can be accessed through court or may be directly available within the survivor's community.

While not all jurisdictions provide for this, it is important that some measures are available for survivors to exercise choice, and which provide some certainty and assurance, rather than being dependent on court application and judicial discretion. For example, in many national jurisdictions, 'special measures' for testifying are available for a survivor to choose — including use of screens, remote video links, use of a pseudonym and concealing identity from the public — and give them some control over how they provide their evidence. Other measures, such as delayed disclosure to defence or anonymity (in some jurisdictions), may remain within the court's discretion as their necessity should be considered and balanced against the rights of the accused (including public hearings).

One of the challenges of witness protection is that there is rarely one single protection service or actor which acts throughout — before, during and after engagement of survivors with the process. Rather, the duty of care for protection falls to each function and actor interacting with survivors. It can therefore be disjointed, uncoordinated and uncertain: for example, investigators can explain what potential protection orders may be available, but which are eventually granted lies within a judge's discretion. Where there is no unified or centralised witness protection mandate or service, we recommend that each main justice function consider using this chapter to complement any partial assessment relating only to their function. We would also recommend that this chapter is included in any external and any end-to-end process review. It could also be used as a cross-function/agency review exercise focused on protection measures and practice.

224 See ***Key Concepts***.

INDICATORS AND ASSESSMENTS

This Chapter is organised along the three common themes:

A. Organisational Culture and Leadership

B. Survivor Interaction and Engagement

C. Technical Capacity and Competency

Indicators are numbered using the acronym WP for "*Witness Protection*", e.g. WP1, WP2 etc.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
WP1 Leaders of justice functions, including Witness Protection Services, prioritise, resource and enforce accountability for timely, accessible, effective and survivor-centred protection of survivors, thereby building trust and confidence in the justice system.
WP2 Justice and protection functions coordinate with other agencies and services including any relevant humanitarian protection actors or safe and effective community services (where the survivor is located) to ensure coordinated, seamless protection for survivors, including risk assessments, mitigation measures and safe approaches.
SURVIVOR INTERACTION AND ENGAGEMENT
WP3 All aspects of protection are attuned to intersectional and situational needs of each survivor, informed by survivor consultation, and therefore accessible and effective for each survivor.
WP4 Justice and protection actors provide survivors with clear understandable information about risks and their security, as well as the full range of protection measures, orders and mitigation options to allow them to make informed choices about participation based on an understanding of the risks.
WP5 Survivors have the opportunity to inform, make decisions on and be heard in relation to all measures which relate to their protection, including their privacy.
WP6 Witness Protection actors use non-stigmatising language and terminology about CARSV and survivors and recognise and counter stigma when they encounter it.
TECHNICAL CAPACITY AND COMPETENCY
WP7 Technical protection competencies relating to CARSV, survivor-centred approaches, trauma, CARSV stigma and its impact, intersectionality and contextual understanding and available protection are mainstreamed across all protection actors, including those interacting with survivors or their information.
WP8 All justice and protection actors maintain, uphold and prioritise the confidentiality and privacy of survivors throughout the process and in relation to any interaction.
WP9 Justice and protection actors are competent to undertake risk assessments and prepare safety plans based on contextual, situational and intersectional understanding of CARSV and survivors.
WP10 Justice actors support and enforce a range of protection measures and orders which are tailored to individual survivors and their families regardless of whether they testify, and contribute to tackling broader stigma from justice processes.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

It is critically important that survivor safety/witness protection are prioritised by leadership in each function, including any centralised or mandated protection agency or service. Regardless of any centralised protection service, each set of actors and justice function which interact with or hold information regarding survivors must prioritise survivor safety, confidentiality and protection.

Competency Indicator WP1: Leaders of justice functions, including Witness Protection Services, prioritise, resource and enforce accountability for timely, accessible, effective and survivor-centred protection of survivors, thereby building trust and confidence in the justice system.

Making quality protection services accessible to all survivors and advancing the development and use of quality protections is critical for building public trust in justice processes. Effective, non-stigmatising, survivor-centred, and carefully tailored protections for survivors is essential. Effectiveness of protection is dependent on the concerted and ongoing cooperative efforts of criminal, civil, family and administrative justice providers and their community partners.

A lack of trust in the police and justice systems has been identified as a significant barrier to reporting sexual violence. Furthermore, unsafe or stressful environments and concerns about revictimisation are not conducive for survivors to give their best evidence. Most importantly, such concerns and environments harm survivors' wellbeing. Lack of safety, confidentiality and protection can all have life-threatening, life-changing consequences for survivors.

Elements of good practice include:

1. **Leaders state and consistently demonstrate, internally and externally, commitment, responsibility and accountability for meeting international survivor protection standards for all survivors.**
2. **Leaders ensure policies, procedures, tools, checks and practices prioritise the effective protection of privacy, safety and security of survivors throughout all justice processes and interactions with survivors.**
3. **Leaders ensure justice actors have sufficient resources to properly assess, map and manage risks, protection services and options for protection measures, orders and operational procedures.**
4. **Leaders assign responsibility and holds justice personnel accountable for the quality, timeliness, and effectiveness of protection services for survivors through:**
   - Key Performance Indicators (KPIs) for the department/unit, Performance Evaluation Reviews (PER) and direct supervision;
   - Data collection and regular internal operational, policy and practice reviews; and
   - Regular liaison and feedback with justice, government, CSOs and survivors.
5. **Justice leaders promote and support regular outreach and communications which challenge and counter all layers of stigma, myths and misassumptions including:**
   - Working with partner organisations;
   - Community outreach and work with community-based organisation; and
   - Media and press work and statements.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
☐ No leader awareness or consideration of importance of leader responsibility and accountability for meeting international standards for protections for survivors. ☐ No leader awareness or commitment to build organisational and community trust in CARSV protection services. ☐ No internal or external commitment to timely, effective, non-stigmatising CARSV protection services. ☐ No requirements for justice staff to consider survivor safety and protection needs. ☐ No CARSV related protection policies, tools or practice guidelines. ☐ No efforts to educate/ inform public and media about steps taken to address safety and security needs of survivors. ☐ No resources or resource capacity to assess, map and manage survivor risks and protection services. ☐ No standards or accountabilities or requirements for quality, timely, and effective protection services. ☐ No data collection, organisational, or individual performance reviews.	☐ Limited leader awareness of survivor bias and stigma. ☐ Some isolated examples of consideration of survivor protection needs. ☐ Ad hoc funding and resourcing of resources for survivor protection services, measures, orders and operational procedures. ☐ Protection services are inconsistently available to survivors. ☐ Leader speaks negatively about survivors and their safety and security needs and does not challenge harmful norms, cultural values that permit continued bias and stigmatisation of survivors. ☐ No organisational expectations, policies and for CARSV protection. ☐ Very limited work with partners, community outreach organisations and the media to promote and support outreach and communications that challenge and counter biases, myths and stereotypes in all forms. ☐ No data collected, and organisational and individual performance related to CARSV protection services is not monitored and evaluated against clearly defined indicators.	☐ Leader sets some basic expectations around survivor protections of privacy, safety and security. ☐ Leaders acknowledge organisational responsibility and accountability for survivor protection. ☐ The impacts of stigma and bias in beliefs, attitudes and practices are occasionally considered in survivor related practices, actions and decisions. ☐ Some survivor protection related data is collected and monitored; however no goals or performance indicators have been developed to evaluate the effectiveness of survivor protection services. ☐ Individual units have allocated some funding for resourcing, development and delivery of survivor protection services. ☐ Justice leaders work with some partners, community outreach organisations and the media to promote and support outreach and communications that challenge and counter biases, myths and stereotypes in all forms.	☐ Survivor protection of privacy, safety and security is defined as important. ☐ Leader makes some public comments on the need for, and importance of bias-free, non-stigmatising protection services for survivors. ☐ Messaging and practice are still sometimes inconsistent. ☐ Organisational CARSV protection policies and practice guidelines are developed to clearly define and establish CARSV protection roles, responsibilities and accountabilities. ☐ Budget lines are allocated for survivor protection resourcing, training and operations. ☐ Unit and organisational performance indicators are established to measure progress towards survivor protection efforts.	☐ Leaders prioritise survivor protection of privacy, safety and security in all CARSV related work. ☐ Leaders demonstrate personal and organisational commitment, responsibility and accountability for prioritising and meeting survivor protection standards. ☐ The impacts of stigma and bias in beliefs, attitudes and practices are considered in all survivor related practices, actions and decisions. ☐ Justice actors have sufficient resources to properly assess, map and manage risks, protection services and options for protection measures, orders and operational procedures. ☐ Protective services are available and accessible to all survivors. ☐ Budgets and resources are allocated and adjusted to enable the organisation to meet its survivor safety and security objectives, including participation in multi-disciplinary approaches and responses. ☐ Data is collected, and organisational and individual performance is monitored and evaluated against clearly defined indicators.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No outreach or contact with community-based organisations or the media to challenge and counter stigma, myths and misassumptions.				□ Justice leaders work with partners, community outreach organisations and the media to promote and support outreach and communications that challenge and counter biases, myths and stereotypes in all forms.

Key critical questions:

- How are international standards on effective protection of survivors of sexual violence incorporated into justice policy and practices?
- How do justice leaders prioritise and demonstrate internal and external commitment, responsibility and accountability for meeting survivor protection standards?
- What policies, protocols, procedures, tools, checks and practices prioritise the effective protection of privacy, safety and security of CARSV survivors throughout all justice processes and interactions with survivors?
- What internal and external accountability structures, policies, and practices are in place to monitor the quality, timeliness and adequacy of protection for survivors?
- What steps do justice leaders take to ensure sufficient resources to properly assess, map and manage risks, protection services and options for protection measures, orders and operational procedures?
- What Key Performance Indicators (KPIs) have been developed to measure progress towards survivor protection for the department/ unit? For managers, supervisors and staff performance evaluations?
- What data is collected to support regular internal operational, policy and practice reviews? How is this data used?
- How is the adequacy and effectiveness of policies, practices and resources determined? What types of adjustments are made based on these findings? What is the level of survivor satisfaction with protection services offered? How do you know?
- How often does leadership and management meet with justice, government and civil society groups to glean perceptions on the quality, timeliness and needs for improvement of protections for survivors?
- How often do justice officials and their partners communicate with the public and the media about the work they are doing to improve CARSV related protection services for survivors?
- To what extent do justice leaders promote and support regular outreach and communications which challenge and counter all layers of stigma, myths and misassumptions, including:
  - working with partner organisations?
  - community outreach and work with community-based organisations?
  - media and press work and statements?

Data sources:

Internal: Codes of conduct, tools and training materials on privacy, safety and protection measures, protective case management reviews, KPIs, PERs.
External: Survivor feedback, media and community outreach feedback.
Interviews and focus groups: Survivors groups, survivor advocates, support organisations, partner service providers, Protection Service leadership and staff.

Useful resources, exercises or tools:

- IICI, The Murad Code (2022).
- UN SRSG SVC, Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence (2021).

Competency Indicator WP2: Justice and protection functions coordinate with other protection agencies and services, including any relevant humanitarian protection actors or safe and effective community services (where the survivor is located), to identify risks and ensure coordinated, seamless protection for survivors, including risk assessments, mitigation measures and safety plans.

Cooperative approaches focused on the best outcomes for survivors can help to avoid duplication or contradictions by multiple justice agencies and thereby reduce the risk of secondary victimisation to the survivor. Consolidating the knowledge of a multidisciplinary approach about environmental conditions and risks faced by survivors also assists in developing consistent practice and messaging across involved service provider organisations and to the public. Such a multi-disciplinary team can bring knowledge of the context, community dynamics and an understanding of the layers and risks of stigma which survivors face in their communities and in the justice process. Ideally, witness protection would be centralised into one function or agency which coordinates with, guides and supports the work of other functions end-to-end in any justice process.

Elements of good practice include:

1. **Coordinated and up-to-date mapping of community power structures, dynamics, gender narratives and key actors.**
2. **Coordinated mapping and vetting of protection services (at same time as mapping broader support services) and referral pathways, including all groups and attuned to intersectional factors.**
3. **Developed relationships between justice, legal, health, other government services, local NGOs and humanitarian service and protection providers to work collaboratively on survivor risk assessments and to build safety plans uniquely tailored to meet individual survivor needs and desires, including:**
   - joint agreements or Memorandums of Understanding (MoUs);
   - joint processes and tools shared with and worked on together;
   - joint reviews of how systems and processes are working;
   - regular joint meetings.
4. **Collaboratively developed protocols for coordinated multidisciplinary responses:**
   - are inclusive and equitable to all people accessing services, and are particularly sensitive to circumstances, issues and characteristics that could stigmatise survivors;
   - clearly define roles and responsibilities of all involved service providers;
   - set service standards and expectations;
   - delineate the approaches and agreed upon principles of tailored response to survivors, based on their unique circumstances, needs and desires;
   - clearly identify who holds ultimate responsibility and accountability for conducting survivors risk assessments and developing safety plans, and defines the roles and responsibilities for all involved parties.
5. **Evaluation mechanisms are in place to assess the value and effectiveness of collaborative and coordinated services from multiple perspectives, and to address identified challenges.**
6. **Joint safety plans, once implemented, are regularly reviewed and updated to ensure they are providing the safety and security envisioned and required by CARSV survivors.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No coordination. ☐ No coordinated mapping of services or joint work to understand community and contextual risks. ☐ No agreements, shared processes, procedures or tools. ☐ No interagency meetings or review. ☐ No clear understanding of shared responsibilities and roles. ☐ No multi-disciplinary responses. ☐ No joint evaluations ☐ No joint safety plans.	☐ Early steps in coordination between limited services. ☐ Prosecution and police more coordinated. ☐ Still not multidisciplinary, ad hoc inclusion by some teams. ☐ Some work together in practice, some isolated pockets of coordination through working level meetings. ☐ No joint reviews or safety plans. Blaming others when safety risks manifest unmanaged. ☐ No joint safety plans — some sharing between isolated teams. Still mostly between investigation and prosecution.	☐ Basic agreements or MoU between basic services. ☐ No clear information sharing or shared tools. ☐ No joint safety plans. ☐ No review process, no required meetings or evaluation. ☐ Only basic disciplines usually focused on police protection and formal witness protection. ☐ Roles and responsibilities often confused in practice. Gaps and overlaps still happening frequently in practice.	☐ More comprehensive agreements and formalised coordination but not well-established and not consistent collaborative practice yet. ☐ Information sharing relatively new and not quite consistent in practice. ☐ No full review or evaluation process or in practice. ☐ Not fully multidisciplinary or at least not all disciplines respected and valued equally in process. ☐ Roles and responsibility on paper, still some gaps, overlaps and misunderstandings in practice.	☐ Well-established comprehensive systems of coordination, with well-established roles, shared information and joint tools and agreed joint safety planning. ☐ Fully multi-disciplinary, with all participants respected equally by justice actors. ☐ Interagency evaluations and reviews, with resulting improvements to policy, process, procedures and practice. ☐ Clear understanding of roles and responsibilities, joint and centralised response. ☐ No gaps, no duplication, no misunderstandings.

Key critical questions:

- What agreements, structures, policies, processes and procedures are in place to guide and enhance the multi-agency team's coordinated efforts to identify risks and develop safety plans tailored to the unique risks each CSRV survivor is facing?
- Have maps of community power structures, dynamics, gender narratives and key actors been completed in coordination with other justice, government and civil society actors working with survivors? How regularly are maps updated?
- How is mapping and vetting of protection services coordinated?
- Do these maps include mapping of broader support services and referral pathways?
- What relationships have been developed between justice, legal, health, other government services, local NGOs and humanitarian service and protection providers to work collaboratively on survivor risk assessment and to build safety plans uniquely tailored to meet individual survivor needs?
- What protocols, joint agreements, MOUs, joint processes and tools have been developed for participants to work and regularly review processes collaboratively?
- How often do participants meet? For what purpose(s)?
- To what extent are collaboratively developed protocols for coordinated multi-disciplinary responses inclusive and equitable to all people accessing services, and particularly sensitive to circumstances, issues and characteristics that could stigmatise survivors?
- Do jointly developed protocols for coordinated multidisciplinary response:
  - clearly define roles and responsibilities of all involved service providers, including in terms of who holds ultimate responsibility for survivor risk assessments and safety plans?
  - delineate service standards, expectations, approaches and agreed upon principles of tailored response to survivors based on their unique circumstances, needs and desires?
- What evaluation mechanisms are in place to assess the value and effectiveness of collaborative and coordinated services from multiple perspectives, and to address identified challenges?
- What policies, mechanisms and practices are in place to:
  - access and share information between participating agencies?
  - regularly review and update jointly developed safety plans to ensure they are providing the safety and security envisioned and required by CARSV survivors?

Data sources:
Internal: Interagency coordination agreements, MoUs, meeting minutes, joint policies, SOPs and tools, information sharing tools, referral agreements, practices and records, survivor liaison strategies and plans.
External: Survivor feedback, reviews/reports.
Interviews/focus groups: Protection Service leadership and staff, survivors groups, service providers.

Useful resources, exercises or tools:
- IICI, The Murad Code (2022).
- Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017).
- UN Women, Safe and Fair: Violence against Women Service Directory for Women Migrant Workers in the ASEAN region (2021).

B. SURVIVOR ENGAGEMENT AND INTERACTION

Competency Indicator WP3: All aspects of protection are attuned to intersectional and situational needs of each survivor, informed by survivor consultation, and therefore accessible and effective for each survivor.

It is critical that quality protection services are made accessible to all survivors, regardless of age, disabilities, SOGIESC, race, religion or other intersectional factors. In order for protection options to be effective and accessible, there has to be an understanding that safety risks and protection needs are unique to individuals and are influenced by intersectional and situation factors.

For example, a transgender woman may find that the authorities and protection services will only accept women who were biologically female at birth (cisgender women). She may not be recognised as eligible. This lack of recognition and intersecting stigmas (CARSV and transgender) may prevent any effective protection and indeed cause her harm in itself. Survivors from LGBTQI+ communities may face risks simply from disclosure of CARSV to authorities, including for example where there are harmful discriminatory laws, attitudes or language used relating to them as LGBTQI+ (compounding stigma). Protection services may not be child-friendly or may not include any expertise in working with child survivors. Equally they may not be designed to give physical access to persons with physical disabilities, may not provide sign or braille language assistance or may make assumptions about capacity and agency in relation to people with intellectual disabilities.

Elements of good practices for accessing protection include:

1. **Intersectional understanding and assessment, recognising barriers and risks to access to justice for different groups of survivors, including for example children, persons from LGBTQI+ communities, or persons with disabilities.**
2. **There are multiple access points for survivors to make enquiries and receive information and advice about protection services that are available to them (e.g., police, health facilities, women's centres, among others) including across rural and urban areas and camp settings where relevant, and attuned for intersectional and situational factors.**
3. **These access points provide bias-free, trauma-informed, and survivor-focused protection services that respect survivors' rights and take into account their diversity, individual needs, capabilities and limitations.**
4. **Sexual violence myths and stereotypes are not used to:**
   - limit survivor ability to access protective services;
   - disqualify survivors whose lives, backgrounds and characteristics depart from the narrow stereotypes of 'ideal victims' in sexual assault cases; or
   - subject survivors and their accounts to increased scrutiny, attack their credibility or view them as less deserving of legal protection.
5. **When survivors access justice, health, other government and civil society services, practitioners take care not to:**
   - misinterpret or question a survivor's credibility or blame them for their behaviours, including reactions of anger or anxiety; or
   - treat survivors with disbelief or interact with them using inappropriate and insensitive behaviour or language.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No awareness or recognised need for intersectional/ gendered understandings or analysis. □ No mapping of services. □ Extremely limited or no access points for protection services. □ Heavily restricted access to what is there based on gendered stigma and assumptions. □ Survivors are met with stigmatised attitudes and revictimisation by protection actors and first responders. □ No survivors report feeling safe. Regular safety concerns arise. Many examples of security incidents and repercussions for survivors.	□ Isolated pockets of understanding and practice, mostly around gender. □ Isolated examples of service mapping based on assumption all survivors are ciswomen. □ Few access points mainly in urban settings where court is based, little thought about barriers to access. □ Almost all set-up for women. □ Survivors often experience stigmatising attitudes and assumptions. □ Most survivors do not find the 'protection offered' makes them safe or feel safe.	□ Basic requirements to consider protection risks of women to access protection services. Not consistent practice, not mainstreamed skills. □ Basic protection services mapped, not necessarily vetted or considered with an intersectional lens. □ Basic access points, with some provision outside urban settings. Not attuned. □ A few protection services also cover child survivors and recognise some other groups of survivors – only in main cities. □ Many survivors experiencing stigma, prejudice or assumptions in terms of protection services and measures. □ Many survivors reporting that whatever protection services or measures do not make them feel safe. Some reported incidents of significant safety repercussions.	□ Specialist protection actors with specialist tools used for different groups, such as women, children, people from LGBTQI+ communities, persons with disabilities, etc. □ 'Specialist' group services mapped by specialists. Not considered part of mainstream protection work. □ Broader access points for women, far fewer addressing intersectional aspects, LGBTQI+, persons with disabilities, old or young, men and boys, rural, marginalised or indigenous groups. □ Some survivors still experience stigma, prejudice or assumptions accessing and receiving protection services. □ More survivors report better experiences of feeling protected. A few reported protection concerns and safety incidents.	□ Full intersectional perspective and assessment built into work practice, tools and monitoring. □ Protection services and referral pathways maps and vetted from an intersectional perspective. □ Broad and unrestricted access points for all groups, with active identification of barriers to access and efforts to reduce those. □ Efforts to attune services and responses to individual survivor needs and realities, including intersectional risks. □ Access points and protection services are bias-free, non-stigmatising and support provided based on survivor informed needs, not assumptions. □ Almost all survivors are positive about protection services and measures received. Any incident or concern arising is investigated and responded to quickly.

Key critical questions:

- How accessible are protection measures for different survivors? How are intersectional risks and vulnerabilities factored into accessibility?
- What are the access points at which survivors seek information about protective services? Are they genuinely accessible to all survivors? Is accessibility the same or substantially different for instance in urban centres and rural areas, or for women and men?
- What mechanisms are in place to ensure that the information and services provided at these access points are accurate, helpful, non-biassed and survivor-focused?
- What does the local referral pathways map look like? Who and what is included? How have they been vetted for their ability to provide bias free, supportive services for all survivors? Are they sensitive to different survivors groups and identities, including intersectional factors?
- How is the ability for survivors to access protection information and services evaluated? By whom?
- What indicators are used to measure the effectiveness of access to justice services for survivors? Are they adjusted to account for intersectional vulnerabilities and compounding barriers to accessing justice?

Data sources:
Internal: SOPs, tools and training materials on non-discrimination and intersectionality, case audits, internal reviews on local/context-specific barriers to accessing protection.
External: Survivor feedback, external reviews on local/context-specific barriers to accessing protection.
Interviews and focus groups: Survivors groups, support services, Protection Service staff.

Competency Indicator WP4: Justice actors and protection actors provide survivors with clear understandable information about risks and their security, as well as the full range of protection measures, orders and mitigation options to allow them to make informed choices based on an understanding of the risks.

Many survivors have limited knowledge and limited access to information about their rights and court processes, including court orders, and what they can and should expect as they navigate complex criminal justice systems. Providing them with support to better understand and make decisions to improve their situation is critical. Survivors should be provided with information, advice and options they can consider and that put them in the best position to make choices that suit their personal circumstances.

See **UN Model Legislation** on the provision of information:

"From the initiation of an investigation, [the prosecutor] [the police] [the pre-trial judge or investigative magistrate] [the responsible ministry] are responsible for ensuring that victims are informed of their rights:

1) To the protective measures available to them, in particular, the protection measures provided for in Article 55, and how to access them. […]

6) To be provided with any information that may affect their personal security, such as the accused or offender's release from detention or imprisonment;

7) To be informed of the progress and results of the investigation of their case as well as the scheduling, progress and ultimate disposition of any proceedings; […]

11) To declare as domicile the address of a third party, subject to the express agreement of that third party or otherwise to have the location of their domicile concealed […]"[225]

If an investigation is initiated, the police, prosecutor, pre-trial judge or investigative magistrate from the responsible ministry is responsible for ensuring survivors are informed of their rights to the protective measures available to them.

Elements of good practice for this information provision includes but is not limited to, comprehensive, understandable, practical, accurate and updated information about:

1. **risks, including safety, privacy and confidentiality limitations, stigmatisation risks and impacts.**
2. **the security measures, including for privacy, confidentiality and protection which the agency/service/function can offer, including the options and choices survivors have.**
3. **the nature of and any limitations in terms of accessible, effectiveness and choice about formal security and protection orders that may be available by a court order.**
4. **the types of protection and support services available.**
5. **the service providers who can assist in providing support and protective measures.**
6. **survivor's role and options for participating in proceedings, what will happen to their information if shared with justice actors, what options there are for confidentiality for their testimony (in terms of the public, in terms of other justice actors such as the defence).**
7. **timely information, in advance with appropriate support and protection services if possible, about developments in the justice process which might impact their security, such as custody hearings, potential release of perpetrators, any potential disclosure of their identity.**

Information and application forms should be available in languages used by survivors and are attuned to age, gender, disabilities, literacy and education levels, etc.

225 UN SRSG SVC, *ibid*, 27-28 (Model Article 50).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No information provided to survivors.	☐ Isolated pockets of practice provided some or better information to survivors. ☐ Most survivors not satisfied with content, timing or methods of information provision about protection issues.	☐ Basic requirements to provide basic information. ☐ Inconsistent practice. ☐ Many survivors not satisfied with content, timing or methods of information provision about protection issues.	☐ Commitment and policies to provide information in understandable, timely manner to survivors. ☐ Not well-established, or integrated into work processes, inconsistent practice by justice actors and inconsistent experience of survivors. ☐ Still a number of survivor complaints and dissatisfaction about aspects of information provision. ☐ Information provision about protection issues not regularly supported.	☐ Well-established policies embedded into workflow, tools and prompts which provide comprehensive, understandable survivor-tailored information about protection measures, risks and developments. ☐ Supported by a communication plan or safety plan with a communication section, agreed by a survivor so that they receive the information they need when they need it in a safe way, with support when needed.

Key critical questions:

- What roles do justice organisations and related service providers have in assisting survivors to understand their rights to protection?
- What survivor-friendly services are available to help survivors navigate challenges of determining whether a protection order is available to them?
- How can survivors access informal protection and support services? How can survivors access protections for testifying in court?
- How can justice organisations and community organisations determine the extent to which information they are providing about safety and security risks is adequately meeting the needs of individual survivors?
- What follow-up is conducted with survivors to determine if/how their protection needs have changed?
- How is information about protection and support measures recommended or implemented by justice actors and their partners shared between service providers?
- What training, resources and support are available for justice actors and their partners to familiarise and update themselves about CARSV protections and support services?

Data sources:

Internal: SOPs, tools and training for survivor information practices and communications, guidelines for identifying protection needs, risk and needs assessment standards and templates, referral practices, privacy and confidentiality protocols.
External: Survivor feedback, external reviews on effective protection measures.
Interviews and focus groups: Survivors groups, support services, Protection Service staff.

Useful resources, exercises or tools:

- IICI, The Murad Code.
- ICC Rules of Procedure and Evidence, Rule 16 (Responsibilities of the Registrar relating to victims and witnesses).
- IICI, Tool for SGBV-investigation/documentation trainers: training materials accompanying the IP2 (2017) (17 training modules, including trainer instructions).

Competency Indicator WP5: Survivors have the opportunity to inform, make decisions on and be heard in relation to all measures which relate to their protection, including their privacy.

*See also **Chapter One — Legislative Framework** and **Chapter Two — Access to Justice and Survivor Pathways**.*

If measures or decision are made which directly impact a survivor — whether in terms of what protection or options are available to them or in terms of seeking personal private information — survivors have the right to be involved in that decision-making, including the right to be notified in advance, and the right to be represented at hearing at which submissions or determinations are made.

Elements of good practice for this indicator include:

1. **Justice actors consult with survivors on all matters relating to their safety and privacy, to understand the risks and their fears and concerns relating to the justice process or any interaction with justice actors.**

See e.g, ICC Statute Article 68(3): "*Where the personal interests may be affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.*"

2. **Whenever possible, justice actors maximise the control and agency of survivors over decisions relating to their safety and privacy. *See also Indicator WP6 on provision of information to inform those choices.***
3. **Advance notice of any application or hearing which relates to protection measures or to the privacy and confidentiality of the survivor or their information.**
4. **Pro bono legal representation in relation to those applications and hearings as far as it directly relates to the survivor's rights of privacy and safety.**[226]
5. **Justice actors do not seek nor allow any unnecessary intrusion or violation of the survivor's rights to privacy, including for instance their family life and correspondence.**

"*Another problem that has arisen in sexual violence prosecutions is whether the defense should have access to counselling or treatment records where the victim has sought help in handling the traumatic aftermath of the sexual violence. In some ICTY cases, such reports are handed over to the defence; in others in camera hearings are held to see if the contents are truly relevant to the witness's credibility or to the weight to be accorded her Testimony [...]. I am informed however that one human rights group warns women victims in the field that any counselling reports may have to be turned over to the court if they become witnesses — an additional incentive not to testify.*"[227]

This is supported by the recent sexual violence justice review in England and Wales which found this intrusion was a significant reason for survivor withdrawal from justice processes: "*an intrusive investigation which heavily scrutinises the victim's personal life and is used as an assessment of the credibility of the allegation. This makes victims feel disbelieved; [...] Police and support service participants felt that in order to encourage more victims to continue with the process, there needs to be less intrusion into a victim's life, less perceived pressure to share phone and private information; and, according to the police participants, less of a perceived desire to undermine them through unrelated third party and digital material.*"[228]

6. **Compiling data on survivor protection concerns, including when that leads a survivor to withdraw from the justice process. Analysis and findings regularly reviewed and used to adapt and improve practices. *See also Indicator WP8 on confidentiality measures and practice.***

226 UN SRSG SVC, *ibid*, 27-28 (Model Article 50).

227 Wald, 'Dealing with Witnesses in War Crime Trials: Lessons from the Yugoslav Tribunal', (2002) Yale Human Rights and Development Journal 5(1), fn.22.

228 George & Ferguson/UK Ministry of Justice, *ibid*, 65.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Decisions about protection are taken without discussing them with survivors. ☐ Survivors have no control or agency over protection decisions – whether they have them or not. For example, automatically put in place or only all up to judge's discretion. ☐ Hearings about protection issues or survivor rights such as privacy and confidentiality happen without the survivor knowing or participating, not notified afterwards either. ☐ No survivor representation allowed. ☐ Automatic or required disclosure of private correspondence, phones, medical records, counselling records, etc. ☐ No proactive monitoring of protection concerns or manifesting risks. ☐ No consideration of why survivors chose not to participate or chose to withdraw, nothing on protection concerns.	☐ Isolated pockets of practice of consultation with survivors. ☐ Isolated pockets of practice where at least survivor's wishes not to have certain protections are determinative. ☐ Survivors told about hearings and orders affecting their rights afterwards. ☐ Applications for representation (if the survivor happens to find out) occasionally granted. ☐ Applications for intrusive searches or unnecessary disclosures common, rarely opposed and often granted. ☐ Little practice or follow-up on survivor withdrawal or non-participation.	☐ Basic commitments and provisions for consultations with survivors on protection issues. Inconsistent and limited in practice. ☐ Basic commitment not to seek or impose unwanted protection measures. Survivors still feel little control or certainty over what measures they can be given. ☐ Survivors informed about hearings affecting their rights, but not always beforehand. ☐ Applications for representation more often granted. ☐ Applications for intrusive searches or disclosure frequent, but sometimes survivors can oppose. Many still granted without balancing rights of accused and survivor or considering necessity or legal relevance. ☐ Use of any existing external reports with feedback or protection experiences and concerns of court users. ☐ Any policies or commitments on non-discrimination or stigma not supported by data collection or analysis.	☐ Requirements for consultation and survivor decision-making/applications. Inconsistent practice. ☐ Provisions for advance notification and representation at hearings directly affecting privacy and safety. Inconsistent application. ☐ Judges still make orders for overly intrusive searches, document disclosure or recovery without full assessment of legal relevancy and necessity, fearing rights of accused impacted without testing that. Little control over use of private material once discovery ordered. ☐ One-off studies or exercises to gain survivor feedback and experiences, protection concerns. ☐ Some data kept on discrimination, stigma and their influence.	☐ Justice actors consult with survivors on risks and protection matters. ☐ Survivors can make decisions about the protections they want and need, with some being available without an application or judicial discretion. ☐ Survivors receive advance notice and can have pro bono representation in relation to all hearing which directly affect their rights, including privacy and safety. ☐ Any intrusions into a survivor's privacy are minimised, based on specific legal justification and necessity and are not used to attack credibility based on stigmatised attitudes and misperceptions. ☐ Regular data collection and end to end reviews around stigma harms, protection concerns and impact, and survivor non-participation and withdrawal aspects as part of organisational response to address and improve practice.

Key critical questions:
- Which justice system actors are responsible for discussions about risks and protection options with survivors?
- How are justice system actors held accountable for having those discussions with survivors?
- How is the survivor involved in making decisions about protections available to them?
- What mechanisms and practices are in place to ensure survivors understand the aid and supports available to assist them in making decisions about legal processes?
- What steps are taken to ensure a survivor's privacy rights are not compromised and any intrusions into their privacy are minimised to the greatest possible extent?
- What training do justice system staff and their partners receive to enable them to speak clearly and responsibly with survivors about the protection decisions they are required to make?
- What data is collected on CARSV survivor protection services? Who is responsible for this collection? How are they held to account for the quality of the data? How often is data collected?
- Who is responsible for analysis of the data? How is the data used? Who is responsible for making recommendations based on the analysis?
- How are protection risks and individual protection concerns arising during the justice process monitored and followed up? What steps are in place to ensure regular follow-up check-ins, where survivors agree?
- What data is compiled on survivor protection concerns, including when that leads a survivor to withdraw from the justice process?

Data sources:
Internal: Codes of conduct and tools for survivor information practices, consultations and communications, guidelines for identifying protection needs, risk and needs assessment standards and templates, referral practices, privacy and confidentiality protocols, survivor experience data and collection policy.
External: Survivor feedback, external reviews on effective protection measures.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Competency Indicator WP6: Protection providers and services use non-stigmatised and non-stigmatising language and terminology about CSRV and survivors, and challenge others who use such language and concepts.

"*Principle 2: Avoid Reproducing Stigma. Communications used about CRSV and those affected by it, creates and entrenches stigma in a way that also leads to specific individuals/groups being overlooked in prevent and response efforts. The application of sensitive verbal, non-verbal and written communications including inclusive definitions of sexual violence, can help to mitigate imposed stigmatisation and its effects. […] Adopt appropriate, sensitive and non-sensational language in all verbal and written communications about CRSV to avoid creating and compounding stigma.*"[229]

Stigmatising language contains words which communicate some form of stigma or negative attitudes against a person or group. It can be words which convey a misassumption or myth about sexual violence, or may victim-blame or shame, or reduce a survivor or their identity to a label or derogatory term. Stigmatising language is one way through which survivors can experience and be harmed by stigma. It is also a way that stigmatised attitudes can spread or be encouraged in society or institutionalised into law, policies, processes and practice.

There is clear evidence that the use of stigmatising language not only affects a person directly but can also influence the behaviour of others around them. In a medical setting, for example, the use of stigmatising language in medical records and histories has been shown to lead to reduced empathy and impacts on medical treatment. A study of physicians-in-training found exposure to stigmatising language associated with more negative attitudes towards the patient.[230] How protection actors speak and the language they use publicly, within their organisation and with survivors about CARSV and CARSV risks can positively or negatively shape perceptions, beliefs, attitudes, behaviours, and actions of survivors, staff within the organisation, and people in the community.

Use of stigmatising comments and language decreases the likelihood that survivors will access justice or take advantage of available protection services. Most importantly, it perpetuates stigma and harm to survivors, and most likely results in secondary victimisation.

Elements of good practice on language and terminology include:

1. **Leaderships for protection actors and services have zero tolerance for stigmatising language and terminology about CARSV and survivors.**
2. **Leadership sets clear expectations that all staff are required to use non-stigmatising impartial language in all oral, written and electronic communications.**
3. **Leadership, management and staff model correct language and non-stigmatising concepts.**
4. **Leaders and staff immediately challenge persons who use stigmatising language. There are consequences to continued use of stigmatising language.**
5. **Supervisors and managers regularly monitor and review interactions, protection interviews, reports and feedback for stigmatising language. Deficiencies are quickly addressed, and where appropriate, corrective action is taken and/or disciplinary penalties applied.**
6. **Staff have the necessary training, mentoring and guidance to understand and recognise what stigmatising language is, to use non-stigmatising language and to work with survivors respectfully and mindfully in relation to any internalised stigma and fear of stigma.**

229 FCDO Global Principles for Action on CRSV Stigma, *ibid.*

230 Goddu *et al*, 'Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record' (2018) Journal of General Internal Medicine 33(8).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or concern about stigmatising language. ☐ No leadership statement or policy. ☐ No guidance or training on stigmatising language. ☐ Common use of stigmatising language and communications across the protective service in oral and written communications, press releases or other comments. ☐ Protection actors do nothing to counter the use of stigmatising language or concepts by others in the justice process.	☐ Pockets of awareness of stigmatising language at the team level. ☐ Isolated pockets of better practice in the use of non-stigmatising language and to objecting to its use by other parties.	☐ Basic guidance against the use of derogatory or insensitive language, or discriminatory language but not specific to CARSV myths and stigma. ☐ Frequent examples of use by protection actors (mostly inadvertently). ☐ Frequent examples of failure to object/ passivity in the face of stigmatising language by others.	☐ Policies and protocols in place. ☐ Covered to a degree in broader training. ☐ Inconsistent practice, with some examples of good and bad practice on use of non-stigmatising language and inconsistent responses to its use by others.	☐ Protection leadership lead on this issue, model the use of non-stigmatising language and set clear expectations. ☐ Protection service guidance on non-stigmatising language, supported by training and supervision/checks. ☐ Protection service protocols requiring proactive objections to the use of stigmatising language and concepts by others in the justice process. Supported by training and supervision. ☐ Rare use of stigmatising language in any protection communications. Formally corrected quickly when noticed. ☐ Routine common practice by protection actors to object to the use of stigmatising language and concepts by others.

Key critical questions:

- What is leadership's position on the use of non-stigmatising language? How does organisational leadership model good use of non-stigmatising language in oral, written and electronic communications?
- What is the level of tolerance for use of stigmatising language in oral, written and electronic communications?
- What are the consequences for not meeting the standards set?
- How is the need and value of non-stigmatising language in communications survivors, within the organisation, with other service providers and with the public understood and communicated across the organisation?
- What specific expectations has the leadership set for use of non-stigmatising language when interacting with survivors, with the public, with other staff within the organisation, or with other service providers? What are the consequences of not adhering to the expectations set?
- What policies, procedures, guidelines or other resources are available to help management, supervisors and staff better understand and address the negative impacts of using stigmatising language?
- How are managers, supervisors and staff held accountable for use of non-stigmatising language?
- What guidance, training, coaching and support are available to assist managers, supervisors and staff to become more proficient in the use of non-stigmatising language?

Data sources:

Internal: Organisational expectations, codes of conduct and tools for non-stigmatising, bias-free language and survivor communications, guidelines and training materials on appropriate language, accountability measures and reviews for stigmatising or discriminatory language.
External: Survivor feedback, external reviews on discriminatory practices, external training providers.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Useful Resources:

- Guide to Non-Stigmatising Language about CARSV.

C. TECHNICAL CAPACITY AND COMPETENCY

Competency Indicator WP7: Technical protection competencies relating to CARSV, survivor-centred approaches, trauma, CARSV stigma and its impact, intersectionality and contextual understanding are mainstreamed across all protection actors, including those interacting with survivors or their information.

The recognition of CARSV competencies as core competencies and mainstreaming of CARSV protection understanding is critical to ensure survivors are properly protected across cases, across teams, across actors and systems, regardless of who a particular survivor happens to interact with and when they feel safe enough to disclose what happened. Investigators, prosecutors and support persons do not always know in advance that the person they will meet is a survivor. Disclosure of CARSV can be delayed and can occur later in investigative or court proceedings. 'Specialist' teams are not always readily available in all settings or without advance preparation. Ensuring all relevant personnel have CARSV skills and protection knowledge is therefore important.

All justice actors interacting with survivors or their information should be able to demonstrate skills for risk assessment, risks of CARSV stigma, basic mitigation measures, operation practice and potential more formal protection measures and orders. Good practice requires that justice actors and other service providers are conversant with and are able to consider and action a broad range of protections measures that will aid, support and maintain the safety and security of survivors and their families.

Elements of good practice for mainstreaming CARSV protection competencies include:

1. **CARSV competencies, survivor-centred, trauma-informed approaches and understanding the risks of CARSV stigma are part of induction training for all protection actors and service staff.**
2. **All justice actors, including protection actors and services, are expected to maintain and update CARSV competencies, understanding of the impact of stigma and (at minimum) basic protection competencies as core competencies for their roles.**
3. **Ongoing training and awareness-raising for all staff on biases, stereotyping, prejudices and discrimination, on the impact of layered stigma and on the negative impact stigma has on the organisation's ability to respond effectively to the unique protection needs of survivors.**
4. **Ongoing supervision and mentoring around these competencies to ensure demonstrated, consistent practice across all protection actors and services staff.**
5. **Protection actors have their performance evaluated based on qualitative indicators such as survivor-engagement and experience (outward-facing indicators); demonstration of values such as inclusion, diversity and equality, non-stigmatising communications, CARSV competent approaches to protection, etc.**
6. **Protection actors undertake continuing professional development (CPD) around CARSV competencies, trauma-informed and survivor-centred approaches, and improvements in CARSV protection practices. CPD available, supported and resourced.**
7. **Protection actors and service staff feel competent, comfortable and prepared to work on cases involving all forms and survivors of CARSV.**
8. **Justice and protection actors:**
   - acknowledge any trauma, shame, blame and/or discrimination each individual survivor has experienced;
   - carefully consider each survivor's unique circumstances, culture, abilities, family dynamics, tolerance for risk and other factors that may negatively impact their ability to remain safe and secure; and
   - consider each survivor's personal situation and immediate special needs.
9. **Monitoring knowledge, attitude and practice (KAP) across practice and teams. Case reviews to assess CARSV and survivor-centred/trauma-informed competency being demonstrated on cases.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ CARSV trauma-informed and survivor-centred approaches not regarded as required competencies. ☐ Very little knowledge of stigma or its impact. ☐ No CARSV, trauma or survivor-centred training at induction or encouraged/ available as CPD. ☐ No performance indicators. ☐ No monitoring of practice on CARSV, trauma or survivor experiences/ feedback. ☐ Stigmatised attitudes and myths held and perpetuated by protection actors. ☐ Protection actors do not want to work on CARSV cases — too hard, too much time, too 'emotional'.	☐ Some isolated ad hoc expertise on CARSV within protection service, not organised, not planned and not integrated. ☐ Mentioned only in relation to the range of international crimes or governing law in induction training. No CPD available on CARSV, trauma or survivor-centred protection. ☐ Performance indicators focus on numbers. ☐ Women always tasked with CARSV protection work. ☐ Mostly negative attitudes towards CARSV work. Few wish to do this work. ☐ Some knowledge of CARSV tested in some teams/departments.	☐ CARSV protection expertise is not regarded as a core competency for all protection actors. ☐ Basic CARSV training in induction and some CPD available – seen as specialist work and few encouraged to specialise. ☐ Performance indicators broader than numbers, with a few outward facing qualitative indicators included, but not CARSV specific. ☐ Mixed attitudes towards CARSV aspects to cases. Most still think 'too hard' and takes 'too much extra work'. ☐ Knowledge tested and monitored but not attitude or practice.	☐ CARSV specialists integrated into protection teams, but not regarded as a core competency for all protection actors. ☐ CARSV protection module in induction training but CPD reserved for specialists. ☐ Performance indicators more qualitative and survivor experience included. Separate full set of qualitative indicators for CARSV specialists. Not included in team leaders' performance measurements. ☐ Some protector actors, particularly specialists, positive and enthusiastic about working on CARSV aspects of cases. ☐ Knowledge and practice tested or monitored. Not attitude or stigmas.	☐ All team members have CARSV competencies as part of their core competencies. ☐ CARSV, trauma-informed and survivor-centred protection approaches, including deep understanding of stigma, is a core part of induction training and regularly accessible CPD on developments and innovations in this area. ☐ All justice actors interacting with survivors or their information have protection competencies as core competencies. ☐ Performance indicators include CARSV protection and risks as core competency, KAP monitoring, mitigating stigma, CPD in CARSV, trauma and survivor engagement with justice, on survivor feedback, innovative approaches to CARSV challenges, and demonstration of key non-discriminatory values and conduct. Also included and tailored to leadership/ supervisor positions. ☐ Protection actors positive about CARSV cases and their importance. Motivated to work on these aspects of cases. ☐ Mixed gender representatives and engagement on CARSV protection issues, fora and meetings. ☐ Monitoring, case reviews and checks around CARSV knowledge, attitudes and practice.

Key critical questions:

- How are CARSV, trauma-informed approaches and survivor-centred protection competencies regarded by leadership and protection actors? Are they thought to be highly specialised? Or at the other end, are they seen to be core skills necessary for all protection actors?
- To what extent is CARSV protection competency mainstreamed across all protection agencies, position and services? If there are focal points or expert advisors appointed on CARSV or SCA, how are they integrated into protection work?
- To what extent do male protection actors have CARSV, SCA and trauma-informed competencies?
- To what extent is CARSV competency required in protection team leader roles?
- Who is assigned to work on CARSV protection? How is this determined? What is the ratio of women to men assigned to do this work?
- How do protection actors describe CARSV specific risks? How do they describe the risks of CARSV stigma? Do they understand the layers of stigma, secondary victimisation and what mitigatory measures can prevent it?
- How do protection actors describe survivor-centred approaches? Can they give good and bad examples from their procedures or practice? What do they understand about trauma-informed approaches? Can they describe some of the elements to a trauma-informed approach? Can they give examples of how it is incorporated into their procedures and practice?
- To what extent are (at least) basic CARSV protection competencies mainstreamed and expected in roles outside designated protection services, agencies or positions?
- How well are (basic) protection approaches for survivors understood by justice actors? Can they explain risk assessments, stigma risks and basic measures for confidentiality, privacy and security?
- What is the content of induction training or briefings for protection actors? To what level are CARSV, SCA and trauma-informed competencies and demonstrated skills included in induction training? Who is required to attend these parts? To what extent are policies, procedures, tools and templates for these issues included?
- What CPD is provided and supported for protection actors? How often are they required/allowed to take time for CPD? To what extent does CPD include CARSV, trauma-informed and survivor-centred approaches? Who is encouraged or assigned for CPD related to these competencies?
- What are protection actors' attitudes and beliefs towards CARSV work?
- What do KAP surveys show about levels of stigma and stigmatising practices among protection actors?
- What do other functions and survivors say about protection actors' attitude to CARSV work?
- What are the performance indicators for protection actors? How do they differ between protection actors and why? What are the qualitative indicators and how are these measured objectively and consistently? How many relate to SCA, trauma-informed practice, CARSV competencies and survivor feedback?

Data sources:

Internal: CARSV protection competency guidelines, training materials and records, KPIs, PERs, KAP surveys testing staff competency and comfort level for CARSV cases, case audits, case outcome data with diverse survivor samples.
External: Survivor feedback, external reviews on survivor-centred practices and effectiveness, external training providers and curricula.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Competency Indicator WP8: All justice and protection actors maintain, uphold and prioritise the confidentiality and privacy of survivors throughout the process and in relation to any interaction.

Confidentiality and protection are two sides of the same coin. If survivors wish to ensure their participation in justice and information sharing during interaction is kept private, especially from their family or community, all justice actors must take all possible measures to ensure non-authorised disclosure or breaches of a survivor's privacy. There is a presumption of confidentiality until a survivor expressly and explicitly provides informed consent otherwise. Survivors must be advised of any possible limitations to the confidentiality of their information or their right to privacy which might arise during the justice process so that any decision to participate is based on realistic expectations and understandings of risks.

Protection of survivor privacy is essential to preserve their dignity and safety, and to avoid retraumatisation and secondary victimisation, particularly in relation to preventing and mitigating potential stigma within their community. Their experience, related services, decisions and all personal information must be treated confidentially by all stakeholders. Survivors may not feel able to report CARSV if they perceive that their protection cannot be guaranteed.

Confidentiality protocols and measures are designed to protect survivor information and data from being made public or shared, and to ensure the security of electronic communications, data management and data storage. Justice actors must understand that any interaction with survivors, even asking for their location in a village or calling them on their phone, can create risks in terms of their privacy and may alert people in the community or their family to their participation in justice processes. All interactions must be risk assessed in advance, and security and privacy measures and practices implemented as standard procedure. In addition, all handling, transfer, sharing and storage of any information about survivors, whether electronically, in person or as hard copies, all carry risk of interception or of being overheard or read by others.

Elements of good practice to maintain privacy and confidentiality of survivors:

1. **Justice and other actors must explain any limitations on the ability to keep information safe and confidential to a survivor before any information is shared.**

This includes any obligation to disclose contents of a police file or witness statements to the defence as part of a justice process. It also includes any mandatory reporting laws where a service or protection service is required by law to report any CARSV disclosures to national authorities, regardless of survivor consent.

2. **All survivors have access to a range of minimum protection options and measures related to their and their family's identity, privacy and confidentiality, which are based on their informed choice and not dependent on discretion of judges.**
3. **A survivor is supported in making informed choices about who their personal information can be shared with, under what circumstances and for what purpose, as well as at least some basic confidentiality measures around their appearance, participation or testimony in court proceedings.**
4. **All survivor information and interactions are regarded as confidential unless and until a survivor gives express and specific informed consent to use, store, share or disclose their information.**
5. **Codes of conduct lay out a duty of care for all justice and protection actors to maintain the privacy and confidentiality of CARSV survivors and all information related to their case. All justice actors are trained and monitored in terms of handling confidential information.**

See also Chapter One — Legislative Framework providing for court orders for non-disclosure, de-identification, press non-disclosure orders and criminal sanctions for unauthorised disclosure and breaches of confidentiality obligations for protected witnesses.

6. **Resources, systems, infrastructure, protocols and practice are sufficiently robust to assure confidentiality based on an assessment of the risks, including ensuring confidentiality and restricted access to confidential information held electronically and physically.**
7. **Information management and sharing protocols for justice actors and between cooperating actors are survivor-centred, based on informed consent (or court orders) and include policies, practice and restrictions on:**
   - sharing of information;
   - protection, preservation and retention of print and electronic documents, exhibits and other records;
   - evidence handling, storage, retrieval and destruction;
   - safe collection, storage, transportation and handling of print and electronic documents, records and evidence;
   - organisation of print and electronic information for easy and safe retrieval;
   - confidential document disposal;
   - safe travel with protected or sensitive material; and
   - destruction of confidential information at risk of unauthorised disclosure or confiscation (e.g., when working independently within other jurisdiction).
8. **All policies and practices around maintaining survivor safety, security and privacy are regularly reviewed and evaluated to ensure they are meeting objectives. Adjustments are made based on findings. Any reports of breaches of confidentiality protocols are dealt with immediately and seriously.**

9. Court buildings and systems are designed and equipped with discreet, separate entrances and spaces for survivor witnesses (away from public and away from accused), and have effective means to provide for confidentiality measures in court including (but not limited to):

- holding in-camera or closed sessions in court which exclude the public and media;
- screening or separate rooms/spaces for survivors to testify via video, away from the accused or without confrontation with the accused; and
- use of pseudonyms and removal of identifying information from the court record.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Survivors are not part of any decision about confidentiality protection measures. ☐ Survivors are not informed of any limitations or risks to confidentiality or their privacy. ☐ Duties of confidentiality do not extend to survivor information or codes of conduct. ☐ No training on confidentiality. ☐ No protocols on survivor information. ☐ Insufficient resources. ☐ No review, no sanction on breaches. ☐ Court building and systems provide no means to protect privacy or confidentiality. ☐ Regular breaches of confidentiality. ☐ Survivors do not trust the system to report based on confidentiality concerns.	☐ Isolated pockets of more survivor-centred practice where survivors informed of risks including confidentiality. Nothing official, formal or consistent. ☐ Survivors do not get choices about protection and confidentiality. ☐ Codes of conduct have general confidentiality provisions. ☐ Any training about information management does not specifically relate to risks to survivors. ☐ Few resources for confidentiality systems. ☐ A few modifications innovated by isolated pockets of actors trying to make best use of what is there in terms of infrastructure and systems. ☐ Breaches reported in many cases. ☐ Most survivors express concerns about confidentiality and privacy, and lack of trust.	☐ Basic protocols and SOPS include information on risks as part of informed consent process. Actors not clear on what risks and worried about survivors not continuing. ☐ Decisions taken about protection measures based on assessment of survivors but not involving them. ☐ Codes of Conduct mention protection measures for vulnerable witnesses but no training or understanding of how this should be done. No real enforcement. ☐ Basic resources for basic protection of information. ☐ Some basic court building and technology provisions, but inconsistently used/not every effective. ☐ A number of significant and serious breaches occur. ☐ Many survivors express concerns about confidentiality and privacy, and lack of trust.	☐ Good set of detailed protocols and training on informed consent including risks and limitations to confidentiality. Inconsistent practice with actors still concerned about being 'too honest'. ☐ Survivors preferences feed into court ordered protection measures, and operational SOPs provide for survivor informed consent around operational communications and contact methods. ☐ A good set of resources and systems for information protection, still some inconsistent practice and human weaknesses. ☐ Good information management and sharing protocols but not full implementation and familiarity, or consistent adherence achieved yet. ☐ Court technology and adaptations available but not consistently and fully effectively used. ☐ Only a few breaches reported. ☐ Some survivors express confidence about their protection and privacy.	☐ Survivors are given clear and honest information about the limitations of confidentiality and privacy. ☐ Survivors have a range of confidentiality measures they can make informed choices about (in addition to ones requiring court applications). ☐ Confidentiality is taken very seriously and expectations and training consistent with that prioritisation. ☐ Information management and sharing protocols well-established and consistently followed. ☐ Systems and practice are regularly reviewed and breaches are addressed and sanctioned. ☐ The court building and system has been adapted or designed to ensure private spaces, discrete entries and separation measures, as well as having well-established in-court technology supporting confidentiality protection measures. ☐ Rare breaches, responded to quickly. ☐ Most survivors engaged in the process felt that their confidentiality and privacy wishes were respected and upheld.

Key critical questions:
- How is the requirement for all CARSV service providers to maintain the confidentiality and privacy of survivors embedded into each participating organisation's code of conduct, policies, procedures or communications protocols?
- What training, development and guidance do services providers receive on their roles and responsibilities in incorporating survivor-centred confidentiality and privacy considerations into information sharing?
- What steps has the organisation taken to define, implement and review employee requirements to protect, preserve, retain and share print and electronic documents, exhibits and other records?
- Who is involved in monitoring and evaluating information collection and sharing practices, and to ensure they do not compromise survivor confidentiality, privacy and dignity?

Data sources:
Internal: Organisational expectations, codes of conduct and tools for survivor information practices, consultations and communications, guidelines for identifying protection needs, risk and needs assessment standards and templates, referral practices, privacy and confidentiality protocols, confidentiality breach reports/complaints.
External: Survivor feedback, external reviews/reports on effective protection measures.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Competency Indicator WP9: Justice and protection actors are competent to undertake risk assessments and prepare safety plans based on contextual, situational and intersectional understanding of CARSV and survivors.

Effective risk assessments are a fundamental element of protection. **The Murad Code** includes the following provisions for risk assessment:

"1.3 Ask the survivor: Following initial preparation work, we will ask the survivor, including child survivors, about what they want, their priorities, concerns, risks and current situation. We will respect and reflect these to the extent possible within our mandates and resources.

1.4 Prioritise survivor safety: We will continuously prioritise a survivor's safety, wellbeing and dignity ahead of our objectives. We will work to understand the risks and repercussions to survivors and those around them which could arise from any contact with us. Such risks can include revictimisationtion, reprisals, stigmatisation, physical, online, information and communications safety risks, and legal risks.

1.5 Identify heightened risks: We will take additional, specific precautions when there are heightened risks of further harm. We recognise that any individual may face heightened risks which may change over time and context. Heightened risks may arise for child survivors including children born of war and unaccompanied children, persons from LGBTQI+ communities, persons with disabilities or with limited literacy, persons from indigenous or marginalised groups, and others.

5.3 Assess and mitigate risks: Based on knowledge and understanding of the context, we will identify and assess any potential risks for all those involved, such as individual survivors, their family and communities, ourselves, and others involved in the process. We will assess general and specific risks for individuals and situations, such as confidentiality, safety, wellbeing, social repercussions and stigma, and legal rights. We recognise that this process should be informed by those competent in aspects such as gender, children and communications, and data, physical and other security. If we proceed to work with individual survivors, we will also seek a survivor's input on their risks. We will not proceed if the risks cannot be appropriately mitigated. This assessment and its mitigation measures will guide every aspect of our work. We will review the assessment as often as necessary."

Elements of good practice include:

1. Survivors are consulted and participate in risk assessments to have an understanding of their own risk and to ensure that safety plans and protection measures are tailored to their needs.

See Indicator WP5 and Indicator WP6, which also include this element.

2. Risk assessments are based on:
   - contextual and situation understanding and analysis.
   - gender analysis and understanding of gender narrative and inequalities and how these shape risks.
   - intersectional approaches attuned to and understanding individual realities born of the intersecting inequalities and discrimination facing individual survivors.
   - understanding of the impact and risks of layers of stigma, including dangers of internalised stigma.
3. Risk assessments cover risks to survivors, their families and communities; physical, psychological, social, legal and economic risks and repercussions, including the impact of stigma; as well as justice actors including vicarious trauma and associational stigma.
4. Risk assessments are prepared and reviewed in relation to all actions involving survivors, from communication, approach and first meeting onward.
5. No assumptions are made about protective measures based on CARSV myths, misperceptions and stigma, including assuming or minimising trauma or vulnerability due to age, gender or other immutable characteristics.
6. Protection measures are unbiassed and trauma-informed, and effectively consider and meet the unique needs and circumstances of survivors. Mitigation measures and safety plans are agreed with survivors.
7. Protection risks and individual protection concerns are monitored during the justice process with regular follow-up check-ins thereafter, based on survivor consultation and consent.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No risk assessments prepared. ☐ Basic understanding of risks related to risks to justice actors, such as police when they are making arrests, etc. ☐ Little or no understanding of risk assessments beyond specialised protection officers, not mainstreamed across all justice actors interacting with survivors. ☐ Few or no mitigation measures, none with survivor consultation or discussion.	☐ Isolated pockets of practice including limited risk assessment and mitigations. ☐ Heavy influence on risk assessment and mitigation measures of stigmatised assumptions, myths and misperceptions about CARSV, survivors and perpetrators.	☐ Basic risk assessments required by protection officers, limited to witness appearance in court and physical security only. ☐ Not informed by a gender analysis or a context and conflict analysis. ☐ Often influenced by stigmatised attitudes, myths and misperceptions about CARSV, survivors and perpetrators.	☐ Risk assessments and safety planning required but not well established and not embedded fully into work practice, tools and flow. ☐ Some limitations remain on range of risks assessed, ☐ Range of potential actors affected by those risks. ☐ Some limitations still in terms of mainstreamed and shared understandings to allow gender, intersectional and situational analysis as basis for assessments. ☐ Stigmatised assumptions still creeping into assessments and mitigation measures.	☐ Risk assessments and safety planning built into work processes for all aspects of survivor interaction and communications. ☐ Consistent practice to include full range of risks to all involved or potentially impacted. ☐ Based on good understanding of context, gender dynamics, intersectional and situational risks as well as a sound understanding of stigma in all its layers including internalised stigma. ☐ No influence of stigmatised assumptions, myths about vulnerability, trauma, etc. ☐ Full discussion and consultation with survivors for their input on risk assessments, and agreement to mitigation measures and safety planning.

Key critical questions:

- How and when are a survivor's concerns about their safety, wellbeing, socio-economic and rights identified?
- What measures identify and address intersectional risks to survivors, their family and their community?
- What checks and balances are in place to ensure the risk assessment is complete and considers all potential harms, risks and consequences for each survivor, including risks to their safety, wellbeing and socio-economic and legal rights? What measures are taken to address these risks and concerns?
- What steps ensure that risk assessments are not based on or informed by CARSV myths and stereotypes?
- How often are risk assessments reviewed and adjusted?
- What is the organisation's policy and practice on proceeding with a justice process if risks cannot be appropriately mitigated?
- What connections are established with other justice personnel, government and civil society service providers to conduct comprehensive risk assessments and tailor 'wrap-around' safety plans that meet survivor needs?
- What criteria is used to determine who has the necessary knowledge, skills and abilities to work with diverse survivor populations and diverse partner service providers to conduct risk assessments?
- What training do risk assessors receive? What resources, coaching, and mentoring is available to assist them in conducting effective risk assessments and building comprehensive safety plans?

Data sources:

Internal: Organisational codes of conduct, SOPs, guidelines and tools for survivor information practices, consultations and communications, identifying protection needs, risk and needs assessment standards and templates, referral practices, privacy and confidentiality protocols, case audits, case outcome data with diverse survivor samples.
External: Survivor feedback, external reviews on effective protection measures.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Useful resources, exercises or tools:
- UNODC, Handbook on Gender Responsive Police Services for Women and Girls Subject to Violence: Chapter 6. This document includes tools and tips for conducting risk assessments.

Competency Indicator WP10: Justice actors support and enforce a range of protection measures and orders which are tailored to individual survivors and their families regardless of whether they testify, and contribute to tackling broader stigma from justice processes.

See Indicator LF6 on legislative provisions to support this. There are also complementary indicators in each function chapter specifically in relation to the environment in which survivors are expected to give their evidence/testify.

Witness protection is very often limited to only those who agree to testify in court and can fail to recognise safety for those around the survivor, such as their family. It can also fail to recognise the dangers outside of the courtroom, before or after a witness appears. It can overlook all those persons engaged in the process that do not end up being a witness at the trial. While risks from public testimony are heightened, any interaction with formal justice actors can have protection implications, and not just for the survivor.

In order to be safe and effective, protection actors must recognise and mitigate these wider risks of harm. Protection actors must ensure resourcing and measures for protection extend to all aspects and interactions with survivors in court or in survivor communities, whether or not survivors decide to participate in proceedings or testify and include risk assessment and consideration of risks and repercussions to the survivor's family too.

Elements of good practice for this indicator include:

1. **Organisational resourcing, policies, SOPs and tools extend security, safety and protection assessments, measures and operational practice to all layers and impacts of stigma, including associational stigma and community reactions to survivors and their families, and regardless of willingness or ability to participate or testify in criminal proceedings.**
2. **Measures are in place for police/investigative authorities to obtain emergency protection orders on a 24-hour basis, by telephone request to a judge, or by a fast-track/rapid access to courts that are accessible after normal office hours.**
3. **Applications for protection orders are heard in a timely and impartial manner. Protocols are in place to expedite processing of applications to the courts.**
4. **Authorities are held accountable for a failure to act on an application for a protection order. Breaches of protection orders are promptly investigated.**
5. **Where necessary, when a justice process has put the life of a survivor at risk, there are adequate protection measures to address this and ensure a survivor's continued safety, such as confidential protection programmes which include safe houses, relocation and identity change.**
6. **Policies, systems and processes are in place to ensure that courts and enforcement authorities have current information on all protection orders, which is regularly updated, and that accurate records on breaches are recorded and information on them can be accessed by investigators.**
7. **Effective measures are in place to protect survivors from secondary victimisation by law enforcement and judicial authorities.**
8. **Regular reviews and evaluations are conducted on all protection order related policies, processes, and practices to determine if they meet survivor needs and organisational and multi-agency objectives.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Any protection measures limited only to testifying witnesses and around appearance in court. ☐ No recognition or contribution to tackling stigma in survivor communities. ☐ Protection measures and orders not easy to obtain, no emergency procedures, no responses adequate to manage risk to life. ☐ No accountability or enforcement.	☐ Isolated pockets of broader informal measures assessing and mitigating risks to those engaging with justice processes. ☐ Pockets of awareness of risk of stigma. No response or proactive steps to mitigate or prevent. ☐ Limited ability to get emergency orders, court-based in urban areas. Limited measures for situations of threat to life. ☐ Little enforcement or accountability — pockets of better practice.	☐ Broader range of recognised informal measures for risks beyond court appearances. Court orders still confined to witnesses. ☐ Basic awareness of stigma risks, but consideration limited to physical violence life threatening stigma — such as 'honour' violence. ☐ Basic systems for emergency orders and unsupported internal relocations/temporary shelters. ☐ Basic enforcement avenues available for survivors or justice actors when protection orders made (complaint or back to court).	☐ Broader eligibility and range of potential formal and informal measures available, inconsistent practice not frequently used. ☐ Greater recognition of stigma, responses limited to confidentiality measures. ☐ Emergency procedures in place and accessible. ☐ Enforcement and accountable processes in place. Still inconsistent follow-up and reviews.	☐ Well-established wide range of protection measures for survivors and their family engaging with the justice system. Full application whether witness or not. ☐ Risk assessments and protection available based on understanding of stigma risks. ☐ Well-established, functioning emergency response systems, including effective accessible responses to threats to life with options for supported relocation, identity change, etc. if necessary.

Key critical questions:

- Are survivors protected in all aspects of their interactions with justice actors, and afterwards? Do protections extend to families? What about survivors who decide not to participate or are not selected as witness?
- What is the range of conditions that civil or criminal protection orders can be sought for in the survivor's jurisdiction?
- What protocols and guidelines are in place to assist justice and related service providers in accessing and applying for protection orders? How accessible, responsive and effective are emergency orders?
- What policies and practices are in place to guide enforcement of protection orders?
- What information on protection orders is available for those responsible for deciding on and implementing them?
- What training is provided for protection actors on survivor-centred enforcement on protection orders, enforcement of protection orders, or eliminating and reducing potential biases? What about applying for a protection order? How do you know that the steps taken are adequately meeting the needs of diverse populations?

Data sources:

Internal: Guidance, SOPs, tools for implementing and enforcing protection orders, conditions and application procedures for emergency protection orders and enforcement of protection orders, accountability measures for non-enforcement and breaches of protection orders, case audits, case outcome data with diverse survivor samples.
External: Survivor feedback, external reviews on effective protection measures.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Protection Service staff.

Useful resources, exercises or tools

- OSCE & ODIHR, Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: Standards, Approaches and Examples from the OSCE Region (2019). *Includes tools on risk indicators*.

USEFUL RESOURCES FOR ASSESSMENT OF PROTECTIVE SERVICES:

- Benetech & Corporation PuntadeVista, Using Quantitative Data to Assess Conflict-Related Sexual Violence in Colombia: Challenges and Opportunities (2011).
- Center for Human Rights, Gender and Migration, The Silence I Carry: Disclosing gender-based violence in forced displacement: Practitioner's Toolkit for Mexico (2020).
- DCAF, Gender Self-Assessment Guide for the Police, Armed Forces and Justice Sector (2011).
- de Brouwer, 'The Importance of Understanding Sexual Violence in Conflict for Investigation and Prosecution Purposes' (2015) Cornell International Law Journal 48(3).
- Ferro Ribeiro & van der Straten Ponthoz/FCO, IP2 (2017).
- International Association of Chiefs of Police, Sexual Assault Response Policy and Training Content Guidelines (2017).
- IICI, Guidelines for Investigating Conflict-Related Sexual and Gender-Based Violence against Men and Boys (2016).
- IICI, Supplement to IP2 in Iraq (2018).
- IICI, The Murad Code (2022).
- IICI, Tool for SGBV-investigation/documentation trainers: training materials accompanying IP2 (2017) (17 training modules, including trainer instructions).
- OHCHR, Integrating a Gender Perspective into Human Rights Investigations: Guidance and Practice (2018).
- OSCE & ODIHR, Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty: Standards, Approaches and Examples from the OSCE Region (2019).
- UN, Early Warning and Threat Analysis to Conflict Related Sexual Violence: Powerpoint lesson (2017).
- UN, Handbook for United Nations Field Missions on Preventing and Responding to Conflict Related Sexual Violence (2020).
- UNDPKO, Gender Equality and Women, Peace and Security: Resource Package (2020).
- UNODC, Gender Dimensions of Criminal Justice Responses to Terrorism (2019).
- UNODC, Handbook on Gender Responsive Police Services for Women and Girls Subject to Violence: Chapters 6 and 8 (2021).
- UNODC, Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (GLO.ACT Asia and Middle East) (2021).
- UNODC, Strengthening Crime Prevention and Criminal Justice Responses to Violence Against Women (2014).
- UNODC & UN Women, Facilitation Handbook for Gender Awareness for Front Line Officers and Law Enforcement Teams: Module 1 (2021).
- UN SRSG SVC, Model Legislative Provisions and Guidance on Investigation and Prosecution of Conflict-Related Sexual Violence (2021).
- UN Women, ASEAN Regional Guidelines on Violence against Women and Girls Data Collection and Use (2018).
- UN Women, Violence against Women in Conflict, Post-conflict, and Emergency Settings (2013).
- UN Women/FCO, Conflict-Related Sexual Violence in Asia-Pacific: Putting Victims/Survivors First (2017).
- UN Women, UNODC et al, Essential Service Package for Women and Girls Subject to Violence (2015).

CHAPTER SIX — MEDICAL AND FORENSICS

Conflict and atrocity-related sexual violence (CARSV) is a complex event with medical, psychological and legal aspects. This Chapter focuses on the process and value of forensic medical evaluations (FMEs) as a component of the justice response to CARSV. Medico-legal evidence of sexual violence is at the intersection of the medical and justice processes, requiring coordination between health services, social services, forensic medicine, forensic lab services, police/investigation and the legal system, including lawyers and judges.[231] "*Effective forensic and medico-legal care depends on the existence of a working justice system, legal support and access to care, which cannot be taken for granted.*"[232]

Health sector professionals are often the first open door for survivors, providing a unique opportunity to support and care. Yet, evidence from survivor interviews suggest that "*understanding and experience of how to respond to rape survivors is often lacking in health facilities.*"[233] Clinician behaviour and practice can range from supportive and open, to shaming, punishing, disbelieving and harming. Recognising that significant physical evidence is commonly absent,[234] clinicians performing forensic SV evaluations must also be trained in the systematic documentation of behaviour, affect and psychosocial impact.

SV FMEs are ideally based on a holistic approach to the client's care and treatment, including acute medical treatment, psychosocial follow-up, forensic examination and evidence collection. It should be noted that forensic medicine is not a medical specialisation, and there are no formal qualification requirements for practitioners. Thus, training and competence-building are foundational to an effective health system response, given that many survivors report FMEs to be distressing, frightening and humiliating. Medical care provided during FMEs includes not only a comprehensive history and physical examination, including the genitalia and anus; but also photographic images, documentation of and treatment for acute injuries, advice and/or provision of contraception, and testing, prevention and treatment of infections.

Deep understanding and active reflection of barriers to successful CARSV response are key to continuous system improvement. Clinicians must engage in ongoing bias identification and stigma reduction training and practice to truly improve the outcomes for survivors. Specific risks for bias in clinicians include propagation of personal beliefs and experience, myths and misconceptions about survivors' gender, affect, behaviour, consent, time of reporting, substance use, perpetrator relationship, mental health conditions, and types and locations of injuries. Literature reports that juries, law enforcement and judges can be heavily impacted by SV myths and stigma when described as fact by expert witnesses. Examples of pervasive myths and practices in the CARSV settings include inappropriate anal or genital testing for evidence of consent or virginity, failure to recognise the significance of the presence or absence of physical injury findings (which may be interpreted as signs of consent or resistance), misinterpretation of normal variations in genitalia findings, and timing of the survivor's presentation to clinical settings as a sign of their credibility or the need to perform an FME (the "*72 hour rule*").[235] Many survivors in conflict settings do not report in the first few days after the event due to barriers such as distance from a health facility, fear of retribution, cost, non-functioning justice systems or requirements to have written police approval for an FME.

231 UNODC & WHO, Strengthening the Medico-Legal Response to Sexual Violence Toolkit (2016).

232 Amnesty International, Women, Violence and Health (2005).

233 Amnesty International (2005), *ibid.*

234 *E.g.* Amnesty International, Time for Change: Justice for Rape Survivors in the Nordic Countries (2019), noting that half of survivors seeking help at a sexual assault centre in Oslo had no visible marks or injuries.

235 Ludes *et al*, 'Guidelines Examination of Victims of Sexual Assault Harmonization of Forensic and Medico-Legal Examination of Persons', (2018) International Journal of Legal Medicine 132.

Tests such as hymenal diameter, anal sphincter assessment, or "*finger test*" for assessment of vaginal elasticity are medically baseless and highly prejudicial.[236] These "*tests*" are often performed under the guise of religious, cultural and political reasons or to defend a survivor's or their family's honour. Clinicians may perform these tests based on ignorance of their scientific value, but they can also feel coercion by religious or justice leaders to perform and report results of these tests. Due to the well-known extreme conditions often present in conflict settings, clinicians may expect to discover both genital and non-genital physical findings during an FME. When physical findings are absent, inadequately trained clinicians may mistakenly assume that SV did not occur, consent was given or that the survivor did not resist the perpetrator. Additional common biases and myths held by clinicians can include doubts about survivors who present more than 72 hours after the event, those who have prior relationships with perpetrators or had consensual intercourse following the SV event, survivors who communicated with the perpetrator before or after the SV event, and survivors who do not initially reveal all the details of the SV event, typically due to shame or fear. All SV cases require close collaboration with law enforcement investigators, and continuous awareness of the introduction of potential bias into forensic investigations and medical evaluations.

Studies linking legal significance and outcomes with medical evidence are limited. One study showed that neither genital trauma nor the presence of sperm was associated with conviction.[237] Another more recent study reported that FME evidence was useful for identifying or confirming suspects, establishing survivor credibility, and proving that sexual contact occurred.[238] Finally, a South African study found that convictions were more likely if there were documented injuries, non-genital or ano-genital injuries, with the highest convictions occurring when both types of injury sites were present.[239] On the other hand, there is ample evidence to suggest that significant variation in FME quality is common.[240] FME affidavits or reports range from comprehensive and accessible statements to minimal, confusing or damaging documentation. Standard training on core competencies of clinical forensic examination, medical documentation and expert testimony is essential to eliminate national and regional differences in quality that can have serious legal consequences for criminal prosecutions.

When there are functioning and accessible law enforcement and medical forensic services available, survivors may face several key decisions in the hours after experiencing CARSV, creating a significant burden. Survivors must provide their consent for an FME and evidence collection, decide about reporting the events to law enforcement and the justice system, decide to accept psychosocial and medical treatment referrals, and whether to share information about the event with family and support personnel. Clinicians are in a key position to facilitate thoughtful, supported and fact-based decision-making in the best interests of the survivor. For CARSV in conflict and crisis settings, immediate responses and opportunities to report crimes may often be absent.[241] For survivors, the option to report, and receive a medical examination, may only come later. While FMEs performed within 2-3 days of assault may be most productive, FME conducted at later stages may still have value in documenting signs of residual injury, infection and changes in function as evidence to assist any court proceedings.

236 Brown, WHO Background Paper: Obstacles to Women Accessing Forensic Medical Exams in Cases of SV, HRW (2001).

237 Du Mont & White, The uses and impacts of medico-legal evidence in sexual assault cases: A global review, Sexual Violence Research Initiative (WHO) (2007), 1-62.

238 Menaker *et al*, 'Use of Forensic Evidence in Sexual Assault Investigations: Perceptions of Sex Crimes Investigators' (2016) Violence Against Women.

239 Jewkes *et al*, 'Medico-Legal Findings, Legal Case Progression and Outcomes in SA Rape Cases: Retrospective Review', (2009) PLoS Medicine 6(10).

240 Amnesty International (2005), *ibid*.

241 *E.g.* Gilmore, Expert Report on Reparations for Victims of Rape, Sexual Slavery and Attacks on Healthcare, Prosecutor v Bosco Ntaganda, ICC-01/04-02/06-2623-Anx2-Red2 (2020), 24.

A note on the availability of court-appointed, official, or approved forensic medical examiners in conflict settings and in different legal systems: In some inquisitorial court systems, only court appointed, government forensic experts may be called to provide expert evidence in criminal justice proceedings. However, in conflict or crisis settings, such officials may not be available due to destruction of infrastructure and services, or when the State itself is implicated in the perpetration of these crimes. In such situations, and for legal systems where the prosecution, defence or survivors can call their own expert witnesses, medical doctors working with survivors can be trained to undertake medical expert evaluations in conflict and crisis settings.[242]

This chapter can be used by either official, government forensic medical services or by organisations which support and arrange medico-legal evaluations for the purposes of accountability and physical evidence.

INDICATORS AND ASSESSMENT

This Chapter is organised along the three common themes:

A. Organisational Culture and Leadership

B. Survivor Interaction and Engagement

C. Technical Capacity and Competency

Indicators are numbered using the acronym **FM** for "*Forensic Medicine*" — e.g. FM1, FM2, etc.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
FM1 The forensic medical leadership prioritises trauma-informed, survivor-centred CARSV services by establishing processes and policies for evidence-based medico-legal evaluations and embodying organisational integrity and clinician credibility.
FM2 The medical forensic leadership creates a healthy, safe, respectful workplace culture, including modelling behaviour around gender equality, inclusivity and non-discrimination.
FM3 The forensic medical team is part of a coordinated and integrated justice process with law enforcement and judicial systems focused on optimal outcomes for survivors. Coordination is key to minimising trauma re-exposure and serious mental health risks.
FM4 The forensic medical team is diverse and representative, and prioritises CARSV competencies through ongoing training, knowledge, skill development and attitude monitoring with clear competencies socialised, rewarded and regularly updated.
SURVIVOR ENGAGEMENT AND INTERACTIONS
FM5 Forensic evaluators have a duty to deliver trauma-informed, survivor-centred services, as well as to ensure that survivors have access to qualified psychological support.
TECHNICAL CAPACITY AND COMPETENCY
FM6 Assurance of FME evidence quality is the basis for expert testimony and credibility of forensic evaluations and their findings.
FM7 Forensic medical experts testify to findings using international best practice protocols and model non-stigmatising language and terminology about CARSV during court testimony.

242 Elliott, Kivlahan & Rahhal, 'Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice and Accountability' (2020) JICJ 18; Istanbul Protocol Supplement (28 June 2022).

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator FM1: The forensic medical leadership prioritises trauma-informed, survivor-centred CARSV services by establishing process and policies for evidence-based medico-legal evaluations and embodying organisational integrity and clinician credibility.

Many survivors face health care systems and practitioners who are ill-prepared for the emotional and physical consequences of CARSV. Leadership and culture in health settings should reflect the highest standards of clinical and ethical practice, collaboration with other justice actors, and up to date knowledge that is deployed effectively with all survivors. Clinical leadership is accountable for expectations and trauma-informed behaviour of all staff, especially that of medical evaluators.

Elements of robust clinical leadership include:

1. **Implementing and monitoring codes of conduct, survivor commitments, standards of service, standard operating procedures embedded with SCA and non-stigmatising behaviour and practice.**
2. **Mainstreaming CARSV competencies and behaviours across leadership, management, teams and practice/processes.**
3. **Ensuring adequate budget to resource timely SCA, evidence collection, testing and security, including survivor consultations, language and access assistance in locations remote from court/work.**[243]
4. **Setting, monitoring, and improving SCA key performance indicators of CARSV competencies.**
5. **Medical evaluators serve as role models, demonstrated by quality forensic medical examinations (FMEs), non-stigmatising written and verbal language, and expert and survivor consultations.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leadership or expert awareness of importance. ☐ No evidence of policy/ processes for CARSV or stigma. ☐ Communications often include stigmatising language, SV myths, etc. ☐ No budget for examinations, evidence or survivor support. ☐ Victim/survivor rights and support not part of culture. ☐ Rigid referral pathways delay survivors.	☐ Some leadership or expert awareness but not written. ☐ Communications sometimes include stigmatising language, SV myths, etc. ☐ Some staff engage in best practices but not at leadership levels. ☐ Urgent needs get ad hoc resourcing. ☐ Some policies reflect survivor-centred approaches. ☐ Survivors not prioritised by office hours, policies, access.	☐ Some leadership communication about importance. ☐ Basic policies and processes exist. ☐ No KPIs on medical evaluations collected for leadership review. ☐ Some budget allocated for some but not all aspects. ☐ Communications rarely include stigmatising language, SV myths, etc. ☐ Ad hoc referral processes: allows for some to jump the line.	☐ Leadership regularly emphasises importance. ☐ Written policies, codes of conduct and expectations. ☐ KPI consistently reported but inadequate response. ☐ Budget and resources allocated. ☐ Communications reviewed for stigmatising language, SV myths, etc. ☐ Referrals within 72 hours prioritised; limited acute medical care provided.	☐ Robust leadership statements and practice. ☐ Clear policies and process, known and adhered to by staff. ☐ KPIs reported, known by staff and clear response. ☐ Communication is a model of equity and inclusion. ☐ Victim/survivor experience is consistently high-quality. ☐ No wrong door. Referrals from survivors and all others. Acute care provided to all.

243 DAI/Equality Now, SV in South Asia: Legal and Other Barriers to Justice for Survivors (2021), on delays.

Key critical questions:
- In this community, are there SV evaluation centres or primarily individual practitioners with SV skills?
- Does the forensic medical evaluator accept self-referrals as well as professional (police/social services/NGO) referrals? Is there specialty access for specific SV populations such as survivors of FGM/C, torture, trafficking or TBI, LGBTQI+ persons, etc.?
- Are survivors sent to either forensic or medical care for evaluations, or are these two services coordinated?
- What is the average timing between SV and FME? What are the reasons for any delays?
- What is the typical number of interviews and physical examinations performed on each survivor?
- What is the medical forensic evaluator's understanding of CARSV prevalence, characteristics and impact?
- What is the typical communication approach used with CARSV, survivors and perpetrators?
- What steps are taken to continually educate and train on CARSV and tackling stigma?
- What is the team's strategy to assess and understand survivor expectations of FMEs?
- What is the team's awareness of and attitudes toward policies, SOPs, codes, commitments, etc?
- What has health system or expert leaders communicated publicly and internally about CARSV and stigma?
- What has the leadership done to ensure continuously improved SCAs are adopted during FMEs?
- How are key performance indicators selected to assess quality of FMEs and service satisfaction? What is the review, monitoring and response strategy?
- How does the budgeting process account for FME needs and staffing?
- How does the leadership/expert get feedback from survivors or survivor networks?

Data sources:
Internal: Organisational expectations, codes of conduct, tools and training materials on survivor-centred and trauma-informed approaches, FME standards and guidelines, FME report templates, referral policies and practices, budget documents, internal and external communications around CARSV FMEs.
External: Survivor feedback, external reports or evaluations.
Interviews and focus groups: Survivors groups, survivor advocates, support services, forensic medical leadership and evaluators.

Competency Indicator FM2: The medical forensic leadership creates a healthy, safe, respectful workplace culture, including modelling behaviour around gender equality, inclusivity and non-discrimination.

The forensic medical evaluator may be the first professional with whom a survivor interacts after experiencing SV. A safe, welcoming and competent environment is necessary to promote trust in the justice system and support survivor decision-making. Monitoring and intervening on clinicians' problematic behaviour in examination rooms and written affidavits are essential to elimination of stigma. "*Professionals in the health sector are often the first port of call for rape survivors.*"[244]

There is increasing evidence that investment in training in diversity, equity, inclusion and health justice changes the awareness and culture within health systems. One of the most obvious, early changes in workplace culture is the increased awareness of stigma and discrimination among staff and clinicians, resulting in changes in attitudes toward survivors and greater depth of understanding of the impact of trauma.

Elements of safe, healthy, and respectful forensic medical system leadership include:

1. **The forensic medical evaluator models respect and inclusion for survivors and staff. Expressions of gender inequality, sexual harassment and abuse are not tolerated. Leaders at all levels are prepared to challenge personal and organisational core beliefs, values, traditions, negative assumptions and harmful language. Reporting procedures in place and accessible to any staff experiencing discrimination or harassment.**
2. **Policies, work plans and tools emphasise accurate understandings of CARSV: bias recognition, attention to inclusivity, intersectional identities, nature of structural violence and discrimination.**
3. **Composition of the forensic medical team is diverse and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. All genders and groups feel respected, included and comfortable in work and social interactions with colleagues, including those marginalised and facing intersectional discrimination within that society.**
4. **Recruitment, selection and retention policies are developed and implemented to promote and advance EDI throughout the forensic medical team.**
5. **People of all genders, sexual orientations, race, ethnicity, age, socioeconomic status, culture, faith and abilities have equal opportunities and feel valued.**
6. **The forensic medical team has policies on values, ethics, integrity, gender equality and sexual harassment. Clear expectations and policies are in place to counter discrimination in the workplace. Leadership ensures that such policies are followed, constantly mentioned and discussed, and include diversity as part of the values of the organisation.**

244 Amnesty International (2005), *ibid.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leader recognition of the need and value of diversity in addressing CARSV. ☐ There is no/very limited diversity of individuals and thoughts in the organisation. ☐ No policies or reporting systems on discrimination, including gender. ☐ Disrespectful communication and behaviour common. ☐ Staff feel undervalued, disrespected, stigmatised. ☐ Sexual harassment unaddressed. ☐ No oversight of content and quality of FMEs.	☐ Leader acknowledges the need to mainstream EDI, human rights throughout the medical team. Not priority. ☐ Ad hoc response to discrimination. ☐ Expression of bias and stigma are common. ☐ Reports of staff feeling undervalued, abused, harassment unaddressed. ☐ No organisational EDI expectations set, or structures, policy or practices implemented. ☐ Some isolated examples of EDI practices at lower levels. ☐ Minimises seriousness of repeated discrimination. ☐ Some FME oversight but frequent stigma in reports and communication.	☐ Leader recognises the potential value of a diverse workforce, though not specifically in connection to CARSV FME responses. ☐ Policies in place for gender and discrimination but not consistently enforced. ☐ Some efforts are made to increase diversity. ☐ No one is held accountable for increasing diversity. ☐ Leader sets some basic expectations around organisational EDI. Not consistently enforced. ☐ Reporting systems unclear. ☐ Inconsistent messaging or enforcement. ☐ Reports of being undervalued, disrespected, unequally treated occur. ☐ Occasional FME peer review that detects stigma. Behaviour during evaluation is still unknown.	☐ Recognition of importance of EDI in creating a safe environment for CARSV FMEs. ☐ Clear policies and reporting systems in place; Teams are safe reporting concerns. ☐ Consistent messaging on importance of equity and inclusion. Management team responsibilities for advancing EDI are identified. ☐ Efforts are made to identify systemic barriers that are negatively impacting recruiting and advancement of diverse staff. ☐ Some human resource management data is collected, but analysis is limited. ☐ Steps are taken to set expectations, a code of conduct and internal governance structures around EDI and CARSV. ☐ Rare expressions of discrimination, disrespectful language, or conduct. ☐ FM evaluator behaviour and FME content is evidence-based and respectful.	☐ Value of EDI as part of safe CARSV FME environmentrecognised as a guiding principle of organisational policy. ☐ Well-established policies that are clear to staff. Advancing EDI are mainstreamed throughout all human resource decision-making. ☐ The level of diversity of individuals and thought is evident, is valued, and is promoted. ☐ Systemic barriers to EDI have been identified, and steps taken to eliminate them. ☐ Leader models exemplary language and EDI practices. ☐ Expectations, code of conduct, internal and external governance structures, and EDI and CARSV policies, procedures and practices are aligned. ☐ Diversity in all forms is sought and valued. ☐ Reporting systems easy to access. ☐ Expressions of gender inequality or discrimination are identified and challenged. ☐ All staff feel respected and safe. ☐ FM evaluator behaviour and FME content model best practices.

Key critical questions:
- How does leadership view the importance of EDI in organisational practice? Is it seen as relevant to accessible justice and a safe reporting environment? Is it seen as relevant to how the FME team is able to engage with survivors?
- What is the level of diversity in the FME team, for instance in terms of gender, LGBTQI+, race/ethnicity, faith? Is the level of diversity different at general staff, management and leadership levels?
- What policies, procedure and enforcement relate to sexual harassment, abuse, non-discrimination, diversity, equity, and inclusion in the forensic medical workplace? What do staff know about these policies? How do staff feel about reporting deviations from policies or procedure?
- What reasonable accommodations are made to ensure opportunities and recognition for staff of all genders, sexual orientations, race, ethnicity, age, socioeconomic status, culture, faith and abilities?
- What specific measures are in place to ensure recruitment and staffing processes are based on merit rather than on personal opinion, preference, bias or stereotypes? Are efforts in place to increase diversity and recruit employees from under-represented groups?
- Do recruitment processes screen potential staff on selection criteria related to their EDI attitudes?
- What are the policies, procedure and enforcement relating to sexual harassment, abuse, non-discrimination, and EDI in the FME team? What do staff know about it? How do staff feel about reporting deviations from policies or procedure?
- How do staff members describe the workplace culture? How do staff who face intersectional discrimination describe their experience and comfort at work? What kinds of language, stories and jokes are expressed in the workplace, with and without the presence of survivors?
- What examples of gender discrimination are present within the practice? What examples of other forms of discrimination are present, for example against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, etc.?
- How have these been addressed by the leadership?
- What is the process for FME review? What is done when stigma or discrimination are identified?
- Who is in the examination room with the forensic medical evaluator and survivor? What is the training regarding survivor advocacy for all team members in the room?

Data sources:
Internal: Organisational EDI documents, strategic plans, diversity and workplace policies and reviews, human resources records, recruitment strategies, policies and practices, vacancy advertisements, harassment and non-discrimination policies and practices, EDI training materials and records, complaint mechanism reports and reviews.
External: Survivor feedback, external reviews on organisational diversity.
Interviews and focus groups: Organisational leadership, EDI officers and staff, diverse samples at all levels.

Competency Indicator FM3: The forensic medical team is part of a coordinated and integrated justice process with law enforcement and judicial systems focused on optimal outcomes for survivors. Coordination is key to minimising trauma re-exposure and serious mental health risks.

The forensic medical evaluator partners with other key justice actors to enhance survivor engagement, communication, protection, support and participation. Partners include police/investigators, prosecution, support services, court services, witness support services and survivor representation or advocates. Consistent and disciplined communication is key to successful justice processes, especially regarding the relevance and strength of physical and psychological findings.

"Judges don't understand shock. For example, they asked me why I just waited at the door until the perpetrator left. There should be a psychologist or a psychotherapist at the trial who would explain to the judges about trauma. For example, when I was asked why I didn't immediately go to the police or a doctor. I was in shock, I don't know why I didn't do it."[245]

Elements for good practice in communication and partnership include:
1. **Medical experts ensure FMEs are protected from loss or contamination.**
2. **When possible and with survivor consent, rapid outreach by clinicians to legal counsel, police or other courts may reduce the risk of lengthy proceedings. Forensic medical teams should establish working relations with international or universal jurisdiction justice actors.**
3. **Medical experts take a proactive leadership role in partner liaison and in court to ensure that police, prosecution and judges thoroughly understand the primary FME conclusions and do not make decisions based on stigma, myths or misunderstanding.**
4. **Medical experts engage with psychological and support experts for additional evidence and interventions.**
5. **Forensic medical teams have regular organisation/agency meetings to review cases and update policies.**

245 Amnesty International (2019), *ibid.*

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
☐ No written cross-sector policies/procedures; minimal collaboration. ☐ Frequent disagreements regarding case selection and action. ☐ No regular meetings across sectors. ☐ Cases are first-come, first-served. ☐ FMEs are narrative, handwritten and non-standard. ☐ No acute care access for survivors. ☐ Forensic exam site does not meet basic SV recommendations (limited privacy, etc). ☐ Forensic evaluator does not share FME with police or prosecution. ☐ No pre-trial prep for expert medical witness or expert not called.	☐ Out of date cross-sector policies/ procedures; ad hoc collaboration. ☐ Meetings occur rarely and ad hoc. ☐ Long wait times result in survivors not accessing exams. ☐ FMEs are typed but non-standard. ☐ Acute care access for survivors is limited to emergency room. ☐ Forensic exam site has some of the requirements for basic SV recommendations. ☐ Forensic evaluator does not meet with police or prosecution to discuss findings. ☐ Pre-trial prep for expert medical witness is ad hoc.	☐ Cross-sector policies and procedures in place. ☐ Case quality definitions have been discussed. ☐ Case prioritisation in the hands of admin staff. ☐ FMEs do not use standard terminology or conclusions. ☐ Appointments for acute care access ad hoc. ☐ Forensic exam site has basic SV requirements. ☐ Forensic evaluator answers questions for police or prosecution. ☐ Pre-trial prep for expert medical witness is routine.	☐ Clearly written policies/ procedures across sectors reviewed regularly. ☐ Clearly written case quality definitions. ☐ Regular cross-sector meetings to review outcomes and success factors. ☐ Procedures include clear direction on timing of forensic exams and those for "*old cases*" (>96 hours). ☐ FMEs are standardised and include feedback from stakeholders. ☐ Ensure acute medical care access. ☐ Clarity on forensic expectations based on site: rural/urban, academic/private, stable/conflict zone. ☐ Case-specific dialogue to dispel myths and focus on evidence. ☐ Pretrial expert witness preparation.	☐ Model policies and procedures. ☐ Regular review of case success factors using root cause analyses to assess quality. ☐ Regular cross-sector meetings. ☐ Joint decisions on exam timing impact case outcomes. ☐ FMEs are models for other systems. ☐ Integrated medical care with forensic care. ☐ Integrated interviews, investigations, and survivor support. ☐ Standard case review meeting pre-trial with witness prep.

Key critical questions:

- What cooperation and coordination agreements, joint procedures and shared tools does the forensic service have with other justice functions?
- How do justice actors select clinicians to perform FMEs (proximity, access, cost, etc)?
- How often does the forensic service meet with partners in other functions (at leadership and staff levels)?
- Is there a joint investigation/interview approach between the forensic evaluator and investigators?
- What agreement exists between actors for ensuring the right sequencing of treatment for acute conditions and timing of forensic examinations?
- How is implementation and adherence to such agreements, procedures and tools measured and monitored? At what level and how often does this occur? Is there a periodic case review meeting where success factors are identified?
- How do survivors describe the interaction with different functions during the process?
- How many interviews or examinations do most survivors experience?
- Do prosecutors prepare experts? Does this also occur when the survivor is in a prison or other institutional or aggregate setting?
- Is there consensus and shared procedures for determining which cases have characteristics that are considered strong, urgent, life-threatening, etc., in order to prioritise services and manage resources?
- How does the forensic team/service assess the accurate interpretation of a medical expert report by other justice actors?

Data sources:

Internal: Interagency coordination agreements, meeting minutes and notes, joint policies, SOPs, tools, information sharing tools, survivor liaison strategies and plans, FME standards and guidelines, FME report templates, referral policies and practices, FME clinician selection and appointment criteria and practices, case audits, data on cases including FME evidence and expert testimony.
External: Survivor feedback, external evaluations or reports.
Interviews/focus groups: Survivors groups, survivor advocates, support services, forensic medical team, coordinating service providers (police and prosecutors).

Competency Indicator FM4: The forensic medical team mainstreams CARSV competencies through ongoing training, knowledge, skill development and attitude monitoring with clear competencies socialised, rewarded and regularly updated.

Centre-based and individual clinicians and staff providing FMEs must be trained and mentored, provided advanced SV training, peer review, team debriefs and regular stigma training. Clinician staff should be broadly representative (by age, gender and race) and aim to reduce the prevalence of rape myths and stereotypes. The FME and a high-quality survivor experience are the core products of the team.

"*[T]raining for health-care providers on intimate partner violence and sexual assault should include different aspects of the response to intimate partner violence and sexual assault (e.g., identification, safety assessment and planning, communication and clinical skills, documentation and provision of referral pathways).*"[246]

Elements of good practice on mainstreaming CARSV and diversity skills include:

1. **Induction training and CPD on CARSV and trauma-informed competencies available and expected of all forensic medical staff engaging with survivors. Terms of reference, duties and responsibilities and associated PERs include delivery of CARSV and SCA competent work.**
2. **Clinician oversight includes assessment of CARSV and trauma-informed competencies.**
3. **CARSV stigma/attitudes measured at recruitment and actively monitored.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Women clinicians do all the FMEs. ☐ FMEs are shared with the requestor with no oversight. ☐ FMEs are done by those with no specialised training. ☐ No standard format of FMEs. ☐ No standards or reporting structure for behaviour within examination rooms; no chaperone policy.	☐ Heavy reliance on a limited number of women to do FMEs. ☐ No dialogue between requestor and evaluator after FME. ☐ Training is out of date; no mandated stigma training. ☐ FMEs have minimal standards. ☐ Chaperones available but discouraged.	☐ Several men on staff capable of FMEs. ☐ Informal FME peer review possible. ☐ Annual training expected. ☐ FMEs use a standard format to collect key content. ☐ Chaperones are present but no training on reporting problematic behaviour.	☐ Diverse staff hired and trained. ☐ Formal peer review in place; FME changes not usually made. ☐ Regular training occurs for all staff. ☐ FMEs are tracked, outcomes are recorded. ☐ Clinicians are observed and feedback is provided.	☐ Diverse staff in clinical and leadership roles. ☐ Formal FME peer review in place; informed changes based on review and dialogue. ☐ Clinicians and team are trainers of others. ☐ FMEs reflect best practice and inform training needs. ☐ 360 reviews of team members, in spirit of improvement. ☐ Required metrics for SV FMEs are included in written guidelines and terminology is non-stigma based.

Key critical questions:

- What is the annual training plan for the team who work on forensic evaluations which could include CARSV?
- How are clinician and staff competency assessed for CARSV, trauma-informed skills and stigma training?
- How are chaperones or in-room support personnel trained in CARSV and real-time advocacy for survivor needs?
- Who has access to, and who reviews, forensic medical reports within the forensic team/health system?
- Is there consistent peer review to oversee medical documentation quality?
- What strategies are in place to manage feedback about staff or clinician behaviour from survivors, justice actors or peers?
- How does the forensic team get systematic feedback from key stakeholders?

Data sources:

Internal: Organisational training materials, training records, strategic plans, diversity and workplace policies and reviews, human resources records, staff diversity data, recruitment strategies, policies and practices, vacancy advertisements, FME clinician selection and appointment criteria and practices, FME peer reviews.
External: Survivor feedback, survivors groups, survivor advocates, support organisations, external partner service providers.
Interviews and focus groups: Survivors and survivors groups, survivor support services, forensic medical team.

246 WHO, Responding to intimate partner violence and SV against women: WHO clinical and policy guidelines (2013).

B. SURVIVOR INTERACTION AND ENGAGEMENT

Competency Indicator FM5: Forensic evaluators have a duty to deliver trauma-informed and survivor-centred services, as well as to ensure that survivors have access to qualified psychological support.

CARSV survivors should receive services from trauma-informed, knowledgeable and high-quality forensic medical evaluators/teams. FMEs are potentially physically and psychologically traumatising procedures. Survivors make exceptionally difficult choices to report SV, to undergo an examination, and to trust that effective assistance is available. Experiencing a respectful evaluation, free from stigma, shame and blame, is an essential step toward recovery.[247] Onsite ongoing support and therapy or referrals thereto are basic expectations.

"*They need evidence. And I think that very few girls who've been raped want to get into that chair at the gynaecologist's to get an examination afterwards. Because that's what they'll do. For me, that was just unimaginable — that I would have to lie down on that thing with my legs spread in the air to be examined [...] That was the deal-breaker for me. To get into such a vulnerable situation once more — that's just not what you want to do right after. You just want to crawl back into yourself.*"[248]

Elements of good practice for voluntary, fully informed survivor participation includes:

1. **The facilities are discreet, comfortable and ensure confidentiality and privacy for survivors.**[249]
2. **Forensic medical evaluators employ standard informed consent and teach-back. Referrals and informed consent for FMEs are not controlled by court orders, law enforcement or government entities.**
3. **A survivor support person is present in the examination room when the survivor consents.**
4. **Forensic medical evaluators are aware of power and status imbalances and take active measures to reduce these, including by giving survivors time to make informed, non-pressured decisions.**
5. **They systematically identify and acknowledge stigma, myths and bias in their work.**
6. **Forensic medical evaluators consult with survivors to proactively identify ongoing psychological and social support needs. Acute injury and trauma care, basic counselling and treatment are easily accessible.**
7. **Forensic medical evaluators describe examination findings and recommendations to survivors in plain, understandable language.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No or only verbal consent performed by untrained staff. ☐ Minimal to no privacy; frequent breaches in confidentiality. ☐ Forensic team is untrained in trauma in SV care. ☐ Accessing forensic services is unclear and unpredictable. ☐ Psychological and social support and referrals not available or used. ☐ No free acute care, HIV or STI treatment onsite. ☐ No survivor hygiene services.	☐ Verbal or written consent by untrained staff. ☐ Physical safety, emotional wellbeing not prioritised. ☐ Reliance on a single or few trained personnel. ☐ Accessing forensic services is ad hoc and inconsistent. ☐ Psychological and social support and referrals are ad hoc, and quality not assured. ☐ Acute care, HIV or STI treatment is costly and ad hoc. ☐ Uninviting and shaming hygiene services onsite.	☐ Consent is verbal/written understandably. ☐ Staff are aware of survivors' physical safety, emotional wellbeing. ☐ A basic forensics team is trained in trauma-informed care. ☐ Accessing forensic services is clear. ☐ Basic psychological and social support are available on request. ☐ Acute care, HIV and STI treatment is onsite or through referrals. ☐ Hygiene services onsite include showers and clothing.	☐ Verbal/written consent consistently includes examination process and procedures. ☐ Physical safety, emotional wellbeing and awareness of competing responsibilities are managed. ☐ Full forensic team is trained in trauma-informed care. ☐ Accessing forensic services is clear and predictable. ☐ Psychosocial support available onsite or referral, for all. ☐ Acute care, HIV and STI treatment are integrated onsite.	☐ Consent by trained staff consistently includes examination process, procedures, and information sharing. ☐ Physical safety, emotional wellbeing and awareness of competing responsibilities are primary. ☐ Full forensic team is trained in trauma-informed FMEs and medical care. ☐ Accessing forensic services is clear and predictable to all referrers. ☐ Integrated psychosocial support for all.

247 "*The Court notes that [the medical examiner] confronted the applicant with the findings of the police and orthopaedics reports, and questioned her on why she had not defended herself more vigorously. [...] Moreover, it does not appear that [he] was trained in conducting interviews with victims of sexual abuse.*" Y v. Slovenia, ECHR App no. 41107/10 (25 May 2015).

248 Hansen *et al*, 'Non-Reporting of SV as Action', (2021) Nordic Journal of Criminology 22(1).

249 Skinnider *et al*, The Trial of Rape: Understanding the criminal justice system response to sexual violence in Thailand and Viet Nam (2017): "*it is not unusual to see a queue of four persons walking through the hospital, led by a male forensic expert. The victim trying to hide her face with a scarf [...] walks behind him, then the nurse, and the last person in the queue is the police holding a pile of paperwork. [...] any bystander can immediately tell that the [...] woman is the rape victim.*"

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ Evidence of myths and stigma in survivor interactions throughout process. □ Survivor decisions are rushed and poorly understood. □ No community social referrals made.	□ Survivors typically exposed to staff myths/ stigma. □ Survivor decisions poorly explained by untrained staff. □ Referrals are made based on relationships, not cost, quality or access.	□ Some members of team actively dispel myths. □ Victim/survivor decisions are allowed time and privacy. □ Referrals are made to shelters, substance use and other resources with unknown access rates.	□ Survivor-only hygiene services onsite include showers and clothing. □ The team actively dispels myths. □ Survivor decisions are allowed time, privacy and support personnel. □ Referrals are made to shelters, substance use and other resources.	□ Acute care, HIV and STI treatment integrated onsite. □ Survivor-only hygiene services onsite include showers and clothing. □ The team trains others on myths, bias and stigma. □ Survivor time and privacy for decisions are integrated into process/procedures. □ Referrals are coordinated and tracked with accessible shelters, substance use and other resources. □ Specialty care is accessible for domestic violence, human trafficking, LGBTQI+, FGM/C needs, etc.

Key critical questions:

- How do survivors seek medical evaluations after SV? Describe the prevalence of self, health system or law enforcement referral.
- How are survivor referrals and walk-ins managed? By whom and with standard protocols?
- During forensic evaluations, how do survivors perceive their experience with privacy and confidentiality?
- How do survivors perceive their level of control and autonomy during forensic evaluations? Specifically, what support do they have for their key decisions, including consent for an FME, reporting the assault, and proceeding with investigation and prosecution?
- How are survivors informed about the effectiveness of performing genital/anal evaluations and evidence collection based on time since the event?
- How is the offer and acceptance of the services of a chaperone or crisis worker to accompany them during the medical evaluation tracked?
- Are free emergency contraception, HIV/antiretroviral treatment and antibiotics against sexually transmitted diseases available to survivors?
- When survivors have acute injuries or are at risk for pregnancy or STI, do they receive a) onsite medical services with free treatment by the forensic evaluator, or b) is there a rapid referral system to free or low-cost acute care for treatment, if offsite?
- Are survivors aware of access to specialised services for LGBTQI+ persons, children, or survivors of human trafficking, FGM/C or domestic violence?
- Are survivors asked about work, child, elder or other care responsibilities at the time of evaluations?
- What are survivor perceptions of their physical safety and emotional wellbeing during the evaluation?
- What level of psychological or social assistance is available to survivors onsite? What level is available based on referral from medical evaluators?
- How are survivors informed about police notification and involvement?
- Are survivors helped to access shelters or other resources following their FME?
- How is showering/washing and a change of clothes managed during their FME?
- How do survivors feel about the way they are asked about substance use and its relationship to the SV event? How do survivors feel about the questions they are asked about prior sexual history during the FME?

Data sources:

Internal: Codes of conduct, tools and training materials on survivor-centred and trauma-informed approaches, FME standards and guidelines, FME report templates, referral policies, practices and data, case audits, FME performance evaluations, chaperone policy, urgent care policy, FME informed consent forms.

External: Survivor feedback, external reviews on survivor experience of FMEs.

Interviews and focus groups: Survivors groups, survivor advocates, support services, forensic medical evaluators, frontline health system personnel, police.

C. TECHNICAL CAPACITY AND COMPETENCY

Competency Indicator FM6: Assurance of FME evidence quality is the basis for expert testimony and credibility of forensic evaluations and their findings.

The FME and a healing, high-quality survivor experience are the core products of the FME team.

"Legal certificates issued by health providers can be important pieces of evidence in rape cases. However, the police sometimes request medical records instead of certificates, which have less value as evidence in a legal process. In addition, a legal certificate was issued based on photos of the woman's injuries. However, some of the photos were of such poor quality that the medical forensic doctor could not form an opinion on how some of the injuries had been incurred."[250]

Quality services also mean that medical examinations are medically relevant, based on science and are free from stigma, myths and scientifically irrelevant considerations.[251]

Elements of good practice for FMEs include:

1. **Forensic medical evaluators perform FMEs using international SV standards, current literature-based practice and standard terminology. They use standardised protocols and documentation tools with robust confidentiality protections.**
2. **Forensic medical evaluators manage acute injuries or illnesses in a coordinated manner.**
3. **Forensic medical evaluators describe diagnostic lab test purpose, site and result timelines (where available) to survivors in an understandable manner.**
4. **Forensic medical evaluators routinely carry out STI treatment, HIV prophylaxis and pregnancy testing, including referrals for medical and psychological care.**
5. **Forensic medical evaluators perform evidence collection by protocol, including internal examinations of vagina/rectum based on timing of reporting after SV and likelihood of residual evidence.**[252]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Scientifically irrelevant tests or examinations are performed as standard practice. ☐ Informed consent not consistently documented. ☐ Evidence not or poorly collected; no rape/ crime kits. ☐ Photos not taken or used. ☐ No standard format for FMEs. ☐ FMEs not stored securely. ☐ Credibility assessment varies by survivor and staff and trends toward disbelief.	☐ Pressure or court orders on FME framed around medically irrelevant tests. ☐ Survivors sign basic consent forms without detailed risks/benefits. ☐ Evidence not routinely collected or evaluated; rape/crime kits used occasionally. ☐ Medical certificates or full FMEs used without clarity of purpose. ☐ Credibility assessment is biassed towards women with physical findings presenting within <72 hours.	☐ Recognition of medically irrelevant tests, and basic standards around scientific testing in place. ☐ Survivors can describe expected FME examination steps. ☐ Chaperones/ crisis workers are present. ☐ Evidence may include survivor's body, clothing, toxicological exam, trace evidence. ☐ Evidence collected by trained personnel using protocol; rape/ crime kits used and sent for analysis. ☐ Comprehensiveness of exam based on history of event, time between the assault and medical exam, history of cleansing.	☐ Full evidence collected using standard kits, stored, tracked. ☐ Extra-genital findings documented (bruising, evidence of strangling etc). ☐ Basic psychological evaluation documented. ☐ Credibility is assessed using standards and focuses on explaining inconsistencies to support survivor's history.	☐ Clear, detailed and trauma-informed consent. ☐ Medical care is integrated and coordinated. ☐ Evidence collection explained to survivor and test results. Documented in FME. ☐ In cases with no physical findings, FMEs describe detailed history and psychological findings. ☐ Genital and extra-genital findings documented in detail. ☐ Photo quality excellent; body diagrams included.

250 Amnesty International (2019), *ibid*.

251 For legal status and use statistics on medically irrelevant 'two finger' tests in South Asia: Dignity Alliance International & Equality Now, *ibid*, 41

252 Skinnider *et al*, *ibid*, 68-70 (noting the risks that untrained or misinformed evidence collection poses to the integrity of the evidence and to survivor well-being).

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
		□ Typically CARSV team believes the survivors, but biases still arise.		

Key critical questions:

- Are there uniform and appropriate standards for the collection of forensic evidence in CARSV cases? Who collects the physical evidence, including rape/crime kits?
- Are there uniform and appropriate standards or regulations governing the analysis and preservation of the evidence? Are these standards followed? What are the barriers? Describe the FME set of record keeping and documentation, including informed consent documents and process.
- Are rape/crime kits developed at the national or local level? Are they available? Do they meet standards? Who pays for the tests? Is there specialised training on how to use the kits? Are there clear policies about who can use them and required training? Can data from these kits and other forensic data be used as evidence in court proceedings? Is it used?
- Are similar CARSV services available to survivors in large cities and rural areas?
- What are the assumptions about the credibility of a survivor in a sexual violence case compared with complainants in any other criminal proceeding?
- How are FME requests for survivors managed? What is the selection process for appropriate clinician gender during FMEs for survivors?
- Do the FMEs contain language describing or implying credibility assessments? Are they stigma-free?
- Are there submitted FMEs which have no physical findings? Describe the quality of these evaluations, use of historical or psychological evidence, and outcomes.
- Who takes photographs? Describe the quality. Are photographs always attached to the FME?
- What is the policy about taking and including genital/anal photographs?
- Are FMEs peer reviewed, reflective of best practice, and evidence-based?

Data sources:

Internal: SOPs, guidelines such as Clinical Management of Rape Guidelines, tools and training materials, FME standards and guidelines, FME report templates, rape kit guidance and training, evidence gathering standards and practices, FME performance evaluations, FME informed consent forms, FME peer reviews, FME photographs, FME expert testimony data.
External: Survivor feedback, external CARSV service mapping, reviews, reports or evaluations of FME services.
Interviews and focus groups: Survivors groups, survivor advocates, support services, forensic medical evaluators, frontline health system personnel, coordinating service providers (prosecutors, defence, judges).

Competency Indicator FM7: Forensic medical experts testify to their findings using international best practice protocols and model non-stigmatising language and terminology about CARSV during court testimony.

Medical experts provide their summary of findings through written expert reports and oral testimony. Survivors must be able to trust that effective FME evidence is available after they make the exceptionally difficult choice to undergo an examination.

"Expert testimony can positively impact a sexual assault case by providing the jury with a better understanding of the relevant evidence and related scientific, forensic, and medical issues. By providing insight into how trauma may affect the behaviour of victims, an expert witness can provide critical information to a jury determining the outcome of a case."[253]

Elements for good practice in expert testimony include:

1. **Medical experts have an accurate understanding of CARSV in all its forms and full range of its survivors.**
2. **Medical experts build bias reduction into their CARSV work (FMEs and analysis, case preparation and presentation at trial).**
3. **Medical experts infuse a gender and intersectional lens on FMEs and analysis, case preparation and presentation at trial.**
4. **As permitted, medical experts meet with investigators and prosecution before trial.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Prosecution does not call medical experts to testify. ☐ Non-specific or absent written affidavits. ☐ Limited to no experience in SV medical evaluations. ☐ Often communicates with bias, myths and stigma. ☐ No effort to know or use rape/crime kit evidence. ☐ Never submits key photographs. ☐ No evidence of ongoing training or related continuing education. ☐ No evidence of psychological evaluation. ☐ No review of case findings with law enforcement and prosecution in advance of trial.	☐ No prior medical expert SV experience or training. ☐ At times communicates with bias, myths and stigma. ☐ Inability to explain rape/crime kit evidence. ☐ Rarely submits key photographs. ☐ Minimal evidence of ongoing training and related continuing education. ☐ Some psychological evaluation yet with stigma, myths or bias. ☐ Ad hoc pre-trial review of case findings with law enforcement and prosecution.	☐ Prior experience as expert. ☐ Basic education and training in SV forensic documentation. ☐ Not consistently skilled in explaining key findings or absence of findings. ☐ Consistent ability to explain sexual violence/crime kit evidence. ☐ Variable quality photographs. ☐ Some evidence of ongoing training and related continuing education. ☐ Describes limited psychological status without stigma, myths or bias. ☐ Limited pre-trial review of case findings with law enforcement and prosecution.	☐ Advanced vetting of skill, expertise, competence. ☐ Evidence of ongoing training. ☐ Basic understanding of forensic pathology of injuries. ☐ Explains absence of findings informed by survivor's history and psychological condition. ☐ Can superficially connect rape/crime kit evidence to findings. ☐ Documents psychological evaluation without stigma, myths or bias. ☐ Reviews case findings pre-trial with law enforcement and prosecution.	☐ Uniformly recognised high degree of skill, expertise, competence. ☐ Consistent ability to explain evidence of physical injuries, toxicological and trace evidence. ☐ Consistent ability to describe meaning of present or absent physical evidence, including extragenital findings in SV survivors. ☐ Consistent ability to explain rape/crime kit evidence. ☐ Consistent submission of high-quality photographs. ☐ Evidence of ongoing training, scholarly work. ☐ Integrates psychological evaluation without stigma, myths or bias. ☐ Pre-trial review of case findings with law enforcement and prosecution.

253 National Sexual Violence Resource Center, Sexual Assault Response Toolkit.

Key critical questions:

- What are the protocols for completing standard CARSV medical evaluation forms, personnel qualifications, and the admissibility of these forms in domestic and international courts? Are there multiple types of certificates used to describe medical findings, such as medical certificates, medico legal expert reports or legal certificates? How do medical experts know what is required for court?
- Are genital and extragenital photographs routinely used as evidence in CARSV cases?
- Do medical experts consider factors that impact the degree of injuries such as type of assault or penetration, degree of force, positions, use of lubrication, use of drugs or alcohol, or extreme fear rendering the survivor unable to resist, time between the assault and medical exam, as well as cleansing or change in clothing?
- Do all actors in the criminal justice system (lawyers, courts) generally accept findings reported by medical experts in CARSV cases? What are their opinions about how this supports the justice process?
- What is the approach to pre-trial expert witness meetings and preparation?
- What feedback do expert witnesses get in the post-trial period?
- What is the data regarding case outcomes when forensic medical expert documents or testimony are used?
- What are the court's expectations regarding routine internal examinations of the vagina and anus during medical forensic evaluations?
- How frequently do medical experts for the defence appear in CARSV cases?
- What guidance is provided to medical experts around stigmatising language and concepts? How is this managed, monitored and enforced? What examples are there of non-stigmatising and stigmatising language in medical expert evaluations or testimony?
- What is the court's response to medical evaluations or testimony that express stigma, bias or myths?

Data sources:

Internal: FME standards and guidelines, FME report templates, FME certificate templates, FME performance evaluations, FME informed consent forms, FME peer reviews, FME photographs, FME expert testimony data.
External: Survivor feedback, external CARSV trial monitoring and case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, forensic medical evaluators, frontline health system personnel, coordinating service providers (police, prosecutors, defence, judges).

USEFUL RESOURCES FOR ASSESSMENT OF FORENSIC MEDICAL SERVICES:

- Atkinson *et al*, 'Impact of forensic medical evaluations on immigration relief grant rates and correlates of positive outcomes in the US' (2021) Journal of Forensic and Legal Medicine 84(1).
- Dignity Alliance International/Equality Now, Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors (2021)
- Ferdowsian *et al*, 'Asylum Medicine Standard and Best Practices' (2019) Health and Human Rights 21(1).
- Fujio & Kivlahan (eds), *Examining Asylum Seekers: A Clinician's Guide to Physical and Psychological Evaluations of Torture and Ill-Treatment* (2012).
- IICI, The Murad Code (2022).
- Ludes *et al*, 'Guidelines Examination of Victims of Sexual Assault Harmonization of Forensic and Medico-Legal Examination of Persons' (2018) International Journal of Legal Medicine 132.
- McKenzie, *Asylum Medicine: A Clinician's Guide* (2022).
- Munala et al, '"She is NOT a Genuine Client": Exploring Health Practitioner's Mistrust of Rape Survivors in Nairobi, Kenya', (2018) International Quarterly of Community Health Education 38(4).
- OHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (2004).
- Smith *et al*, 'Achieving More With Less: A Critical Review of Protocols for Forensic Investigation of Sexual Violence in Low-Resource Environments', (2019) Forensic Science International: Synergy 1
- UNODC, Gender in the Criminal Justice System Assessment Toolkit (2010).
- WHO, Responding to intimate partner violence and sexual violence against women: WHO clinical and policy guidelines (2013).
- WHO, UNFPA, UNHCR, Clinical Management of Rape and IPV Survivors: Developing Protocols for Use in Humanitarian Settings (2019).

CHAPTER SEVEN — PROSECUTION

> *"It is [...] imperative that international criminal justice actors commence an honest and well-informed discussion about misconceptions concerning the nature and seriousness of conflict-related sexual violence crimes. These misconceptions are a reality that any prosecution office in the future will have to grapple with. One of the most fundamental lessons learned by the Office of the Prosecutor [ICTY] is that dismantling misconceptions [...] is the key to improving accountability outcomes for this category of crime".*[254]

Public prosecutors act on behalf of society in the public interest to ensure the application of criminal law. Prosecutors are usually the central decision-makers on whether prosecutions are initiated and continued. They supervise or review investigations, assess evidence, and decide whether to prosecute or not and on which charges. In many jurisdictions, they are also responsible for preparing, selecting and presenting evidence at trial to prove those charges. Any mischaracterisation, misunderstanding, myth, minimisation, de-prioritisation or other stigmatised and stigmatising attitude about CARSV held by prosecutors will have a profound effect on criminal justice processes for CARSV crimes. Prosecutorial attitudes towards CARSV, CARSV investigations, CARSV prosecutions, CARSV survivors and CARSV perpetrators will all inevitably influence and can deny justice.

The conduct of prosecutors in CARSV cases can perpetuate or deepen stigma, stereotypes and myths. Cases where CARSV charges were omitted and survivors barred from testifying about the SV are prime examples of this impact. "*Given the stigma attached to rape in Rwandan society, the international community's silence further amplifies the societal constraints that women are already under to muffle their voices about what happened to them. The continued silence and impunity surrounding these rapes has been facilitated by the ICTR.*"[255]

The reliance on and influence of rape myths, stigma and misconceptions is well-documented among prosecutors around the world. Prosecutors can focus on survivors' characteristics and behaviour which may impeach character and undermine credibility or suggest 'provocation' or consent. Prosecutors have been found to be "*more likely to file charges when there are no questions about the victim's moral character and no indication of risky behaviour regardless of evidence strength, demonstrating how victim characteristics overshadow evidentiary factors in both jury deliberations and charging decisions.*"[256]

Prosecutors' attitudes towards CARSV cases can also have a detrimental effect on the pursuit and success of these cases. "*Rape is difficult to convict and prosecutors, especially when time constraints are present, [...] prefer to prosecute other crimes as they want to invest their time where they have more probability of getting a conviction. It is also the case that victims/witnesses require more time and patience,*

254 Jarvis & Vigneswaran, 'Challenges to Successful Outcomes in Sexual Violence Cases', in Brammertz & Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (OUP 2016), 35.

255 Nowrojee, '"Your Justice is Too Slow: Will the ICTR Fail Rwanda's Rape Victims?', United Nations Research Institute for Social Development (2005), 29.

256 Sharratt, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals* (2011); St. George & Spohn, 'Liberating Discretion: The Effect of Rape Myth Factors on Prosecutors' Decisions to Charge Suspects in Penetrative and Non-Penetrative Sex Offenses', (2018) *Justice Quaterly*; Frohmann, 'Discrediting victims' allegations of sexual assault: Prosecutorial accounts of case rejections' (1991) *Social Problems* 38(2).

again making the cases more demanding. This is especially the case in prosecuting higher-ranking persons. In the case of Milosevic, for example, rape charges in Croatia were dropped. This was also due to the pressure put on the Office of the Prosecutor by the bench to speed up the trial." (Female Prosecutor, ICTY)[257]

"*In CRSV cases, the detrimental impact of the misconceptions and other barriers identified [...] is often magnified by prosecutorial discretion, which requires investigators and prosecutors to continuously make choices about which crimes to prioritise in their work. In the demanding and complex environment in which international criminal law practitioners function, perceptions that CRSV is not as serious as other crimes, or that it is too difficult to prove or link to senior officers will inevitably increase the risk that it will not receive adequate attention. Our experience shows the importance of clearly identifying the pressure points that exist for sexual violence crimes and taking proactive steps to ensure that sexual violence charges are not disproportionately omitted, diluted or eliminated through the investigation and prosecution process.*"[258]

A note about the variance of prosecutorial roles, functions and duties between jurisdictions.

In many countries prosecutors serve similar functions, including having:

- some level of supervision/review of investigation and evidence gathering — whether formally in charge/lead or engaged in cooperation/coordination from as early in the process as possible.
- powers of coercion/summons/orders, arrest and custody (with separate judicial oversight).
- the decision to prosecute — always involving assessment of evidence, judgement and some discretion, albeit at varying levels (survivor participation in some systems, or alternative private prosecutions or survivor complaints — which usually need prosecution consent or judicial decision).
- drafting responsibilities for charge sheets/indictments.
- the right to make submissions in court.[259]
- a role in deciding alternatives to prosecution, diversion or acceptance or negotiation of guilty pleas.

The indicators in this Chapter are framed around the key common duties of prosecutors in a way to allow application, with some potential adaptation, to a variety of systems, whether adversarial, inquisitorial or a mix in-between. In some jurisdictions, some of these functions may be performed by an official with another title (e.g. investigating magistrate). Those using this Toolkit should adapt their review to include the authorities performing these tasks, even if the official has a different title. In many jurisdictions, private prosecutions may be permitted in lieu of prosecution by mandated public prosecutors, in which case assessments using this toolkit could be extended to private prosecutors performing these functions and conduct.

INDICATORS AND ASSESSMENT

Indicator numbers in this chapter are prefaced with P, to indicate Prosecution. The Guiding Framework set out in Methodology is applied in this Chapter in the following order:

257 Sharratt (2011), *ibid*, 62.

258 Jarvis & Vigneswaran, *ibid*, 45.

259 Including, *e.g.* in some countries, prosecutors and private prosecutors ("*querellas*") can make final submissions to 'extract testimonies' from trial which revealed new crimes for a new judge to open a new investigation. This has been an important procedure to ensure new trials and accountability; *e.g.* ESMA trial in Argentina.

A. **Organisational Culture and Leadership:** in terms of leadership and workplace practices of the prosecution service.

B. **Survivor Engagement and Interaction:** considering whether survivor participation, survivor-centred approaches and protection are taken into account, consistently employed and prioritised in prosecutorial functions.

C. **Technical Competency and Capacity:** measuring levels of CARSV knowledge, stigma and trauma competency, and structural stigma among prosecutors.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
P1 The Prosecution Service leadership appropriately prioritises and resources survivor-centred approaches and CARSV prosecutions.
P2 The Prosecution Service has a healthy, safe, respectful workplace culture, including specifically in relation to gender equality, inclusivity and non-discrimination.
P3 The Prosecution Service is part of a coordinated and integrated justice process for survivors in relation to their engagement, information/communications, protection, support and participation.
SURVIVOR INTERACTION AND ENGAGEMENT
P4 Where a prosecutor has powers to call witnesses, a survivor's participation as a witness for the prosecution is based on fully-informed, voluntary consent.
P5 Survivors are well-informed, regularly updated and contacted by the Prosecution Service in relation to the process, progress and their role in proceedings.
P6 Prosecutors, decision-makers and leaders in the Prosecution Service use non-stigmatised and non-stigmatising language and terminology about CARSV, survivors and prosecutions of CARSV and challenge others who use stigmatising language and concepts.
P7 Prosecutors work with survivors and others to create an environment and process which allows survivors to give their evidence to court in the most effective and safe manner which reduces anxiety, stress, distress, trauma, intimation, power differentials and uncertainties.
TECHNICAL CAPACITY AND COMPETENCY
P8 Prosecution Service has a set of CARSV policies, procedures, templates and tools which prompt accurate assessment and work on CARSV.
P9 Prosecutors/Prosecution Service personnel demonstrate CARSV and trauma competency in all their actions, and these competencies are mainstreamed across teams.
P10 Prosecutors make decisions on the inclusion and continuation of charges based on accurate understandings of CARSV in its contextual and intersectional (including gendered) dimensions.
P11 At all stages of the process, prosecutors' assessment of evidence is not coloured by stigmatised attitudes or myths or the assumption that these reduce the credibility or reliability of evidence in the eyes of the factfinder/adjudicator.
P12 Prosecutors make submissions regarding survivor safety during custodial hearings, including bail/detention on remand hearings, early release or pardon applications, in relation to those accused or convicted of CARSV crimes.
P13 When permitted in law and procedure, prosecutors advocate for sentences which reflect the gravity of CARSV and its radiating impacts in survivor communities, without perpetuating stigma or misconceptions about CARSV, survivors or perpetrators.
P14 Whenever appropriate and possible, prosecutors pursue interlocutory appeals, appeals against verdicts and appeals against sentence (when permitted in law) to ensure judicial processes and outcomes recognise the gravity and realities of CARSV, counter CARSV stigma and misconceptions and protect the rights and wellbeing of survivors.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Depending on the system, the prosecution function may have quite different institutional homes – as an independent organisation, a branch of the police authorities, or a department of the judiciary. Regardless of this and the differences in the role and duties of prosecutors across jurisdictions, competencies relating to Prosecution Service organisational leadership and culture can be assessed either by the Prosecution Service itself or as part of a broader review by its wider institutional body.

Competency Indicator P1: The Prosecution Service leadership appropriately prioritises and resources survivor-centred approaches and CARSV prosecutions.

"*The tone regarding gender issues [including CARSV] set by the leadership in a prosecution office is crucial. Our experience confirms that successful outcomes are unlikely unless the chief prosecutor and other senior managers are open to understand the impact of gender on the office case work and willingness to prioritise strategies to improve the integration of a gender perspective. Managers must also understand the complexities of investigating and prosecuting CRSV and other gender-based crimes and the imperative of making sufficient resources and expertise available to address these crimes. Even the most enlightened written policy will not translate into positive results on a day-to-day basis without visible commitment and support for their implementation coming from the top. A culture must be established within the office whereby every staff member clearly understands that gender policies and guidelines are not merely lip service but are to be implemented as part of their core professional obligations [...] this culture is important to counter the degree of discretion that otherwise resides in individual staff members working on international criminal cases and the likelihood that gender issues may not be inherently well understood and automatically prioritised across the staff body.*"[260]

Ensuring non-stigmatising and survivor-centred approaches are realised in the Prosecution Service requires sustained and consistent messaging, systematic institutionalisation, resourcing, monitoring and holding to account. Leadership should 'walk the walk', 'talk the talk' and set clear enforced expectations for all staff.

Elements of good leadership include:

1. **Leadership institutes and enforces codes of conduct, survivor commitments, standards of service, general instructions and SOPs which require SCA and non-stigmatising behaviour and practice.**
2. **Leadership mainstreams CARSV competencies and attitudes across leadership, management, teams and practice/ processes.**
3. **Leadership budgets to resource SCA (including survivor consultations, survivor liaison officers, all with outreach including language and access assistance in locations remote from court/work).**
4. **Leadership sets key performance indicators (KPIs) around CARSV competencies (including attitudes) and SCA, as well as implementing decision-making review points/supervision in CARSV cases.**
5. **Leadership sets good examples as role models through their actions on prioritisation, non-stigmatising language and messaging, and survivor consultations.**
6. **Leadership collects and uses disaggregated data in order to understand, monitor and improve practice on CARSV, stigma, survivor-centred and trauma-informed approaches.**

This data includes when and for what reasons there is attrition in relation to reported CARSV and case outcomes (Attrition and Acquittal reviews and reports — why CARSV cases/charges not proceeding and succeeding), KAP on CARSV, SCA and trauma-informed approaches across staff and survivor feedback and external consultations/reviews.

260 Jarvis & Vigneswaran, *ibid.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leadership awareness of importance indicated. ☐ No steps taken about CARSV or stigma. ☐ Leadership communications include stigmatising language and SV myths. ☐ No budget lines. ☐ Attitude to survivors as witnesses, a means to an end in prosecution. ☐ Survivor rights are someone else's role. ☐ No data collection or analysis of policy, procedures, decision-making, attrition, pressure points or practices.	☐ Some leadership awareness but not communicated. ☐ Leadership still uses stigmatising language and expresses SV myths. ☐ Isolated steps taken ad hoc at lower management or practitioner level. ☐ No budget lines, but examples of ad hoc resourcing. ☐ Isolated examples of SCA. ☐ No data is collected, and organisational and individual performance related to CARSV is not monitored and evaluated against clearly defined indicators.	☐ Some leadership communication about importance. ☐ The start of some basic policies and provisions around expectations. ☐ No KPIs focused on survivor experience, SCA and countering myths. ☐ No consistent data collection for leadership review. ☐ No review or check points on decision making around CARSV. ☐ Some budget lines allocated for some aspects. ☐ Some data is collected and monitored; however, not specific about CARSV.	☐ Leadership statements emphasising importance. ☐ Clear steps taken to establish a cohesive set of policies, codes of conduct and expectations. ☐ Budget and resources allocated. No monitoring, review or protection. ☐ KPI set but not consistently reported against or responded to. Not fully covering the issues. ☐ Inconsistent messaging or practice. ☐ Some CARSV related data is collected and monitored; however, not integrated into KPI or evaluation processes.	☐ Consistent leadership statements and practice. ☐ Established set of policies and code/ instructions, well-known, welcomed and adhered to by staff across all levels. ☐ Established KPI which are actively reported, reviewed and responded to. ☐ Comprehensive budget lines protected, reviewed and adjusted as necessary. ☐ Culture and practice of the service reflects leadership goals. ☐ Data is collected, and organisational and individual performance is monitored and evaluated against clearly defined indicators. Used to make improvements. ☐ Good leadership understanding and responses to pressure points and attrition issues.

Key critical questions:

- What is the leadership's understanding and position on CARSV?
- What language does the leadership use in relation to CARSV, survivors and perpetrators?
- What steps has the leadership taken to prioritise CARSV and tackling stigma?
- What is the staff level of awareness of those steps, including familiarity and application of policies, SOPs, codes, commitments, etc.? What is the staffs' attitude towards these steps?
- What opportunities are there for staff to share knowledge, experience and challenges around these issues? And to contribute to their regular revision?
- What matters or issues are prioritised ahead of CARSV?
- What has the leadership done to ensure more SCAs are adopted during prosecutions?
- What reporting and data does the leadership require on CARSV, survivor-centred approaches and stigma? What follow-up action have they taken?
- Are the needs of survivor-centred CARSV prosecutions reviewed and factored into the budgeting process each year? What are the identifiable budget lines for this? How are these protected and monitored?
- How often has the leadership met with survivor networks or groups or civil society organisations which support them?
- How does the leadership ensure CARSV, gender, cultural and trauma competencies mainstreamed across staff and teams? What resources, tools, training and support are provided to this?

Data sources:
Internal: Organisational expectations, codes of conduct, tools and training materials on survivor-centred and trauma-informed approaches, case management reviews, KPIs, PERs, KAP surveys, budget documents, memoranda, notices and other internal communications directed for staff.
External: Press releases, speeches, interviews, articles, public notices or other external communications related to CARSV, survivor and CSO feedback.
Interviews and focus groups: Prosecutors, leadership, trial monitors and observers, survivors groups.

Useful resources, exercises or tools:
- Model leadership statements on CARSV and stigma
- Model key performance indicators for CARSV cases, survivor-centred and trauma-informed approaches
- CARSV gender sensitive budget guidelines
- Argentina Prosecutor's Office General Instructions for CRSV Cases.
- Crown Office and Procurator Fiscal Service, Standards of service for victims and witnesses (2018).
- Working Group on the ECCC and the OSJI, International Standards for the Treatment of Victims and Witnesses in Proceedings before the ECCC for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (2004).
- Jarvis & Vigneswaran, 'Challenges to Successful Outcomes in Sexual Violence Cases', in Brammertz & Jarvis (eds), *Prosecuting CRSV at the ICTY* (2016), 55-67 (prosecution pressure points for CARSV cases).

Competency Indicator P2: The Prosecution Service has a healthy, safe, respectful workplace culture, including specifically in relation to gender equality, inclusivity and non-discrimination.

Diversity is fundamental to ensure a legal system genuinely reflects the cultural, religious and gender identities present in the society. It plays a critical role in preventing discrimination and reducing the discriminatory application of the law or nature of the justice process. In particular, ensuring gender equity and inclusivity diversifies perspectives and increases the understanding of discriminatory systems and historical systematic discrimination, thereby being more representative of and accessible to broader sections of society, including survivors. Stigma, as a manifestation of societal beliefs and attitudes, is deeply gendered. Studies have found the acceptance of rape myths are more prevalent among men/male law students.[261]

Studies have also found a correlation between acceptance of male rape myths and sexism,[262] adherence to traditional gender roles (particularly traditional male roles)[263] and acceptance of rigid gender binary roles (which also correlates strongly for female rape myths).[264] Male rape myths also correlate with homophobia,[265] and, like female rape myths, are associated with increasing age and decreased levels of education.

Given these correlations between gender, harmful gender norms and beliefs and the findings that men hold such beliefs and accept rape myths more often than women, ensuring a diverse workplace and inclusive workplace culture where such beliefs are challenged and not accepted is key. Workplace culture becomes a critical element to reducing stigma, stigmatised attitudes and stigmatising behaviours among justice actors. For example, Patricia Sellers has highlighted a 'smouldering sexism' and backlash to gender prosecution strategies aimed at more effective and representative cases.[266]

"*Gender bias within the Office of the Prosecutor (OTP) was quickly identified as an issue that would have to be address if the OTP was to secure good accountability outcomes on sexual violence crimes. […] The initial under-representation of women within the OTP had implications for work on sexual violence crimes. In some cases, the sufficient distribution of female personnel contributed to a reluctance to 'earnestly investigate sexual assaults with the thoroughness of killing and snipings […] received' which in turn affected the extent to which sexual violence was charged and prosecuted.*"[267]

Prioritising diversity and representation at the Prosecution Service, including through recruitment and retention policies, ensures that its prosecution is not siloed or responded to through myopic perspectives or only by isolated, unintegrated focal points or specialists (usually assumed to be women). "*The OTP adopted a recruitment policy committed to 'achieving a non-discriminatory workplace that is geographically representative and gender balanced in each job category', implemented through gender-mixed recruitment panels. […] The OTP also adopted proactive strategies for recruiting women.*"[268]

Elements of a safe, healthy and respectful workplace culture include:

1. **Prosecution Service has policies on values, ethics, integrity, gender equality and sexual harassment. Clear policies and expectations which are monitored and enforced to counter discrimination in the work and in work practice.**
2. **Diversity is a driving principle of work. Active, engaged leaders are committed to fostering a work culture that actively promotes EDI and sets and sustains a tone of mutual respect. Leaders at all levels consistently communicate and model expected behaviours, and are prepared to challenge personal and organisational core beliefs, values, traditions, negative assumptions and harmful language.**
3. **The Prosecution Service is diverse and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. All persons feel respected, included and comfortable in work and social interactions with colleagues. All persons have equal opportunities and feel valued. L eadership and decision-making positions show gender parity and diversity.**
4. **Prosecution Service has recruitment policies with proactive targeting for diversity, with diversity monitored and recruitment adjusted to build diversity.**

261 Chapleau *et al*, 'Male Rape Myths: The Role of Gender, Violence and Sexism' (2008) Journal of Interpersonal Violence 23(5); Davies *et al* (2012) Examining the relationship between male rape myth acceptance, female rape myth acceptance, victim blame, homophobia, gender roles, and ambivalent sexism. Journal of Interpersonal Violence, 27, 2807-2823; Spruin & Reilly, 'An Exploration into the Acceptance of Male Rape Myths within the UK' (2018) Journal of Forensic Sciences and Criminal Investigation 9(3); Walfield, "'Men Cannot Be Raped": Correlates of Male Rape Myth Acceptance', (2018) Journal of Interpersonal Violence 36(13).

262 Chapleau, *ibid.*

263 Scarce, *Male on male rape: The hidden toll of stigma and shame* (Insight Books/Plenum Press 1997).

264 Burt, 'Cultural myths and supports for rape' (1980) *Journal of Personality and Social Psychology* 38(2).

265 Burt & DeMello, 'Attribution of rape blame as a function of victim gender and sexuality, and perceived similarity to the victim' (2002) *Journal of Homosexuality* 43(2); Ford *et al*, 'Perceptions of rape based on sex and sexual orientation of victim' (1998) *Journal of Social Behaviour and Personality* 13(2); Kassing *et al*, 'Gender Role Conflict, Homophobia, Age, and Education as Predictors of Male Rape Myth Acceptance' (2005) *Journal of Mental Health Counseling* 27(4).

266 Sellers, 'Gender Strategy is Not Luxury for International Courts' (2009) *Journal of Gender, Social Policy & the Law* 17(2); Jarvis & Vigneswaran, *ibid*, about priorities and cultures of all male investigation and prosecution teams.

267 Jarvis & Vigneswaran, ibid, 80-81.

268 Jarvis & Vigneswaran, ibid, 82.

5. **Staff demonstrate respect for persons of other genders, racial, ethnic, religious and other groups, including making space for their voices, listening and not interrupting them, using respectful and inclusive language. Expressions of gender inequality (screensavers, posters, jokes, etc.) are challenged.**
6. **There is zero tolerance in policies and practice for any form of sexual harassment or abuse. Reporting procedures in place and are accessible and responsive to any staff experiencing discrimination or harassment.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leader recognition of the need and value of diversity in addressing CARSV. ☐ No policies or reporting systems on gender or broader discrimination. ☐ Common expression of inequality. ☐ Disrespectful language and behaviour common. ☐ Most report feeling undervalued, disrespected, unequally treated (>50%). ☐ Examples of sexual harassment unaddressed. ☐ Significant negative reactions to raising equality and gender issues. ☐ No diversity, equality and inclusion in recruitment policy. No measures to recruit and retain women or persons from minority groups. ☐ Predominantly male prosecution teams. All male leadership.	☐ Awareness of the issue but ad hoc response. ☐ Isolated examples within teams or managers starting to tackle this. ☐ Frequent expression of inequality. ☐ Frequent disrespectful language and behaviour. ☐ Many report feeling undervalued, disrespected, unequally treated (30-50%). ☐ Examples of sexual harassment unaddressed. ☐ Negative reactions to raising equality and gender issues. Minimising the seriousness of issues. ☐ Recruitment process and records not transparent, consistent or objective. ☐ Isolated, small pockets or examples of diversity. ☐ All male leadership, perhaps ad hoc isolated female team leader.	☐ Leader recognises the potential value of a diverse workforce, though not specifically in connection to CARSV prosecutions. ☐ Policy on gender and discrimination, basic EDI expectations, but not enforced. ☐ No consistent messaging or response to these issues. ☐ No accessible reporting systems or pathways. ☐ Openness at leadership level to manage these issues. ☐ A significant number of staff still report feeling undervalued, disrespected, unequally treated (10-30%). ☐ Still some negative reactions to raising gender, discrimination or harassment issues. ☐ Still minimising of harmful behaviours (e.g. "*it was only a joke*"). ☐ Basic diversity and equality measures in recruitment and retention policy. No proactive measures to recruit or retain women or persons from minority groups. ☐ Formal, transparent recruitment processes, criteria and records. ☐ More diversity in teams, still little diversity in leadership.	☐ Recognition of importance of EDI in creating a safe and effective Prosecution Service. ☐ Clear policies and reporting systems in place. ☐ Consistent messaging on the importance of equality and inclusion. ☐ Inconsistent practice with continuing expressions of discrimination, disrespectful language or conduct. ☐ Staff still express concerns about raising complaints. ☐ A small number of staff describe undervalued, disrespected, unequally treated (1-10%). ☐ Diversity and inclusivity measures in recruitment and team selection policy. ☐ Organisational responses have yet to achieve gender parity or diversity. ☐ Still predominantly male leadership and decision making for prosecution, teams are more diverse.	☐ Value of EDI as part of safe CARSV reporting environment and accessible justice recognised as a guiding principle of organisational policy. ☐ Expectations, code of conduct, internal and external governance structures, and EDI and CARSV policies, procedures and practices are aligned. ☐ Well-established policies well-understood by staff. ☐ Reporting systems are supported and staff feel safe to access them. ☐ Any expressions of gender inequality or discrimination in workplace are challenged quickly. ☐ All staff report feeling respected, valued with equal opportunities. ☐ Staff describe workplace culture in positive terms on equality and inclusion. ☐ Well-established diversity and inclusivity measures in recruitment and retention policies with proactive measures to recruit and retain diverse team members. ☐ Gender parity and diversity reflected across all teams and leadership positions.

Key critical questions:

- What are the policies on non-discrimination, diversity, equality and inclusion in the service?
- What reasonable accommodations are made to ensure differentially equal opportunities and recognition for all staff regardless of SOGIESC, race, ethnicity, age, socioeconomic status, culture, faith, disability?
- How would staff members describe the workplace culture? How do staff who may face intersectional discrimination describe their experience and comfort levels at work?
- What kinds of language, stories and jokes are expressed in work and social interactions?
- What expressions of gender equality, gendered language or comments are made and how often?
- Are there examples of gender discrimination present within the service? If so, what?
- How have these been addressed by the leadership?
- What are the policies, procedure and enforcement relating to sexual harassment/abuse in the workplace or practice? What do staff know about it? How do staff feel about reporting sexual harassment/abuse?
- What beliefs, attitudes, behaviours, actions, gender and other forms of discrimination are present in the organisation? For example, against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, persons with criminal records?
- What steps are being taken to eliminate these biases, beliefs, attitudes and discriminatory practices?
- What complaint mechanisms are available to staff to lodge concerns?
- What are the levels of diversity in all sections and levels of management in the Prosecution Service? What is the ratio of men to women in leadership and prosecution functions?
- What steps have leadership taken to ensure diversity through recruitment processes? Have barriers and exclusionary measures in recruitment been identified and addressed?
- What is the promotion policy and criteria for prosecutors — are they objective, do they relate to performance and values around SCA, DEI, cultural, gender, trauma and CARSV competencies?

Data sources:

Internal: Organisational EDI documents, codes of conduct, strategic plans, diversity and non-discrimination workplace policies and reviews, human resources records, recruitment strategies, policies and practices, harassment and non-discrimination policies and practices, EDI training materials and records, complaint mechanism reports and reviews.
External: Survivor feedback, external reviews on organisational diversity (staff unions, employee representatives).
Interviews: Organisational leadership, EDI officers and staff, diverse samples at all levels.

Useful resources, exercises or tools:

- SPA, "*The impact of gender in the selection process of prosecutors: Analysis of the situation of women applicants to the spaces of decision and greater hierarchy of the Public Prosecutor's Office*" (2019).

Competency Indicator P3: Prosecutors ensure that they are part of a coordinated and integrated justice process for survivors in relation to their engagement, information/communications, protection, support and participation.

"Victims and witnesses are the most important people in the [...] criminal justice system. Every part of that system shares the responsibility to improve the rights, support, protection and participation of victims and witnesses in criminal proceedings. The experience of victims and witnesses is a measure of the effectiveness of our justice system and of our society as a whole. Victims and witnesses have legitimate interests and needs and must feel confident that their contribution to the criminal justice process will be worthwhile, valued and supported."[269]

Coordination and collaboration serve to standardise and unify the justice process for survivors. Coordination should reduce unnecessary duplication, gaps or omissions between functions or service providers. It should ensure a solid support system surrounding a survivor to ensure they can interact with and participate in the justice process and give their best evidence in a safe and supported environment.

Elements of good practice for this indicator includes:
Prosecution Service actively pursues and maintains:

- **joint agreements or Memorandums of Understanding (MoU)**
- **joint processes and tools shared with and worked on together**
- **joint reviews of how systems and processes are working**
- **regular joint meetings,**

with other key functions which relate to survivor engagement, communication, protection, support and participation, including:

- **Police/investigators270**
- **Support Services/System**
- **Medical Forensics**
- **Court Services, including their witness support unit around attendance at any court process**
- **Any Victim/Survivor Representation or Advocate.**

See also Chapter Two — Access to Justice and Survivor Pathways and Chapter Three — Support Services.

269 'Working Together for Victims and Witnesses' Protocol agreed between the Crown Office and Procurator Fiscal Service, Victim Support Scotland, the Scottish Courts and Tribunals Service and Police Scotland.

270 Rt Hon Dame Angiolini, Report of the Independent Review into the Investigation and Prosecution of Rape in London (2015): *"'Early consultation will take place between the specialist prosecutor and the police to ensure that all possible avenues of evidence are explored and that the correct charge is identified'.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Asserts independence and works on own or in isolation on prosecution functions and at its stage of involvement. ☐ No agreements or MoUs with other actors, even where handovers, intersections or duplication in function or process. ☐ No formal meetings with other actors. ☐ Voices criticism of other actors and functions without engagement. ☐ Survivors consistently report disjointed process, with multiple contact points, irregular and inconsistent communications, support, etc. — with overlaps and gaps.	☐ Joint process with investigation only or one or two actors. No formal agreements or joint reviews. ☐ Some ad hoc working level meetings to try to improve. ☐ Survivors frequently report disjointed process, with multiple contact points, irregular and inconsistent communications, support, etc. — with overlaps and gaps. Some isolated examples of better practice and coordination happening ad hoc through some teams.	☐ Some basic agreements with most of the other key actors. ☐ Leadership meetings sporadically or responsive to crisis or criticism. ☐ No joint processes or shared tools. ☐ Some survivors report areas of collaboration and coordinated support or communications, but mostly still overlapping, inconsistent, conflicting and confusing interactions with different persons in different functions or departments.	☐ Agreements with all key actors with some joint processes. No shared tools or regular day-to-day collaboration on cases. ☐ Leadership meetings and reviews more regular. ☐ Mixed reports by survivors, with still significant issues around overlapping, conflicting or multiple contact points or gaps. Some still report disjointed, confusing process.	☐ Fully integrated cooperation and collaboration to ensure seamless, deconflicted and consistent process for survivors. ☐ Includes joint agreements, with joint processes and shared tools with all other actors. ☐ Includes day-to-day working level team meetings for individual cases, and regular leadership review meetings. ☐ Survivors mostly report a simple, streamlined, coordinated system which meets their communication, information, preparation, support and preparation needs.

Key critical questions:

- What cooperation and coordination agreements does the Prosecution Service have with other functions?
- What joint procedures has the Prosecution Service adopted with other functions?
- What shared tools does the Prosecution Service use with other functions?
- How often does the Prosecution Service meet at the leadership level with other functions? How often does the Prosecution Service meet with other functions at the working level on cases?
- How is implementation of and adherence to such agreements, procedures and tools monitored and reviewed? At what level and how often does this occur?
- What is the relationship between the Prosecution Service and the investigation/law enforcement function? What joint tools, such as joint investigation plans, do these functions share and work on together? How early in the investigative process do prosecutors provide advice and input into cases?
- How do survivors describe their interaction with different functions during the process? How many times do survivors have to recount their experience to different functions? How many different liaison and contact points are there for survivors? Are there gaps at handover points or where functions intersect or overlap? Are there unnecessary or uncoordinated interactions or engagements?

Data sources:

Internal: Interagency coordination agreements, memoranda of understanding, meeting minutes and notes, joint policies, SOPs, tools, information sharing and confidentiality tools, survivor liaison strategies and plans, practice guidelines and referral agreements.
External: Survivor feedback, review/reports.
Interviews/focus groups: Organisational leadership, prosecutors and prosecution staff, service providers.

Useful resources, exercises or tools:

- ACPS, Protocol between the Police Service and Crown Prosecution Service in the Investigation and Prosecution of Rape (2015).

B. SURVIVOR INTERACTION AND ENGAGEMENT

Prosecutors, particularly from a traditionally adversarial system, can be averse to or cautious about survivor-centred approaches (SCA). They may express concern that it is not within their role (limited to proving the guilt of the accused) and that it may be inconsistent with upholding the rights of the accused to a fair trial. Many see survivors as just witnesses, a means to get evidence to prove the guilt of the accused. "*The witnesses are treated as cogs in the larger machine rather than placed central to the process.*"[271] Where survivors feel marginalised, disenfranchised and retraumatised through their interaction with the process, many choose to disengage before being able to provide their evidence to the court.

Conversely, SCA which facilitate and enhance survivor participation serve to reduce stigma and stigmatising attitudes within the justice system and lead to more effective and safer outcomes for CARSV prosecutions. "*A witness-centred trial preparation can enhance the willingness of witnesses to testify and their ability to do so effectively.*"[272] Survivor cooperation and participation negatively correlates with attrition rates and failure to charge or prosecute.[273] Cases/charges with cooperating survivors able to give their best evidence are most likely to proceed.

"*The utmost care must be taken to ensure that international [and other] justice mechanisms adopt humane processes that do not in any way further contribute to [survivors'] suffering. One of the goals of international justice should be to restore dignity and humanity to victims who have been stripped of these. The experience of testifying at the ICTR should not be a dehumanising and disempowering experience. If we do injustice to rape victims in the process of providing international justice, then we are doing wrong. Attention to the issue of process is critical to the ICTR's ability to obtain strong witnesses, to undertake effective investigations and prosecution of crimes of sexual violence, and to ensure a more effective witness protection programme.*"[274]

Competency Indicator P4: Where a prosecutor has powers to call witnesses, a survivor's participation as a witness for the prosecution is based on fully-informed, voluntary consent.

"*Trauma robs the victim of a sense of power and control; the guiding principle of recovery is to restore power and control. The first task of recovery is to establish the survivor's safety. This task takes precedence over all others, for no therapeutic work can possibly succeed if safety has not been adequately secured [...] No intervention that takes power away from the survivor can possibly foster her recovery, no matter how much it appears to be in her immediate best interest.*"[275]

"*Ensure legal justice is only pursued with informed consent, in the victim's/survivor's best interest and with the necessary support structures in place.*"[276]

Murad Code Principle 2.6: Reduce pressures: We will not use any legal power we may have to compel survivors as doing this can harm them and any justice processes and outcomes.

Elements of good practice for voluntary, fully informed survivor participation as a witness include:

1. **Prosecutors do not use powers of compulsion, summons, etc. on survivors.**
2. **Prosecutors make full use of broader evidence of the crimes to reduce pressure or reliance on individual survivors who do not want to participate.**[277]
3. **Prosecutors are aware of power and status imbalances and take active measures to reduce them, including by giving survivors time and space to make informed, non-pressurised decisions.**
4. **Prosecutors do not approach survivors simply as sources of evidence but engage with them as participants, partners and rights-holders in the criminal justice process.**
5. **Prosecutors provide material information in an understandable form for individual survivors so they can make fully informed decisions about whether to participate in the justice process or not.**
6. **Prosecutors consult with survivors proactively to seek opportunities for survivor decision-making within the process, including how they wish to engage.**
7. **Survivors can decide to withdraw from being a witness without pressure, demands or consequences for the survivor.**[278]

See also Indicator P7. See also Chapter Two — Access to Justice and Survivor Pathways.

271 Nowrojee, *ibid*.

272 Gopalan et al (2016), *ibid*, 111.

273 St. George & Spohn, 'Liberating Discretion: The Effect of Rape Myth Factors on Prosecutors' Decisions to Charge Suspects in Penetrative and Non-Penetrative Sex Offenses', (2018) *Justice Quarterly*.

274 Nowrojee, *ibid*, 20.

275 Herman, *Trauma and Recovery* (Hachette 1992), 159.

276 FCDO Principles for Global Action, *ibid*, 27.

277 Gopalan *et al*, *ibid*, 150-158 (other forms of evidence for CARSV).

278 See IICI, The Murad Code (2022).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Survivors are summoned for interviews and to court for their testimony with no prior warning or discussion. The summons threatens criminal prosecution, arrest or a fine if they do not comply. ☐ There is little or no interaction or engagement with prosecutors outside of taking a statement or taking testimony in court. ☐ Prosecutors do not provide any information, do not consult and do not ask survivors to make any decisions. ☐ Prosecutors use their position of authority or power to pressure survivors to participate. ☐ Survivors are always the only witnesses to establish CARSV. ☐ Survivors describe feeling out of control and being dragged through a process they do not wish to participate in.	☐ Survivors are often summoned for interviews or testimony, but with isolated pockets of advanced notice or discussion. ☐ There is some ad hoc interaction between survivors by some prosecutors acting in isolation. ☐ Isolated examples of prosecutors providing information to survivors. ☐ Prosecutors do not consult with survivors or groups. ☐ Prosecutors seek to 'persuade' survivors to cooperate, but do not threaten arrest or prosecution. ☐ Survivors are the main or only source of evidence for CARSV crimes. Isolated examples of broader sources of factual evidence, such as a doctor or eyewitness. ☐ Survivors describe pressure and lack of options or choices.	☐ Mixed practice of using summons when survivors are reluctant or only for 'critical witnesses'. ☐ More regular practice of prosecution and survivors meeting in advance of trial to discuss the process of testifying. ☐ Survivors asked for preferences on some aspects but not often honoured or followed. ☐ Prosecution leadership meet only symbolically with survivors groups but little consultation. ☐ A broader array of fact witnesses included to establish CARSV. Some cases still reliant on individual survivors. ☐ Survivors describe being given some choices but without sufficient information at the time to make such decisions, or for that choice not to be respected.	☐ Survivors not summoned in practice, with rare exceptions. ☐ Prosecution provides information and consults with survivors (within the bounds of the law). ☐ Prosecution policies on informed consent, and information sheets for survivors. ☐ Common practice to have multiple witnesses beyond survivors to establish CARSV. Still inconsistent practice in calling expert witnesses as standard practice. ☐ Survivors describe being given standard information, not always tailored to their situation or specific needs/risks.	☐ Clear leadership policy and procedures to prevent summoning or pressure on survivors to testify if they do not wish to. ☐ Clear investigation and evidence policy, reviews and tools to ensure expert and wider fact witnesses to establish CARSV, leaving survivors to choose whether they wish to participate or not. ☐ Informed consent training, policies, protocols and tools for prosecutors. Prosecutors trained to maximise survivor decision-making and feeling of being in control. ☐ Choices made are honoured. ☐ Survivors describe positive empowering engagements with prosecutors, with understandable explanation and discussions about options when available. Survivors understand limits to options and why. Survivors understand risks.

Key critical questions:

- How are survivors engaged in prosecutions? Are there avenues for them to initiate their own participation — e.g. reporting the crime, commencing criminal proceedings, applying for victim status and participation? What other avenues or pathways are there for survivors to be brought into the process? Do prosecutors ever summon survivors as witnesses to attend interviews or court? Do survivors get to decide whether they wish to be witnesses and to testify in the proceedings?
- How do prosecutors describe their role and interactions with survivors? When and how do they engage with them?
- How do survivors describe their interaction and engagements with prosecutors? When are these meetings in the process? What is discussed? Are they asked to make any decisions or for their opinion or perspective on any aspect? What information is given to them? Do they understand it? What opportunity is there to ask questions or get more information or a simpler explanation?
- What information is given to survivors about the criminal justice process and their participation? Who gives this? What opportunity is there for survivors to ask questions or take time to consider their options?
- How do prosecutors describe their reliance on and the importance of survivor testimony to their cases? Do they describe being under pressure to ensure survivors give testimony and participate?
- What (if any) pressures do survivors describe in terms of their participation in the process? Where or from whom do those pressures come?

Data sources:
Internal: Prosecution witness lists, summonses, policy and guidelines, informed consent tools, guidance and templates, survivor information packs or guides, survivor communication policies and letters.
External: Survivor and survivor support feedback, coordinating justice actor reviews (VWU/witness support), assessments by witness/victims units (if they exist).
Interviews and focus groups: Prosecutors, other coordinating justice actors (VWU/witness support).

Useful resources, exercises or tools:
- IICI, The Murad Code (2022).
- AIAMP (Latin American Association of Prosecutor's Offices), Victims Rights and Protections (Spanish).

Competency Indicator P5: Survivors are well-informed, regularly updated and contacted by the Prosecution Service in relation to the process, progress and their role in proceedings.

The provision of sufficient information in a timely manner about the nature, process and progress of criminal cases is a basic survivor right.[279] "*Research suggests that the provision of high-quality information (e.g., about criminal justice procedures and case status) is the most important precursor of satisfaction among victims of sexual violence.*"[280] "*Confirmation that 'their' case is being prepared for court marks a significant milestone in a victim-survivor's justice journey. For some, this represents an acknowledgement of their experiences and the possibility of closure. The period of time when a case is being prepared for court, however, is one that is often protracted and characterised by a great deal of anxiety. [...] Key concerns at this time relate to personal safety, uncertainty about the process, delays in court dates, lack of communication about case progress, making decisions about special measures, limited understanding of the requirements of the process, worry about facing the accused in court and a sense of being ill-prepared to give evidence in court. Collectively, these concerns contributed to victim-survivors' sense that they had little control over the criminal justice process and that they were marginal to it. [...] This is a crucial time for maintaining victim-survivor engagement and confidence in the process, but one in which there can be long periods of silence. Lack of communication was identified by victim-survivors as a major issue during this period. Some described feelings of 'being kept in the dark' in terms of whether the case was going ahead and uncertainty about what was happening 'behind the scenes' (Kaye). Inadequate communication contributed to a sense, for several victim-survivors, that their needs were not a priority within the process. It also impacted upon their ability to endure the criminal justice process and cope with their day-to-day lives and responsibilities. [...] 'it was kind of just torture in my head, it was, yes, and every day was just waiting for that phone to ring or do you get a letter and kind of just again, there wasn't a life in those two months.*"[281]

"*...It was three years of retraumatisation [...] I felt stuck for so many years because everything kept going wrong [...] they promised that they would keep me informed every step of the way, I remember the words [...] and they didn't. Once you'd reported it, that was it. And that was for years.*"[282]

Elements of good practice for survivor communications include:

1. **Prosecution Service has internal processes and resources to work and communicate with survivors regularly and ensure they understand the process, can make decisions and have some control over their part of the process.**

Including the provision of a Victim Unit or Victim Liaison/Support Officers (internally or as part of a coordinated approach (*see **Indicator P3***).

2. **Prosecution Service has an assigned survivor liaison officer (with KAP tested CARSV and trauma-informed competencies) who implements a CARSV and trauma-competent 'victim strategy/liaison plan/road map', developed with the survivor; or coordinates with other functions/services to provide this.**

This includes ensuring continuity of communication even when there is no case progress or developments to report, but rather to explain delays or continue communications in periods of inactivity. This can be critical when investigation, case preparation and trial processes can take a long time.

279 See *e.g.*, European Directive 2012/29/EU; New Zealand Crown Law, Solicitor-General's Guidelines for Prosecuting Sexual Violence (2019); UNGA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (29 November 1985), Principles 5 and 6(a); UNGA Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (21 March 2006), para.11; ACHPR Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003), Sections F(i)(iv), P(d) and P(f)(i); IACHR, Case of the Río Negro Massacres v. Guatemala (4 September 2012), para.193.

280 Healy, Exploring Victims' Interactions with the Criminal Justice System: Literary Review, Ireland Department of Justice and Equality Report (2019), 69.

281 Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019), 10-11.

282 Brooks-Hay *et al*, *ibid*, 37.

3. **Prosecution Service ensures that survivors have advanced knowledge of critical process and outcome points, are prepared and updated as soon as possible, with support around those communications/developments (includes decisions on custody of accused, charging, witness lists, trial, challenges to evidence, no case to answer challenges, verdicts, appeals).**

"Victim-survivors in these cases were clear that whilst they were devastated at the news that their case was not proceeding, this should not be interpreted as simply being about the importance of their case going to court. Far more, it is about being listened to, about being believed, and about being seen as credible. It is about those concessions made in the lead up to this point being worth something, both in the eyes of the victim-survivor and officials. Indeed, it is very hard for victim-survivors to separate themselves from 'their' case, and it is in these terms that the enormity of case progression decisions, and the need for support when cases do not progress, must be understood."[283]

"Participants recommended that communication protocols be designed to protect victims' privacy and keep them safe. They advised that letters should provide specific and factual information to help victims make informed decisions, avoid legal jargon; provide concrete information about the next steps in the case and offer advice on accessing victim supports. As a result of this exercise, communication protocols were altered so that face-to-face communication became the primary mode of communication, with letters used only as a last resort when all other attempts at communication failed. A dedicated helpline was also set up by the police service to provide information to victims as well as links to support services and access to the investigator and/or advocate assigned to the case."[284]

*See also **Indicator P3**; Indicator LF4; **Chapter Two — Access to Justice and Survivor Pathways**.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No prosecution contact or communication with survivors. ☐ Little or no information provided to survivors by prosecutors on developments, process or preparation/what to expect. ☐ No resources, no time and no commitment to do those things either. ☐ Survivors express deep disappointment in lack of information and contact from prosecutors, describe further harm and risks which arose as a result.	☐ Ad hoc pockets of better practice, liaison with survivors and information provision — team based and per prosecutor. ☐ No resources or support to prosecutors trying to accomplish this. ☐ Survivors describe lack of information and gaps in communications. Few examples of survivors being happier with specific isolated prosecutors.	☐ Prosecution has an outreach officer, but only one or two to meet the needs of all survivors in all cases. ☐ Basic information sheets for survivors. ☐ Press releases on cases which inform survivors of progress and developments. ☐ Survivors describe inadequate information or gaps or long lapses between information and communications with prosecution.	☐ Prosecution has a team of support and outreach staff but does not coordinate with other functions or services. ☐ Information sheets with some tailored information for different groups of survivors. ☐ Meetings or town hall for a set up to brief survivors in large groups or at once. ☐ Prosecutor communications with individual survivors in the lead up to testimony and briefly afterwards. ☐ Mixed levels of satisfaction reported by survivors, with more survivors reporting satisfaction with level and content of communications and updates.	☐ Clear well-established coordinated survivor communication processes. ☐ Well-resourced to ensure dedicated competent, sensitive liaison points and back-up if on leave/leaves. ☐ Victim/survivor strategy and communication plans decided with survivors. ☐ Communications tailored to individual survivors, their needs and wishes. ☐ Survivors satisfied with levels of communication, understand road map, what to expect at each stage, and that important outcomes have been communicated sensitively, with support when needed and in a timely fashion.

283 Brooks-Hay *et al*, *ibid*, 13.

284 Sully *et al*, "'At Least They're Workin' on My Case?" Victim Notification in Sexual Assault "Cold" Cases' (2018) Journal of Interpersonal Violence, 4360-4380.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
				▫ Prosecutors and survivors get preparation time (within the bounds allowed by law) to allow building of trust, familiarity and being ready to give their best evidence.

Key critical questions:

- How do the prosecution leadership and individual prosecutors describe their role in terms of communications with survivors and duty to keep them up-to-date and to provide relevant information?
- What do prosecutors say are survivors' rights to information? What is their attitude to these rights? How do prosecutors describe the relationship between survivor communication and prosecution outcomes?
- During which stages and periods of activity/inactivity do prosecution leadership and individual prosecutors believe they have communication responsibilities? What recognition is there of responsibilities after interviewing, meeting or court appearances?
- What staffing and resources are allocated for survivor liaison, communications and updates?
- What policies, protocols, and tools are for survivor consultations, meetings and communications?
- How are timing, content and needs determined for communications? By whom? How tailored is this to survivors groups or individual survivors?
- What trauma-informed competency or support is available in conjunction with those communication resources and processes?
- How remote or distant are those resources from survivors? What barriers to effective and safe communications exist between prosecution services and survivors?
- In what way are developments in the case communicated to survivors? Are any of these developments, such as release from custody for example, risk assessed for individuals or groups of survivors? How are those risks communicated and managed with survivors?
- What challenges in communications are described by the Prosecution Service?
- Does the Prosecution Service coordinate and cooperate with other communication functions in other court/justice functions/ agencies? How does this work?
- Is there a survivor communications plan? How was it developed? Were any survivors consulted?
- What do survivors say about communications from the Prosecution Service? Do they happen often enough, in understandable and accessible formats, in safe ways? Do survivors feel satisfied with the level and quality of communications? How often do they receive conflicting information or duplicated communications from different court actors?

Data sources:

Internal: Survivor information and communications policies, procedures, records, tools, internal reviews and survivor surveys, standards and reviews for survivor-centred and trauma-informed interactions.
External: Survivor feedback and experiences of justice, human rights/CSO reports.
Interviews and focus groups: Prosecutors, leadership, survivors groups, support services and other organisations which support survivors, survivor advocates.

Useful resources, exercises or tools:

- New Zealand Crown Law, Solicitor-General's Guidelines for Prosecuting Sexual Violence (2019), 10-14.
- Victim and Witnesses (Scotland) Act 2014, Section 6, and Access to Information Protocol — A Guide for Victims and Witnesses.

Competency Indicator P6: Prosecutors, decision-makers and leaders in the Prosecution Service use non-stigmatised and non-stigmatising language and terminology about CARSV, survivors and prosecutions of CARSV and challenge others who use stigmatising language and concepts.

"*Principle 2: Avoid Reproducing Stigma. Communications used about CRSV and those affected by it, creates and entrenches stigma in a way that also leads to specific individuals/groups being overlooked in prevent and response efforts. The application of sensitive verbal, non-verbal and written communications including inclusive definitions of sexual violence, can help to mitigate imposed stigmatisation and its effects. […] Adopt appropriate, sensitive and non-sensational language in all verbal and written communications about CRSV to avoid creating and compounding stigma.*"[285]

Stigmatising language contains words which communicate some form of stigma or negative attitude against a person or group. For example, it can be words which convey a misassumption or myth about sexual violence, or may victim-blame or shame, or reduce a survivor or their identity to a label or derogatory term. Stigmatising language is one way through which survivors can experience and be harmed by stigma. It is also a way that stigmatised attitudes can spread or be encouraged in society or institutionalised into law, policies, processes and practice.

There is clear evidence that the use of stigmatising language not only affects a person directly but can also influence the behaviour of others around them. In a medical setting, for example, the use of stigmatising language in medical records and histories has been shown to lead to reduced empathy and impacts on medical treatment. A study of physicians-in-training found exposure to stigmatising language associated with more negative attitudes towards the patient.[286]

Given the authoritative nature of the proceedings, and the status of the prosecutor, stigmatising language can convey and perpetuate stigma in the community and can intensify the internalisation of self-stigma by survivors, which can be extremely harmful and lead to poor physical and mental health outcomes for survivors. For example, prosecutors may inadvertently use stigmatising language or invoke stigma in well-intended ways to argue for a certain survivor's credibility, thereby perpetuating stigma and myths as well as reducing the perceived credibility of other survivors at the same time.[287] Prosecutors have been found, for example, to argue that a male survivor's evidence could be believed because he had immediately reported the incident to his carers, he was visibly upset and agitated, and because he had sufficient sources of income so did not need to make up the allegation of rape. "*This quote shows once more that rape myths are not solely used by the defence to undermine victims, but also by prosecution barristers to support victim credibility.*"[288]

Note: The use of stigmatising language can be a reflection of the beliefs and stigmatising attitudes held by the speaker. Stigma manifests beyond the words spoken and includes underlying attitudes which influence decision-making and actions. Understanding and countering stigma is therefore as much about internal reflection and awareness as it is external expression.

Elements of good practice on language and terminology include:

1. **Prosecution Service provides training to prosecutors specifically on recognising CARSV stigma, bias and stigmatising language, and how to use non-stigmatising language.**
2. **Prosecution Service has guidance against stigmatising language and representations, which provides examples of what this is and what more accurate terminology and concepts are.**
3. **Leadership leads by example by modelling correct language and non-stigmatising concepts.**
4. **Line-managers check and correct written or oral submissions, briefings, letters and other communications for stigmatising language.**[289]
5. **Prosecution Service guidance, monitoring and compliance checks require prosecutors to object or make submissions whenever stigmatising language or concepts are used by other parties in proceedings.**
6. **Prosecutors always object, without exception, if others in court use stigmatising language, ask questions or seek to introduce challenges or evidence which is based on stigmatised attitudes, misassumptions and SV myths (including those which relate to survivor conduct or consent which are not legally relevant).**

285 FCDO Principles for Global Action, *ibid*, 25.

286 Goddu *et al.*, 'Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record' (2018) *Journal of General Internal Medicine* 33(8).

287 *E.g.* Gopalan, Rejecting Notions of "*Honour*" to Mitigate Stigma Prosecutions for Sexual Violence Before The Bangladeshi International Criminal Tribunals (2021) LSE, 8-9.

288 Smith & Skinner, 'Observing Court Responses to Victims of Rape and Sexual Assault', (2012) Feminist Criminology 7(4).

289 In oral and written submissions, in order to avoid perpetuating stigmas and misconceptions, CARSV should also be contextualised against the conflict and wider forms of violence, depicted accurately, clearly covering and representing typologies and survivors. It should not be minimised or lost under headings or emphasise on other crimes. *E.g. Prosecutor v. Mladic*, ICTY-09-92, Trial Judgement (22 November 2017), which does not have a single heading relating to CARSV, and only one paragraph in the entire 2,500+ page judgement.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or concern about stigmatising language. ☐ No leadership statement or policy. ☐ No guidance or training on stigmatising language. ☐ No policy or protocol on objecting to the use of stigma in court proceedings by other parties. ☐ Common use of stigmatising language and communications across the Prosecution Service in oral and written submissions, press releases or other comments. ☐ Prosecutors do nothing to counter the use of stigmatising language or concepts by others in the court process or hearings.	☐ Pockets of awareness of stigmatising language at the team level. ☐ Isolated pockets of better practice in the use of non-stigmatising language and to objecting to its use by other parties, including Defence Counsel.	☐ Basic guidance against the use of derogatory or insensitive language, or discriminatory language but not specific to CARSV myths and stigma. ☐ Frequent examples of use by prosecutors (mostly inadvertently). ☐ Frequent examples of failure to object/ passivity of prosecution in the face of stigmatising language by others.	☐ Policies and protocols in place. ☐ Covered to a degree in broader training. ☐ Inconsistent practice, with some examples of good and bad practice on use of non-stigmatising language and inconsistent responses to its use by others in the court process.	☐ Prosecution leadership lead on this issue, model the use of non-stigmatising language and set clear expectations for prosecutors. ☐ Prosecution Service guidance on non-stigmatising language, supported by training and supervision/ checks. ☐ Prosecution Service protocols requiring proactive objections to the use of stigmatising language and concepts in court. Supported by training and supervision. ☐ Rare use of stigmatising language in any prosecution communications. Formally corrected quickly when noticed. ☐ Routine common practice by prosecutors to object to the use of stigmatising language and concepts by others, including Defence Counsel.

Key critical questions:

- What is the leadership's position on non-stigmatising language? Do they recognise stigmatising language? Can they demonstrate good practice?
- What guidance is there around discriminatory or stigmatising language and concepts? How is this managed, monitored and enforced? What awareness and understanding of this is present across the service? What are prosecutors' attitudes towards this issue? How seriously do they take it?
- Does the induction training or any practice directions or manuals address stigmatising language?
- What examples are there of non-stigmatising language being used? What about stigmatising language? At different levels, in different roles, internally and in public settings such as in court or public submissions?
- What are prosecutors' understanding of stigmatising language? Can prosecutors recognise such language?
- What is prosecution practice on objecting to the use of such language and concepts in their cases?

Data sources:

Internal: Organisational expectations, codes of conduct, communications tools and training materials, standards and reviews for non-stigmatising and bias-free language, training records and evaluations, survivor communications, reviews of written and oral submissions.

External: Survivor feedback, trial monitoring reports and external case reviews, communications.

Interviews and focus groups: Survivors and survivors groups, survivor support services, prosecution leadership and prosecutors, survivor liaison officers, other court users (judges, interpreters, defence).

Competency Indicator P7: Prosecutors work with survivors and others to create an environment and process which allows survivors to give their evidence to court in the most effective and safe manner which reduces anxiety, stress, distress, trauma, intimation, power differentials and uncertainties.

In some jurisdictions, the prosecutor may have less of a leading role at trial interacting with the survivor (as the judge will lead the question at first), but nonetheless will directly engage survivors during earlier processes and at trial. In international courts and more adversarial processes, the prosecutor will also play a critical role calling survivors as witnesses, leading questioning at trial and requesting protection measures. In all systems, prosecutors can contribute to the creation of safe and conducive environments for survivors to provide their best evidence.

Given how often survivors report retraumatisation from the court process (and prosecutors complain that they do not get the evidence they need or expected), there have been considerable reform, particularly in adversarial systems, to find better and safer ways for vulnerable/traumatised witnesses to provide their evidence in environments which are less confrontational, less stressful and pressurised, and less intimidating.[290] Survivor studies and feedback highlight the importance of environmental features facilitating participation, such as building familiarity with the process and actors, reduction of intimating factors such as formalities, physical and symbolic hierarchies, reduction of waiting time and avoiding rescheduling, and avoidance of direct contact with accused/physical perpetrators.

Many of the studies about best evidence specifically address the importance of proper familiarity and preparation time with the prosecutor (not amounting to coaching) to avoid situations where a survivor meets a prosecutor for the first time in court and their testimony becomes a stressful memory test many years after the events. "*Victims also told us about what helped them during court proceedings. This included meeting the trial prosecutor prior to the trial and afterwards so they could explain the outcome, and having access to an advocate or supporter.*"[291]

It is often assumed that prosecutors are not the ones harming or retraumatising survivors in court. This is, however, not always the case. Prosecutors can also ask inappropriate, harmful, stigmatising questions, and can prepare and conduct very long examinations-in-chief in systems where they have a role in questioning witnesses.[292]

Elements of good practice for this indicator include:

1. **Within the parameters of the law and their mandated role, prosecutors meet with survivors in advance of any testimony and explain both of their roles, the process and what is involved.**[293]

"*It was apparent from participants' accounts that there was a stark disparity between their expectations of the prosecutor's role, and how they experienced their engagement with them. Some victim-survivors expressed their belief that the prosecution was supposed to 'win their case', be 'on their side', or at least provide them with some support in preparation for giving evidence. The requirement for [the Public Prosecutor] to prosecute in the public interest, rather than that of the victim, contributed to victim-survivors feeling very let down by prosecutors and unprepared for the evidence that they were about to give.*"[294]

This preparation and familiarity with what to expect (as distinct from coaching or influencing what a survivor will say) is important for survivors and their ability to give their best evidence. "*In addition to completeness and coherence benefits, the Trial Chamber highlighted the benefits of witness preparation for reducing witnesses' stress and anxiety about testifying in an unfamiliar setting. According to the chamber:' Particularly with regard to vulnerable witnesses, such prior preparation may help to reduce the psychological burdens of testimony, since those witnesses may face unique difficulties when being questioned about traumatic events. Enabling interaction with counsel on the substantive aspects of their evidence may help to increase witnesses' confidence and may reduce their reluctance to reveal sensitive information on the stand.*"[295] As ICC Trial Chamber V noted: "*A witness who testifies in an incomplete, confused[,] and ill-structured way because of lack of preparation is of limited assistance to the Chamber's truth-finding function.*"[296]

Basic elements of these meetings would include: introduction and building of trust, understanding of the prosecutor's role, the defence's role, the judge's role and expectations about the process, discussions of concerns and available protective measures.[297]

*See also **Indicator P5** about wider communications and information needs.*

290 *E.g.* SCTS, Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group (2021), 40; Ireland Department of Justice Working Group, Review of Protections for Vulnerable Witnesses in The Investigation and Prosecution of Sexual Offences (2020), 19-25.

291 HM IPS, Follow-up Review of the Investigation and Prosecution of Sexual Crime (2020); Brooks-Hay *et al*, *ibid*, 29.

292 Sharratt, *ibid*, 67.

293 Brooks-Hay *et al*, *ibid*, 42.

294 Brooks-Hay *et al*, *ibid*, 29.

295 Ciorciari & Heindel, 'Victim Testimony in International and Hybrid Criminal Courts: Narrative Opportunities, Challenges and Fair Trial Demands' (2016) *Virginia Journal of International Law* 56(2).

296 *Prosecutor v. Ruto et al*. ICC-01/09-01/11, Decision on Witness Preparation (2 January 2013), para.31.

297 New Zealand Crown Law, Solicitor-General's Guidelines for Prosecuting Sexual Violence (2019), 14-19 (on meeting survivors before trial); Thomson, Review of Victim Care in the Justice Sector in Scotland (2017), Preparing Victims, 4.19-4.38; Gopalan et al, ibid, 114-117.

2. **Within the parameters of the law and their mandated role, prosecutors discuss with survivors any available special measures, procedures or alternatives to in-court testimony during trial and allow survivors to make informed decisions on how they would like to provide their evidence.**

In jurisdictions with victim representation or private prosecutors, consultation with legal representatives for survivors would be a critical part of this practice.

3. **Within the parameters of the law and their mandated role, prosecutors push for ground rules in preliminary hearings to set trauma-informed procedures, practice and questioning, including the right to independent legal representation for survivors during their participation in the process or allow trusted support persons to be present and actively supporting during testimony.**[298]
4. **Prosecutors adhere to trauma-informed approaches and measures to reduce formalities and hierarchies/power dynamics during any presence and questioning of survivors (in court and outside of court).**
5. **Prosecutors are proactive in objecting to any questioning or evidence which arises from stigmatising attitudes or assumptions, or which relate to survivor conduct or consent and are not strictly legally relevant, whether in court or in any advance hearing or motion/application.**

*See also **Indicator P6**.*

Prosecutors also object to any questions or applications to seek or use evidence which is not respectful of survivors' dignity and integrity, and which involves more than a minimal intrusion into their private lives. It is important that Prosecutors use all available SV evidential or procedural protections, as well as arguments of legal irrelevancy, in support of their objections.[299]

6. **Prosecutors have a positive attitude towards and seek active support for survivors as part of the survivor's engagement with the justice process.**

*See **Chapter One — Legislative Framework** for process, procedures and protection measures; **Chapter Nine — Judicial Function and Court Services** for judge's role in facilitating safe and effective procedures; **Chapter Five — Witness Protection** for protection measures for court processes; **Chapter Three — Support Services** for support around court processes.*

298 See Scottish Courts and Tribunals Service, *ibid*, 40.

299 Gopalan *et al*, *ibid*, 158-167.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Prosecutors do not see this as their role or function. ☐ Prosecutors averse to and do not meet survivors before testimony. ☐ Prosecutors do not engage in any preliminary hearing discussions about measures to secure 'best evidence' from survivor-witnesses. ☐ Prosecutors rarely if ever object in court to questioning of survivor-witnesses. ☐ Prosecutors engage in full formalities, wearing wigs/gowns/ court attire, use formal legalistic language, stand above survivor-witnesses, etc. ☐ Prosecutors discourage any support or counselling for survivors before testimony based on the belief it undermines their evidence.	☐ Isolated pockets of better practice in one or two teams due to team leader or expertise. ☐ Isolated ad hoc advanced meeting with survivors but usually on the same day as testimony. ☐ Isolated examples of objections, but most prosecutors do not object. ☐ Isolated examples of attempts by individual prosecutors to reduce the formality of their language and conduct in court. ☐ Isolated examples of prosecutors being open to survivor support before testimony.	☐ Basic guidelines for prosecutors with some responsibilities detailed around vulnerable witnesses, including CARSV witnesses. ☐ At least one meeting in advance of testimony expected. Inconsistent practice with many meetings on the day of testimony and for short time. ☐ Little discussion on special measures with survivors, prosecutors more reliant on 'vulnerability' assessments by others. ☐ Initial basic rules around preliminary hearings addressing these issues, including reducing formalities. Inconsistent practice by prosecutors to ensure measures in place. ☐ Mixed practice in prosecution conduct and language to reduce formalities, etc. ☐ Mixed attitudes towards support and counselling for survivors before their testimony.	☐ Guidelines lay out responsibilities for prosecutors to ensure best evidence of survivor-witnesses. ☐ At least one meeting at least a few days before testimony expected. Debriefing after testimony also expected. Some examples of rushed and minimal efforts. ☐ Discussion with survivors about their needs in court and preferences for testimony expected. Some examples of rushed and minimal efforts or leaving it to others. ☐ Requirement for preliminary hearings about survivor testimony in place. Inconsistent practice with some prosecutors not fully prepared or participating. ☐ Rules in place for reduced formalities but some examples of prosecutors still using formal language or conduct. ☐ Guidelines for prosecutors state benefits of support and counselling for survivors, but doubts and concerns remain with some prosecutors on how to manage this.	☐ Well-established detailed guidelines, checklists and tools integrated into case files and workflow. ☐ Series of meetings between prosecutors and survivors mandated to ensure all preparations properly conducted well ahead of testimony, including discussions of special measures and preferences for testimony (based on options in law). ☐ Preliminary hearings with full prosecutor submissions and engagement for all CSRV witnesses standard practice and part of workflow. ☐ Reduced formalities measured, supported by training and simulations around language, body language and conduct in court. *See **Indicator P9**.* ☐ Prosecutors fully supportive and facilitate counselling and support for survivors as early as possible. Guidance and notes available and used to counter any challenge of impact of counselling on testimony.

Key critical questions:
- What role does the prosecution play in relation to the testimony of survivors? Are the survivors seen as prosecution witnesses?
- How do Prosecutors prepare and build their case with the safety and wellbeing of survivors and their rights in mind? Do they solely rely on survivor's evidence or do they seek alternative sources which can remove the pressure and focus of challenge from survivors? Do they build cases focused on individual incidences and physical perpetrator, or build wider cases based on command or leadership responsibility for attacks or patterns of conduct?
- Do prosecutors decide or apply for special measures for survivor testimony? Who determines whether these measures are applied? Do survivors get to decide, choose or advise on what they need or wish?
- What attitudes do prosecutors have in relation to prior support and counselling for survivors? What attitudes do they have for proactive support around survivors during the justice process?
- What steps do prosecutors take in advance of hearings and during hearings in relation to survivor-centred approaches, protection of survivor rights and to ensure no revictimisation of survivors occurs?
- What policies, tools and support do prosecutors receive to assist with this?
- How do survivors describe the role of the prosecutor in their case? What did they expect? What happened? What else could the prosecutor have done which might have helped?
- How do other court users describe prosecutors in relation to protection of rights of survivor-witnesses?

Data sources:
Internal: Guidance, SOPs, tools and training around survivor engagement, preparation for trial, vulnerable witness testimony, witness preparation.
External: Survivor feedback, trial monitoring reports and external case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, prosecution leadership and prosecutors, survivor liaison officers, other court users (judges, interpreters, defence).

Useful resources, exercises or tools
- New Zealand Crown Law, Solicitor-General's Guidelines for Prosecuting Sexual Violence (2019), 14-19 (on meeting survivors before trial).
- Scottish Courts & Tribunals Service, Improving the Management of Sexual Offence Cases: Final Report from the Lord Justice Clerk's Review Group (2021), 40.
- Crown Prosecution Service, Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures (2011).
- Gopalan *et al* 'Proving Crimes of Sexual Violence', in Brammertz & Jarvis (eds.), Prosecuting CRSV at the ICTY (2016), 114-119 (preparation for court).

C. TECHNICAL CAPACITY AND COMPETENCY

This section of indicators focuses on CARSV specific policies, tools as well as competency and approaches to some critical prosecution functions and discretion, such as the decision to prosecute and the preparation of charge sheets or indictments, and the assessment of evidence.

As noted above, in different systems prosecutors can have slightly different functions or roles. For example in some civil systems, while prosecutors may propose charges, those charges have to be confirmed by a judge or judicial panel. In purely inquisitorial systems, the role of a prosecutor may be replaced by an investigating magistrate, and prosecutors may not play a role in selecting, calling or questioning witnesses at trial. The application of these indicators should be adapted/adjusted depending on the role of the prosecutor in the system under consideration.

Competency Indicator P8: Prosecution Service has a set of CARSV policies, procedures, templates and tools which prompt accurate assessment and work on CARSV.

CARSV competency and understanding should be embedded into the working system so that work processes, templates and tools prompt and remind prosecutors about accurate understandings of CARSV and guard against assessments or use of discretion influenced by stigmatised attitudes and myths.

The impact of lack of policies and standardising approaches and understanding of CARSV can be seen in the record of prosecuting CARSV against men at international and hybrid courts. "*There are inconsistencies in the characterization of the same male sexual violence acts. […] There are also inconsistencies in characterization between similar CRSV acts, depending on whether men or women were the victims. These are in addition to the often-inconsistent treatment of sexual violence more generally. The fight to bring CRSV against women and girls out of the shadows has been a long hard-fought one. […] there is still a long way to go to get 'consistent and rigorous prosecution of sexual violence crimes'. So far, [conflict-related male sexual violence] is lagging behind, as it is lost in stigma, myths and invisibility. 'This lack of consistency suggests there has been, or there is currently, no overarching or coherent prosecutorial policy, or consistent judicial analysis, on how to approach this form of sexual violence.*"[300]

Elements of good practice for this indicator include:

1. **Prosecution Service applies a full set of prosecution tools, including a CARSV policy, procedures and checks, guidance, templates and tools endorsed and operationalised by leadership, which:**
   - embeds an accurate understanding of CARSV in all its forms and with its full range of survivors into workflow, processes and practices;
   - prompts and builds inclusivity into CARSV work and contextualises CARSV in relation to the conflict, crisis or wider forms of violence (evidence analysis, charging, case preparation and presentation at trial);
   - infuses a gender and intersectional lens on evidence analysis, charging, case preparation and presentation at trial;
   - encourages and illustrates alternative and additional sources of evidence beyond just survivor testimony to reduce pressure and dependency on survivors;
   - sets out legal rules and arguments against the use of irrelevant evidence or challenges based on stigmatised attitudes or myths about CARSV; and
   - risk assesses and mitigates the impact of stigma on survivors and their engagement with the justice process.
2. **Prosecution Service provides prosecutors induction, continuing education and training on these tools.**
3. **Prosecution Service integrates these tools into the workflow, supervises and expects them on case files, and uses them as part of an ongoing system of assessments, check-ins, checks/guards against inaccurate understandings or myths creeping into assessments, decision-making or use of discretion.**

"*Reforms should focus on reducing the impact of rape myths on prosecutors' decisions. This could be achieved in part by increasing oversight of prosecutors' decisions and holding prosecutors accountable when they are systematically influenced by rape myths.*"[301]

*See also **Indicator P3** on shared use and work with these tools with other key actors, including with police/investigators; and Legislative Framework on evidence and procedural rules.*

300 Elliott, Kivlahan & Rahhal, *ibid*, 487.

301 St. George & Spohn, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No written policies, tools or templates with reference to CARSV. No induction, training or supervision based on these. ☐ No awareness or assessment of impact of stigma on survivors engaging with the justice process.	☐ Isolated pockets of useful tools developed at team practice level. ☐ Any training or supervision on CARSV ad hoc at the team level depending on team leaders.	☐ Basic CARSV policy which is not comprehensive. ☐ No tools for work which prompt CARSV competency and good practice. ☐ Nothing substantive on stigma or myths. ☐ Nothing requiring risk assessments and mitigation of the impact of stigma on survivors engaging with justice.	☐ Full set of tools but not yet well understood, fully implemented into day-to-day workflow or consistently used by prosecutors. ☐ Some induction or continuing training based on these tools but no supervision or file review. ☐ Awareness of stigma and impact of stigma on survivors engaging in the justice process. Inconsistent actions in relation to this. No consistent proactive mitigation measures.	☐ Full set of well-established policies, processes, guidance, templates and work tools which all prompt inclusive and accurate understandings of CARSV. ☐ Gender and intersectional lens applied to all cases across prosecution functions and roles. ☐ Tools fully integrated into the workflow and day-to-day work. Supervised and on file. ☐ Well understood and consistently used by prosecution teams. ☐ Proactive and preemptive mitigation of the impact of stigma on survivors engaging with the justice process.

Key critical questions:

- What tools specifically refer to CARSV? How comprehensive are they? Do they prompt more inclusive understandings of CARSV typologies and survivors? Do they prompt attention to wider sources of evidence? Do they challenge and guard against the influence of stigmatised attitudes and myths?
- What tools are in place for gender analysis and intersectional justice approaches?
- What training do prosecution staff get on these tools? At what stage do they receive this training? Does the training use case studies or work simulations to ensure useability in practice?
- What is the staff knowledge about, use of and attitude towards any of these tools? How widely are they used? Is it mandatory and part of the case file? Is their use supervised, monitored or used as a double check for CARSV competency and a guard against stigmatised understandings and myths?
- What do prosecutors know and understand about the impact of stigma on justice proceedings and on survivors who seek to participate in justice proceedings? Do they believe they have a role to play in tackling or mitigating stigma? What actions do they take in relation to that?

Data sources:

Internal: CASRV policies, guidance and tools, training records, evaluations and attendance data (mainstreaming), case reviews, prosecutor performance reviews.
External: Survivor feedback, external reviews/reports, external training providers and feedback.
Interviews and focus groups: Prosecution leadership, prosecutors and members of prosecution teams, CARSV focal points or other relevant specialists, survivors groups, survivor advocates, other justice actors

Useful resources, exercises or tools:

- New Zealand Crown Law, Solicitor-General's Guidelines for Prosecuting Sexual Violence (2019).

Competency Indicator P9: Prosecution Service personnel demonstrate CARSV and trauma competency in all their actions, and these competencies are mainstreamed across teams.

While the advice and inclusion of individual experts focusing on CARSV can have positive results, there are also risks in 'specialising' rather than mainstreaming competencies across all staff. Review of CARSV prosecutions at the ICTY highlighted issues with having only individual specialist focal points or experts, including:

- The post was not a senior management position so could not set or enforce policies. Their effectiveness was dependent on endorsement by leadership and the receptiveness of staff.
- No staff or resources allocated.
- "*[A] perception that sexual violence crimes was now someone else's responsibility and need not be the focus of attention for staff members generally.*"
- Usually staffed by a woman, perpetuating the perception that CARSV is a 'woman's issue'.

A specialist CARSV team was found to 'interfere with the consistent incorporation of sexual violence investigations by all teams."[302]

This isolated specialism approach can further 'other' or encourage the perception of CARSV as something different, decontextualising it from other forms of violence and failing to integrate it into all investigations. "*A central theme to emerge from our experience with sexual violence cases over the past two decades is the imperative of seeing — and treating — sexual violence prosecution as core work for any prosecution office addressing conflict-related atrocities. We have been confronted with the many ways in which sexual violence crimes are at risk of being separated from the core work of a prosecution office and of being inappropriately treated differently from other conflict-related crimes.*"[303]

Another critical aspect of competency is attitude. Many studies of prosecutors working on international crimes have uncovered perceptions that CARSV cases take too long and are too hard, leading prosecutors to deprioritise CARSV crimes at decision-making points along the process of investigation and prosecution. For example:

- "*Most prosecutors who were interviewed clearly do not like to prosecute rape cases. Most stated that rape cases require much sensitivity and time. The combination of lack of competency on gender issues, lower percentage of success, the additional time sometimes required and the time pressure created by large caseloads makes their reluctance understandable.*"[304]
- Many survivors at the ICTY reported that Milan Lukic had sexually assaulted them. The ICTY Prosecutor did not include any CARSV charges against Lukic on the basis that the institutional completion strategy required her to conclude her cases as quickly as possible. She believed that sexually violent crimes would result in a lengthy case.[305]

"*We often refer to the fact that sexual violence crimes might require the investment of 'extra' time and resources to bring victims' evidence forward, due to stigma, trauma, and other factors, however there are also other categories of evidence that can require large amounts of time from investigators and prosecutors e.g. insider witnesses. […] Yet we see this as simply an inherent part of our core case work. We should adopt the same approach to evidence gathering for CRSV.*"[306]

To this end, performance targets and evaluations should be based on CARSV competency and processes, rather than equating 'success' in terms of winning cases or numbers of convictions or speed with which these are obtained. "*They [prosecutors] see it as a personal failure if they do not win. In the beginning, 99.99 percent of the indictments did not even ask us to get evidence for rape. They were not interested. They do not hesitate to charge killing or the destruction of property and asking us to find the evidence.*" (Male Investigator, ICTY)[307]

"*According to prosecutors, they are trained to believe that success is equated with swift convictions ending in maximum sentences. […] There appears amongst those we interviewed to be a consensus that indicators of success need to be reconceptualised with 90% of those magistrates and prosecutors interviewed expressing their unhappiness with current indicators. […] [For example,] targets have been set for court preparation and victim impact statements in DPP's and prosecutors performance indicators.*"[308]

Elements of good practice for this indicator include:

1. **Prosecution teams working on international crimes mainstream CARSV competencies and contextual understanding into team practice and across cases.**

302 Jarvis & Vigneswaran, *ibid*, 75-76.

303 Jarvis & Vigneswaran, *ibid.*

304 Sharratt, *ibid*, 62.

305 Paraphrased from Ginn, 'Ensuring the Effective Prosecution of Sexually Violent Crimes in the Bosnian War Crimes Chamber: Applying Lessons from the ICTY' (2013) *Emory Int'l L. Rev.* 27, 565.

306 Jarvis, 'Overview: The Challenge of Accountability for CRSV Crimes', in Brammertz & Jarvis (eds.), *ibid*, 8.

307 Sharratt, *ibid*, 63.

308 Heath *et al*, 'Improving Case Outcomes for Sexual Offences Cases Project: Pilot Study on Sexual Offences Courts', Gender Health and Justice Research Unit, USAID (2018), 112.

2. **CARSV competencies, gender dynamics and perspectives, survivor-centred and trauma-informed approaches are part of recruitment criteria and induction training for all prosecution staff, including training on stigma and myths.**
3. **Prosecution Service has ongoing supervision and mentoring around these competencies to ensure demonstrated, consistent practice across all prosecutors and staff.**
4. **Prosecutors have their performance evaluated based on qualitative indicators such as survivor-engagement and experience (outward-facing indicators); demonstration of values such as EDI, non-stigmatising communications, CARSV competent approaches to prosecution, etc.**
5. **Prosecutors undertake CPD around CARSV competencies, trauma-informed and survivor-centred approaches, and improvements in CARSV prosecution practices. CPD available, supported and resourced.**
6. **Prosecutors feel competent and prepared to work on cases involving all forms and survivors of CARSV.**
7. **All prosecutors are encouraged to engage in discussions related to CARSV, trauma-informed and survivor-centred approaches.**
8. **Prosecution Service monitors KAP across practice and teams. Case reviews to assess CARSV and survivor-centred/trauma-informed competency being demonstrated on cases.**
9. **Prosecution leadership creates an environment conducive to and supporting peer-to-peer mentoring and sharing of experience, knowledge and challenges in relation to CARSV cases.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ CARSV trauma-informed and survivor-centred approaches not regarded as required competencies. ☐ No CARSV, trauma or survivor-centred training at induction or encouraged/ available as CPD. ☐ No performance indicators, or indicators contain quantitative and timebound measures connected to number of charges or number of convictions. ☐ Prosecution office does not engage in discussions about CARSV specifically. ☐ No monitoring of practice on CARSV, trauma or survivor experiences/ feedback. ☐ Prosecutors do not want to work on CARSV cases — too hard, too much time, too 'emotional'.	☐ Some isolated ad hoc expertise on CARSV within prosecution service, not organised, not planned and not integrated. ☐ Mentioned only in relation to the range of international crimes or governing law in induction training. No CPD available on CARSV, trauma or survivor-centred justice. ☐ No mention or expectation of CARSV or gender competencies in prosecution team vacancies. ☐ Performance indicators focus on numbers and convictions for cases including CARSV. ☐ Those tasked with CARSV work always women. ☐ Mostly negative attitudes towards CARSV work. Few wish to do this work. ☐ Some knowledge of CARSV tested in some teams/ departments.	☐ CARSV teams or expertise separate from other case teams. Not regarded as a core competency for all prosecutors. ☐ Basic CARSV training in induction and some CPD available – seen as specialist work and few encouraged to specialise. ☐ Performance indicators broader than numbers of convictions, with a few outward-facing qualitative indicators included, but not CARSV specific. ☐ No mainstreamed requirement of CARSV competencies and sensitivities in recruitment or team selection. ☐ Those tasked or asked to engage on CARSV discussions, fora or work frequently women. ☐ Mixed attitudes towards CARSV aspects to cases. Most still think 'too hard' and takes 'too much extra work'.	☐ CARSV specialists integrated into case teams, but not regarded as a core competency for all prosecutors. ☐ CARSV module in induction training but CPD reserved for specialists. ☐ Performance indicators more qualitative and survivor experience included. Separate full set of qualitative indicators for CARSV specialists. Not included in team leaders' performance measurements. ☐ No expectations or testing of CARSV and gender competencies in recruitment unless for specific CARSV position. ☐ Some prosecutors, particularly specialists, positive and enthusiastic about working on CARSV aspects of cases.	☐ All team members have CARSV competencies as part of their core competencies. ☐ CARSV, trauma-informed and survivor-centred justice approaches a core part of induction training and regularly accessible CPD on developments and innovations in this area. ☐ Performance indicators include CARSV as core competency, KAP monitoring, mitigating stigma, CPD in CARSV, trauma and survivor engagement with justice, on survivor feedback, innovative approaches to CSRV challenges, and demonstration of key non-discriminatory values and conduct. Also included and tailored to leadership/ supervisor positions. ☐ CARSV, gender, cultural and trauma competencies mainstreamed across recruitment, team selection and retention protocols/criteria.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
		□ Knowledge tested and monitored but not attitude or practice.		□ Prosecutors positive about CARSV cases and their importance. Motivated to work on these aspects of cases. □ Mixed gender representatives and engagement on CARSV issues, fora and meetings. □ Monitoring, case reviews and checks around CARSV knowledge, attitudes and practice.

Key critical questions:

- How are CARSV, trauma-informed approaches and survivor-centred justice competencies regarded by leadership and prosecutors? Are they thought to be highly specialised? Or at the other end, are they seen to be core skills necessary for all prosecutors? Or are they seen as irrelevant as the CARSV prosecutions already occur and so the challenge has been addressed?
- To what extent is CARSV competency mainstreamed across all prosecution team roles and teams? If there are focal points or expert advisors appointed on CARSV or SCA, how are they integrated into prosecution teams and their work?
- Do recruitment and retention policies test CARSV and screen candidates for stigma attitudes? To what extent is CARSV competency required in team leader or prosecutor roles?
- To what extent do all prosecutors have CARSV, SCA and trauma-informed competencies?
- What is the content of induction training or briefings? To what level are CARSV, SCA and trauma-informed competencies and demonstrated skills included in induction training? Who is required to attend these parts? To what extent are policies, procedures, tools and templates for these issues included so that training embeds and simulates work processes and flows?
- What CPD is provided and supported for prosecutors? How often are prosecutors required/allowed to take time for CPD? To what extent does CPD include CARSV, trauma-informed and survivor-centred approaches? Who is encouraged or assigned for CPD related to these competencies?
- Who is assigned to CARSV work? How is this determined? What is the ratio of women to men assigned?
- If there is an inquiry, training, conference or meeting about CARSV, who attends or is assigned? How is this determined? What is the ratio of women to men attending or assigned for these activities?
- What are prosecutors' attitudes and beliefs towards CARSV work?
- What do KAP surveys show about levels of stigma and stigmatising practices among prosecutors?
- What do other functions and survivors say about prosecutors' attitude to CARSV work?
- What are the performance indicators for prosecutors? How do they differ between prosecutors and why? What are the qualitative indicators and how are these measured objectively and consistently? How many of the indicators are quantitative and relate to outcomes such as convictions?

Data sources:

Internal: Training and CPD records/attendance data (mainstreaming), prosecutor performance reviews, KPIs, TORs, PERs, KAP surveys, organigram of teams and staffing, leadership CARSV memoranda and statements.
External: Survivor feedback, external reviews/reports, external training reports/feedback.
Interviews and focus groups: Prosecution leadership and prosecutors, gender or CARSV focal points, survivor liaison focal points, survivors groups, survivor advocates, CSOs.

Useful resources, exercises or tools:

- Toolkit Part B Key Performance Indicators
- Toolkit Part B Example KAP Survey questions

Competency Indicator P10: Prosecutors make decisions on the inclusion and continuation of charges based on accurate understandings of CARSV in its contextual and intersectional (including gendered) dimensions.

One of the most critical functions and decision-points for the prosecution in the criminal justice process is the initial decision to prosecute and lay charges or indict on charges relating to CARSV. So many international criminal cases have seen failure to charge CARSV as fatal for the later introduction of evidence of CARSV by survivors and have resulted in convictions being overturned for insufficient notice in charges. [*Noting that in some systems, a prosecutor's charges have to be confirmed by a judge, or it will be the investigating magistrate who performs this function*.] While the level of discretion of prosecutors varies in different jurisdictions, there is always an assessment of evidence required and so there is always some measure of discretion or judgement used.

Examples of failures or inadequacies in charging CARSV, which then either precluded evidence or resulted in a conviction being reversed on appeal, include:

- At the ICTR, **the Cyangugu case**, in which judges refused leave to amend the indictment and refused to hear any evidence of CARSV which came out at trial.[309]
- At the SCSL, in **the CDF trial** the judge also excluded evidence of CARSV after the prosecution failed to include it explicitly in the charges (and would not even hear CARSV evidence to support the element of 'severe physical and mental suffering' in stark contradiction to other forms of violence and suffering which were allowed). In this case, it seems the judge's primary consideration was about 'undue delay' (to allow the defence time to prepare). "*Perhaps even more sadly, the silence surrounding the prosecution of wartime rape in the CDF case may only reinforce the stigma associated with prosecuting crimes of sexual violence that exists at the local level in Sierra Leone, where rape — other than rape of a virgin — is still largely not considered a crime.*"310

The influence of myths and stigma on the attrition rates at this stage of criminal proceedings has been noted. *"Typifications of rape victims inform prosecutors' assessments of convictability and willingness to file charges more than evidentiary or aggravation factors even when discretion is constrained by offense severity. [... reforms should focus on reducing the impact of rape myths on prosecutors' decisions."*[311]

"A [Prosecution] decision not to prosecute accounts for 14% of the attrition of non-withdrawn cases. In the sample, none of the cases with an inconsistent victim account of the rape resulted in a charge. A charge was also substantially less likely if the victim had a mental health problem or if police officers noted doubts in the case file. Whether or not the suspect is a 'credible criminal' appears to be decisive: a charge is significantly more likely if the victim and suspect are non-white (most offences are intra-racial, accounting for the higher percentage of non-white victims), and if the suspect was a known sex offender."[312]

This is illustrated in relation to international crimes by statements of prosecutors as to whether CARSV would amount to an international crime or not. "*As a male prosecutor at ICTY put it to me: 'It could be a question in some cases of lust, and that is not a war crime."*[313]

It is also demonstrated by the failure to recognise and charge CARSV against men, including:

- At the SCSL, the failure to specify CARSV against men, resulting in the exclusion of facts and evidence about male CARSV entirely in **Alex Tamba Brima et al.** (SCSL-04-16-PT) (AFRC Case); and **Charles Taylor** (SCSL-03-01-PT).[314]
- **ICTY Tadić Judgment** (crimes against Harambasic who died as result of sexual violence against him, which included forced nudity, forced subject of fellatio, genital mutilation as testicles bitten off, but only charged as murder);
- **ICTY Kvocka Case** (Bahonjic and Jusufagic were severely beaten and forced to fellate other prisoners. They then had objects inserted into their anuses. They died from injuries sustained during such abuse. Charges and conviction only for murder.);
- **ICTY Brdanin Case** (An old man killed after refusing to rape a female detainee. Threat of assault recognised against female detainee, but not the old man.);
- **ICTR Muhimana Case** (genitals amputated and hung on a pole, beheaded — charged only with murder).[315]

Elements of good practice on CARSV charging include:

1. **Prosecution Service charging guidelines and practice reflect merits, include standardised practice and understandings of CARSV, and counter myths, emphasising the public interest and importance of CARSV cases.**
2. **Prosecutors consult survivors and survivor networks before making decisions on the charging process to ensure charges reflect the crimes and harms inflicted.**

309 Nowrojee, *ibid*, 29.

310 Staggs et al, "*When We Wanted to Talk About Rape*": Silencing Sexual Violence at the Special Court for Sierra Leone', (2007) *International Journal for Transitional Justice* 1, 362; Thuy Seelinger Hissène Habré's rape acquittal must not be quietly airbrushed from history, The Guardian, (2017).

311 St. George & Spohn, *ibid*.

312 Hohl & Stanko, 'Complaints of rape and the criminal justice system: Fresh evidence on the attrition problem in England and Wales', (2015) *European Journal of Criminology* 12(3), 14.

313 Sharratt, *ibid*, 58.

314 See Elliott, Kivlahan & Rahhal, *ibid*, 481.

315 Examples taken from Elliott, Kivlahan & Rahhal, *ibid*, 486.

3. **Prosecutors apply a gendered and intersectional analysis of the evidence and events to ensure charges give notice of all relevant forms of CARSV against different groups and contextualise CARSV consistently with other forms of violence.**
4. **Prosecutors do not use wording which excludes relevant groups in charges.**
5. **Prosecutors have consistent forms of charging for CARSV across cases, between types of CARSV and with other types of crimes.**

For example, prosecutors at the international tribunals have charged CARSV only as persecution, without separate CARSV explicit charges as they did with for example murder (where cumulative charging was permitted or used in aggravation pleadings).

6. **Charging decisions (inclusion and continuation) are reviewed with a CARSV lens by a more senior/CARSV experienced colleague, especially where the decision is to not proceed or include CARSV charges, to ensure an accurate and inclusive assessment on CARSV has been made and there are no further investigative steps possible to meet challenges/evidential gaps.**[316]
7. **Any process for confirmation of charges by prosecutors or by pre-trial or other judges sets evidential thresholds based on *prima facie* value of evidence available and not on conviction standards of proof. Such confirmations do not give weight to any SV myths, assumptions or stigma, nor make assumptions about trial factfinder's (judge or jury) misunderstandings, myths and biases.** *See also **Indicator P11** on evidence and credibility assessment indicators.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No charging guidelines. ☐ No consultation with survivors or survivors groups to understand their perspective or impact from crimes. ☐ No gender or intersectional analysis. ☐ CARSV considered in isolation. ☐ Non-inclusive language in charges relating to CARSV. Otherwise lack of notice on CARSV charges. ☐ Inconsistencies across CARSV types, survivors and when compared to other crimes or violence. ☐ No review system.	☐ Basic charging guidelines but not specific to CARSV. Inconsistent use or reference to guidelines. ☐ Isolated *ad hoc* examples or pockets of practice which consider gender analysis and understanding. ☐ Isolated *ad hoc* examples or pockets of practice which contextualise CARSV into charges and show consistency with other crimes. ☐ Inconsistent language used in CARSV charges, rarely inclusive. Many examples of challenges at trial or on appeal in relation to notice for CARSV typologies or survivors in charges. ☐ Review left to informal supervision of team leaders.	☐ Charging guidelines which have some basic provisions on CARSV. Use and reference still inconsistent. ☐ Consideration of survivor statements when considering charging. ☐ Examples of basic gender analysis more frequent in practice. ☐ CARSV more contextualised against other forms of violence and the conflict. Mixed practice. ☐ Mixed practice on adequacy and consistency of CARSV charges. ☐ Review process in place but inconsistently used.	☐ Charging guidelines specific to CARSV but does not address consistency of charges. ☐ Good examples of survivor consultations in practice but not mandated and not resourced. ☐ Gender and intersectional analysis tools but still some inconsistent use. ☐ Charges relating to CARSV more consistent in terms of inclusive language but still inconsistent practice on consistency with approach on other crimes or between typologies and survivors. ☐ Review process in place for initial decision to charge but subsequent decisions left to discretion of prosecutor.	☐ Comprehensive well-established and well-used charging guidelines specific to CARSV that ensure consistent understanding, characterisation and charging across CARSV and with other crimes. ☐ Consultation with survivors groups to understand their perspectives and impacts from crimes is standard practice prior to any charging decisions. ☐ Gendered, intersectional and conflict analysis conducted and reflected in every case to ensure charges accurately reflect the nature and impact of the crimes. ☐ Charges have inclusive language which gives notice of CARSV typologies and survivors.

316 See Angiolini, *ibid*: "*The response to such evidence by the prosecutor and prosecuting Counsel on occasion demonstrated a susceptibility to the stereotypical expectations of how rape complainants may be expected to behave following rape. […] At no time was any discussion of these stereotypes and myths acknowledged in any case examined, nor were any strategies for dealing with the apparent weaknesses addressed.*"

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
				□ Prosecution records show consistent charging across CARSV typologies and survivors, and in comparison to other crimes. □ Charging decisions are reviewed at a senior level for every case, and in relation to any decision to charge, amend, drop or otherwise not pursue a charge (*e.g.,* not to defend or appeal a no case to answer application/ decision.)

Key critical questions:

- What are the charging guidelines (if any) for prosecutors? What thresholds and standards do they set? What guidance do they give about assessing evidence? What do they say about CARSV charges?
- What is the review process and who is involved in deciding final charges?
- Is there a court-based confirmation of charges process? (*See Judiciary* ***Indicator J8***)
- What consultation, if any, is done with survivors? What are the attitudes of the Prosecution Service and prosecutors about such a consultation on charges? Is this formalised into process and procedures? Is it resourced/budgeted?
- How many cases include CARSV charges? How are CARSV charged in comparison to other crimes such as murder? How is gender and intersectionality factored into CARSV charges? Are charges reflective of the context in which CARSV is occurring (e.g. as a weapon of war, as part of ethnic cleansing or to drive a population away, as part of a genocide, etc.)?
- What are the prosecutors' attitudes towards CARSV charges?
- How often are prosecutors deciding not to include CARSV charges? What are the reasons given for this?
- How often are prosecutors deciding to discontinue or drop CARSV charges? When is this occurring in the process? What are the reasons given for this?

Data sources:

Internal: Charging guidelines and instructions, tools and training materials on CARSV competency, training records, evaluations and attendance data, case/charging reviews, charge sheets, indictments, internal documents concerning evidence review and charging, confirmation of charges hearings and judgments.
External: Survivor feedback, judgements and interlocutory decisions on evidence excluded due to charges or lack of notice to defence, external reports or reviews.
Interviews and focus groups: Prosecution leadership, prosecutors and members of prosecution teams, other coordinating service providers and court users (investigators, judges, defence counsel), survivors groups.

Useful resources, exercises or tools:

- Argentina Prosecutor's Office, General Instruction on CARSV Cases (includes charging decisions).
- Argentina Mercosur, Guidelines for Public Prosecutors in the criminal investigation of cases of sexual violence perpetrated within the context of international crimes, in particular crimes against humanity.
- Reports on CARSV Charges (Argentina).
- Colombia SGBV Protocol.
- Toolkit Part B - CARSV Charging Guidelines

Competency Indicator P11: At all stages of the process, prosecutors' assessment of evidence is not coloured by stigmatised attitudes or myths or the assumption that these reduce credibility or reliability of evidence.

In almost all systems the prosecutor's assessment of evidence is a critical part of their function in deciding whether to prosecute and how to formulate charges/indictments. In adversarial systems, prosecutors will also be responsible for assessing and calling witnesses at trial to support those charges. In all systems, prosecutors make closing submissions regarding the weight, credibility and reliability of the evidence presented at trial.

One critical aspect of any assessment of the evidence is to focus on the accused's conduct, rather than engaging in stigmatising victim-blaming and considerations of survivor conduct which are not legally relevant. "[T]he IACommHR [...] has observed that 'police, prosecutors, judges, lawyers and others involved in law enforcement [...] are influenced by stereotypes, practices, and assumptions, which detracts from the importance that acts of sexual violence deserve. For example, they may examine a case [...] by focusing on the woman's sexual history and life, the implication being that the victim may have somehow provoked or invited the acts committed against her, and the fact that she is not a virgin.' It then specified that 'allowing these stereotypes inside the judicial branch serves to legitimise and aids and abets impunity."[317]

"*[T]here was still a very acute focus of attention on the credibility and reliability of the complainant in all cases, to the detriment of any meaningful concentration on the behaviour and previous conduct of the suspect. [...] Finding ways to prosecute without the evidence of the complainant was not considered [...]. Discussion about the potential for establishing evidence of longer-term predatory patterns of behaviour by suspects was also absent [...] despite a number of cases where vulnerable complainants with learning difficulties appeared to have been sought out by suspects.*"[318]

Elements of good practice for CARSV evidence assessment include:

1. **Prosecution training, guidance, tools and practice promote evidence building that focuses on the credibility of the allegation and the conduct and responsibility of the accused rather than the credibility of the survivor.**

For example, evidential assessment (proofing charts) which focus prosecutors on legally relevant considerations and assessments of evidence. Such tools are then a record of evidence assessment which can be supervised and mentored, or handed-on if prosecutors leave a case.[319]

2. **Prosecutors' assessment of evidence do not:**
   - Set higher standards of proof or evidence for CARSV than for other crimes or violence.
   - Make gendered assumptions about who has evidence of CARSV, who are survivors and who are not.
   - Decontextualise evidence of CARSV from the conflict or other violence, or otherwise treat CARSV differently from other violence based on stigma, myths and misconceptions.
   - Rely solely on survivor evidence without also looking for other forms of evidence which may reduce the pressure and singular focus on challenging survivor evidence.
   - Assume that late disclosures or delayed reporting, expectations and assumptions of how a 'real victim' should react or behave, or any other aspect of a survivor based on myths, stigma or stereotypes will discredit survivors or otherwise cast doubt on their credibility or reliability.
   - Use myths or stigmatised attitudes to consider higher credibility of certain witnesses; for example choosing certain witnesses because they reported early, were virgins or sexually inactive, or are visibly upset when discussing their experience, etc. See ***Indicator P6***.
   - Allow for any other influence of myths, misassumptions, stereotypes or other forms of stigma.

3. **Prosecution guidance and practice (and resources) counter myths and other stigmatising attitudes potentially held by fact-finders/adjudicators or defence, including leading expert witnesses. For example, prosecution guidance notes on countering stigma and myths, challenges to credibility of survivors based on myths, stigma and other legally irrelevant facts.**

"*If these common features and behaviours of so many complainants in rape cases are to be explained and understood by [fact-finders] they must first be understood by police, prosecutors and judges and steps must be taken to address those same issues through the use of expert evidence from psychologists and psychiatrists as well as experts in cultural or religious norms [...]*"[320]

4. **Where prosecutors play a role in evidence gathering or evidence selection for presentation at trial, they consider representativeness in the witness list — in terms of genders, age, and other intersectional factors/collectives and groups. (Counters current problems of over-representation of male witnesses.)**

317 IACommHR, Report on Access to Justice by Women Victims of Sexual Violence in Mesoamerica, 9 December 2011, para.49; ICJ, Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice (2015).

318 Angiolini, *ibid*, paras.621-624.

319 CPS, Toolkit for Prosecutors on Violence Against Women and Girls Cases Involving Vulnerable Victims (2015).

320 Angiolini, *ibid*.

5. More senior/CARSV-experienced prosecutors perform checks on assessments of evidence, concerns over survivor credibility or how to counter challenges on survivor evidence, and selections/representativeness of witnesses/evidence.

"[We need] a willingness to consistently check our assumptions about sexual violence crimes to ensure we are not applying inconsistent approaches as compared to other crimes categories. We should aim for an approach free of double standards with an appropriate level of prioritisation accorded to SVC."[321]

*See **Indicator P8** on the development, operationalisation and use of tools.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
□ No guidance, training, tools or practice focusing on perpetrator conduct in CARSV cases (as opposed to survivor conduct). □ Prosecutors focus on credibility of survivors based on myths and stigma. □ No guidance or practice to counter myths. □ No consideration of representation and diversity in witness lists. □ No system of supervision or checks.	□ Isolated pockets of good practice within specific teams due to leadership or expertise focused on accused's conduct and countering myths. Occasional experts called. □ Most prosecutors still very focused on credibility of survivors. □ Little consideration of representativity in witness lists. Isolated pockets of good practice at team level. □ Isolated ad hoc supervision and checks in certain teams.	□ Basic tools for evidence assessment, such as proofing charts. Inconsistent use by staff, no central use or record. □ Guidance focused on survivor credibility and countering challenges which include myths and stigma without identifying them as such. □ Mixed practice on assessment of evidence, many prosecutors still believe myths and stigma are relevant challenges to credibility which affects the weight they should assign to their evidence, and influences decisions to call them as witnesses or other decision-making. □ Prosecutors use stigmatised ideas to assign higher credibility to some survivors (chaste woman, reported early, was visibly upset, etc.) □ Basic data on binary gender breakdown on witness lists (M/F). □ Supervision assumed by team leaders, not organised or systematic. Not specific to these issues.	□ Guidance, training and tools but inconsistent practice, no centralised record in case files or for review. □ Guidance on countering stigma and myths/challenges to survivor credibility, but inconsistent practice. □ Prosecution assessment of evidence largely free of stigma but still creeps in and some prosecutors describe some myths as relevant or use them to assess a 'good' and 'bad' witness. □ Witness lists or statement lists include disaggregated data to show diversity. Inconsistent practice or response to lack of diversity. □ Supervision checks but not systematic and no centralised record of evidence assessment.	□ Full set of prosecution training, guidance, tools and practice promoting evidence building that focuses on the credibility of the allegation and the conduct and responsibility of the accused rather than the credibility of the survivor. With centralised, shared tools for consensus building and checks/ reviews. □ Prosecution guidance and practice (and resources) which counter myths and other stigmatising attitudes. Consistent prosecution practice countering myths. □ Prosecution assessment of evidence is consistently free from stigma and myths, with any residual issues caught on review. □ Witness lists and statement sets representative and best efforts are made to tackle any lack of diversity. □ Systematic, consistent checks and supervision based on centralised tools which are mandated.

321 Jarvis, *ibid*, 8.

Key critical questions:
- How do prosecutors assess evidence? What standards and considerations do they use?
- How do prosecutors look at evidence of CARSV? Do they consider it in isolation? Do they consider how it relates to or is connected to surrounding violence and other crimes?
- What factors do they say are relevant for the credibility of witnesses, including survivor-witnesses? In prosecutors' opinions, what makes survivor-witnesses reliable or unreliable? What would lead a prosecutor to call or rely on such a witness's evidence and what would lead them to not use it?
- Does this vary across groups of survivors — such as men, women, boys and girls, persons from LGBTQI+ communities, etc.? What would make a reliable or credible male survivor-witness? What makes a reliable or credible female survivor-witness?
- What about late disclosures by survivor-witnesses, for example? What impact do prosecutors say this has on their reliability or credibility?
- What about inconsistencies in prior statements? What impact do prosecutors say this has on their reliability or credibility?
- What do prosecutors think about using stigmas/myths to argue a witness is more credible or reliable?
- What guidance is available for prosecutors to make these assessments? What tools do they use? Are these shared or centralised into the case records?
- Do they discuss/review evidence assessments or decisions about witnesses, witness lists, statements, etc.?
- Is any analysis or consideration made about the representativeness or diversity of statements/witnesses? What actions (if any) are taken to improve this?

Data sources:
Internal: Guidance. SOPs, tools and training materials on CARSV competency, case reviews, prosecutor performance reviews, charge sheets, witness preparation materials, written and oral submissions.
External: Survivor feedback, trial monitoring reports, external reviews/reports.
Interviews and focus groups: Leadership, prosecutors, service providers, trial monitors and court users (investigators, judges, defence).

Useful resources, exercises or tools:
- Burrowes, Responding to the Challenge of Rape Myth in Court: A Guide for Prosecutors, (2013).
- Crown Prosecution Service, Toolkit for Prosecutors on Violence Against Women and Girls Cases Involving Vulnerable Victims (2015).
- ICC Case Matrix Network Evidence Charts.
- Rice Lave, 'The Prosecutors Duty to "*Imperfect*" Rape Victims' (2016) *Texas Tech Law Review* 49.
- Gopalan *et al*, 'Proving Crimes of Sexual Violence', in Brammertz and Jarvis (eds), *Prosecuting CRSV at the ICTY* (2016), 111-144.
- Toolkit Part B A Guide for Prosecutors: Responding to the Challenge of CARSV Myths in Court.

Competency Indicator P12: Prosecutors make submissions regarding survivor safety during custodial hearings, including bail/detention on remand hearings, early release or pardon applications, in relation to those accused or convicted of CARSV crimes.

Prosecutors often have a role in custodial hearings, and can oppose bail if there are sufficient concrete risks to survivors or the community. It is important that when prosecutors can make submissions regarding custody at all stages of the process, they assist the court with information and risk assessments relating to safety and ensure the survivor's views are before the court. Custodial decisions should not be made based on assumptions about survivors or perpetrators, but rather based on survivor-informed risk assessments and accurate understandings of risks of harm to the survivor. The prosecution often has a role to play to ensure these factual assessments and survivor perspectives are before the court. Prosecutors should also present any evidence supporting the imposition of conditions of release, protective measures and orders. *See also **Chapter Five — Witness Protection.***

It is also critical that the prosecutor, along with any survivor focal points and support systems, properly communicate and update survivors about any custodial hearings and their outcomes. This includes ensuring survivors have the necessary support and protection they need following any release.[322]

Elements of good practice for this indicator include:

1. **Whenever survivors are not represented or do not have standing to present their own submissions, prosecutors seek and present to the court survivor views regarding safety as part of any submissions at custodial hearings, including pre-trial detention/bail hearings, commutation of sentence, pardon or early release.**
2. **Prosecutors work with police and witness protection to ensure they have accurate and comprehensive risk and safety assessments to present to the court to inform any custodial decision-making.**
3. **Prosecutors ensure their submissions and position at custodial hearings do not contain any stigmatised language, concepts, myths or assumptions about CARSV, survivors or perpetrators.**
4. **Prosecutors make submissions about appropriate conditions of release which take into account the safety of the survivor and the survivor community.**
5. **Working in coordination with others, prosecutors should ensure that survivors are informed about custodial decisions and are supported, including with any necessary protection measures where release is ordered.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Prosecutors neither seek survivor perspective nor risk assessments before custodial hearings. ☐ Prosecution submissions contain assumptions and misperceptions about CARSV, survivors or perpetrators. ☐ Prosecutors make no submissions about CARSV, gender and intersectional aspects of conditions of release. ☐ Survivors are not informed by prosecution about custody, and do not receive support or protection.	☐ Isolated pockets of prosecutor seeking survivor input or asking for risk assessments from the police/ investigators. ☐ Many submissions contain stigma, stereotypes and myths. ☐ Isolated examples of submissions addressing CARSV, gender and intersectional aspects for any conditions of release. ☐ Isolated examples of survivors being informed.	☐ Basic guidance for custodial hearings for prosecutors but not specifically on CARSV. ☐ Basic requirement to canvas survivor input and obtain risk assessment in advance of such hearings. ☐ Stigma, stereotypes and myths sometimes appearing in submissions. ☐ Inconsistent practice on CARSV, gendered aspects for custody and conditions for release. ☐ Basic policy to contact survivors, but silent on support and protection needs.	☐ Policy, guidelines and tools about CARSV but not well-established and inconsistent practice. ☐ Many prosecutors asking survivor input. ☐ Many survivors asking police for risk assessments. ☐ Few examples of stigma, stereotypes and myths creeping into custodial submissions. ☐ Many prosecutors making submissions on CARSV, gender for custody and conditions for release.	☐ Well established policy, guidelines and tools, embedded well into work practice. ☐ Consistent survivor input presented to court and coordinated gendered and CARSV specific risk assessments also presented to the court. ☐ No stigma, stereotypes or myths included in submissions. ☐ Consistent detailed and supported submissions about CARSV, gender and intersectional aspects for custody and conditions for release.

322 UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, Article 17(c): "*ensure the right of a victim of violence to be notified of the offender's release from detention or imprisonment.*" See Human Rights Watch, Struggling to Survive: Barriers to Justice for Rape Victims in Rwanda (2004), 18; Skinner & Taylor, "'Being Shut Out in the Dark": Young Survivors' Experiences of Reporting Rape and Sexual Assault' (2009) Feminist Criminology 4(2), 9-10.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
			□ Policy for contact, support and protection of survivors on release but inconsistent practice.	□ All survivors notified in advance of custodial hearings, informed of outcome with support and protection needs met — all achieved through a multi-agency coordinated approach.

Key critical questions:

- What do prosecutors believe their role is in relation to custodial hearings?
- How do prosecutors prepare? What steps must they take to have relevant information for such hearings? What preparation is necessary for CARSV cases?
- What internal guidance, support and data are available to prosecutors?
- What contact do prosecutors have with survivors to understand their concerns about safety and any history of risks, threats, reprisals, revictimisation or violence?
- How do prosecutors assess risks, vulnerabilities, perpetrator history, etc.?
- What are the main arguments that prosecutors use to oppose bail or release and what conditions of release do they seek?
- What contact do prosecutors have with survivors about the outcome of custodial hearings? How do they tell survivors what happened?

Data sources:

Internal: Guidance or Instructions/Practice Directions, SOPs, tools and training material, case reviews, prosecutor performance reviews, written and oral submissions, custodial hearing policies, transcripts or notes from custodial hearings, templates or tools, agreements for coordinated communications and protection, risk assessments and follow-up.
External: Survivor feedback, trial monitoring reports, custodial decisions, reports/reviews.
Interviews and focus groups: Prosecution leadership, prosecutors and members of prosecution teams, other coordinating service providers and court users (investigators, judges, defence).

Useful resources, exercises or tools:

- UNODC, Handbook on Effective Prosecution Responses to Violence Against Women and Girls (2014), 91-98 (useful considerations even though it is not specific to CARSV or specific to all groups of victims).

Competency Indicator P13: When permitted in law and procedure, prosecutors advocate for sentences (and when part of the process, reparations) which reflect the gravity of CARSV and its radiating impacts in survivor communities, without perpetuating stigma or misconceptions about CARSV, survivors or perpetrators.

In different jurisdictions, prosecutors have different roles in relation to sentencing of an accused upon conviction. Where prosecutors are permitted to make recommendations about sentencing, they should ensure full use of this opportunity to stress the gravity and deep impact on communities of this form of violence. Where prosecutors have a public function and survivors do not have representation or standing in the proceedings, prosecutors are responsible for ensuring survivor's perspectives and voices are before the court when considering sentencing.

In some processes, there is no separate hearing on sentencing, in which case prosecution must lead impact evidence during trial and make sentencing recommendations as part of their closing submissions. Where separate sentencing hearings are possible under the court procedure, prosecutors should request such hearings and make full use of them to make detailed and dedicated submissions specifically to CARSV crimes, stigma, etc. Prosecutors should ensure judges are fully aware of:

- the gravity and seriousness of CARSV.
- their duty to determine a sentence which denounces and deters CARSV.
- their responsibility to promote survivor and community safety, including by separating the offender from the survivor, as well as from society where necessary.
- taking into account the impact on survivors and their family members of sentences imposed on perpetrators, including the severity of the physical, psychological and other harms and the impact of victimisation, including through survivor impact statements.
- relevant elements of aggravation and non-relevant mitigatory factors. *See also **Indicator LF3***.
- the need to not be influenced by stigma, myths or misconceptions, including victim-blaming or 'real perpetrator' preconceived expectations.

Thoughtful consideration of survivor input, including through survivor impact statements and testimony, is an important part of the process.[323]

Sentencing submissions must not perpetuate stigma, myths and misconceptions about CARSV, survivors or perpetrators. "*Prosecutors should be careful to avoid presenting sexual violence as primarily a matter of 'honour' rather than a violent crime. For example, the ICTY has recognised rape as a 'particularly serious crime' based on the 'violation of moral and physical integrity of the victims'. While such judicial observations can be useful in helping the prosecution to articulate and reinforce the gravity of sexual violence crimes in a particular case, discussions of sexual violence as a 'moral' crime risk undermining broader prosecutorial goals by reinforcing misconceptions.*"[324] Such misconceptions under the authority of a court can perpetuate stigma within communities and can further harm survivors.

"*The impact of sexual violence on victims is an area that raises challenging questions about the social consequences of these crimes. It is important for prosecutors to take the reality of victims' experiences into account in assessing gravity. This could include making reference to the harms such as stigma or ostracism that victims suffer within their family or society as a result of the sexual violence. Indeed this will be particularly important when sexual violence has been inflicted for the strategic purpose of shattering family and community ties. However, in so doing, care must be taken to avoid reinforcing problematic paradigms. In particular, prosecutors should not suggest that the victim's honour or identity as a human being has in fact been diminished as a result of the crime. To do this, a prosecutor should instead focus on factually recounting the social harms the victims suffered and avoid language suggesting that sexual violence necessarily or automatically have a bearing on the victims' honour or morality. By acknowledging social harms [...] but at the same time firmly insisting on its characterisation as a violent crime, prosecutors can hopefully contribute to a more accurate perception of these crimes in the future.*"[325]

Sentencing judgements are an important opportunity to counter such stigmas and myths, and to contribute to reducing the harm of stigma within survivor communities. Prosecutors' sentencing submissions can assist judges to make the most of this opportunity. *Element of good practice include that prosecutors:*

1. **have clear guidance and practice directions on sentencing submissions for CARSV crimes, including guidance on the following aspects.**
2. **consult with survivors, obtain survivor perspectives on impact, gravity and sentencing and ensure that material is before the judges for consideration.**
3. **ensure impact evidence is supported by expert evidence.**
4. **ensure a gender and intersectional perspective is integrated into their submissions about sentencing.**
5. **make specific detailed and supported sentencing recommendations for CARSV crimes, to ensure these crimes are not "*obscured by other criminality*".**
6. **specifically tackle stigma and the dangers of stigma and myths in sentencing, including minimisation or trivialisation of CARSV compared to other crimes.**
7. **where the law allows, appeal low sentences for CARSV.**
8. **systematically records internal decision-making, submissions and evidence relating to sentencing for CARSV to inform understanding, review and revision of internal policies and practices on sentencing submissions.**[326]
9. **support inclusive reparation orders as part of criminal proceedings when possible, including the collection and presentation of evidence to the court to support such orders.**

323 UN Updated Model Strategies, *ibid*, Article 17(a).

324 Baig, 'Sentencing for Sexual Violence Crimes', in Brammertz & Jarvis, *ibid*, 274.

325 Baig, *ibid*, 274.

326 Baig, *ibid.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No prosecution guidance or practice directions on sentencing. ☐ Survivor input not considered by prosecution. Evidence not elicited during trial or at sentencing hearing. ☐ No expert evidence on impact considered or used. ☐ Nothing in sentencing recommendations about CARSV specifically. ☐ Sentencing submissions contain stigmatised language and concepts. ☐ Low sentences for CARSV not appealed even where powers to do so. ☐ No tracking or data collection system around sentencing.	☐ Isolated pockets of prosecution practice on: ☐ trying to make consistent sentencing recommendations on CARSV. ☐ using survivor evidence about impact but minimal survivor input sometimes part of sentencing recommendations. ☐ using expert evidence on impact. ☐ some submissions specifically about CARSV. Little if anything on gendered or intersectional perspectives. ☐ Frequent use of stigmatising concepts in sentencing recommendations. ☐ Little ad hoc tracking of sentencing data.	☐ Basic guidance on sentencing recommendations but nothing specific on CARSV. ☐ Basic use of survivor impact testimony in sentencing recommendations but not additional statements or consultations. ☐ Basic use of expert evidence or precedent/ judicial dicta on impact. ☐ Basic sentencing submission on CARSV referring to gravity. Some basic gender aspects addressed. ☐ Some use of stigmatising concepts to support gravity submissions. ☐ Basic tracking of sentences but not specific to CARSV.	☐ Specific guidance on sentencing recommendations for CARSV, including using stigma tackling language, but practice not consistent yet. ☐ Policy to solicit survivor input on sentencing, but practice not fully consistent. ☐ Policy calls for expert evidence to support impact of CARSV, not consistently followed in practice. ☐ Policy and templates for CARSV sentencing submissions including gender perspectives, often used but not consistently. ☐ Occasional stigmatising language appearing in sentencing submissions. ☐ Tracking of CARSV sentencing but not being fully used or integrated into updated policies and practice directions.	☐ Well-established sentencing recommendations guidelines for CARSV, used as part of standard practice and embedded into workflow. ☐ Victim/survivor input always solicited and included in sentencing recommendations. ☐ Expert evidence and judicial dicta always used to support impact and other sentencing submissions. ☐ Detailed and dedicated CARSV sentencing submissions standard practice which include gender and intersectional perspectives and countering stigma messaging and language. ☐ Tracking and use of CARSV sentencing data, used to improve submissions and ensure best practice on CARSV and stigma.

Key critical questions:

- What do prosecutors believe is their role in sentencing? What do they consider as the most important elements for sentencing for CARSV? What is their view of the sentencing judgements for cases involving CARSV convictions?
- What policies, guidelines and tools are there for prosecutors in relation to their sentencing submissions? What support is available to ensure they have judicial data and sentencing data that they can use?
- What evidence do prosecutors elicit either during trial or at a sentencing hearing about gravity, impact, aggravating and mitigating factors?
- How are survivors' perspectives integrated into prosecution sentencing submissions? Are there any survivor impact statements taken or used? Are there any survivor consultations?
- How do prosecutors ensure a gender and intersectional perspective in their sentencing recommendations?
- How do prosecutors address stigma in their sentencing submissions?
- How do prosecutors approach appeals relating to sentencing? What is their record for appealing CARSV sentences? What arguments have they made to support such appeals?

Data sources:

Internal: Guidance/instructions/practice directions, tools and training materials, case reviews, prosecutor performance reviews, written and oral submissions, transcripts or notes from sentencing hearings, reporting on data collection, policies on sentencing submissions, sentencing submissions, closing statements.

External: Survivor feedback, trial monitoring reports, sentencing decisions, external reviews.

Interviews and focus groups: Prosecution leadership, prosecutors, other coordinating service providers and court users (investigators, judges, defence).

Useful resources, exercises or tools:
- Baig, 'Sentencing for Sexual Violence Crimes', in Brammertz and Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (2016), 274.
- UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, Article 17.

Competency Indicator P14: Whenever appropriate and possible, prosecutors pursue interlocutory appeals, appeals against verdicts and sentences to ensure judicial processes and outcomes recognise the gravity and realities of CARSV, counter CARSV stigma and misconceptions and protect the rights and wellbeing of survivors.

"While prosecutorial discretion is more limited in scope at the appeal stage, it still takes on important dimensions. By the time decisions made during investigation, pre-trial and trial stages are irreversible and the scope of review of trial judgements on legal and factual errors is limited. On appeal prosecutorial discretion involved making judgement calls about what is most significant for outcomes of cases and the development of jurisprudence. This decision making is further circumscribed by the realities of right filing deadlines and limits on internal resources. [...] in this framework [...] there is a risk that appealing acquittals on sexual violence charges will not be seen as a priority."[327]

Indeed there are examples of failures to appeal CARSV decisions, including at international courts.[328] There are also good examples of critically important appeals which have corrected misperceptions, myths and stigma in judgements. "*For example, in the Milutinovic et al. and Dordevic cases, by challenging problematic precedents at the trial level regarding the foreseeability of sexual violence, we secured appellate precedents that will facilitate a better contextual approach [...] In the Dordevic appeal, we challenged erroneous factual findings and secured a valuable appellate precedent regarding the use of circumstantial evidence to provide sexual violence."*[329]

Elements of good practice include:

1. **Prosecution leadership recognise the importance of CARSV appeals and support and resource other elements of good practice below.**
2. **Prosecutors review all decisions eligible for appeal (interlocutory or at end of the trial) for legal and factual errors, unreasonable minimisation, misunderstandings, decontextualisation and other stigma, myths and misconceptions about CARSV.**
3. **Prosecutors review all interlocutory and custodial decisions (eligible for appeal) which would negatively affect the safety and wellbeing of survivors.**
4. **Prosecutors ensure appeals are filed on time to address and counter any harmful decisions or reasoning concerning CARSV.**
5. **Prosecutors ensure that their appeal submissions (written and oral) do not contain or perpetuate CARSV stigma, myths and misconceptions.**
6. **Prosecutors do not deprioritise CARSV appeals in favour of other crimes or because convictions on other charges were secured.**
7. **Prosecutors should be prepared to take risks on CARSV appeals, and to make dynamic or novel arguments which develop a better, more accurate understanding and legal consideration of CARSV, or the protection and survivor-centred participation of survivors in the justice process.**

327 Jarvis & Vigneswaran, *ibid*, 66-67.

328 See Nowrojee, *ibid*, 18-19 (noting Prosecution failure to appeal within deadline in ICTR Kajelijeli); FIDH, Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond (2018), 26, 29-30; WIGJ, 'Appeals Withdrawn by Prosecution and Defence: *The Prosecutor vs. Germain Katanga*' (2014) (discussing Prosecution withdrawal of appeal after Defence withdrawal in ICC Katanga).

329 Jarvis, *ibid*, 9-10.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Very little time or resources put into appeals. ☐ CARSV issues generally not appealed, deprioritised or unrecognised. ☐ Survivor participation and safety decisions generally not appealed. Prosecutors do not consider it their role. ☐ No guidance or tools. ☐ Appeals deadlines missed often. ☐ Appeals only taken on very certain grounds.	☐ Short deadlines and limited resources for appeals. ☐ Isolated pockets attentive to some CARSV appeal points. ☐ Isolated pockets attentive to witness safety appeals. ☐ No guidance or tools, except those developed ad hoc by individuals for individual use. ☐ Appeal deadlines are frequently missed. ☐ Appeals practice generally risk averse.	☐ Short deadlines but some resource and leadership focus. ☐ Appeal guidance but not on CARSV or survivors specifically. ☐ Some CARSV appeals but only on clear and certain grounds. ☐ Appeals deadlines missed sometimes.	☐ Appeals guidelines for witness safety and CARSV, but still inconsistent practice. ☐ CARSV issues generally recognised but not always prioritised. ☐ Witness safety appeals often prioritised. ☐ Some more speculative appeals on CARSV but face internal resistance.	☐ Clear guidelines requiring review and prioritisation of CARSV, survivor participation and safety issues. ☐ Leadership provides resources, support and review/check process to ensure this happens. ☐ Appeal deadlines never missed. ☐ Important CARSV appeals and survivor participation and safety appeals always pursued even if making important novel arguments and developing the law and jurisprudence.

Key critical questions:

- What is the attitude of prosecution leadership to CARSV appeals? In what circumstances do they recognise the importance such appeals can have?
- What guidance, tools and resources do prosecutors have in relation to appealing CARSV outcomes?
- What are the time limits and resources available to prosecutors to review decisions for appeal and file appeals? Are they sufficient to consider and brief on CARSV issues?
- How do prosecutors decide whether to appeal decisions or not? What work is done to assess whether there are grounds for appeal? What do prosecutors look for in relation to CARSV cases or witness protection or survivor participation decisions?
- What is the record or practice history in terms of appealing decisions relating to CARSV or witness protection? For interlocutory stages, custodial decisions, survivor participation and evidence decisions, no case to answer stages (where relevant), verdict and sentence, pardon or early release, etc.?
- What attitudes do prosecutors have in relation to appealing CARSV when they may help push boundaries and develop better legal understandings of CARSV? What if they are risky, novel or not completely certain?
- What attitudes and approach do prosecutors have to CARSV appeal points against broader judgements or when convictions for other crimes were secured? Are decisions taken not to appeal CARSV or survivor safety and wellbeing points in order to not undermine other findings or decisions?

Data sources:

Internal: Guidance/Practice Directions/Instructions, SOPs, tools and training materials, prosecutor performance reviews, written and oral submissions, transcripts or notes from appeal hearings, appeal filings, training and policies around appeal submissions.
External: Survivor feedback, trial monitoring reports, appeal judgments and dissenting opinions, trial judgments and dissenting opinions.
Interviews and focus groups: Prosecution leadership, prosecutors and members of prosecution teams, other coordinating service providers and court users (investigators, judges, defence).

Useful resources, exercises or tools:

- Jarvis, 'Overview: The Challenge of Accountability for Conflict-Related Sexual Violence Crimes', in Brammertz & Jarvis (eds.), Prosecuting Conflict-Related Sexual Violence at the ICTY (2016), 9-10,
- Jarvis & Vigneswaran, 'Challenges to Successful Outcomes in Sexual Violence Cases', in Brammertz & Jarvis, ibid, 66-67.

CHAPTER EIGHT — DEFENCE

Defence Counsel are vital actors in the justice system, to ensure fair trials, human rights and properly tested and adjudicated assessments of fact and interpretation of law. Defence Counsel are officers of the court, bound by ethics and in the service of justice, beyond their client's interests. They can, and do, critically contribute to more survivor-centred justice which does not further traumatise, stigmatise or otherwise harm survivors. They can do so in ways which enhance the fairness of the process and do not undermine the accused's rights to a fair trial. The culture, attitude and ethics at the defence bar is an important test and health-check for a justice system.

Defence Counsel have been some of the key players innovating and agreeing processes which minimise trauma and the burden on survivors of testifying in court. For example, in ICTY trials, Defence Counsel have worked with Prosecutors to agree on facts which would allow survivors not to be questioned about CARSV in court. "*Our Defence is not that she was not raped. […] We are very, very mindful about the stressful situation that the witness is going through […] I can tell you that we are not going to cross-examine this witness about those details.*"[330] In the Stanisic & Zupljanin case at the ICTY, Defence Counsel did not object to the Prosecutor using leading questions when a survivor began to struggle with the process.[331]

However, Defence Counsel do have a very difficult balance to strike, between the defence of their client and the wellbeing and safety of survivors whose testimony forms part of the potential evidence against their client. The prospect of being questioned by the defence can be very daunting for survivors. Any questioning of survivors can feel confrontational and may harm the survivor's wellbeing. Critically, cadres of Defence Counsel have emerged with trauma-informed vulnerable witness competencies in national and international settings, and who are framing good practice for defending CARSV cases, without resort to gender stereotyping, rape myths and other forms of stigma.

The cost of getting this balance wrong is high. As a sexual violence survivor in Scotland described the repercussions from her interaction with Defence Counsel: "*these lawyers don't understand when they're standing badgering you, like how much they are going to affect the rest of your life, essentially. They don't, that's just their job. Their job is to ask questions but it's how they ask the questions, it's quite demoralising and demeaning, so it is, the way they talk to you. […] You're made to feel as though you're the one that has done this. And that is hard because you've already been through the whole guilt stage, like trying to […] like this is all my fault, maybe I shouldn't have said that, maybe I shouldn't have done that. Should have, would I, could I. […] when they […] speak to you the way they speak to you, you're back to square one again. And I was. When I came out of court, I was, I was so like […] I was done, I couldn't sort of function, as it were. I had to go to the doctor's and he put me on medication and stuff like that, and that's the first time in the whole process where I had to be, and it was after court.*"[332]

Unfortunately, misunderstandings, misassumptions and stigmatised attitudes towards SV and CARSV survivors influence and are manifested by Defence Counsel, just as they affect other justice actors. Historically, Defence Counsel have used such stigmas and myths as a tool to secure an acquittal for their client. As evidenced by the examples in this chapter, this practice still persists today, and can be seen in international criminal tribunals

330 *Prosecutor v. Stanisic*, ICTY-08-91-T, transcript 627-629.

331 Gopalan *et al*, 'Proving Crimes of Sexual Violence', in Brammertz & Jarvis, *Prosecuting CRSV at the ICTY* (2016), 127.

332 Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019), 22.

as well as in national courts.[333] Despite evidential restrictions, legal clarity on the irrelevance and inadmissibility of evidence and potential bars on questions seeking to elicit such evidence, in practice cross-examinations or questioning by defence still often draw on stigma and misperceptions, often unchecked by judges or prosecutors. "*There is literature suggesting that judges have their own biases [...] and a culture of judicial passivity is rife.*"[334] Furthermore, "by the time it becomes apparent that a lawyer does not have a good faith/reasonable basis for pursuing a line of questioning [...] it may be too late to repair the harm that arises [...] Given the power of these social assumptions to distort the truth-seeking process, provision of this wide latitude to Defence Counsel demands a concomitant ethical obligation on these lawyers not to trigger these legally rejected social assumptions.'[335]

Note on the Role and Organisation of the Criminal Defence Bar:

In different countries, criminal Defence Counsel and the legal profession are regulated and organised in different ways. Usually there is a bar council which regulates entry into the profession as well as the rights of audience before courts. For international courts, this function is usually mandated to the registry or to an independent defence office. Such professional regulatory bodies are critically important in ensuring competency, support training, ethics and discipline, and are uniquely placed to address culture change in the profession. Their leadership and enforcement of values and ethics set the culture among Defence Counsel. The importance of culture change cannot be overstated.

"*It has been recognised for some years that the single most important factor in achieving any sort of change in trial practice is not legislation or government policy declarations but the attitude of the judiciary and the legal profession. That cultural beliefs impact on the implementation of practice reforms has been found in a number of reports and qualitative empirical studies, and examples of the legal profession's ability to 'subvert' both legislative and judiciary-led reform of legal practice are legion.*"[336]

The criminal defence bar is often under-resourced, without funding for training and capacity building, minimal legal aid, and little other resources or time. Change in culture and practice is highly unlikely without professionalisation, leadership and resourcing through a professional and committed defence bar/law council. The emergence of highly-skilled, trauma-informed, gender competent Defence Counsel can help champion and drive further change.

Note on the Role of Defence Counsel in Different Systems:

As with the other chapters of the Toolkit, some adaptation should be allowed to account for the differences in Defence Counsel roles across different legal systems. While frequently portrayed as two separate, mutually exclusive systems of adversarial and inquisitorial justice, often countries have elements from both processes, especially when it comes to vulnerable witness protections and special procedures for their testimony.

Importantly, while adversarial systems are known for combative cross-examinations, inquisitorial systems have also reported poor outcomes for SV and CARSV based on institutionalisation of rape myths, stigma and their impact on survivors as they navigate the system. As such, while systems with

333 Zydervelt *et al*, 'Lawyers' Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?', (2016) British Journal of Criminology; Craig, 'The Ethical Obligations of Defence Counsel in Sexual Assault Cases' (2014) Osgoode Legal Studies Research Paper Series 72; Gopalan. Kravetz, Menon (2016), *ibid*, 131.

334 Smith & Skinner, 'Observing Court Responses to Victims of Rape and Sexual Assault', (2012) Feminist Criminology 7(4).

335 Craig, *ibid*, 4.

336 Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People', (2016) Criminal Law Review 3; Zydervelt *et al*, *ibid*.

greater inquisitorial features may reduce the Defence Counsel role in questioning survivors, there are still reported problems. "*However, [for example] Dutch defence barristers have been accused of improper questioning during pre-trial hearings, with the examining magistrate failing to intervene. In addition, while countries with adversarial systems are the only countries with rape conviction rates classed as 'low'; some inquisitorial countries also have worrying success rates. This may reflect the fact that adversarial and inquisitorial systems are not as dichotomous as traditionally stated. Inquisitorial approaches may not be as advantageous as commonly suggested, though. For example, although victims are not cross-examined and may not have to attend trial; they can be questioned several times pre-trial. Indeed, some argue that countries with inquisitorial systems experience similar levels of rape myths […], for example there can still be a focus on the victims' clothing, motivation to lie and sexual history.*"[337]

337 Smith & Skinner, *ibid*; Amnesty International, Time for Change: Justice for Rape Survivors in the Nordic Countries (2019).

INDICATORS AND ASSESSMENT

The indicators in this chapter can be assessed (and used as a basis for monitoring and evaluation of capacity building and change) by either i) criminal defence bar or the administrator of defence bar/ accreditation system for Defence Counsel to have rights of audience before a court or both, or ii) civil society and survivor networks and other activists advocating for reform and improved practice in relation to CARSV.

Indicator numbers in this chapter are prefaced with D, to indicate Defence. The Guiding Framework set out in Methodology is applied in this Chapter in the following order:

A. **Organisational Culture and Leadership:** in terms of leadership and workplace practices of the criminal bar association.

B. **Survivor Engagement and Interaction.**

C. **Technical Competency and Capacity:** measuring levels of CARSV knowledge, stigma and trauma competency, and structural stigma among Defence Counsel.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
D1 Criminal bar association (or other professional body to which defence representatives and counsel belong) appropriately prioritises survivor-centred approaches and non-traumatising and non-stigmatising professional competency and practice across its members.
D2 The defence bar has a healthy, safe, respectful workplace culture, including specifically on gender equality, inclusivity and non-discrimination.
SURVIVOR ENGAGEMENT AND INTERACTION
D3 Defence Counsel participate in, follow and respect all protective or special measures procedures designed for survivors' safe and constructive interaction and participation in the justice process.
D4 Defence Counsel contribute to the creation of an environment and processes which allow survivors to give their evidence to court in the most effective and safe manner which reduces anxiety, stress, distress, trauma, intimation, power differentials and uncertainties.
D5 Defence Counsel use non-stigmatised and non-stigmatising language and terminology about CARSV, survivors and prosecutions of CARSV in all oral and written motions, applications or submissions to the court.
TECHNICAL COMPETENCY AND CAPACITY
D6 Defence Counsel demonstrate understanding and competency around CARSV trauma in all their actions.
D7 Defence Counsel restrict their conduct and defence in CARSV cases to supporting facts and to raising challenges which are legally relevant and permitted in law, and do not invoke or trigger stigma, social misconceptions or myths about CARSV, survivors or perpetrators.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Competency Indicator D1: Criminal bar association (or other professional body to which defence representatives and counsel belong) appropriately prioritises survivor-centred approaches and non-traumatising and non-stigmatising professional competency and practice across its members.

The importance of leadership in setting and changing the culture at the defence bar cannot be understated. Without a professional body responsible for professionalisation and standard-setting, Defence Counsel will act individually, likely prioritising only their client's interest and seeking acquittal. While the judiciary also has a role in policing court conduct and practice on a case-by-case basis, a professional system supported by training, competency and ethics standards is critical to a change in culture.

"*Our Law Societies need to step in and clearly set out, in Commentaries to the relevant Rules and in Continuing Legal Education (CLE) programs, that advocacy or conduct grounded in stereotypical norms about sexual assault violates the ethical norms of the profession.*"[338]

"*The two most discussed aspects of the Bar Code are the need to 'promote and protect fearlessly by all proper and lawful means, his lay client's best interests' and the importance of not causing undue harm to witnesses or knowingly misleading the jury. [Commentators] observe that such Codes of Conduct are frequently breached without objection, though; possibly because the need to promote their client's interests is perceived as overshadowing the demand for consideration of victims. Codes alone cannot guarantee ethical behaviour; since there are always loopholes and colleagues are unlikely to become whistle-blowers. In order to ensure ethical behaviour, Nicholson therefore argues that barristers must develop a moral character that encourages them to behave ethically.*"[339]

Elements of good practice for this indicator include:

1. **Defence Counsel exhibit a culture of ethics and duty to the court, recognised and upheld by professional association and members of the defence bar.**
2. **Defence bar has adopted a code of conduct/professional values which expects, demands and values accurate knowledge, understanding and attitudes towards CARSV and survivors, and non-stigmatised, non-stigmatising and non-traumatising practice by Defence Counsel.**
3. **Defence bar resources, supports and encourages training and sensitisation of Defence Counsel on CARSV, vulnerable witness skills and laws around relevancy and admissibility of evidence and procedures.**

Including training to counter CARSV/SV myths from law school, through bar examination or other professional accreditation processes. Consideration of mainstreaming as core competency of Defence Counsel or further professional accreditation to represent or act in court in cases with vulnerable witnesses.

4. **Defence bar monitors compliance, complaints and accountability based on these values, through which good practice is recognised and bad practice is disciplined and remedied.**

This includes the use of survivor feedback to train and raise awareness/change culture.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No Defence Counsel professional body or no apparent awareness of issue at Defence Counsel professional body. ☐ No code of conduct or no reference in any code to duties to court, 'do no harm', ethics, etc. ☐ No funding or resourcing for training on CARSV or vulnerable witnesses.	☐ Professional body with initial comments showing resistance to this issue. ☐ Code of conduct or professional values statement with some ethical issues included. ☐ Little training with some ad hoc occasional training offered as specialisms at cost. ☐ No oversight, rare or ad hoc complaints made and processed. Response neither consistent or adequate.	☐ Professional body with early recognition and something on paper about CARSV and vulnerable witnesses. ☐ Code of conduct with duties to court as well as clients. ☐ Some training available but not comprehensive, not widely available.	☐ Professional body with leadership messaging around ethics, vulnerable witness and CARSV/stigma and SV myths. ☐ Code of conduct with clear ethical duties to the court, vulnerable witnesses and to not mislead including around SV myths/ stigma. ☐ Training programmes include vulnerable witness training and CARSV/rape myths and stigma training with clear messaging on ethical duties.	☐ Professional body with consistent leadership messaging and professional values, expectations clear and part of culture. ☐ Code of conduct with ethical provisions, do no harm, duties to court and vulnerable witnesses, all clear and well-known by counsel. ☐ Regular training as standard for all counsel includes vulnerable witnesses and ethics around vulnerable witnesses/ trauma-informed approaches.

338 Tanovich, "'Whack" No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases', (2014) *Ottawa Law Review* 45(3).

339 Smith and Skinner, *ibid.*

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No oversight or accountability mechanisms for Defence Counsel working on CARSV cases.		□ Some oversight but no culture or leadership support to ensure practice is ethical, minimises harm and adheres to standards. Sanctioning of bad practice uncommon.	□ Oversight systems and complaint processes in place, but bad practice often without consistent or adequate response.	□ Accreditation before practice and work with vulnerable witnesses and CARSV cases. □ Oversight and complaints process clear and functioning. Any bad practice is responded to quickly and adequately. Repeat offenders are sanctioned and if continuing disbarred, lose accreditation or rights of audience in those cases.

Key critical questions:

- How are Defence Counsel accredited for rights of audience before the court for CARSV cases?
- Is there a professional body or certification process to ensure professional competency and conduct?
- What standards of professional conduct and values are in place? How well-known and how well-practised are these values and expectations?
- What publication or statements has the professional body made about CARSV, CARSV stigma and myths and vulnerable witnesses, ethical duties of Defence Counsel, etc.?
- What training and qualifications are counsel expected to have before being certified and able to practise, including on CARSV cases or cases with potentially vulnerable or traumatised witnesses and survivors? What training do they receive or is available to them once they are certified/in practice?
- How are Defence Counsel's knowledge, attitude and practice around CARSV, survivors, trauma and stigma evaluated and tested as part of certification and ongoing oversight?
- How many complaints have been made against Defence Counsel in relation to their approach and conduct with vulnerable witnesses or survivors, particularly in relation to CARSV?
- What was the outcome of those complaint processes?
- How many counsel have been sanctioned or disbarred for continuing bad practice?

Data sources:

Internal: Accreditation standards and testing papers, publications, press statements and other external communications, oversight and monitoring records, disciplinary records and judgments.

External: Press releases, speeches, interviews, articles, public notices or other external communications related to CARSV, survivor and CSO feedback.

Interviews and focus groups: Defence Counsel and Criminal Defence Bar leadership, trial monitors and observers, survivors groups, other court users (judges, prosecutors, victim advocates).

Useful resources, exercises or tools:

- Haddon-Cave/ICCA, Raising the Bar: Report/Toolkit on Vulnerable Witnesses in the Justice System (2019).
- ICC, Code of Professional Conduct for Counsel (2011).

Competency Indicator D2: The defence bar has a healthy, safe, respectful workplace culture, including specifically on gender equality, inclusivity and non-discrimination.

Diversity is fundamental to ensure a legal system genuinely reflects the different cultural, religious and gender identities present in the society. It is critical in preventing discrimination and reducing the discriminatory application of the law or nature of the justice process. In particular, gender equity and ensuring inclusivity diversifies perspectives and increases the understanding of discriminatory systems and historical systematic discrimination. Stigma, as a process rooted in societal beliefs and attitudes, is deeply gendered. Studies have found the acceptance of rape myths to be more prevalent among men/male law students.[340]

Studies have also found a correlation between acceptance of male rape myths and sexism,[341] adherence to traditional gender roles (particularly traditional male roles)[342] and acceptance of rigid gender binary roles (which also correlates strongly for female rape myths).[343] Male rape myths also correlate with homophobia,[344] and, like female rape myths, are associated with increasing age and decreased levels of education.[345]

Given these correlations between harmful gender norms and beliefs and the findings that men hold such beliefs and accept rape myths more often than women, ensuring a diverse workplace and inclusive workplace culture where such beliefs are challenged and not accepted is central. Workplace culture becomes a critical element to reducing stigma, stigmatised attitudes and stigmatising behaviours among justice actors.[346]

"*Only where there is diversity within a body that arbitrates in matters of considerable import will UK society find that its blend of cultures, genders and religions are reasonably and respectfully protected and promoted by the law.*"[347]

Elements of good practice on this indicator include:

1. **Defence bar is diverse, inclusive and representative in terms of gender, sexual orientation, race, ethnicity, religion, ability and other characteristics. Full diversity of thoughts and perspectives is welcomed as a positive contribution.**
2. **Defence Counsel demonstrate respect for all persons whatever their gender, sexual orientation, race, ethnicity, age, socio-economic status, culture, faith and abilities.**

Including making space for their voices, listening and not interrupting them, using respectful and inclusive language. Expressions of inequality (messaging, jokes, sharing images, etc.) are not accepted and are disciplined.

3. **Defence bar has policies on values, ethics, integrity, gender equality and sexual harassment.**
4. **People of all SOGIESC, race, ethnicity, age, socioeconomic status, culture, faith and abilities have equal opportunities and feel valued, and feel respected, included and comfortable in work and social interactions with colleagues.**
5. **There is zero tolerance in policies and practice for language, behaviours and actions that discriminate against individuals, including any form of harassment, including any form of sexual harassment or abuse. Reporting procedures in place and accessible to any person experiencing discrimination or harassment.**

340 Chapleau *et al*, 'Male Rape Myths: The Role of Gender, Violence and Sexism' (2008) 23(5).

341 Chapleau *et al*, *ibid*; Davie et al (2012) Examining the relationship between male rape myth acceptance, female rape myth acceptance, victim blame, homophobia, gender roles. Journal of Interpersonal Violence, 27, 2807-2823. Spruin & Reilly, 'An Exploration into the Acceptance of Male Rape Myths within the UK' (2018) 9(3). Walfield, "'Men Cannot Be Raped": Correlates of Male Rape Myth Acceptance', (2018) 36(13).

342 Scarce, *Male on male rape: The hidden toll of stigma and shame* (Insight Books/Plenum Press 1997).

343 Burt, 'Cultural myths and supports for rape' (1980) *Journal of Personality and Social Psychology* 38(2).

344 Burt & DeMello, 'Attribution of rape blame as a function of victim gender and sexuality, and perceived similarity to the victim' (2002) Journal of Homosexuality 43(2); Ford *et al*, 'Perceptions of rape based on sex and sexual orientation of victim' (1998) *Journal of Social Behaviour and Personality* 13(2); Kassing *et al*, 'Gender Role Conflict, Homophobia, Age, and Education as Predictors of Male Rape Myth Acceptance' (2005) *Journal of Mental Health Counseling* 27(4).

345 Kassing *et al*, (similar to female rape myth findings Burt (1980), ibid); Turchik & Edwards, 'Myths About Male Rape: A Literature Review', (2012) *Psychology of Men and Masculinity* 13(2).

346 Temkin, 'Prosecuting and Defending Rape: Perspectives from the Bar' (2000) *Journal of Law Society* 27(2).

347 Brawn, 'Diversity at the Bar' (2019) *Barrister Magazine*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
□ No leader recognition of the need and value of diversity in addressing CARSV. □ Little diversity at the defence bar, with a predominance of men and a male-machismo culture. □ No codes of conduct, commitments or reporting on diversity and non-discrimination. □ Common expressions of inequality. □ Disrespectful language and behaviour common. □ Most report feeling undervalued, disrespected, unequally treated. □ Examples of sexual harassment unaddressed. □ Significant negative reactions to raising equality and gender issues.	□ Awareness of issue but ad hoc response. □ No organisational EDI expectations set, or structures, policy or practices implemented. □ Predominately male counsel at defence bar but isolated examples of diversity and gender representation only at junior levels. □ Frequent expression of inequality. □ Frequent disrespectful language and behaviour. □ Many report feeling undervalued, disrespected, unequally treated. □ Examples of sexual harassment unaddressed. □ Negative reactions to raising equality and gender issues. Minimising the seriousness of issues.	□ Professional body/ leadership statements and policy on gender and discrimination but little action. □ No consistent messaging or response to these issues. □ No accessible reporting systems or pathways. □ Openness at leadership level to manage these issues. □ Many report feeling undervalued, disrespected, unequally treated. □ Still some negative reactions to raising gender, discrimination or harassment issues. □ Still minimising harmful behaviours (e.g. "*it was only a joke*").	□ Professional body has clear policies and reporting systems in place. □ Actions to attract more diverse counsel to the defence bar. Women and other groups still not consistently represented across the bar or in seniority. □ Consistent messaging on importance of equality and inclusion. □ Inconsistent practice with continuing expressions of discrimination, disrespectful language or conduct. □ Members of defence bar and others interacting with them express concerns about raising complaints. □ Some describe feeling undervalued, disrespected, unequally treated.	□ Advancing EDI is mainstreamed. Well-established policies well-understood by Defence Counsel. □ Diverse intake and representation in leadership positions and senior cadre. □ The level of diversity of individuals and thought is evident, is valued, and is promoted. □ Systemic barriers to EDI have been identified, and steps taken to eliminate them. □ Reporting/complaint systems supported and people feel safe to access. □ Any expressions of gender inequality or discrimination by Defence Counsel are challenged quickly. □ All counsel and support staff report feeling respected, valued with equal opportunities. □ People describe defence bar culture in positive terms on equality and inclusion.

Key critical questions:

- What are the ratios on gender and diversity, equality and inclusion at the defence bar and those supporting counsel, for instance in terms of gender, SOGIESC, race/ethnicity, faith? What is the situation for those in positions of seniority or leadership?
- What are the defence bar's professional policies on non-discrimination, diversity, equality and inclusion? What steps have been taken to attract and retain more diversity in terms of Defence Counsel?
- What reasonable accommodations are made to ensure differentially equal opportunities and recognition for all genders and groups?
- How would people describe the defence bar culture? How do people who may face intersectional discrimination describe their experience and comfort levels around the Defence Counsel (including court users, court service staff, judges, prosecutors, survivors and witnesses)?
- What expressions of gender equality, gendered language or comments are made and how often?
- What examples of gender discrimination are present within the defence bar?
- What examples of other forms of discrimination are present within the service, for example against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, etc.?
- What steps are being taken to eliminate these biases, beliefs, attitudes and discriminatory practices?
- What complaint mechanisms are available to lodge concerns?
- How have these been addressed by the leadership of the defence bar?
- What are the policies, procedure and enforcement relating to sexual harassment and abuse in the workplace or practice? What do people know about it? How do people feel about reporting sexual harassment or abuse?

Data sources:
Internal: Organisational EDI documents, codes of conduct, strategic plans, diversity and non-discrimination workplace policies and reviews, disaggregated EDI data on members, recruitment strategies, policies and practices, harassment and non-discrimination policies and practices, EDI training materials and records, complaint mechanism reports and reviews.
External: Survivor feedback, external reviews on organisational diversity.
Interviews and focus groups: Defence Counsel and Criminal Defence Bar leadership with diverse samples at all levels, survivors, other court users (judges, prosecutors, court service staff).

B. SURVIVOR INTERACTION AND ENGAGEMENT

For some Defence Counsel, as with other actors within the justice system, the idea of survivor-centred approaches in their role may seem an anathema to their primary role to represent and defend their client, the accused, in a process to determine their guilt or innocence. However, there are Defence Counsel pioneering change, demonstrating trauma-informed and gender competencies, tailoring their approach to individual survivors/witnesses and seeking ways to reduce harm. Unfortunately, in other jurisdictions, the professional culture among Defence Counsel habitually poses survivors as the central point of attack to undermine the case against their client.[348]

Competency Indicator D3: Defence Counsel participate in, follow and respect all protective or special measures procedures designed for survivors' safe and constructive participation in the justice process.

It is of vital importance to the integrity of proceedings, the trust of survivors in the system and their protection that Defence Counsel fully embrace and adhere to measures put in place to protect survivors as witnesses. If Defence Counsel constructively participate in discussions on how to employ protective measures, the rights of the accused can be balanced and protected at the same time.[349] Unfortunately, even at international criminal courts, Defence Counsel (and other justice actors) have been responsible for breaches of confidentiality, using names in open court or other conduct which has had severe repercussions for survivors testifying under protective measures.

"*Although it is a violation of the rules for the defendant or Defence Counsel to disclose the names of witnesses, the reality is that these names get leaked back to Rwanda. This can have a devastating impact on the witness. First, it is a betrayal of the trust that the witness has placed in the ICTR as an institution. Second, it puts the witness at risk of reprisal for having testified; all the rape victims interviewed who had testified talked about varying levels of threats directed at them upon returning from Arusha. Rape victims are often widows living alone and are even more vulnerable to violence. Third, because of the stigma attached to being a rape victim, a number of the women who have agreed to testify have not notified their families or their intimate partners that they were raped during the genocide.*"[350]

"*The trial monitor for this project who monitored cases involving rape and sexual violence confirmed that protective measures often seemed absurd, since prosecutors, judges or defense attorneys usually disclosed personal details of witnesses during examinations, but no measures had been undertaken to remedy the situation. The offenders were just warned by the Trial Chamber. [...] Also, [x] defense attorney revealed the witness's identity, saying her name during the cross-examination.*"[351]

Elements of good practice for Defence Counsel's role in measures for survivors include:

1. **Defence Counsel participate constructively in any communications to agree on approaches which may contribute to survivor safety and wellbeing.**
2. **Defence Counsel do not oppose special measures for survivors without factually or legally relevant grounds. Defence Counsel uphold confidentiality requirements and do not make any unauthorised disclosure of survivor information.**
3. **Defence Counsel uphold all special measures and protections put in place for survivors.**
4. **Defence Counsel take all reasonable care, in terms of their words and conduct, to reduce or eliminate harm to survivors.**

*See **Indicator D4** on ground rules hearings; **Indicator D6** on trauma-informed questioning; **Indicator D7** on restricting questioning and seeking access to factually and legally relevant information only.*

348 *E.g.* Canadian barristers were once taught to "*whack the complainant*". See Tanovich, *ibid.*

349 *E.g.* Gopalan *et al*, *ibid*, 127-127.

350 Nowrojee, "'Your Justice is Too Slow: Will the ICTR Fail Rwanda's Rape Victims?', UNRISD (2005).

351 Sharratt, *Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals* (Routledge 2011), 104, 107.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ General attitude against protective measures among Defence Counsel and defence bar leadership based on assumption of conflict with rights of accused. ☐ Defence Counsel do not participate or constructively engage around protective measures. ☐ Defence Counsel oppose all potential protective measures. ☐ Defence Counsel often implicated in breaches of confidentiality or failure to comply with the spirit of protections in place.	☐ Start of awareness of importance of protection and 'do no harm', with a few Defence Counsel aware of the importance of balance of defence and survivor rights and that the two may actually align. ☐ Isolated examples of more constructive engagement by a few Defence Counsel and non-opposition where appropriate. ☐ General attitude of resistance, opposition and assumption that not in accused's interest.	☐ On balance, a more nuanced approach and attitude emerging from Defence Counsel. ☐ Some writing or guidance emerging, but examples of bad practice or non-adherence are found. ☐ Mixed attitude with persisting concerns that any survivor rights or protection will harm accused's rights or outcomes.	☐ Established guidance for Defence Counsel on the importance of constructive engagement and adherence to protective measures. ☐ Most Defence Counsel supportive of the approach, although practice not fully consistent with pockets of resistance and examples of bad practice.	☐ Well-established attitude and expectations of constructive engagement and recognition by Defence Counsel of compatibility between accused's and survivor rights. ☐ Numerous examples to demonstrate this practice and culture. ☐ As common practice, Defence Counsel engages constructively to ensure the right balance between protective measures. ☐ All Defence Counsel uphold special measures and confidentiality, and any isolated incidents to the contrary are responded to and sanctioned appropriately. ☐ Defence Counsel take all reasonable care, in terms of their words and conduct, to reduce or eliminate harm to survivors.

Key critical questions:

- What is the attitude among Defence Counsel and at the defence bar about protective measures which facilitate safe, less traumatising, less confrontational participation of survivors in the criminal justice process?
- What role and input do Defence Counsel have in relation to protective and special measures for survivor participation in the process?
- How do Defence Counsel prepare for their participation, including any hearings or motions?
- What are relevant considerations for Defence Counsel?
- How do other actors describe Defence Counsel participation and attitudes to this issue?
- Are there any reports of failure to uphold special or protective measures by Defence Counsel? What was the response to any such failure?

Data sources:

Internal: Codes of conduct, guidance, SOPs, tools and training materials, case reviews, agreements for coordinated communications and protection, risk assessments and follow-up, contempt proceedings.
External: Survivor feedback, trial monitoring reports, reviews or reports.
Interviews and focus groups: Defence Counsel and Criminal Defence Bar leadership, other service providers and court users (investigators, judges, prosecution, WVU/witness protection).

Competency Indicator D4: Defence Counsel contribute to the creation of an environment and processes which allow survivors to give their evidence to court in the most effective and safe manner which reduces anxiety, stress, distress, trauma, intimation, power differentials and uncertainties.

"Victims of rape describe cross-examination as the most distressing part of their experience within the criminal justice system. Although a plethora of law reforms in common law countries have been implemented since the 1970s with the aim of improving aspects of the criminal justice response for rape complainants, the feeling is that 'nothing has changed'. That is, victims still report that being cross-examined is a distressing, demeaning and humiliating experience."[352]

'Traditional' Defence Counsel attitudes towards complainants or victims can be summed up in the remark by one Defence Counsel: "*If you're asking do I take account of the sensitivity of the complainant, the blunt answer is no because it's not my brief.*"[353]

Importantly, these myopic understandings of Defence Counsel's role are changing to reflect a greater ethical responsibility to 'do no harm' and tailored approaches to potentially vulnerable witnesses in trauma-informed and sensitive ways. "*Certainly the majority of the [defence] lawyers I interviewed were acutely aware of, and empathetic about, the enormous harm to individual complainants wreaked by sexual violence. Many also recognised the additional trauma to sexual assault complainants that results from participating in the criminal justice process. […] A senior member of the bar with expertise in legal ethics stated: 'Experienced criminal lawyers use a kinder and gentler approach to extract as much information as they possibly can, which may then be used to cross-examine at trial on inconsistencies. […] The point is that whacking is not only reprehensible, and unethical […] it is generally also bad lawyering.' […] Nearly every criminal defence lawyer I interviewed commented about the strategic inadvisability of cross-examining the complainant in an aggressive manner: you're certainly not doing your client any good in that regard.*"[354]

Elements of good practice for this indicator include:

1. **Defence Counsel seek and participate in ground rules hearings which set trauma-informed procedures, practice and questioning.**[355]
2. **Defence Counsel give advance notice of challenges or their position in relation to survivors' testimony.**

The Court of Appeal in England and Wales explained the importance of this in the Farooqi case: "*The objective is to reduce delay and inefficiency and enhance the prospect that justice will be done. Ambush defence or arguments are prohibited.*"[356]

3. **Defence Counsel employ sensitive approaches in terms of questioning style, duration and content.**[357]

"Both the nature of the questioning — particularly that which required survivors to talk about intimate matters, and the interrogatory manner in which questions were asked — were experienced as very challenging. Beth: Seven hours of that was absolute torture […] she [defence] was a bully. She was nothing short of a bully, a horrible woman.

Survivors were also overwhelmed by attempts by the defence to challenge their credibility, and attacks on their character, designed to depict them as untruthful or dishonest: Helen: '[L]ike the amount of times I was called a liar, to my face, and things were made up, you know, things were wrong. Like, downright wrong, from the defence.'"[358]

4. **Defence Counsel reduce and avoid displays of intimidation, hierarchy and power differentials in their communications and body language, and are respectful towards survivors.**

This includes the reduction in formalities and power hierarchies, including not wearing a wig and gown, using non-legalistic, simple language, where they stand or sit in comparison to the survivor, for example.[359]

5. **Defence Counsel coordinates and collaborates with other actors and functions on this matter.**

See also: ***Chapter One — Legislative Framework*** for process, procedures and protection measures; ***Chapter Nine — Judicial Function and Court Services*** for judge's role in facilitating safe and effective procedures; ***Chapter Five — Witness Protection*** for protection measures for court processes; ***Chapter Three — Support Services*** for support around court processes; and ***Indicator D6*** on non-stigmatising language and non-use of stigmatised concepts or myths.

352 Zydervelt *et al*, *ibid*

353 Temkin, *ibid*; Kirby, 'Effectively Engaging Victims, Witnesses and Defendants in the Criminal Courts: A Question of "*Court Culture*"?' (2017) *Criminal Law Review* 12.

354 Craig, *Putting Trials on Trial: Sexual Assault and the Failure of the Legal Profession* (2018).

355 SCTS, Improving the Management of Sexual Offence Cases: Final Report from the LJC's Review Group (2021), 40.

356 Henderson, 'Best Evidence or Best Interests? What Does the Case Law Say About the Function of Cross-Examination?' (2016) International Journal of Evidence and Proof 20(3).

357 Doak *et al*, Cross-Examination in Criminal Trials Towards a Revolution in Best Practice? Intimidating or humiliating questions may amount to violations of the survivor's right to privacy (2021). See Y v. Slovenia, ECHR App no. 41107/10 (28 May 2015), paras.101-108, 115.

358 Brooks-Hay *et al*, *ibid*.

359 Kirby, *ibid*; Ciorciari & Heindel, 'Victim Testimony in International and Hybrid Criminal Courts: Narrative Opportunities, Challenges and Fair Trial Demands' (2016) Virginia Journal of International Law 56(2). See also examples of impact of power differentials on answering questions from older, professional, male lawyers: Randell *et al*, Young Witnesses in New Zealand's Sexual Violence Pilot Courts (2020).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No preliminary hearings held about survivor testimony or appearances. ☐ No ground rules or reminders set. ☐ No advance notice of any defence challenges to survivor testimony. Defence Counsel use ambush tactics and scattergun approaches with the hope that some challenge will damage a survivor's credibility or reliability. ☐ Defence Counsel stand over/above the survivor, in wigs and gowns, and use formalities of proceedings and their status to intimidate or overwhelm the survivor. ☐ Defence Counsel routinely use intimidation, duration/ prolonged questioning, fast pace, aggression, ambush, name-calling, victim-blaming and shaming tactics in their interaction with survivors. ["*Whack the complainant*"] ☐ No coordination or collaboration around safe processes by Defence Counsel. ☐ Defence Counsel attitude that survivor rights are not their duty; instead that attacking the survivor is required to defend their client.	☐ Survivor testimony format and process occasionally raised in preliminary hearings or motions. ☐ Defence Counsel occasionally raise challenges early, but most practice remains by ambush. ☐ Defence Counsel in wig and gowns/formalities all preserved, with only isolated practice with reduced formalities. ☐ Only isolated pockets of better, less aggressive practice towards survivors. ☐ Isolated examples of coordination for safe processes.	☐ Initial basic rules around preliminary hearings addressing these issues, including reducing formalities. ☐ More frequent practice in raising these issues but not consistent and no follow-through necessarily. ☐ Frequent examples of ambush challenges or scattergun approaches. ☐ More examples of hearings without formalities for vulnerable witnesses, including CARSV survivors. ☐ Initial basic rules about less aggressive questioning. ☐ Basic rules and processes for coordination, but still infrequent examples of this happening in practice.	☐ Requirement for preliminary hearings about survivor testimony in place. ☐ Requirement for ground rules to be set. ☐ Requirement for advance notice of any defence challenge to survivor evidence. ☐ Requirement for reduced formalities. ☐ Expectations written and clear about Defence Counsel behaviour towards survivors. ☐ Practice and attitude still varied and inconsistent. Inconsistent responses to bad practice as well. ☐ Requirements for coordination, but still not happening effectively for all cases. Some Defence Counsel not active in this regard.	☐ Preliminary hearings always comprehensive about survivor testimony, setting clear agreed ground rules and expectations, which are then implemented in practice in a coordinated and effective way. ☐ Only defence challenges notified in advance are allowed. ☐ Setting created without formalities or intimidating power differentials. ☐ All court users and questioners are respectful and non-aggressive.

Key critical questions:

- How do Defence Counsel describe their role and approach to survivors' testimony?
- What tactics do Defence Counsel describe?
- What Defence Counsel tactics and approach do other court users or trial observers (prosecutors, judges, court personnel, survivors) describe?
- What preliminary hearings or ground rules are put in place? Do Defence Counsel respect and uphold those ground rules?
- How do Defence Counsel interact with others in relation to survivors' appearances in court?

Data sources:
Internal: Organisational expectations, codes of conduct, communications tools and training materials, standards and reviews for non-stigmatising and bias-free examination techniques, training records and evaluations, trial transcripts, written submissions (responses/motions/applications), in-court observation.
External: Survivor feedback, trial monitoring reports and external case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Defence Counsel and Criminal Defence Bar leadership, other court users (judges, support persons, interpreters, prosecutors).

Useful resources, exercises or tools:
- Henderson, 'Best Evidence or Best Interests? What Does the Case Law Say About the Function of Cross-Examination?' (2016) International Journal of Evidence and Proof 20(3).
- Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People' (2016) Criminal Law Review 3.
- Doak *et al.*, 'Cross-Examination in Criminal Trials: Towards a Revolution in Best Practice?' (2021).

Competency Indicator D5: Defence Counsel use non-stigmatised and non-stigmatising language and terminology about CARSV, survivors and prosecutions of CARSV in all oral and written motions, applications or submissions to the court.

Stigmatising language contains words which communicate some form of stigma or negative attitude against a person or group. It can be words which convey a misassumption or myth about sexual violence, or may victim-blame or shame, or may reduce a survivor or their identity to a label or derogatory term. Stigmatising language is one way in which survivors can experience and be harmed by stigma. It is also a way through which stigmatised attitudes can spread or be encouraged in society or institutionalised into law, policies, processes and practice.

There is clear evidence that the use of stigmatising language not only affects a person directly, but it can also influence the behaviour of others around them. For example in a medical setting the use of stigmatising language in medical records and histories has been shown to lead to reduced empathy and impacts on medical treatment. A study of physicians-in-training found exposure to stigmatising language to be associated with more negative attitudes towards the patient.[360]

This indicator is separate from the use of stigmatising attitudes and myths as tactics or lines of defence (*see* ***Indicator D7***), as well-intended counsel and other court users may unconsciously perpetuate stigmatising attitudes or deepen internalised stigma in survivors by accidentally or carelessly using stigmatising language which ends up on the authoritative record of formal court proceedings. It is language which may also then be picked up by judges and others in the court.[361]

More deliberate illustrations include the minimisation of sexual violence:

- **Rukundo, ICTR Appeals Chamber:** where a Catholic priest had locked a woman in his room, put his gun on the bedside table, forced her onto the bed and sexually assaulted her — after she had begged him for protection as her family had been killed — Defence Counsel asserted: "*at most, Witness CCH suffered only disappointment since he was not ultimately able to protect her… Rukundo argues that Witness CCH was not subjected to degrading or humiliating treatment as part of a campaign against Tutsis and that the incident was also insufficiently grave. Rather, "he treated her with consideration, like a woman one is trying to seduce."*[362]
- **Canadian appeal case:** defence argued that the judge had failed to take into account the 'survivor's failure to run away from the appellant'.[363]

Elements of good practice on language and terminology include:

1. **Defence bar has guidance against stigmatising language and representations, which provides examples of what this is and what more accurate terminology and concepts are.**
2. **Defence Counsel's written submissions show no stigmatising language or concepts based on stigmatised attitudes or myths.**
3. **Defence Counsel's oral submissions and conduct in court equally show no stigmatising language nor reflect stigmatised attitudes or myths.**
4. **Defence Counsel's language and conduct in court or in any interaction with survivors equally show no stigmatising language nor reflect stigmatised attitudes or myths.**

360 Goddu *et al*, 'Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record' (2018) *Journal of General Internal Medicine* 33(8).

361 For example, some ICTY judgements attempting to explain the impact of sexual violence expressly referred to it as a source of shame on a survivor, without noting the stigmatised nature of this attitude: "*For a woman, rape is by far the ultimate offense, sometimes even worse than death because it brings shame on her.*" *Prosecutor v. Stakic*, ICTY Case No. IT-97-24, Trial Judgement (31 July 2003), para.803.

362 Prosecutor v. Rukundo, ICTR Case No. ICTR-2001-70-A, Appeals Judgement (20 October 2010), para.231.

363 Craig, *ibid.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or recognition of stigmatising language as problematic at the defence bar. ☐ Stigmatising language commonly used in written and oral submissions and questioning, including victim-blaming (conduct), shaming, minimisation.	☐ Pockets of awareness among the defence bar. ☐ Isolated examples of better practice but most Defence Counsel still using such language with or without awareness.	☐ Basic guidance available but not circulated, Defence Counsel not familiar. ☐ Rising awareness of the issues with such language. Still frequent examples of use.	☐ Guidance with examples available with good awareness but not full familiarisation. ☐ Practice not consistent among Defence Counsel, response inconsistent too.	☐ Well-known guidance with examples circulated among defence bar. ☐ Culture among the defence bar against using such language. ☐ Rare use of stigmatising language in written and oral submissions. Any use is responded to and corrected by prosecution or judges.

Key critical questions:
- What awareness is there of stigmatising language at the defence bar?
- What guidance or information is available for Defence Counsel about stigmatising language?
- What examples can people give of the use of stigmatising language by Defence Counsel?
- How commonly is this language used in court? Or during survivor-witness testimony?

Data sources:
Internal: Guidance, communications tools and training materials, standards and reviews for non-stigmatising and bias-free language, training records and evaluations, reviews of written submissions and other filings.
External: Survivor feedback, trial monitoring reports and external case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Defence Counsel and Criminal Defence Bar leadership, other court users (judges, support persons, interpreters, prosecutors).

Useful resources, exercises or tools:
- Guidance on CARSV Stigmatising Language

C. TECHNICAL CAPACITIES AND COMPETENCIES

As professional officers of the court who play a fundamental role in the justice process, competency and capacity are important aspects for Defence Counsel. Ideally, Defence Counsel will be supported by a professional bar association or body, which accredits and supports continuous legal education and skills training for counsel. In atrocity and conflict cases, knowledge of trauma-informed skills for vulnerable, potentially traumatised witnesses is a core skill. Furthermore, skills in understanding trauma and vulnerability may be critical for their clients, for example as victims of crime or abuse may go on to become abusers or commit other crimes themselves.

Competency Indicator D6: Defence Counsel demonstrate understanding and competency around CARSV trauma in all their actions.

These skills and competencies have been overlooked historically, with Defence Counsel in the past singularly focusing on cross-examination skills to undermine the case against their client regardless of its impact on a vulnerable witness. Fortunately, these 'traditional' attitudes are changing. Vigorous debate and leadership have advocated for professional Defence Counsel with broader ethical duties and broader competencies and skill sets in many countries over recent years.

One discussion in Canada has centred on the need for 'cultural competency', which includes understanding societal attitudes, discriminatory thinking, stigma and stereotyping. For example: "*'In order to practise law in a culturally competent manner, […] we must (1) value an awareness of humans, and oneself, as cultural beings who are prone to stereotyping; (2) acknowledge the harmful effects of discriminatory thinking and behaviour upon human interaction; and (3) acquire and perform the skills necessary to lessen the effect of these influences in order to serve the pursuit of justice.'*"[364]

In England and Wales, the advocacy training authority has created a toolkit for Defence Counsel to improve competencies for working with vulnerable people in the justice process. "*[Handling of vulnerable witnesses, victims and defendants] should have three virtues. First, it should at all times be sensitive and understanding [of] the needs and vulnerabilities of the person concerned. Second, it should uphold the requirement rigorously to examine the evidence and fulfil the [counsel's] duty both to the court and client. Third, it should seek to elicit 'best evidence'. […] Specialist training must begin in pupillage [initial training] and extend throughout [counsel's] career. It must include a range of approaches, teaching a comprehensive set of skills including identification of vulnerabilities; awareness of conceptual understanding at various thresholds of development; and how to best prepare and modify lines of questioning. Advocates should have access to resources including toolkits outlining common problems encountered with vulnerable witnesses, together with suggested solutions, and quick references 'checklists' of communication techniques.*"[365]

An understanding and self-care around vicarious trauma is important for Defence Counsel, as with other justice actors. Burnout or self-protective distancing can impact how lawyers interact with survivors, as well as being a threat for their own wellbeing and mental health.[366]

Elements of good practice on trauma-informed cultural competency include:

1. **Defence Counsel demonstrate an accurate understanding of CARSV, free from misunderstandings, misassumptions and CARSV myths (monitored through KAP surveys).**
2. **Defence Counsel working on CARSV cases have been trained on and demonstrate competency in sensitive questioning of vulnerable witnesses and survivors.**[367]
3. **Defence Counsel do not make misleading arguments or challenges based on an inaccurate understanding of trauma, including any expectations or stereotypes about how a survivor would or should behave.**

An example of bad practice was provided in a case where the Defence argued that a survivor's evidence should be assessed based on their "*emotionality — whether the victim was 'emotional at appropriate points in appropriate ways'*".[368]

4. **Defence Counsel do not misrepresent minor inconsistencies or late disclosure as questions of reliability or credibility, and do not seek to challenge survivors or their testimony based on any counselling or support they have received.**

Challenges to survivors based on their access to counselling can have a devastating effect on survivors, with police and others often advising them not to start therapy because it might invite defence challenges. "*However, many of those affected do not want to begin with psychological therapy during the duration of the criminal proceedings, as this can be seen in court as falsifying their testimony. Police and even lawyers may therefore often advise against therapy, because it might be used against the victim. This can lead to long-term negative mental health consequences. Therefore, victims might be stuck in a process of victimisation until the end of trial.*"[369] It is important to highlight good practice, where Defence have agreed to stipulated facts that the survivor had been raped based on counselling records.[370]

364 Tanovich, *ibid*; Voyvodic, 'Lawyers Meet the Social Context: Understanding Cultural Competence' (2005) *Canadian Bar Review* 84, 564, 571–572.

365 Haddon-Cave/ICCA, Raising the Bar: Report and Toolkit on Vulnerable Witnesses (2019).

366 Craig (2018), *ibid*, raising the issue of vicarious trauma and self-protective adaptation by Defence Counsel and how this can impact their approach to survivors.

367 Gravitas, *ibid*, 79ff, impacts of stigmatising questioning and their traumatic impact on survivors.

368 Smith & Skinner, *ibid*.

369 Wolf & Werner, 'Victims' Rights Looking Good on Paper: How Criminal Prosecution in Germany Fails Victims of Sexual Violence' (2021) *German Law Journal* 22; Ginn, 'Ensuring the Effective Prosecution of Sexually Violent Crimes in the Bosnian War Crimes Chamber: Applying Lessons from the ICTY' (2013) *Emory International Law* Review 27(1), 583 (Furundžija case).

370 Smith, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Defence Counsel commonly exhibit misunderstandings about CARSV, survivors and perpetrators. ☐ No training for Defence Counsel on CARSV or stigma, or on traumatised or vulnerable witnesses. ☐ No awareness of issues or understanding of what a trauma-informed approach entails. ☐ No demonstrated skills in relation to trauma-sensitive questioning by Defence Counsel. ☐ Survivors routinely retraumatised by Defence Counsel during cross-examination. ☐ Survivors report lasting consequences of retraumatisation and harm from cross-examination. ☐ Defence Counsel regularly challenge the reliability of survivors using mental health issues, prior counselling. ☐ Defence Counsel challenge credibility of survivors based on assumptions of how traumatised persons 'should' react. ☐ Defence Counsel commonly challenge delayed disclosure as a question of credibility.	☐ Defence Counsel frequently exhibit misunderstandings of CARSV, but pockets of better understanding emerging. ☐ Some training available but not accessible to most counsel. ☐ Little understanding of trauma-informed approaches, and negative attitude towards it (or not relevant for Defence Counsel). ☐ Survivors frequently retraumatised and often report lasting repercussions. ☐ Frequent challenges to reliability and credibility of survivors using myths about CARSV trauma. Some isolated pockets of better practice. ☐ Most delayed disclosures challenged as a matter of credibility.	☐ Growing awareness and attitudes beginning to shift. ☐ Defence bar have issued some guidance. ☐ Specialist course more readily available, but only to a few. ☐ Most counsel still exhibit negative attitudes towards trauma-informed approaches and its relevance to defence. ☐ More frequent examples of good practice or improving practice in court. ☐ More reports from survivors of less harmful interactions and repercussions. ☐ Challenges to reliability and credibility based on trauma, mental health and delayed disclosure still occurring with some regularity, but more examples of better practice or responses preventing or rejecting those arguments.	☐ Awareness of importance of CARSV understanding and trauma competency at the defence bar. ☐ Policy and guidance issued. ☐ Training programmes available to those interested, including trauma-informed approaches and vulnerable witness training, but still not a mainstreamed expectation or requirement. ☐ Many attending training and now exhibiting better practice in court. ☐ Reducing numbers of survivor reports of lasting impacts, but still not consistent reporting of more positive/less harmful experiences. ☐ Practice still not consistent on credibility and reliability challenges based on trauma, mental health and delayed disclosure. Inconsistent outcomes or responses to these arguments.	☐ Defence Counsel exhibit accurate understandings of CARSV, survivors and perpetrators throughout their work. ☐ Well-established training and accreditation systems for CARSV and vulnerable witnesses as part of all Defence Counsel's core training and expected skills. ☐ Resources such as toolkits, checklists and other solution-oriented resources available for counsel. ☐ Good understanding of and well-established expectations at defence bar around trauma-informed approaches and cultural competency. ☐ Good practice commonly exhibited in court, with any lapses responded to promptly. ☐ Survivors do not report lasting impact from cross-examination/ questioning in court. ☐ No arguments deployed or successful on reliability or credibility based on misassumptions or myths around trauma or mental health status of survivors. ☐ Delayed disclosures accepted as normal course of process, without comment or challenge.

Key critical questions:

- How do Defence Counsel describe CARSV, and how often do they express incorrect misunderstandings or misassumptions about CARSV or survivors? What are the results of KAP surveys on CARSV stigma at the defence bar?
- What awareness is there of trauma-informed approaches at the defence bar and among Defence Counsel? Are all Defence Counsel able to describe some of the components or requirements for a trauma-informed approach?
- What training or accreditation is available and required for Defence Counsel who interact with vulnerable witnesses/survivors? How early in their career is such training available to counsel? Who is it available to: for a select few specialists, or for all counsel as part of their training and continuing legal training requirements?
- What is Defence Counsel's attitude towards survivors and traumatised/vulnerable witnesses?
- How do they describe their role and the required skill set for questioning vulnerable witnesses? What do Defence Counsel say about survivor rights?
- To what extent are trauma-informed skills demonstrated by Defence Counsel in court?
- How often do Defence Counsel deploy challenges around the mental health of survivors or vulnerable witnesses? How often do Defence Counsel exploit vulnerabilities in an effort to undermine testimony?
- How often do Defence Counsel rely on misconceptions around trauma or mental health issues of survivors or vulnerable witnesses in an effort to influence adjudicator/fact-finder decision-making?
- What are examples of good and bad practice on trauma-informed approaches by Defence Counsel?
- What protective measures and approaches to defence counsel use to try to mitigate risks of vicarious trauma, stress and burn-out in relation to their interactions with survivors?
- What is the response in court to bad practice?
- How do survivors describe their experience of cross-examination or questioning by Defence Counsel during their testimony?

Data sources:

Internal: Guidance, toolkits, checklists, other tools and training materials on trauma-informed approaches and CARSV competency, training and CPD records and attendance data, accreditation materials and records, performance reviews, KAP surveys, Defence Counsel publications on CARSV.

External: Survivor feedback, external training providers and feedback, trial monitoring reports.

Interviews and focus groups: Survivors groups, survivor advocates, support services, Defence Counsel and Criminal Defence Bar leadership, other court users (judges, support persons, interpreters, prosecutors, VWU/witness support).

Useful resources, exercises or tools:

- Haddon-Cave/ICCA, Raising the Bar: Report and Toolkit on Vulnerable Witnesses (2019).
- Tanovich, '"Whack" No More: Infusing Equality into the Ethics of Defence Lawyering in Sexual Assault Cases', (2014) Ottawa Law Review 45(3)
- Voyvodic, 'Lawyers Meet the Social Context: Understanding Cultural Competence' (2005) Canadian Bar Review 84.
- Temkin, 'Prosecuting and Defending Rape: Perspectives from the Bar' (2000) Journal of Law and Society 27(2).

Competency Indicator D7: Defence Counsel restrict their conduct and defence in CARSV cases to supporting facts and to raising challenges which are legally relevant and permitted in law, and do not invoke or trigger stigma, social misconceptions or myths about CARSV, survivors or perpetrators.

As officers of the court, Defence Counsel have duties which require them to remain within the bounds of legal relevancy and to not mislead the court. "*A barrister has an overriding duty to the Court to act with independence in the interests of justice: he must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the Court.*"[371] Cross-examination based on stereotypes, rape myths and stigma "*serve no purpose other than to mislead*".[372]

Some have argued that it is for the judge to control Defence Counsel, and for the Defence Counsel to do whatever it takes within the bounds so set by the judge (akin to a football analogy — 'to play to the referee'). "*One defence attorney has noted that her job is to challenge testimony and "it [i]s up to the judges to stop the line of questioning if it [i]s inappropriate.*"[373] Relying only on judicial intervention can come too late, after harm has been done, and it is also not always very effective. "*[D]espite many and varied prompts over the last 25 years, researchers invariably concluded that judges intervene in vulnerable witness examinations far too seldom*".[374]

Unfortunately, the use of rape myths and other stigmatised attitudes by Defence Counsel remains common around the world.[375] One study published in 2021 in the USA found in child sexual abuse (CSA) cases: "*Ten percent of all defense attorneys' lines of questioning referenced a rape myth, and attorneys asked 77% of children at least one rape myth line of questioning. Whether or not attorneys asked about different myths and the content of these questions varied by children's age. Our findings indicate that defense attorneys use rape myths strategically to undermine children's credibility in CSA trials, but they adapt (adult) rape myths in ways that are plausible in the CSA context.*"[376]

Equally a 2016 New Zealand court study noted: "*overarching finding is that, relative to 50 years ago, defence lawyers who question rape complainants are merely pursuing the same goals in slightly different ways. In essence, little has changed. Even after significant reforms to policy and law, complainants still find cross-examination to be distressing and demeaning, and our data show that this sentiment is understandable given the tactics employed. Tactics leveraging rape myths were common. Cross-examining lawyers frequently invoked stereotypes about complainants' behaviour — that is, about how complainants typically behave and how they ought to have behaved, with the benefit of hindsight. In over 85 per cent of cases, for example, the complainant's behaviour leading up to and after the alleged offence was used to infer that she had consented to the sexual acts (e.g. that the complainant went somewhere voluntarily with the defendant prior to the offence). In around 60 per cent of cases, defence lawyers alleged that the complainant's personal traits — for example, her work as an actor or prostitute, or her parenting failures — made her less credible.*"[377]

In international tribunals, lines of cross-examination of CARSV survivors have included:

- putting to the survivor that since she had not bathed and smelled, she could not have been raped. The judges did not intervene. The survivor was asked 1,194 questions by defence.[378]
- challenging why the survivor did not take an opportunity to escape (e.g. ICTY "*survivors being asked why they did not leave the camp (which was in the middle of a war zone) if there were no locks on their doors*").[379]
- suggesting that the survivor falsified rape claims for revenge or for financial gain.[380]
- suggesting that the survivor is untruthful based on late disclosure or failure to report to someone immediately.
- minimising the violence and harm (e.g. ICTY Celebici "*defense counsel telling a survivor that the defendant 'only' raped her once and did not hurt her*").[381]
- centering cross-examination around survivor's prior sexual activity or history.[382]

371 England & Wales Bar Council Code of Conduct, Annex 1: Part III — Fundamental Principles, Principle 302; Henderson, 'Best Evidence' (2016), *ibid*.

372 Temkin *et al*, 'Different Functions of Rape Myth Use in Court: Findings From a Trial Observation Study' (2018) *Feminist Criminology* 13(2).

373 Ciorciari & Heindel, *ibid*.

374 Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People' (2016) *Criminal Law Review* 3.

375 *E.g.* Tinsley *et al*, "'*I Think She's Learnt Her Lesson*": Juror Use Of Cultural Misconceptions In Sexual Violence Trials' (2021) 472 (considering the 'false allegations are common' myth); Ginn, *ibid*; Boesten, 'Transformative Gender Justice: Criminal Proceedings For Conflict-Related Sexual Violence In Guatemala And Peru' (2021) *Australian Journal Of Human Rights* 27(3), 497.

376 St. George *et al*, 'Blaming Children: How Rape Myths Manifest in Defense Attorneys' Questions to Children Testifying About Child Sexual Abuse' (2021) *Journal of Interpersonal Violence*.

377 Zydervelt *et al*, *ibid*.

378 Nowrojee, *ibid*.

379 Sharratt, *ibid*, 67; *e.g. Prosecutor v. Rukundo*, ICTR-2001-70-T, Trial Judgement (27 February 2009), para.367

380 *E.g. Prosecutor v. Rukundo*, Trial Judgment, ibid, para.367 ("*Witness CCH denied that she concocted the story of Rukundo's sexual assault because, according to some people, Rukundo was responsible for the death of her relative*").

381 Sharratt, *ibid*, 33.

382 *Prosecutor v. Rukundo*, Trial Judgement, ibid, para.367; Ginn, *ibid*, 583 (noting ICTY *Prosecutor v. Mukic* where Defence Counsel questioned the survivor about their prior sexual history, including a previous abortion, with no judicial intervention).

- Other victim-blaming, such as "*a survivor being asked why she took birth control pills to the camp, insinuating that she was willingly going to be having sex*".[383]
- Further recent examples show defence lawyers asking CARSV survivors in Peru what they had been wearing and about sexual histories.[384]

Elements of good practice on conduct and defence strategies include:

1. **Defence Counsel uphold their ethical duties as officers of the court and do not seek to utilise social assumptions, stigmatised misunderstandings or myths to mislead the adjudicator of fact or influence their decision-making.**
2. **Defence Counsel restrict the evidence they seek and seek to admit, the lines of examination and cross-examination they pursue and the oral and written submissions and applications they make to those which are legally and factually relevant.**
3. **Defence Counsel do not challenge survivors based on stigmatised assumptions or myths about CARSV.**
4. **Defence Counsel do not seek private information about or from a survivor as evidence which is not factually and legally relevant.**[385]

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
□ Defence Counsel are unaware and non-compliant with ethical duties. □ Defence bar culture values and glorifies this type of approach, described in Canada as 'whack the complainant'. □ Defence Counsel use whatever tactics they believe are necessary to win their case/get their client acquitted. □ Defence Counsel commonly deploy arguments that are not factually or legally relevant to CARSV charges. □ Defence Counsel seek very broad private information and access to very personal data, as a matter of course ('fishing exercises"), (including medical, psychological, personal communications) and as a tactic to embarrass, malign or otherwise get survivors to withdraw from the process.	□ Defence Counsel aware of ethics but believe ethical duties to client only. □ Some members of the defence bar question aggressive approach and attitude towards CARSV survivors. Most Defence Counsel prepare to use whatever tactics necessary to win their case. □ Defence Counsel often deploy arguments that are not factually or legally relevant to CARSV charges. □ Defence Counsel often seek private information and access to very personal data (including medical, psychological, personal communications) and as a tactic to embarrass, malign or otherwise get survivors to withdraw from the process.	□ Defence Counsel aware of duties to the court, but do not see that extending to any duties to survivors etc. □ Defence Counsel awareness and start of shift away from 'whack the complainant" tactics. □ Most Defence Counsel using factually or legally irrelevant arguments, but less successfully. □ Many Defence Counsel still seeking overly broad or intrusive searches or information orders to see what they can dig up to use against the survivor. □ Many Defence Counsel still use stigma, myths and misleading assumptions about CARSV, survivors or perpetrators to challenge the credibility, reliability or to attack or distract or upset a survivor. Some response and rejection of such challenges.	□ Defence Counsel aware of ethical duties as officer of the court, and not to mislead the court. □ Many Defence Counsel recognise that 'whack the complainant" tactics are unethical and ineffective. □ Few Defence Counsel making factually or legally irrelevant arguments based on myths and stigma, but inconsistent practice. □ Many Defence Counsel make more focussed requests for information, balancing right to privacy and legally relevant facts. □ Defence Counsel practice still inconsistent on use of stigma, myths and social assumptions about CARSV and survivors. Inconsistent response and outcomes to such challenges.	□ Defence Counsel culture centred on ethical approaches and balancing responsibilities to client and duties to court and do no harm. □ Defence bar recognition that 'whack the complainant" tactics are unethical and ineffective. □ Very few Defence Counsel motions/ applications seeking disclosure or information about survivor's personal information - when occurred based on legally relevant, important factual basis. □ Defence Counsel consistent practice focused on factually and legally relevant arguments, which do not deploy stigma, myths, social attitudes or inaccuracies about CARSV or survivors. Consistent response and rejection if arguments made.

383 Sharratt, *ibid*, 67.

384 Boesten, *ibid*, 497.

385 Ginn, *ibid*, (on the Furundzija Defence motion to gain access to all medical, psychological and counselling records).

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ Defence Counsel use stigma, myths and misleading assumptions about CARSV, survivors or perpetrators to challenge the credibility, reliability or to attack or distract or upset a survivor.	□ Defence Counsel often use stigma, myths and misleading assumptions about CARSV, survivors or perpetrators to challenge the credibility, reliability or to attack or distract or upset a survivor.			

Key critical questions:

- How do Defence Counsel describe their role and duties, particularly in relation to the court and survivors?
- What do Defence Counsel describe as their most deployed and most effective tactics around CARSV charges? How far are they prepared to go to defend a client from CARSV charges? Are there any limits they know they should not cross?
- How do other court users, including survivors, describe the tactics used in defending accused from CARSV charges? How do survivors describe the challenges against them and their impact?
- What are examples of lines of defence or challenge used against CARSV charges?
- What is the response in court when Defence Counsel deploy stigmatised attitudes or misunderstandings about CARSV or survivors in their questioning or submissions?
- How often are those challenges stopped or specifically addressed and rejected? How often are they successful?

Data sources:

Internal: Guidance, toolkits, tools and training materials on trauma-informed approaches and CARSV competency, performance reviews, KAP surveys, trial transcripts and submissions.
External: Survivor feedback, trial monitoring reports, external reviews or reports.
Interviews and focus groups: Survivors groups, survivor advocates, support services, Defence Counsel and Criminal Defence Bar leadership, other court users (judges, support persons, interpreters, prosecutors, VWU/witness support).

Useful resources, exercises or tools:

- Zydervelt et al, 'Lawyers' Strategies for Cross-Examining Rape Complainants: Have We Moved Beyond the 1950s?' (2016) British Journal of Criminology.
- Henderson, 'Best Evidence or Best Interests? What Does the Case Law Say About the Function of Cross-Examination?' (2016) International Journal of Evidence and Proof 20(3).
- Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People' (2016) Criminal Law Review 3.

CHAPTER NINE — JUDICIAL FUNCTION AND COURT SERVICES

Justice requires impartial magistrates. Yet, impartiality does not require ignorance of how of sexual violence occurs and of the challenges confronting survivors. To the contrary, in order to permit survivors to give their best evidence and for the truth-seeking function to be fulfilled, judges must be aware of the dynamics of sexual violence and sensitive to survivors' needs. This includes the ways in which perpetrators operate and the effects that abuse has on survivors. Further, as presiding officers and leaders of their courtrooms, judges set the tone for how survivors are treated and valued, and what sort of evidence is permitted. The end goal is justice, but justice that provides a full and fair opportunity to be heard without inflicting additional trauma. In both procedure and substance, judges' practice and decision-making should reflect their understanding of the nature of CARSV, recognition of how it is perpetrated and by whom, and the impacts justice systems can have on survivors. Through their conduct and words, judges can play a powerful role tackling stigma within justice, but also within communities.

"*A survey of the ICC's jurisprudence on sexual crimes shows that even the most progressive legal framework is futile when it is not translated into legal practice. In the case of sexual and gender-based crimes under international law, this requires constant effort, prioritization, and a high degree of gender sensitivity within both the prosecution and the judiciary.*"[386]

Note on the Role of Judges in Different Systems:

The role and responsibilities of judges can vary from system to system. In all systems, the judge presides over the court and is in control over what happens in court. While some adversarial systems may use juries for domestic crimes, for international crimes[387] judges are usually the primary decision-maker and adjudicator of fact based on the evidence before the court. In more inquisitorial systems, the judge takes the lead in asking questions of witnesses at a trial. In adversarial processes, judges may ask questions after the parties but in large part their role will be to marshall the questions of Prosecution and Defence.

The indicators in this chapter are designed to cover the main roles of judges in most systems, and in particular the main ways that stigma, myths and misperceptions can sway outcomes when judges are either influenced by them or allow them to form part of the process. The indicators also reflect the judges' role in ensuring a survivor-centred, trauma-informed approach to survivors' experiences in court.

Judges, such as investigating magistrates, can also perform roles before the trial phase that may fall within the mandate of investigators or prosecutors in other jurisdictions. In these contexts, for a full assessment of the judiciary, an assessor can also select the relevant indicators from these other functional chapters which match the judicial responsibilities and roles in their system.

Note on Court Services in Different Systems:

International and hybrid courts, as stand-alone courts, are usually supported by a 'Registry' which performs the many roles and justice support functions of a court administration or court services department. Such functions usually closely serve the judges in their role administering justice, and in some countries are not separate or independent from the judiciary. The Registry or Court Services department is often responsible for such vital services as Victim and Witness Support Units (VWUs), Witness Protection (and relocation) Services (WPS), interpretation, courtroom administration, trial and hearing scheduling, court safety and security, and

386 Altunjan, 'International Criminal Court and Sexual Violence: Between Aspirations and Reality', (2021) German Law Journal 22, 892.

387 This chapter does not include directions to juries for domestic crimes, although it may be possible where the legislative framework does not incorporate international crimes. For example, CARSV may have to be charged as rape, rather than rape as a war crime or crime against humanity.

the implementation of many court orders. Given how central some of these services are, they are represented by individual chapters in their own right — for example, ***Chapter Three — Support Services***, and ***Chapter Five — Witness Protection***.

Given the close connection in many national systems between the judiciary and court services, their indicators have been grouped together into this chapter. We would recommend that the 'Registry' or court services serving a court use this chapter to support a review of both the culture within judges' chambers and more broadly within the court services. There are some additional indicators at the end of this chapter which are specific to court services and do not relate to judges. In addition to this chapter's indicators, the Support Services and Witness Protection indicators in earlier chapters should also be used specifically for VWUs and WPS.

INDICATORS AND ASSESSMENTS

This chapter is organised along the three common themes:

A. **Organisational Culture and Leadership** (which can be used by whichever function is under review or externally assessing each of the justice functions which play a role in survivor access and participation in justice).

B. **Survivor Interaction and Engagement**

C. **Technical Capacity and Competency**

Indicators are numbered using the acronym J for "*Judiciary*" — e.g. J1, J2, etc.; and CS for "*Court Services*", for example CS1, CS2.

Summary and order of indicators in this chapter:

ORGANISATIONAL CULTURE AND LEADERSHIP
J1 Judicial leadership values and mainstreams CARSV competencies, countering the influence of stigma and ensuring a court culture which is safe, respectful and enables best testimony from survivors.
J2 The Judiciary and Court Services have a healthy, safe, respectful workplace culture that applies to all court personnel and extends to all court users, including specifically in relation to gender, equality, inclusivity and non-discrimination.
SURVIVOR INTERACTION AND ENGAGEMENT
J3 Judges and Court Services encourage and support survivor participation at all stages of the court proceedings, including by scheduling and organising proceedings efficiently and in a manner that permits survivors to attend and participate.
J4 Judges and Court Services create an atmosphere of safety and respect for survivors in and around the courthouse.
J5 Judges lead by using non-stigmatised and non-stigmatising language and terminology about CSRV and survivors of CARSV and require others to do the same, proactively correcting or countering any myths or stigmas which surface.
J6 Judges control the courtroom proceedings and conduct of counsel to ensure the rights and protections of the accused and rights and wellbeing of survivors are respected and balanced.
TECHNICAL CAPACITY AND COMPETENCY
J7 All Judges and Court Service staff receive regular and continuing education on CARSV, CARSV stigma, CARSV myths and trauma-informed approaches.
J8 When Judges are involved in confirmation of charges or decide applications/motions concerning charges, their decisions on confirmation or inclusion of charges are based on accurate understandings of CARSV in its contextual and intersectional (including gendered) dimensions.

J9 Judges' evidential and other assessments and rulings reflect an understanding of the context and dynamics of CARSV and an awareness of and non-reliance on CARSV myths, and proactively counter stigma and CARSV myths.
J10 Judges consider survivor safety during custodial hearings and decision-making for persons accused or convicted of CARSV, including early release, commutation of sentence or pardon applications.
J11 Judges' sentences reflect the seriousness of the crimes committed, do not minimise or excuse sexual violence [and where possible compensate survivors for the harm suffered].

COURT SERVICES

CS1 Court Services ensure a coordinated and integrated justice process for survivors in relation to their engagement, information/communications, protection, support and participation.
CS2 Court Services provide survivors and other witnesses with interpreters who are certified, professional, independent, competent in survivors' dialects and trained in CARSV and trauma.

A. ORGANISATIONAL CULTURE AND LEADERSHIP

Given the central importance of judicial independence, leadership, judicial rules and oversight must be done in a way that does not interfere with the independence of decision-making on individual cases. All courts typically have a president or chief justice. There can also be codes of conduct, practice directions, training and varying means of oversight for professional or ethical breaches by Judges. Oversight can include civilian oversight such as ombudspersons, Judicial Conduct Commissions or internal judicial oversight such as judicial investigations or disciplinary panels.[388] These structures and processes are key to ensuring the integrity and competency of Judges, and to maintain public confidence in the judiciary. This set of indicators are about ensuring judicial culture and leadership around CARSV, stigma and survivor-centred approaches through these structures and processes. They should be flexible to adapt to different systems of judicial regulation and oversight.

Competency Indicator J1: Judicial leadership values and mainstreams CARSV competencies, countering the influence of stigma and ensuring a court culture which is safe, respectful and enables best testimony from survivors.

Judicial leadership and judges establish courthouse cultures through their natural roles as leaders. Ideally, the culture is respectful and supportive towards those engaging with the court, without sacrificing objectivity. Sometimes, though, court cultures can become toxic, particularly when judges allow discriminatory attitudes and practices to take root through abdication of their leadership roles. Strong judicial leaders establish, through their words and actions, that CARSV is taken seriously, survivors are treated respectfully and all courthouse personnel maintain high standards of professionalism, objectivity and sensitivity.

Court culture can be a significant barrier to change and effective implementation of policy or legislative protections. "*It has been recognised for some years that the single most important factor in achieving any sort of change in trial practice is not legislation or government policy declarations but the attitude of the judiciary and the legal profession. That cultural beliefs impact on the implementation of practice reforms has been found in a number of reports and qualitative empirical studies, and examples of the legal profession's ability to 'subvert' both legislative and judiciary-led reform of legal practice are legion.*"[389]

"*Judicial Leaders are those individuals who realise that the judiciary is embedded in a social, political, economic and technological context that is dynamic and constantly changing. To stay effective and fulfil its critical purpose, the judiciary has to continuously change and adapt as well.*"[390]

388 See UNODC, Commentary on the Bangalore Principles of Judicial Conduct (2006), 23: "*These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.*"

389 Henderson, 'Taking Control of Cross-Examination: Judges, Advocates and Intermediaries Discuss Judicial Management of the Cross-Examination of Vulnerable People' (2016) *Criminal Law Review* 3.

390 Steadman, 'Transformational Judicial Leadership: What, Why, How?' (2015) The National Judicial College (US).

Elements of good leadership include:

1. **Judicial leadership institutes and enforces codes of conduct, standards of service, ethics rules and standard operating procedures for Judges and Court Services staff which require survivor-centred approaches and non-stigmatising behaviour and practice.**

Cognisant that "*codes can be neutralised when they conflict with a strong culture.*"[391]

2. **Judicial leadership mainstreams CARSV competencies and attitudes through bench books, practice directions and continuing judicial education materials.**
3. **Judicial leadership sets good examples as role models through their actions on prioritisation, non-stigmatising language and messaging and survivor consultations, and by immediately countering any use of CARSV stigma, myths or misperceptions, or any disrespectful conduct in their courtrooms or cases.**
4. **Judicial leadership and oversight mechanisms collect CARSV and SCA data, and respond to deviations from survivor-centred policy and practice through education, correction and discipline, as appropriate.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leadership awareness of importance indicated. ☐ No steps taken to address CARSV myths or stigma, or survivor revictimisation in court. ☐ Leadership communications include stigmatising language and SV myths. ☐ No recognition of the challenges faced by survivors. ☐ No recognition of responsibilities towards survivors. ☐ Focus on avoiding appeals by giving accused and their counsel total leeway.	☐ Some leadership awareness but not officially communicated. ☐ Leadership still using stigmatising language and expressing SV myths. ☐ Isolated steps taken ad hoc by individual judges. ☐ Occasional examples of survivor-centred approaches. ☐ Isolated examples of safer court cultures which do not revictimise survivors.	☐ Some leadership communication about importance. ☐ The start of some basic policies and provisions around expectations. ☐ No judicial education on survivor experience, SCA and countering myths. ☐ No consistent data collection for leadership review. ☐ No review or check points on decision-making around CARSV.	☐ Leadership statements emphasising importance. ☐ Clear steps taken to establish cohesive set of policies, codes of conduct and expectations. ☐ Judicial education sometimes provided but not comprehensive, consistent or followed. ☐ Inconsistent messaging or practice. ☐ Basic data collection and reporting to leadership. Some inconsistent response.	☐ Consistent leadership statements and practice. ☐ Established set of policies and codes, well-known, welcomed and adhered to by staff across all levels. ☐ Judicial education regularly conducted, reviewed and followed. ☐ Culture and practice of the court reflects leadership goals. ☐ Well established disaggregated data collection system around practice (CSRV, stigma and SCA), with regular reporting and recommendations supported and implemented by leadership.

Key critical questions:

- What is the leadership's understanding and position on CARSV?
- What language does the leadership use in relation to CARSV, survivors and perpetrators?
- What steps has the leadership taken to prioritise CARSV and tackling stigma?
- What is the judicial level of awareness of those steps, including familiarity and application of policies, SOPs, codes, commitments, etc.? What is the judicial attitude towards these steps?
- What matters or issues are prioritised ahead of CARSV?
- What has the leadership said publicly and internally about CARSV and stigma?
- What has the leadership done to ensure more survivor-centred approaches are adopted?
- What data is collected about CARSV cases, the influence of stigma and SCA in proceedings?
- What reporting and data does the leadership require on CARSV, survivor-centred approaches and stigma? What follow-up action have they taken?
- How often has the leadership met with survivor networks or groups or civil society organisations which support them?

391 Temkin, 'Prosecuting and Defending Rape: Perspectives from the Bar', (2000) Journal of Law and Society 27(2), 246.

Data sources:
Internal: Organisational expectations, codes of conduct, tools and training materials on survivor-centred and trauma-informed approaches, judicial CPD materials and records, bench books and practice directions, KPIs, PERs, KAP surveys, memoranda, notices and other internal communications directed for staff, decisions from preliminary hearings, trials and appeals.
External: Press releases, speeches, interviews, articles, public notices or other external communications related to CARSV, survivor and CSO feedback, trial monitoring and court culture reports.
Interviews and focus groups: Judges, judicial leadership, trial monitors and observers, survivors groups.

Competency Indicator J2: The Judiciary and Court Services have a healthy, safe, respectful workplace culture that applies to all court personnel and extends to all court users, including specifically in relation to gender, equality, inclusivity and non-discrimination.

In order to effectively carry out its mission, the judiciary itself must serve as a model. The court must establish a workplace that is not only free of discrimination, but strives for diversity and affirmatively provides opportunities for historically stigmatised groups to advance. Procedural justice is best achieved when all court users feel that they are treated respectfully and fairly and are not subjected to judgements based on factors outside their case. Furthermore, a work culture and environment which upholds values of equality and non-discrimination protects against stigmas and prejudicial attitudes towards CARSV and survivors. Persons engaging in a judicial process are more likely to feel they will get a fair hearing when their gender, race, ethnicity, religion, disability and/or sexual orientation are represented among judges and court employees.[392]

"*Developing and moulding an appropriate court culture is an enterprise with consequences, one that judges and administrators should attend to as purposefully and deliberatively as they do when making legal decisions, issuing orders, and distributing institutional resources. In many ways, culture shapes and defines what is possible in the work environment.*"[393]

"*Ideally, the judiciary should reflect the varied groups that make up our societies – women and men, as well as majority and minority groups. This is essential for public trust, as the public perceive its judges to be fair, impartial and representative of the diversity of those who are being judged. From a gender perspective, I posit that since women and men have diverse life experiences because of their gender differences, they are also likely to have different views regarding particular issues. From a judicial perspective, it can be argued that such consideration of gender may lead to better judicial decisions because the diversity of society is better represented, and issues are tackled with fitting sensitivity.*"[394]

Elements of a safe, healthy and respectful courthouse culture include:

1. **Judiciary has policies on values, ethics, integrity, gender equality and sexual harassment. Clear policies and expectations to counter discrimination (including intersectional discrimination) in the work and in practice. Leadership ensures that such policies are followed, constantly mentioned and discussed, and include diversity as part of the values of the judiciary.**
2. **Judiciary and Court Services staff are diverse and inclusive, representing different genders, races and ethnicities, people from LGBTQI+ communities, persons with disabilities and different faith groups. Diversity extends to leadership and decision-making positions. Leadership monitors and adjusts recruitment/attracting candidates to the profession to build diversity.**[395]
3. **Judiciary staff receive appropriate, systematic and mandatory training on gender equality and intersectional discrimination, with a view to eradicating discriminatory practices and gender inequalities throughout the legal process.**
4. **Judiciary staff demonstrate respect for all persons of all SOGIESC, race, ethnicity, age, socioeconomic status, culture, faith and disabilities, including making space for their voices, listening and not interrupting them, using respectful and inclusive language and welcoming them into the courthouse.**
5. **Expressions of gender inequality (screensavers, posters, jokes, etc.) are not accepted and are disciplined. There is zero tolerance in policies and practice for any form of sexual harassment or abuse. Reporting procedures in place and accessible to any staff experiencing discrimination or harassment.**
6. **All staff have equal opportunities and feel valued and respected regardless of gender, sexual orientation, race, ethnicity, age, socioeconomic status, culture, faith or ability.**

392 Consider, *e.g.* the experience of one survivor in New Zealand: "*The court system to me is like an Old Boys Club. They look after their own. For example, the judge saw this old white guy [offender] sitting there looking so frail and all this garbage and felt sorry for him I think. So, the whole thing was taken away from the victim – who was the one to feel sorry for – and taken to the offender, who was treated like he was some fantastic bloke because supposedly he hadn't offended for so many years after offending against myself and two other victims. […] It's a very western environment. It's a whole heap of white people as the goodies and a whole heap of brown people [including us, the victims] as the baddies.*" Gravitas, Improving the Justice Response to Victims of Sexual Violence: Victims' Experiences, Research Report (2018).

393 Ostrom *et al*, *Trial Courts as Organizations* (Temple University Press 2007).

394 International Association of Women Judges, Jubilee Biennial Conference: Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, Seoul (12 May 2010).

395 It is important to note that in some systems becoming a judge is a career path decided after university through application to training programmes and sitting professional examinations. In others, it is a selection process and appointment to a particular court. Where being a judge is an early career path choice, Judiciary will have to work with others to attract diversity into university law degree programmes and at the intake point into professional training or entrance examinations for judges.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No leader recognition of the need and value of diversity in addressing CARSV. ☐ No policies or reporting systems on gender or broader discrimination. ☐ Common expressions of inequality. ☐ Disrespectful language and behaviour common. ☐ Judges and court staff are mostly from the same race, gender, ethnicity, religion, gender identity and expression. ☐ Other staff report feeling undervalued, disrespected, unequally treated. ☐ Examples of sexual harassment unaddressed. ☐ Significant negative reactions to raising equality and gender issues ☐ Many court users feel unwelcome and treated poorly. ☐ EDI not considered in hiring and promotion.	☐ Awareness of issues but ad hoc response. ☐ No organisational EDI expectations set, or structures, policy or practices implemented. ☐ Isolated examples within teams of managers starting to tackle this. ☐ Frequent expressions of inequality. ☐ Frequent disrespectful language and behaviour. ☐ There are a few judges and court staff members outside of the majority culture. ☐ Many report feeling undervalued, disrespected, unequally treated. ☐ Examples of sexual harassment unaddressed. ☐ Negative reactions to raising equality and gender issues- minimising seriousness of issues. ☐ Fair and respectful treatment of court users depends on initiative of individual judges and staff members. ☐ EDI rarely considered in hiring and promotion.	☐ Leader recognises the potential value of a diverse workforce, though not specifically in connection to CARSV. ☐ Policy on gender and other forms of discrimination exists, basic EDI expectations, but is not consistently enforced. ☐ No consistent messaging or response to these issues. ☐ No accessible reporting systems or pathways. ☐ Openness at leadership level to manage these issues. ☐ Judges and court staff members have some representation from different demographics. ☐ Many report feeling undervalued, disrespected, unequally treated. ☐ Still some negative reactions to raising gender, discrimination or harassment issues. ☐ Still minimising of harmful behaviours (e.g. "*it was only a joke*"). ☐ Judges and court staff value treating court users with professionalism and respect but practice is inconsistent. ☐ EDI nominally included in hiring and promotion, but with inconsistent results.	☐ Clear policies and reporting systems in place. ☐ Consistent messaging on importance of equality and inclusion. ☐ Steps are taken to set expectations, a code of conduct and internal governance structures around EDI and CARSV. ☐ Inconsistent practice with continuing expressions of discrimination, disrespectful language or conduct. ☐ Staff and court users still express concerns about raising complaints. ☐ Judges and court staff have representation from all relevant demographics, some of which are in proportion to their representation in the relevant society. ☐ Some staff describe feeling undervalued, disrespected, unequally treated. ☐ Court users are generally treated professionally with occasional allowances for cultural differences. ☐ EDI regularly included in hiring and promotion, with promising results.	☐ Value of EDI as part of effective justice recognised as a guiding principle of organisational policy. ☐ Well-established policies well-understood and accepted by staff. ☐ Reporting systems supported, and staff and court users feel safe to access. ☐ Any expressions of gender inequality or discrimination in workplace are addressed quickly and effectively. ☐ Judges and staff members include representation in numbers roughly equal to the relevant society. ☐ All staff and court users report feeling respected, valued, with real efforts made to recognise their culture. ☐ Staff and court users describe workplace culture in positive terms about EDI. ☐ Court users are treated with dignity and sensitivity, with appreciation for cultural differences. ☐ EDI cornerstones of hiring and promotion and demonstrated in results.

Key critical questions:

- How does leadership view the importance of EDI in organisational practice? Is it seen as relevant to the effective functioning of a judiciary, especially in relation to CARSV cases?
- What are the policies on non-discrimination and EDI in the court?
- What are the levels of diversity in all sections and levels of management in the Judiciary and Court Services staff, including leadership? What reasonable accommodations are made to ensure differentially equal opportunities and recognition for all persons of all genders, sexual orientation, race, ethnicity, age, socioeconomic status, culture, faith and abilities?
- How would staff members describe the workplace culture? How do staff who may face intersectional discrimination describe their experience and comfort levels at work?
- How do court users describe their treatment in coming to the court?
- What expressions of gender equality, gendered language or comments are made and how often?
- Are examples of gender discrimination present within the court?
- Are examples of other forms of discrimination present at the court, e.g. against LGBTQI+ persons, persons of a minority faith or race, persons with disabilities, persons from other countries, etc.?
- How have these been addressed by the leadership? What complaint mechanisms are available to staff to lodge concerns?
- What are the policies, procedure and enforcement relating to sexual harassment and abuse in the workplace or practice? What do staff and court users know about it? How do staff and court users feel about reporting sexual harassment or abuse?
- Are staff expected to treat court users with dignity and respect, regardless of their race, colour, gender, sexual orientation, gender expression, religion or disability?
- How do court users view their experience with the court? Do they feel the court to be a welcoming and supportive environment? Do they see their own groups and identities represented and reflected?
- What are the recruitment and promotion processes for judges and court staff? Are the criteria objective and focus on performance? How is EDI and representativeness factored into these processes?

Data sources:

Internal: Organisational EDI documents, codes of conduct, strategic plans, diversity and non-discrimination workplace policies and reviews, human resources records, vacancy advertisements, PER and promotion records, recruitment strategies, policies and practices, harassment and non-discrimination policies and practices, EDI training materials and records, complaint mechanism reports and reviews.

External: Survivor feedback, external reviews on organisational diversity (staff unions, employee representatives).

Interviews: Organisational leadership, EDI or gender officers, judges and court staff, court users, diverse samples at all levels.

B. SURVIVOR ENGAGEMENT AND INTERACTIONS

In different jurisdictions, the role of a survivor in a court process can be very different. In some proceedings, a survivor will be a full party to the case, with rights of audience, the right to call witnesses, and so forth. In others, a survivor may only be recognised as a witness in the case. Regardless of the official status or legal standing in a case, survivors should always be recognised as rights holders. Judges have a key leadership role in ensuring all survivors' interaction with the process upholds their rights and is respectful and empowering. Court processes must balance the rights and wellbeing of survivors with the rights of a fair trial. Judges' approaches are central to achieving this. The right to a fair trial is not a set of limitless rights which allow oppressive and offensive questioning or unnecessary intrusions into survivor's privacy, or their retraumatisation.

Competency Indicator J3: Judges and Court Services encourage and support survivor participation at all stages of the court proceedings, including by scheduling and organising proceedings efficiently and in a manner that permits survivors to attend and participate.

When courts fail to resolve cases in an expeditious manner, it undermines the pursuit of justice and it can have a significant impact on the lives and wellbeing of survivors. Survivors can remain at risk while the case drags on. Memories fade. Evidence is lost. Motivation to pursue the case dissipates. Some perpetrators can feel emboldened by impunity. For others, motivation to change and the ability to engage with positive support is impaired.

"*Delays in scheduling court cases, over a period of several months, were cited as a common occurrence and as an especially frustrating and anxiety-producing aspect of the process*".[396]

Survivors explain the emotional toll in preparing for their testimony, only for it to be cancelled, often without good communications around those delays. "*Similarly, Kaye described this process of preparing for court only to be told, 'no, it's not happening tomorrow and then prepare yourself the next day, it's not happening again' as 'being continuously let down'. […] Consequently, preparing to go to court was highlighted as stressful and emotionally draining for both victim-survivors and their friends or family. This was especially so when they had actually got as far as being in the court building, only to be sent home.*"[397]

Judges should also understand the toll that the length of the process as a whole has on survivors. Many survivors speak of being in limbo or their lives being on hold while they wait for justice. "*Beth: It was three years of retraumatisation […] I felt stuck for so many years because everything kept going wrong […] they promised that they would keep me informed every step of the way, I remember the words […] and they didn't. Once you'd reported it, that was it. And that was for years. Lottie: I didn't know how to live for 18 months. I didn't know, you know, do I just forget about it, but then it has to be all dragged back up again, or do I just live my life on pause?*"

With many of the courts adjudicating international criminal cases being remote from where the crimes took place or remote from where survivor communities are (including those in rural settings, displaced from home or displaced beyond their own country borders), accessibility and outreach for survivors is critically important.

Elements of good practice for an effective and survivor-centred court system includes:

1. **Judges ensure court process is predictable and transparent, prioritising dates for survivor testimony and proactively mitigating delays or rescheduling.** For example, setting a date and pausing other testimony if it is not complete and would impact that fixed session to a survivor's testimony.
2. **Judges give survivors sufficient notice, support and communications, and time to travel and prepare for court appearances.**
3. **Judges set and enforce deadlines and decide matters promptly, but do not prioritise expediency over the rights of the survivors or the accused.**
4. **Judges ensure survivors are supported and empowered to attend or view court proceedings if they wish to. Their needs are considered when setting court dates.**
5. **Judges deal with cases effectively and efficiently to prevent prolonged proceedings, minimise the potential retraumatisation of survivors and ensure they can access justice without undue delay.**
6. **Judiciary ensures accessibility and outreach efforts are increased when a court does not hold hearings in the immediate vicinity of survivor communities (including rural, diaspora and displaced communities).** This is critical particularly for international, hybrid or other extra-territorial courts which sit outside countries where crimes took place or where survivors reside. This also includes substantive work for contextual and cultural understandings of survivor communities and collectives.

396 Brooks-Hay *et al*, Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, Scottish Centre for Crime and Justice Research Report No. 4/2019 (2019).

397 Brooks-Hay *et al*, *ibid*, 14, 27.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
□ Survivors are excluded from the court process. □ Survivors are not informed about court proceedings. □ No effort is made to schedule matters conveniently for survivors. □ Judges are hostile toward survivors appearing in court unless necessary. □ Cases delays are frequent and extensive.	□ Survivors are discouraged from attending court proceedings but are not excluded. □ Survivors receive inconsistent notification of court dates. □ Judges largely ignore survivors and do not seek their input or participation. □ Cases delays are common.	□ Survivors are permitted to attend court proceedings. □ Survivors are usually informed of court dates □ Judges willingly hear from survivors and allow for their participation □ Cases are resolved reasonably quickly with occasional delays.	□ Survivor participation is welcome. □ Efforts are made to accommodate survivors' schedules when possible. □ Judges inquire about survivors' willingness and ability to attend court proceedings. □ Judges consider survivor input in resolving cases. □ Most cases are resolved expeditiously and efficiently, with occasional exceptions.	□ Survivor participation is actively encouraged by judges and court staff. □ Judges inquire about survivors' willingness and ability to attend court and schedule proceedings to accommodate them. □ Judges always ask for survivors' input on issues where permitted. □ Cases are resolved expeditiously and efficiently.

Key critical questions:

- What policies or practices have judges developed to permit/encourage/facilitate survivor attendance and participation in court?
- How have these policies or practices been communicated to the parties?
- Are the policies being followed?
- Do judges recognise the value of survivor input and are they motivated to receive it?
- What are median case processing times for cases involving survivors?
- How often are survivors' attendance at court rescheduled or postponed? How much notice do the survivors get? How is this communicated?
- What do survivors say about the length of the proceeding and about the timing for their attendance?

Data sources:

Internal: Survivor participation measures, policies and guidelines, survivor travel policies and processes, survivor communication policies and letters, court processing data, policies and surveys of practices.
External: Survivor and survivor support feedback, coordinating justice actor reviews (VWU/witness support), assessments by witness/victims units (if they exist).
Interviews and focus groups: Judges and court staff, other coordinating justice actors (VWU/witness support).

Competency Indicator J4: Judges and Court Services create an atmosphere of safety and respect for survivors in court proceedings and around the courthouse.

"*Studies of witness experiences at international and hybrid criminal trials have found that survivors' psychological experiences depend significantly on whether they believe they were treated with civility and respect. One obvious factor is the manner in which a court conducts and manages questioning. The order, tone, pace, and content of questions can all affect survivor testimony. Another factor is whether and how judges and parties acknowledge a witness's contribution to the proceedings.*"[398]

For CARSV survivors, having to describe and therefore relive what happened is difficult enough. The difficulty is compounded when the court fails to affirmatively recognise and consider the effect that the proceedings may have on them. In order to effectively and fairly adjudicate cases involving sexual violence, judges must be attentive to survivors' experiences and limit the risks of retraumatisation so long as doing so does not impair the integrity of the adjudicative process.

Retraumatisation can be triggered by many things. Drawing on survivor accounts of justice processes, some key factors include:

- fear of seeing or confronting the accused, including in the court building outside of the trial;
- questioning by prosecution, judges and defence;
- uncertainty, unfamiliarity, unpredictability;
- being silenced or having their testimony limited or controlled by questions or objections;
- being intimidated by the hierarchies, formalities, technical language and traditional pomp of court processes; and
- being made to feel marginal to the process, being made to feel that their participation is not very important — just another routine day in court.

Survivors in the SCSL **CDF Case** spoke of their pain from being silenced and being unable to speak about the sexual violence against them in court. "*I feel so bad, because they raped me very brutally, and that was my main reason for going to court to testify. As soon as I got there, my lawyer told me that I should not talk about that anymore. And up until now, that still causes me pain. It makes me feel bad.*" "*Not only me, but we, the [redacted] group, we were suffering from these rapes, and our plan was to talk about these rapes and what happened to us. I would have felt good about being able to express what happened, and really to point at the perpetrator in the court, but I was not given the opportunity to do so.*"[399]

"*Being repeatedly called a 'liar' and a 'fantasist' about a horrific part of her life in front of a court challenged her personal integrity and was more than even she could bear.*" Oliver Andrade, son of survivor Frances Andrade, who committed suicide days after testifying against her abuser.[400]

*See also complimentary **Indicator LF6** and **Indicator WP10** for full lists of the kinds of special protective measures which can be available to survivors. These include:*

- testifying by live link from another room in the court building or other supported location.
- screening in court to ensure neither the survivor nor the perpetrator can see each other.
- accompaniment by a support person of the survivor's choice, preferably professional support officer whom the survivor trusts.
- earlier supported review of any previous statements or videoed interviews.
- risk and needs assessment around assistance, such as an intermediary or communication assistance.
- conducting ground rules hearings with a full discussion of preparation, logistics, attendance and expectations for the hearing, including judicial pre-vetting of Defence Counsel's intended lines of questioning and challenge.
- where defence can ask questions of the survivor and the accused is unrepresented or represented by counsel with no vulnerable witness training or demonstrated competencies, the judge either appoints a specialist counsel to act for them during the survivor testimony or the judge asks the questions for them.

Elements of good practice for survivor communications include:

1. **Courthouse facilities include separate entrances for survivors and waiting areas that keep them separate from the alleged abusers and their supporters.**
2. **All Judges and courtroom personnel have access to systematic core training on trauma-informed approaches, prevention of retraumatisation, and have incorporated this into their courtroom and trial management, monitor survivor wellbeing and actively seek to prevent re-traumatisation and re-victimisation.**

398 Ciorciari & Heindel, 'Victim Testimony in International and Hybrid Criminal Courts: Narrative Opportunities, Challenges and Fair Trial Demands', (2016) Virginia Journal of International Law 56(2), 308.

399 Staggs *et al*, '"When We Wanted to Talk About Rape": Silencing Sexual Violence at the Special Court for Sierra Leone', (2007) *International Journal for Transitional Justice* 1, 357, 366.

400 'Michael Brewer: Victim 'killed herself' during trial', BBC News (8 February 2013) (accessed 12 May 2022).

3. **Judges waive in-court formalities for survivor testimonies, use simple accessible language and ensure a more conducive, safe environment for survivor testimony.**[401]

Sexual violence survivors from New Zealand explained their experiences: "*It was very formal. I wasn't expecting it to be so formal. It was a bit daunting really. There's 12 people sitting there just staring at you, and there's big Police officers with big vests on, the lawyers all in black, and the judge. It was very scary walking in and seeing all of that.*" "*There is a real hierarchy thing. [The lawyers] are very well dressed, immaculately dressed […] and they bow – that's weird in itself. And they say, "If it pleases the judge […]*". That's not normal stuff."[402]

4. **Judges lead by example and control their courtrooms and all persons present in court, so that survivors feel respected and their time and testimony is acknowledged.**[403]
5. **Judges restrict questioning and challenges to those legally or factually relevant and not based on any stigma, myth or misperception about CARSV, survivors or perpetrators.**
6. **When Judges ask questions from survivors, they employ sensitive approaches in terms of questioning style, duration and content.**
7. **Judges encourage the availability and use of the best possible suite of special measures when a survivor wishes to use them.**[404]

Judges ensure survivors are aware of these measures and are given time and information to make decisions about these. Orders for these are made at the earliest opportunity and can be reviewed with the survivor if they change their mind.

"*The Judge the whole way through was excellent in most respects. One, our last time [in court] he allowed the other victim and I to ask him questions. So, we were allowed to go into the actual floor of the courtroom and just ask him questions if we had any, which was good.*"

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No accommodations are made to spare witnesses from being retraumatised during testimony. ☐ Judges permit lawyers to hector survivors in order to "*test*" their testimony. ☐ Court staff have little knowledge of how to implement special measures and avoid doing so. ☐ Court staff are unaware of concepts of re-traumatisation and make no effort to assist survivors. ☐ Survivors feel intimidated and unsafe in the courtroom environment due to excess formalities and undue/unmonitored exposure to alleged abusers.	☐ While some judges impose reasonable limitations on overly aggressive examination, most fail to exercise control. ☐ Minimal application of special measures. ☐ Some staff understand concepts of re-traumatisation and attempt to assist survivors, including through implementation of special measures. ☐ Survivors feel intimidated in the courtroom environment due to excess formalities and inaccessible language.	☐ Judges understand the effects of overly aggressive examination in re-traumatising survivors and generally address inappropriate attorney conduct when it arises. ☐ Court considers and frequently grants applications for special measures. ☐ Court staff effectively implement special measures and other ways of avoiding re-traumatisation upon request. ☐ Some efforts to reduce formalities for survivor comfort, some unwanted exposure to alleged abusers still occurs.	☐ Judges' rules and practices prohibit overly aggressive examination, often review these rules with attorneys in advance and generally enforce them. ☐ Court advises litigants about availability of special measures and makes them available. ☐ Court staff participate in planning for survivor appearances and have special measures at the ready. ☐ Routine efforts to reduce formalities for survivor comfort, accessible language. ☐ Routine efforts to prevent unplanned confrontations between survivors and alleged abusers.	☐ Judges' rules and practices provide clear expectations to attorneys about their conduct during cross-examination and judges effectively enforce reasonable limitations. ☐ Special measures are a regular part of the court's practice. ☐ Court staff are alert to issues of re-traumatisation and take steps to actively avoid its occurrence. ☐ Formalities, language always adjusted individually based on survivor comfort. ☐ Unplanned confrontations between survivors and alleged abusers actively prevented.

401 In *ICTR Prosecutor v. Gacumbitsi*, judges allowed a CARSV survivor-witness to testify to the event by writing during trial because she could not speak the words; see Bergsmo *et al* (eds.), Understanding and Proving International Sex Crimes (Torkel Opsahl 2012), 112, fn.176.

402 Gravitas, *ibid*.

403 Gopalan *et al* (2016), *ibid*, 145-148 for examples of good practice in judicial conduct, and impact.

404 *E.g.* the Argentinian Court of Cassation Order for video-recorded prior testimony to be admissible to avoid retraumatisation and repeated need for testimony in CARSV cases; OAS Report.

Key critical questions:
- How aware are judges of the concept of re-traumatisation and the effect it can have on survivors?
- Have they considered ways to prevent re-traumatisation and are they familiar with ways to prevent it, while still maintaining a fair trial?
- Is court staff trained on re-traumatisation and procedures for implementing special measures and skilled at implementing them when necessary?
- Are judges active or passive in intervening on antagonistic or stigmatising questioning or other language in court?
- Are court formalities, decorum and language adjusted to accommodate survivor participation? If so, how (ad hoc, standard measures, individual preferences)?

Data sources:
Internal: Bench books, directions and guidance, communications tools and judicial education materials, standards and reviews for non-stigmatising language and CARSV competency, training records and evaluations, trial transcripts, decisions and judgments, in-court observation.
External: Survivor feedback, trial monitoring reports and external case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, judicial leadership and judges, court staff, other court users (witness support persons, interpreters, defence counsel, prosecutors).

Useful resources, exercises or tools:
- CoE, Training Resource Tool For Prosecutors and Judges in Combating Violence Against Women and Domestic Violence in Kosovo (2020), Section 2.5 (Creating an enabling Court Room Environment) and Section 4.5.1 (Court Case Management Special Considerations for Judges).

Competency Indicator J5: Judges lead by using non-stigmatised and non-stigmatising language and terminology about CSRV and survivors of CARSV and require others to do the same, proactively correcting or countering any myths or stigmas which surface.

"*Principle 2: Avoid Reproducing Stigma. Communications used about CRSV and those affected by it, creates and entrenches stigma in a way that also leads to specific individuals/groups being overlooked in prevent and response efforts. The application of sensitive verbal, non-verbal and written communications including inclusive definitions of sexual violence, can help to mitigate imposed stigmatisation and its effects. […] Adopt appropriate, sensitive and non-sensational language in all verbal and written communications about CRSV to avoid creating and compounding stigma.*"[405]

Stigmatising language contains words which communicate some form of stigma or negative attitude against a person or group. For example, it can be words which convey a misassumption or myth about sexual violence, or may victim-blame or shame, or reduce a survivor or their identity to a label or derogatory term. Stigmatising language is one way through which survivors can experience and be harmed by stigma. It is also a way that stigmatised attitudes can spread or be encouraged in society or institutionalised into law, policies, processes and practice.

There is clear evidence that the use of stigmatising language not only affects a person directly, but can also influence the behaviour of others around them. In a medical setting, for example, the use of stigmatising language in medical records and histories has been shown to lead to reduced empathy and impacts on medical treatment. A study of physicians-in-training found exposure to stigmatising language associated with more negative attitudes towards the patient.[406]

How judges speak and the language they use publicly, within their chambers and with survivors about CARSV and CARSV risks can positively or negatively shape perceptions, beliefs, attitudes, behaviours, and actions of CARSV survivors, court service staff, and people in the community. Use of stigmatising comments and language by judges significantly decreases the likelihood that survivors will access justice. Most importantly it perpetuates stigma and harm to survivors, and most likely results in secondary victimisation.

Elements of good practice on language and terminology include:

1. **Judicial leadership and Judges have zero tolerance for stigmatising language and terminology about CSRV and survivors of CARSV.**
2. **Judicial leadership sets clear expectations that all judges are required to use non-stigmatising impartial language in all oral, written and electronic communications.**
3. **Judicial leadership models correct language and non-stigmatising concepts.**
4. **Judicial leadership, Judges and judges' legal clerks/officers immediately challenge persons who use stigmatising language and correct or counter the stigma or myths. There are consequences to continued use of stigmatising language in terms of available judicial sanctions.**
5. **Supervisors and managers regularly monitor and review judgements and decisions, court hearings, reports and feedback for stigmatising language. Deficiencies are quickly addressed, and where appropriate, corrective action is taken and/or disciplinary penalties applied.**
6. **Judges and Court Service staff have access to systematic core training, mentoring and guidance to understand and recognise what stigmatising language is, how to use non-stigmatising language, and how to work with survivors respectfully and mindfully in relation to any internalised stigma and fear of stigma.**
7. **Where available, judges are subject to existing oversight and disciplinary processes for persistent use of such language and concepts.**

405 FCO PSVI, Principles for Global Action, *ibid*, (2017).

406 Goddu *et al*, 'Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record' (2018) *Journal of General Internal Medicine* 33(8).

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No awareness or concern about stigmatising language. ☐ No leadership statement or policy. ☐ No guidance or training on stigmatising language. ☐ Common use of stigmatising language and communications across the judges in oral and written decisions, press releases or other comments. ☐ Judges do nothing to counter the use of stigmatising language or concepts by others in the justice process.	☐ Pockets of awareness of stigmatising language at the individual level. ☐ Isolated pockets of better practice in the use of non-stigmatising language and to objecting to its use by other parties.	☐ Basic guidance against the use of derogatory or insensitive language, or discriminatory language but not specific to CARSV myths and stigma. ☐ Frequent examples of use by judges (mostly inadvertently). ☐ Frequent examples of failure to object/ passivity in the face of stigmatising language by others.	☐ Policies and protocols in place. ☐ Covered to a degree in broader training. ☐ Inconsistent practice, with some examples of good and bad practice on use of non-stigmatising language and inconsistent responses to its use by others.	☐ Judges lead on this issue, model the use of non-stigmatising language and set clear expectations. ☐ Benchbook guidance on non-stigmatising language, supported by training and supervision/ checks. ☐ Judicial protocols requiring proactive intervention to the use of stigmatising language and concepts by others in the justice process. Supported by training and monitoring. ☐ Rare use of stigmatising language in any judicial communications. Formally corrected quickly when noticed. ☐ Routine common practice by judges to intervene and correct the use of stigmatising language and concepts by others.

Key critical questions:

- What is the leadership's position and level of tolerance for use of stigmatising language in oral, written and electronic communications?
- How do judges model good use of non-stigmatising language in oral, written and electronic communications?
- How is the need and value of non-stigmatising language (within the judiciary, with other service providers and with the public) understood and communicated across the judiciary?
- What specific expectations has the leadership set for use of non-stigmatising language in court proceedings? When interacting with CARSV survivors? With the public? With other staff within the justice process? With other service providers?
- What are the consequences for not adhering to the expectations set?
- What policies, procedures, guidelines, or other resources are available to help judges and staff in judges' chambers to better understand and address the negative impacts of using stigmatising language?
- How are judges held accountable for use of non-stigmatising language?
- What directions, training, peer work and support are available to assist judges and their staff to become more proficient in the use of non-stigmatising language?

Data sources:

Internal: Codes of conduct, communications tools and training materials, standards and reviews for non-stigmatising and bias-free language, training records and evaluations, communications related to CARSV cases, reviews of decisions and judgments, in-court observation.

External: Survivor feedback, trial monitoring reports and external case reviews.

Interviews and focus groups: Survivors groups, survivor advocates, support services, judicial leadership and judges, court staff, other court users (witness support persons, interpreters, defence counsel, prosecutors).

Useful resources, exercises or tools:

- Judge's CARSV and Stigma Bench book
- Guide to Stigma, Recognising Stigmatising Language and Using Non-Stigmatising Language/
- Myth-busters Guide for Judges

Competency Indicator J6: Judges control the courtroom proceedings and conduct of counsel to ensure the rights and protections of the accused and rights and wellbeing of survivors are respected and balanced.

Judges are, of course, bound by relevant rules, and the duty to ensure a fair trial for anyone accused of a crime. Within those bounds, however, there are many ways that judges can uphold the rights of survivors while still preserving a fair trial. In a properly balanced system, judges must ensure that disclosure of and questioning about survivors' personal information is confined to relevant matters. Prior to permitting survivors to be confronted with questions concerning private and/or embarrassing information, judges should appropriately balance the needs for disclosure and inquiry against the survivor's interest in maintaining privacy and avoiding embarrassment. If the court determines that the matter does not fall within a proper line of inquiry, judges must enforce orders preventing attorneys from pursuing it.

Examples of prioritising expediency over the rights of both the accused and victims can be found in many CARSV charging and admissibility of evidence rulings. When there has been a delayed disclosure or where the prosecution has sought to amend a charge to ensure CARSV is fully charged, the court could provide the defence with additional time to investigate and prepare in an effort to uphold the rights and interests of the survivors as well as the right to a fair trial.

Element of good practice include:

1. **Judges understand and uphold the tenets of a fair trial for an accused, including the limits of those rights and what conduct is not permitted on the basis of a fair trial.**

This should not be interpreted to allow counsel to stray beyond the requirements of a genuinely fair trial from fear of the case being appealed or from misunderstanding the boundaries of the rights to a fair trial. The European Court of Human Rights in Doorson v The Netherlands stated "*[t]he principles of fair trial also require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify*".[407]

2. **Judges understand their responsibility and role in terms of protection and wellbeing of survivors appearing in their court.**[408]
3. **Judges balance and uphold the rights of survivors participating in court processes, including their rights to privacy.**[409]
4. **Judges do not permit disclosure or questioning beyond legally relevant matters.**

Judges must ensure that examination during trial is confined to judicially relevant matters, particularly to monitor for any stigmatising questioning concerning the survivor's personal information, behaviour or character unrelated to the alleged sexual violence. Judges should actively enforce the survivor's right to privacy, confidentiality and dignified treatment.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No limits on pre-trial disclosure; Defence Counsel may seek any material they want. ☐ Privileges are not recognised or enforced. ☐ Survivors are confronted with embarrassing and private information on the witness stand, with no screening for appropriateness.	☐ Some limits on pre-trial disclosure, but survivors still embarrassed and have privacy violated. ☐ Privileges are sometimes recognised but not enforced. ☐ Some embarrassing and private information is screened in advance.	☐ Most judges require a showing of relevance before allowing disclosure of embarrassing or private information. ☐ Most judges recognise and enforce privileges. ☐ Judges regularly screen embarrassing and private information prior to witnesses testifying.	☐ Nearly all judges require that private and embarrassing information be relevant before disclosure. ☐ Almost all judges recognise and enforce privileges. ☐ Judges generally screen and often exclude irrelevant and embarrassing personal information.	☐ All judges require a showing of relevance, including conducting an in-camera review before ordering disclosure of embarrassing or private information. ☐ Judges always recognise and enforce privileges. ☐ Judges always screen and preclude examination of irrelevant private and embarrassing information.

407 (1996) EHRR 330. See Y v. Slovenia, ECHR App no. 41107/10 (28 May 2015), paras.101-108, 115; ICTY *Prosecutor v. Tadic*, Decision on Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10/8/1995), para.45; IACHR, Report on Human Rights and Terrorism OEA/Ser.L/V/II.116 Doc.5rev.1corr. (22 October 2002), para.251.

408 Sharratt, *ibid*, 57. See the duties of the court to support survivors and protect them from secondary victimisation: See Y v. Slovenia, ECHR, *ibid*.

409 *E.g.* Ginn, 'Ensuring the Effective Prosecution of Sexually Violent Crimes in the Bosnian War Crimes Chamber: Applying Lessons from the ICTY' (2013) *Emory International Law Review* 27(1), 583 (Furundžija case).

Key critical questions:
- What are the judges' attitudes and understanding of the right to a fair trial? What do they understand as the limits or boundaries of that in terms of a line of defence or Defence Counsel's conduct?
- What do judges see as their role in terms of protecting the rights and wellbeing of witnesses, specifically survivors who appear before the court?
- How do judges reconcile these two sets of rights?
- How do judges handle disclosure issues? Is their approval required for a subpoena to be issued? Do they review materials in camera before turning them over to the defence? What standards are used to assess whether the defence is entitled to these records?
- What privileges and rights do survivors have to private, protected materials? What standing does a survivor have to contest disclosure? Are survivors entitled to their own counsel on these issues?
- How are sensitive issues handled prior to the survivor being confronted with embarrassing/stigmatising questions? Is there a 'rape shield law'? How do judges decide the bounds of relevance?

Data sources:
Internal: Bench books and practice directions, training records and evaluations, vulnerable witness training and protocols, trial transcripts, decisions and judgments, in-court observation.
External: Survivor feedback, trial monitoring reports and external case reviews.
Interviews and focus groups: Survivors groups, survivor advocates, support services, judicial leadership and judges, court staff, other court users (witness support persons, interpreters, defence, prosecutors).

Useful resources, exercises or tools:
- Prosecutor v. Tadic, Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses (10 August 1995), para.45.

C. TECHNICAL CAPACITY AND COMPETENCY

Competency Indicator J7: All Judges and Court Services staff receive regular and continuing education on CARSV, stigma, myths and trauma-informed approaches.

All Judges dealing with international crimes (or with domestic crime charges which relate to international crimes) must have CARSV competencies. Without understanding CARSV, its impact, the associated stigma and the often-held myths and misunderstandings about it, adjudicators cannot ask the right questions, manage trials and processes effectively and safely or determine facts and criminal responsibility accurately. Without these skills, survivors engaging with criminal justice processes will be harmed and revictimised.

Traumatic memories of these experiences often endure for life, particularly when prompt therapeutic interventions are not put in place. Court processes can compound this trauma by making survivors feel disrespected, disbelieved and devalued, particularly when the process relies on rape myths and other stereotypes and misinformation. An informed court that follows best practices can have the opposite effect — helping survivors to feel valued, listened to and respected, regardless of case outcome.

"*There is a clear benefit to ensuring that judges are well informed not only about the law as it pertains to sexual assault, but also about the physical, mental and emotional impacts of sexual violence on the victims and how those affect decision making, behaviour, ability to recall detail, and more. Judges need training to challenge the false stereotypes about sexual violence that they may hold. These biases create barriers for all survivors seeking justice through the legal system, and discourage victims from coming forward.*"[410]

All court personnel must receive appropriate, systematic and mandatory training relevant for the professionals working with survivors in prevention and detection of sexual violence, gender equality and intersectional discrimination, and rape myths and stereotypes. The training must be provided with a view towards preventing secondary victimisation and eradicating discriminatory practices and the application of gender stereotypes at all stages of the legal process.

Judge Navi Pillay has emphasised the importance "*that women are represented and a gender perspective integrated at all levels of investigation, prosecution, defence, witness protection and the judiciary. […] However, gender parity alone is insufficient and must be coupled with gender competency on the bench. Our work underscores the need for experienced and qualified judges presiding over SV cases. When judges experienced in conducting trials involving sexual violence and attuned to specific characteristics of these cases, this made a real difference in the manner in which they handled victims on the stand. Gender Competent judges were not only better equipped to understand the emotional and psychological impact of sexual violence on witnesses in court, they were also better equipped to assess their evidence.*"[411] It should be noted that even in systems which very rarely deal with CARSV cases (e.g. courts utilising extraterritorial jurisdiction in one-off cases), mainstreaming and expecting gender, SV, cultural and trauma-informed competencies across all judges provides invaluable skills for non-conflict cases involving violence and SV as well.

Necessary topics that must be required in judicial education for all judges hearing cases that involve sexual assault, directly or indirectly, include:

- Dynamics of sexual violence;
- Sexual violence as a form of power and control;
- Methods of force and coercion;
- Effects of trauma on behaviour, memory and recall;
- Victimisation based on gender, gender expression, and sexual orientation;
- Rape myths;
- Countering implicit bias.

The concepts and information provided should be incorporated into court policies and practices, including bench books, manuals, jury instructions, and the like. All staff must also be trained on CARSV topics that affect operations, and performance evaluations and decisions on promotions should explicitly take staff performance in this area into account.

Elements of good practice include:

1. **Judiciary mainstreams and expects all judges to demonstrate CARSV competencies, including understanding stigma, myths and misperceptions, and trauma-informed approaches. CARSV stigmas/attitudes are tested at selection/ appointment and monitored as part of judicial training/education measures.**
2. **Judiciary makes systematic core training and updates available for all judges and their staff (not just specialists), including knowledge, demonstrated skills for judicial court practice and trial management, and attitudes.**
3. **Practice directions, bench books and guidelines are all available and regularly updated to support competencies and good practice.**
4. **Judiciary provides all judges implicit bias training and leadership training. This includes CARSV, gender and stigma.**
5. **KPIs for judicial practice and outcomes measure the quality of these demonstrated competencies by judges in their work.**

410 Illingworth, Federal Ombudsman for Victims of Crime (Canada), Submission to the Senate Standing Committee on Legal and Constitutional Affairs: Study of Bill C-337, An Act to amend the Judges Act and the Criminal Code (sexual assault), June 2019.

411 Gopalan et al (2016), *ibid*, 146.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Judges have no training, competency assessments or skills development training about CARSV or CARSV cases. ☐ Judges and their staff have no training or guidance on handling cases involving trauma as a result of sexual violence. ☐ Judges frequently rely on rape myths and stereotypes in handling sexual violence cases.	☐ Isolated pockets of judges and their staff with some sexual violence education, more with experience (not necessarily with training). ☐ Isolated examples of competency testing for certain positions in certain tests/sections. ☐ Isolated pockets of trained trauma-informed judges. ☐ Sexual violence cases are handled by judges who have received very little or no specialised training. ☐ No guidance or guidelines. ☐ No awareness of bias or stigma.	☐ Some staff members have received training on handling cases involving trauma, largely as a result of their own interest or initiative ☐ Basic experiential criteria for recruitment set but not specific for CARSV, etc. ☐ Sexual violence cases are handled by designated judges, but those judges receive little or no specialised training. ☐ Some awareness of bias but more focused on conflict of interest rather than implicit bias and prejudices.	☐ Specialised judges who handle sexual violence cases receive specialised education. But not all CARSV charges are heard by all specialist judges. ☐ Solid sets of CARSV competencies are set for selection/ appointment but not consistently assessed. ☐ Specialist judges with expertise in sexual violence cases use it to inform their practices and procedures and sexual violence cases. ☐ Specialist judges have trauma-informed training but inconsistent incorporation and practice. Not mainstreamed to all judges hearing ICL cases which may include CARSV charges. Not all staff working on these cases have the right competencies. ☐ Guidelines and bench books recently developed but not well-established or well-known yet.	☐ All judges working on ICL cases are expected to have CARSV and trauma-informed competencies, and receive regular CPD in these topics. ☐ Judges and their staff incorporate trauma-informed practice broadly. ☐ Selection panels include relevant competencies to ensure the right skills and attitudes. ☐ Well established and well-known guidance, bench books and practice directions support consistent CARSV competent practice. ☐ Judges undergo stigma training, self-awareness and stigma champion leadership courses. ☐ The judicial leadership holds themselves to KPI around CARSV competent practice.

Key critical questions:
- What continuing education is given to judges about CARSV, stigma, rape myths and trauma?
- How are curricula developed, updated and evaluated?
- What are judges taught about stigma? Is it case based/justice focused? Does it involve implicit bias recognition and reflection?
- Which judges are required to be trained? Is the training mandated?
- How are judges' staff trained on working with sexual assault survivors? Is it trauma-informed?
- How does their performance in applying their training factor into evaluations and promotions?
- Does the judicial leadership set expectations and measurable goals to mainstreaming competency and tackling stigma across all judges?

Data sources:
Internal: Bench books, guidance and practice directions, codes of conduct, tools and judicial education materials on survivor-centred, gender informed and trauma-informed approaches and CARSV competency, staff training and CPD records and attendance data (mainstreaming), KPIs, KAP surveys.
External: Survivor feedback, trial monitors, external reviews on judicial practices, external training providers and feedback.
Interviews and focus groups: Judicial leadership and judges, court staff, gender or CARSV focal points, survivors groups.

Useful resources, exercises or tools:
- UNODC, Judicial Conduct and Ethics: Self-Directed Course (2019), 40-42 on unconscious/gender bias.

Competency Indicator J8: When Judges are involved in confirmation of charges or deciding applications against charges, their decisions on confirmation or inclusion of charges are based on accurate understandings of CARSV in its contextual and intersectional (including gendered) dimensions.

*See also **Indicator P10** covering prosecution role in formulating charges.*

Not all jurisdictions include a formal confirmation process for charges or indictments (or their equivalent); however, in its absence there may be an option for defence to challenge the charges early on. In addition, a prosecutor may seek to amend their indictment or charges later in the process, and judges will have to decide on that application. In all of these ways, judges may be involved in reviewing charges laid by prosecutors.

There are many examples of judicial decisions on applications concerning charges or at confirmation of charges hearings which reflect myths and misperceptions about CARSV. The high attrition rates of CARSV charges at the confirmation of charges hearings at the ICC show this,[412] along with a judicial tendency to minimise or trivialise CARSV charges by rejecting some as of insufficient gravity or setting higher standards of proof than legally set at that stage and in comparison to other forms of violence.

"*The invisibility of SGBV crimes can also result from requalification of the charges by the Pre-trial Chamber. In the Kenya situation, the OTP issued a summons to appear [...] in respect of charges including 'other forms of sexual violence' [...] through forcible circumcision, but the Pre-trial Chamber considered this crime should fall under 'other inhumane acts' [...] The Pre-Trial Chamber reached this decision 'in light of the serious injury to body that the forcible circumcision causes and in view of its character, similar to other underlined acts constituting crimes against humanity.' This decision is revelatory as to a potential lack of sensitization of judges and/or a lack of recognition of sexual violence against men.*"[413]

There are also examples of judicial decisions on charges which have prioritised expediency and have then precluded evidence or restricted survivor testimony concerning CARSV, including:

- At the ICTR, **the Cyangugu case**, in which judges refused leave to amend the indictment and refused to hear any evidence of CARSV which came out at trial. "*Given the stigma attached to rape in Rwandan society, the international community's silence further amplifies the societal constraints that women are already under to muffle their voices about what happened to them. The continued silence and impunity surrounding these rapes has been facilitated by the ICTR.*"
- At the SCSL, in the **CDF trial** the judge also excluded evidence of CARSV after the prosecution failed to include it explicitly in the charges (and would not hear it as part of 'severe physical and mental suffering' in stark contradiction to other forms of violence and suffering). In this case, it seems the judge's primary consideration was about 'undue delay' (to allow the defence time to prepare). "*Perhaps even more sadly, the silence surrounding the prosecution of wartime rape in the CDF case may only reinforce the stigma associated with prosecuting crimes of sexual violence that exists at the local level in Sierra Leone, where rape — other than rape of a virgin — is still largely not considered a crime.*"
- At the ICTY, the Prosecution motion to amend the **Lukic** Indictment was denied based on delay to the proceedings, despite evidence of very serious sexual violence being heard. Leave for certification to appeal was also denied.[414]

Elements of good practice on CARSV charging decisions include:

1. **Charging decisions reflect merits, include standardised practice and understandings of CARSV, and counter myths, emphasising the public interest and importance of CARSV cases.**
2. **Judges apply a gendered and intersectional analysis of the evidence and events to ensure charges give notice of all relevant forms of CARSV against different groups and contextualise CARSV consistently with other forms of violence.**
3. **Judges ensure consistent forms of charging for CARSV across cases, between types of CARSV and with other types of crimes.**
4. **Any process for confirmation of charges by pre-trial or other judges sets evidential thresholds based on prima facie value of evidence available and not on conviction standards of proof. Such confirmations do not give weight to any myths, assumptions or stigma in relation to CARSV, survivors or perpetrators, nor make assumptions about trial fact-finder's (judge or jury) misunderstandings, myths and biases.**

*See **Indicator J9** on evidence and credibility assessment.*

412 Hayes, 'Sisyphus Wept: Prosecuting Sexual Violence at the International Criminal Court', in Hayes et al (eds.), Ashgate Research Companion to International Criminal Law: Critical Perspectives (2013): "*Women's Initiatives for Gender Justice have noted that, based on current figures, exactly half of all individual charges for gender-based crimes have not survived the confirmation of charges hearings. By contrast, charges for crimes such as murder, pillage or intentionally directing attacks against the civilian population have encountered no such obstacles.*" FIDH, Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond (2018).

413 FIDH, *ibid*, 16.

414 Ginn, *ibid*, 586.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No guidelines around CARSV charges. ☐ No survivors or survivors groups' perspective to understand nature and impact of crimes and ensure that charges reflect nature of what happened. ☐ No gender or intersectional analysis. ☐ CARSV considered in isolation - decontextualised from conflict and other forms of violence. ☐ Non-inclusive language in charges relating to CARSV. Otherwise lack of notice on CARSV charges. ☐ Inconsistencies across CARSV types, survivors and when compared to other crimes or violence. ☐ Inconsistent application of standard of proof or gravity threshold for CARSV crimes.	☐ Basic guidelines about charging decisions but not specific to CARSV. Inconsistent use or reference to guidelines. ☐ Isolated ad hoc examples or pockets of practice which consider gender analysis and understanding. ☐ Isolated pockets of practice where survivor perspectives are taken into account to understand the nature of the crimes and form of charges. ☐ Isolated ad hoc examples or pockets of practice which contextualise CARSV into charges and show consistency with other crimes. ☐ Isolated pockets of good practice on standards of proof, gravity and consistency charging decisions.	☐ Charging decision guidelines which have some basic provisions on CARSV. Use and reference still inconsistent. ☐ Consideration of survivor statements when considering charging. ☐ Examples of basic gender analysis more frequent in practice. ☐ CARSV more contextualised against other forms of violence and the conflict. Mixed practice. ☐ Mixed practice on adequacy and consistency of CARSV charges.	☐ Charging decision guidelines specific to CARSV but does not address consistency of charges. ☐ Good examples of survivor perspectives used in charging decisions but not mandated and not always available. ☐ Gender and intersectional analysis tools but still some inconsistent use. ☐ Charges relating to CARSV more consistent in terms of inclusive language but still inconsistent practice on consistency with approach on other crimes or between typologies and survivors.	☐ Comprehensive well-established and well-used charging decision guidelines specific to CARSV that ensure consistent understanding, characterisation and charging across CARSV and with other crimes. ☐ Consistent availability and use of survivor perspectives to understand crimes as standard practice prior to any charging decisions. ☐ Gendered, intersectional and conflict analysis conducted and reflected in every case to ensure charges accurately reflect the nature and impact of the crimes. ☐ Charges have inclusive language which gives notice of CARSV typologies and survivors. ☐ Consistent charging decisions across CARSV typologies and survivors, and in comparison to other crimes. ☐ CARSV charging decision data collected and analysed, corrective action taken to ensure consistency and competency.

Key critical questions:

- What are the charging decision guidelines (if any) for judges? What thresholds and standards do they set? What guidance do they give about assessing evidence? What do they say about CARSV charges?
- What survivor perspectives are presented to inform charging decisions? What do the judges think of these perspectives and how they can or should be used?
- How many cases include confirmed CARSV charges? What is the record of charging decisions around CARSV? Is the pattern or outcomes in CARSV charging decisions different from other forms of violence/crimes such as murder? What have been the reasons for CARSV charges not being confirmed?
- How is gender and intersectionality factored into CARSV charging decisions? Are charging decisions reflective of the context in which CARSV is occurring (e.g. as a weapon of war, as part of ethnic cleansing or to drive a population away, as part of a genocide, etc.)?
- What do judges think of charging decisions about CARSV in general?

Data sources:
Internal: Bench books, practice directions, guidance and training materials on CARSV charging, training records, charge sheets, indictments, confirmation of charges hearings and judgments, any appeals of charging decisions including submissions and judgements, dissenting opinions.
External: Survivor feedback, trial monitoring, reviews and reports.
Interviews and focus groups: Judicial leadership and judges, judge's clerks or legal officers, other court users (investigators, prosecutors, defence counsel), survivors groups, survivor advocates.

Useful resources, exercises or tools:
- Toolkit Part B - CARSV Charging Decision Guidelines

Competency Indicator J9: Judges' evidential and other assessments and rulings reflect an understanding of the context and dynamics of CARSV, do not rely on CARSV myths and proactively counter stigma and CARSV myths.

In assessing credibility, judges have historically held survivors of sexual assault to a higher standard than victims of any other type of crime. This is so even though research demonstrates that sexual assault is very rarely falsely reported, in no greater numbers than any other crime.[415] Survivors are often judged as much, if not more, than alleged perpetrators. In order to effectively perform their role, judges need to remain open-minded, and consider evidence based on an accurate understanding of how CARSV really occurs and not rely on stereotypes, myths or preconceived notions of how 'real' survivors and perpetrators are supposed to look and act.[416]

There are many examples of this from CARSV cases, including as an example:

- **ICC Katanga case** where the accused was found guilty of aiding and abetting attacks on civilians, destruction of property, pillage and murder through stockpiling and distributing weapons for violent attacks on villages. During those attacks, alongside these other crimes, sexual violence was committed against villagers; yet the Court acquitted the accused of aiding and abetting those simultaneous violent attacks committed while wielding the same weapons.
- **ICC Bemba** application for arrest warrant in relation to forced nudity of two male civilians was dismissed due to lack of gravity without any analysis of the law or facts.[417]

Elements of good practice include:

1. **Judges' decisions and assessments properly understand CARSV in the context of conflict and as part of wider forms of violence occurring in war.**
2. **Judges' decisions and assessments properly apply a gendered and intersectional understanding to the evidence and crimes.**
3. **Judgements and assessments contain no stigmatising language, misconceptions, myths or perceived ideas about survivors or perpetrators, but rather positively contribute to 'myth-busting' by actively countering and tackling CARSV stigma. CARSV is not marginalised or lost in judgements.**
4. **Where judges have the power to call witnesses and evidence, judges seek broader evidence to contextualise and understand CARSV and its impact, using expert and fact-pattern witnesses.**
5. **Where forensic examinations are court ordered, judges do not use these powers to compel a forensic examination of a survivor without their informed consent, and ensure that any forensic examination uses a trauma-informed, survivor-centred approach and is based on scientifically valid methodology and findings.**

*See also **Chapter Six — Medical and Forensics.***

415 McMillan (2018) Police Officer's Perceptions of False Allegations of Rape, Journal of Gender Studies, 27(1) 9-21; Lisak *et al* (2010) False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases, Violence Against Women 16(12) 1318–1334.

416 ICJ, Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Laws and Practice (2015); J.L v. Italy, ECHR App no.5671/16 (27 May 2021), paras.134-143: "*criminal prosecutions and sanctions play a crucial role in the institutional response to gender-based violence and in addressing gender inequality. It is therefore essential that judicial authorities avoid reproducing sexist stereotypes in court decisions, minimising gender-based violence and exposing women to secondary victimisation by using guilt-inducing and moralistic language likely to discourage trust victims in justice*" (unofficial translation).

417 Altunjan, 'ICC and Sexual Violence: Between Aspirations and Reality', (2021) *German Law Journal* 22, 886.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Judges routinely express uninformed views of CARSV. ☐ Judges' decisions frequently rely on rape myths. ☐ Frequent examples of survivor blaming, shaming and focus on survivor's conduct rather than that of the perpetrators. ☐ Expert witnesses are rarely used and often disregarded. ☐ CARSV often marginalised, trivialised, decontextualised or ignored. ☐ Court ordered forensic examinations without survivor consent.	☐ Isolated pockets of judges expressing informed CARSV views. ☐ Judges' decisions often have references to rape myths, or otherwise marginalise or trivialise different forms of CARSV. ☐ Isolated pockets of judges more focused on perpetrator conduct, and resistant to attacks on survivors' conduct and credibility based on stigma and myths. ☐ Isolated examples of expert witnesses being called and considered. ☐ Isolated examples of judges using orders for forensic examination only after survivor consent obtained.	☐ Judgements and assessments demonstrate a basic understanding of CARSV but myths and misunderstanding creeping in many cases. ☐ Basic guidance highlights that judges should not use rape myths in their decision-making, not followed through in practice. ☐ Basic guidance emphasises focus on perpetrator conduct, not consistent in practice. ☐ Expert testimony is sometimes called and weighed in making decisions. ☐ Basic guidance not to compel forensic examinations for CARSV, mixed practice. Basic understanding of what makes an exam and findings scientifically valid.	☐ Practice directions guide judges on assessments and decision-making around CARSV, including benchbook assistance with avoiding stigmatising concepts, myths and misunderstandings. Still some inconsistencies in practice. ☐ Many judgements and assessments show good understanding of CARSV, its context and gendered/ intersectional impact. ☐ While few judges rely on rape myths, only some judges' decisions dispel rape myths. ☐ Expert testimony is a frequent part of the practice and is given strong consideration. ☐ CARSV forensic examinations only on consent basis. Generally good understanding of scientifically valid exam and findings.	☐ All judges have been fully educated on CARSV dynamics and their decisions reflect it. ☐ No judges rely on rape myths and judges routinely dispel such myths in their decision-making. ☐ Experts are used regularly as standard practice, and judges' decisions reflect a strong understanding and consideration of the topics about which experts testify. ☐ CARSV forensic examinations only when survivors choose to undertake them. Excellent understanding of forensic process and nature of scientifically valid findings.

Key critical questions:

- Do judges' decisions reflect an understanding of how CARSV occurs and how it affects survivors?
- Do judges' decisions rely on or convey any rape myths or other common misconceptions about CARSV?
- How is CARSV described in judgements and decisions? How much prominence is it given? How are its impacts described? Are there any assumptions about the gender or other characteristics of survivors or perpetrators?
- How do judges describe their expectations for survivors' reactions in court and of what makes a 'good' CARSV survivor-witness? What do judges say about male CARSV survivors?
- How do judges describe persons accused of CARSV?
- What are the attitudes of judges about expert evidence? Can they describe different kinds of relevant expert evidence in CARSV cases and why they are relevant?
- Are expert witnesses permitted to help educate the court and factfinders about these issues?
- What are the judges' attitude towards forensic or medical examinations? What do they describe as the purposes and potential outcomes of those examinations? Do they know who conducts them and how? What is their attitude to a survivor's wishes not to have an examination?
- What do judges think of countering stigma and myths in their judgements? What do they think their role is in that regard? What kinds of things do they think they could do?

Data sources:

Internal: Bench books and practice directions, judges' educational material, transcripts, decisions, judgments, appellate submissions and judgments, decisions on forensic medical expert designations and examinations.
External: Survivor feedback, trial monitoring reports, reviews and reports.
Interviews and focus groups: Judicial leadership and judges, clerks or legal officers, other court users (investigators, prosecutors, defence), forensic medical experts, survivors groups, survivor advocates.

Competency Indicator J10: Judges consider survivor safety during custodial hearings and decision-making for persons accused or convicted of CARSV, including early release, commutation of sentence or pardon applications.

"Judges have a duty to be aware of and consider all relevant facts concerning the defendant's risk of violence to the victim. They should always take into consideration any concerns raised by the victim relating to [...] safety. [...] Pre-trial detention should be imposed when the judge determines there is sufficient risk of violence or concerns that the defendant will not obey imposed release conditions. [...]

[There are a number of c]onditions judges can impose to reduce the risk to the victim if the defendant is released pending trial, [including]:

- Judges should take into account the victim's views regarding the appropriate conditions. Protection should not be offered in a paternalistic manner but should be viewed as a means to afford [survivors] safety so that they can develop their own strengths and strategies for coping with violence.
- Judges may want to ask the victim directly about [their] fears of future violence and the basis for that fear, as well as [their] opinion on the likelihood that the defendant will obey the terms of release."[418]

Custodial decisions should not be made based on assumptions about survivors or perpetrators, but rather based on survivor-informed risk assessments and accurate understandings of risks of harm to the survivor. Survivors should be informed when custodial decisions will take place, and decisions communicated to them with support and protection measures when necessary.[419]

*See also **Chapter Five — Witness Protection**.*

Elements of good practice for this indicator include:

1. **Judges should take into account survivor views regarding safety as one aspect of any custodial decision, including pre-trial detention/bail hearings, commutation of sentence, pardon or early release.**
2. **Judges should not be influenced by stigmatised concepts, myths, assumptions or preconceptions about survivors or 'real perpetrators' when making custodial decisions.**
3. **Judges should consider appropriate conditions of release which take into account the safety of the survivor and the survivor community.**
4. **Judges should ensure that survivors are informed about custodial decisions and are supported including with any necessary protection measures where release is ordered.**

418 Adapted from Council of Europe, Training Resource Tool For Prosecutors and Judges in Combating Violence Against Women and Domestic Violence in Kosovo (2020), 37-38.

419 UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, Article 17(c): "*ensure the right of a victim of violence to be notified of the offender's release from detention or imprisonment.*"; Brooks-Hay *et al*, *ibid*.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Judges neither seek nor use survivor perspective nor risk assessments to inform custodial decisions. ☐ Custodial decisions contain assumptions and misperceptions about CARSV, survivors or perpetrators. ☐ Custodial decisions do not consider CARSV, gender and intersectional aspects of custody or conditions of release. ☐ Survivors are not informed about custody, and do not receive support or protection.	☐ Isolated pockets of judges seeking survivor input or asking for risk assessments for custodial decision-making. ☐ Many custodial decisions influenced by stigma, stereotypes and myths. ☐ Isolated examples of custodial decisions addressing CARSV, gender and intersectional aspects for custody or any conditions of release. ☐ Isolated examples of survivors being informed.	☐ Basic guidance for custodial decisions but not specifically on CARSV. ☐ Basic requirement to rely on survivor input and obtain risk assessment in advance of such hearings. ☐ Stigma, stereotypes and myths sometimes appearing in decisions. ☐ Inconsistent practice on CARSV, gendered aspects for custody and conditions for release. ☐ Basic policy to contact survivors, but silent on support and protection needs.	☐ Policy, guidelines and tools about CARSV but not well-established and inconsistent practice. ☐ Many judges asking for survivor input. ☐ Many judges asking for risk assessments. ☐ Few examples of stigma, stereotypes and myths creeping into custodial decisions. ☐ Many judges making custodial decisions based on CARSV and gender aspects for custody and conditions for release. ☐ Policy for contact, support and protection of survivors on release but inconsistent practice.	☐ Well-established policy, guidelines and tools, embedded well into work practice. ☐ Consistent survivor input used by judges, as well as coordinated gendered, intersectional and CARSV specific risk assessments. ☐ No stigma, stereotypes or myths included in decisions. ☐ Consistent custodial decisions and conditions of release informed by CARSV, gender and intersectional aspects. ☐ All survivors notified in advance of custodial hearings, informed of outcome with support and protection needs met — all achieved through a multi-agency coordinated approach.

Key critical questions:

- What do judges believe are relevant considerations for custodial hearings? What are specific CARSV considerations? Do they believe gender and intersectional aspects are important?
- What internal guidance, support and data are available to judges?
- What evidence do judges seek at custodial hearings?
- What consideration do judges have of survivor concerns about safety and any history of risks, threats, reprisals, revictimisation or violence?
- How do judges assess risks, vulnerabilities, perpetrator history, etc.?
- What are the main grounds for judges to refuse bail or release and what conditions of release do they impose?
- How are survivors informed about the outcome of custodial hearings? What do judges believe is their role or responsibilities in that regard? Do judges consider support or protection for survivors as part of any release or bail decision?

Data sources:

Internal: Bench books and practice directions, custodial hearing policies, tools and judicial education materials on CARSV competency, training records and evaluations, transcripts or notes from custodial hearings, judgments relating to custody and release, decisions relating to risk assessments and protective measures.
External: Survivor feedback, trial monitoring reports, review and reports.
Interviews and focus groups: Judicial leadership and judges, clerks or legal officers, other court users (investigators, prosecutors, defence), survivors groups, survivor advocates.

Competency Indicator J11: Judges' sentences reflect the seriousness of the crimes committed, do not minimise or excuse sexual violence, and where possible compensate survivors for the harm suffered.

Once CARSV is adjudicated, judges have the responsibility of crafting a sentence that:

- holds offenders accountable for their acts related to CARSV;
- denounces and deter such violence;
- stops violent behaviour;
- promotes survivor and community safety, including by separating the offender from the survivor, as well as from society where necessary;
- takes into account the impact on survivors and their family members of sentences imposed on perpetrators, including the severity of the physical, psychological and other harms and the impact of victimisation, including through survivor impact statements;
- provides sanctions that ensure that the perpetrators are sentenced in a manner commensurate with the severity of the offence;
- provides reparations for harms caused as a result of the violence; and
- promotes the rehabilitation of the perpetrator, including a sense of responsibility in offenders and, where appropriate, reintegration of the perpetrator into the community.[420]

Where plea agreements or 'settlements' are being presented, there should be consultation with survivors and care to ensure CARSV charges are not treated differently from other charges (e.g. the only charge dropped to reach a plea agreement). Furthermore, judges should take care when reviewing such agreements to ensure there are no other stigmatising aspects, such as minimisation through low sentencing recommendations for CARSV crimes.[421]

Judges should take into account specific circumstances as aggravating factors for sentencing purposes, including for example repeated violent acts, abuse of a position of trust or authority, perpetration of violence against a person in a relationship with the perpetrator, perpetration of violence against a person under 18 years of age. *See also* ***Indicator LF3.***

Thoughtful consideration of survivor input, including through survivor impact statements and testimony, is an important part of the process.

"*Traditionally judges provide comments or 'remarks' at the point of sentencing. The purpose of the remarks is to explain the sentence that is imposed on the offender. They are directed at the offender but they also provide an opportunity to inform the victim and the wider public about the sentencing process. Part of the process is to explain why the particular behaviour deserves to be punished with criminal sanctions. By explaining why the behaviour is treated as a crime, or why it is wrongful, a judge can be said to be acting as the 'authorised spokesperson for the state' and in this role delineates between 'right and wrong social conduct'. In so doing, particularly where offences have been recently introduced or where existing laws have expanded into new areas, judges can be said to play the role of a 'norm entrepreneur' — a person 'interested in changing social norms' — by using law's 'expressive function' to 'mov[e] norms in better directions'. Indeed, sentencing is recognised as a 'communication tool' not just between judge and offender, but also between the criminal justice system and society.*"[422]

Judges frequently describe the sentencing decision as the most difficult part of their job. While some aspects of sentencing are prescribed by statute, judges commonly have broad discretion. Sentences are generally meant to be reflective of the relevant society's views about the offence and the offender. Society also has an interest in facilitating the restoration of the survivor. Research can help guide this process, as the court considers the risk of re-offence and ways to mitigate that risk through confinement, treatment and supervision. Sentences can provide validation, closure and peace of mind to survivors, while helping them to recover what they have lost. Sentencing guidelines and ranges can help keep sentencing decisions more uniform and consistent, and can inform judges of the gravity of CARSV and its many reverberating impacts.[423]

420 UN Updated Model Strategies, *ibid*, Article 17(a) and (d).

421 OSCE, Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia: Progress before Courts in BiH 2014-2016 (2017) 70-73.

422 Hunn *et al*, 'Exploring the educative role of judges' sentencing remarks: an analysis of remarks on child exploitation material' (2018) *Psychiatry, Psychology and Law* 25(6).

423 Baig, 'Sentencing for Sexual Violence Crimes', in Brammertz & Jarvis, *ibid*, 271.

Sentencing decisions must not perpetuate stigma, myths and misconceptions about CARSV, survivors or perpetrators. Light sentences can send a message that CARSV is not a serious crime.[424] Applying inappropriate mitigating factors can also reflect victim-blaming, perpetrator affinity bias or myths about 'real perpetrators'.[425] Stigmatising language will also perpetuate stigma within the judge's constituent communities and may further harm survivors. For example: "*In determining a sentence in respect of the offence of rape, the judge should not consider the following to justify a lesser sentence: the complainant's previous sexual history; an apparent lack of physical injury to the complainant; or any relationship between the accused person and the complainant prior to the offence being committed.*"[426]

Elements of good practice include judges:

1. **having clear guidance and practice directions on sentencing for CARSV crimes, to encourage consistency and recognition of gravity.**
2. **hearing and using survivor and survivor community perspectives on impact, gravity and safety.**
3. **hearing and using impact evidence from experts.**
4. **ensuring a gender and intersectional perspective is integrated into their sentencing decisions.**
5. **ensuring CARSV crimes are not "*obscured by other criminality*" or treated as less grave than other crimes involving killing or other forms of violence.**
6. **applying appropriate aggravating and mitigating factors, but are not influenced by stigma, myths and misconceptions in these considerations, including 'real perpetrator' myths, lack of physical scars, 'virginity' or sexual history of the survivor, etc.**[427]
7. **specifically tackling stigma/myths and their dangers in sentencing, including minimisation or trivialisation of CARSV compared to other crimes.**
8. **Systematic recording of sentencing practice and trends for CARSV to inform understanding, review and revision of policies and practices on sentencing.**
9. **making inclusive transformative reparation orders whenever possible and appropriate.**
10. **ordering CARSV offenders to be added to sexual violence offender registers.**

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ No sentencing guidance or practice directions. ☐ Survivor input not considered by judges. ☐ No expert evidence on impact considered. ☐ Nothing in sentencing about CARSV specifically. ☐ Sentencing judgements contain stigmatised language and concepts. ☐ Low sentences for CARSV or lost in sentencing judgements that focus on other crimes. ☐ No tracking or data collection system around sentencing. ☐ No compensation or restitution available.	☐ Isolated pockets of judges' practice on: ☐ trying to make consistent sentencing on CARSV. ☐ using survivor evidence about impact ☐ using expert evidence on impact. ☐ some dicta specifically about CARSV. Little if anything on gendered or intersectional perspectives. ☐ Frequent use of stigmatising concepts in sentencing. ☐ Little ad hoc tracking of sentencing data.	☐ Basic guidance on sentencing but nothing specific on CARSV. ☐ Basic use of survivor impact testimony in sentencing but not additional statements or consultations. ☐ Basic use of expert evidence or precedent/ judicial dicta on impact. ☐ Basic sentencing judgements on CARSV referring to gravity. Some basic gender aspects addressed. ☐ Some use of stigmatising concepts to support gravity findings. ☐ Basic tracking of sentences but not specific to CARSV.	☐ Specific guidance on sentencing for CARSV, including using stigma tackling language, but practice not consistent yet. ☐ Policy to seek and use survivor input on sentencing, but practice not fully consistent. ☐ Policy calls for expert evidence to support impact of CARSV, not consistently followed in practice. ☐ Policy and tools for CARSV sentencing including gender perspectives, often used but not consistently.	☐ Well-established sentencing guidelines for CARSV, used as part of standard practice and embedded into workflow. ☐ Survivor input always solicited and included in sentencing decisions. ☐ Expert evidence and precedent always used to support sentencing decisions. ☐ Detailed and dedicated CARSV sentencing findings standard practice which include gender and intersectional perspectives and countering stigma messaging and language.

424 Gopalan, 'CRSV in Kosovo - Gendering Justice Through Transformative Reparations', in Mouthaan & Jurasz (eds), *Gender and War in International and Transitional Justice Perspectives* (2019), p.8.

425 *E.g.* TRIAL International, Punishing Conflict-Related Sexual Violence: Guidelines for Combating Inconsistencies in Sentencing (2019), 27 (describing a Bosnian court finding the perpetrator to be a 'family man' as a mitigating factor).

426 Council of Europe, *ibid*, 68.

427 Gravitas, *ibid*.

PRIORITISE FOR IMPROVEMENT	UNDER PERFORMANCE	BASIC	STRUCTURED	OPTIMAL
□ No risk and safety assessment of offenders.	□ Compensation or restitution can be considered as part of negotiation of sentence. □ Risk assessment is considered but effectiveness not measured.	□ Compensation and restitution considered from sentence. □ Validated risk assessment used to inform decision-making.	□ Occasional stigmatising language appearing in sentencing judgements. □ Tracking of CARSV sentencing but not being fully used or integrated into updated policies and practice directions. □ Genuine efforts made to restore survivors through compensation and restitution. □ Validated risk assessment used, with some local adjustment.	□ Tracking and use of CARSV sentencing data, used to improve sentencing policy and guidelines to ensure consistency and recognition of gravity. □ Genuine and effective efforts made to restore survivors through transformative reparations. □ Validated risk assessment with evidence-based adjustment for local considerations.

Key critical questions:

- What do judges believe is their role in sentencing? What do they consider as the most important elements for sentencing for CARSV? What is their view of the sentencing judgements for cases involving CARSV convictions?
- What policies, guidelines and tools are there for judges in relation to their sentencing? What support is available to ensure consistent sentencing practice?
- What evidence do judges use either during trial or at a sentencing hearing about gravity, impact, aggravating and mitigating factors?
- How are survivors' perspectives integrated into sentencing? Are there any survivor impact statements taken or used? Are there any survivor consultations?
- How do judges ensure a gender and intersectional perspective in their sentencing?
- How do judges address stigma in their sentencing submissions?
- What efforts are made to restore survivors (through restitution, compensation or other means)?
- Is validated risk assessment part of the sentencing process?
- Are risk assessment instruments normed for local conditions?
- Where confinement is ordered, what provisions facilitate rehabilitation?
- What treatment and supervision options are available to judges at sentence? How are providers selected and evaluated? How do they report back to the court?

Data sources:

Internal: Guidance or bench books, tools and training materials on CARSV sentencing guidelines, transcripts or notes from sentencing hearings, pre-sentence report templates, survivor input procedures and court rules, data on restitution and compensation orders, risk assessment instruments, reports and further proceedings on enforcement of judgements.
External: Survivor feedback, trial monitoring reports, external reviews on sentencing practices.
Interviews and focus groups: Judicial leadership and judges, clerks or legal officers, other court users (investigators, prosecutors, defence counsel), survivors groups, survivor advocates.

Useful resources, exercises or tools:

- Baig, 'Sentencing for Sexual Violence Crimes', in Brammertz and Jarvis (eds.), *Prosecuting Conflict-Related Sexual Violence at the ICTY* (2016), 274.
- UN Updated Model Strategies and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice, Article 17.

COURT SERVICES

Competency Indicator CS1: Court Services ensure a coordinated and integrated justice process for survivors in relation to their engagement, information/communications, protection, support and participation.

"Victims and witnesses are the most important people in the [...] criminal justice system. Every part of that system shares the responsibility to improve the rights, support, protection and participation of victims and witnesses in criminal proceedings."[428]

Coordination and collaboration serve to standardise and unify the justice process for survivors. Coordination should reduce unnecessary duplication, gaps or omissions between functions or service providers. It should ensure a solid support system surrounding a survivor to ensure they can interact with and participate in the justice process and give their best evidence in a safe and supported environment.

Elements of good practice for this indicator includes:

Court Services have and maintain:

- **joint agreements or Memorandums of Understanding (MoUs);**
- **joint processes and tools shared with and worked on together;**
- **joint reviews of how systems and processes are working;**
- **regular joint meetings**

with other key functions which relate to survivor engagement, communication, protection, support and participation, including:

- **Police/investigators**
- **Prosecution**
- **VWU and Support Services/System**
- **Witness Protection Services**
- **Medical Forensics**
- **Any Victim Representation or Advocate**
- **The Judiciary**

*See also **Chapter Two — Access to Justice and Survivor Pathways** and **Chapter Three — Support Services**.*

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Asserts independence and works on own or in isolation. ☐ No agreements or MoUs with other actors, even where handovers, intersections or duplication in function or process. ☐ No formal meetings with other actors. ☐ Voices criticism of other actors and functions without engagement. ☐ Survivors consistently report disjointed process, with multiple contact points, irregular and inconsistent communications, support, etc. — with overlaps and gaps.	☐ Joint process with internal court service functions only for one or two actors. No formal agreements or joint reviews. ☐ Some ad hoc working level meetings to try to improve. ☐ Survivors frequently report disjointed process, with multiple contact points, irregular and inconsistent communications, support, etc. — with overlaps and gaps. Some isolated examples of better practice and coordination happening ad hoc through some teams.	☐ Some basic agreements with most of the other key actors. ☐ Leadership meetings sporadically or responsive to crisis or criticism. ☐ No joint processes or shared tools. ☐ Some survivors report areas of collaboration and coordinated support or communications, but mostly still overlapping, inconsistent, conflicting and confusing interactions with different persons in different functions or departments.	☐ Agreements with all key actors with some joint processes. No shared tools or regular day-to-day collaboration on cases. ☐ Leadership meetings and reviews more regular. ☐ Mixed reports by survivors, with still significant issues around overlapping, conflicting or multiple contact points or gaps. Some still report disjointed, confusing process.	☐ Fully integrated cooperation and collaboration to ensure seamless, deconflicted and consistent process for survivors. ☐ Includes joint agreements, with joint processes and shared tools with all other actors. ☐ Includes day-to-day working level team meetings for individual cases, and regular leadership review meetings. ☐ Survivors mostly report a simple, streamlined, coordinated system which meets their communication, information, preparation, support and preparation needs.

428 'Working Together for Victims and Witnesses' Protocol agreed between the Crown Office and Procurator Fiscal Service, Victim Support Scotland, the Scottish Courts and Tribunals Service and Police Scotland.

Key critical questions:
- What cooperation and coordination agreements does the Court Service have with other functions and external actors, including support, protection, logistics, etc.?
- What joint procedures has the Court Service adopted with other functions?
- What shared tools does the Court Service use with other functions?
- How often does the Court Service meet at the leadership level with other functions? How often does the Court Service meet with other functions at the working level on cases?
- How is implementation of and adherence to such agreements, procedures and tools monitored and reviewed? At what level and how often does this occur?
- How does the Court Service ensure that survivors are not retraumatised and revictimised by multiple actors in the court process?
- How do survivors describe their interaction with different functions during the process? How many times do survivors have to recount their experience to different functions? How many different liaison and contact points are there for survivors? Are there gaps at handover points or where functions intersect or overlap? Are there unnecessary or uncoordinated interactions or engagements?

Data sources:
Internal: Interagency coordination agreements, MoU, meeting minutes and notes, joint policies, SOPs, tools, information sharing and confidentiality tools, survivor liaison strategies and plans, practice guidelines.
External: Survivor feedback, reviews or reports.
Interviews/focus groups: Organisational leadership, court services/registry staff, other service providers and justice actors, external service providers, survivors groups, survivors advocates.

Competency Indicator CS2: Court Service provides survivors and other witnesses with interpreters who are certified, professional, independent, competent in survivors' dialects and trained in CARSV and trauma.

Survivors must be able to fully understand what is happening in the courtroom and to fully relate their own story in their own words, with an interpreter who makes it comfortable for them to do so. It is critical that interpreters be independent and highly skilled, hired by the court and with no ties to the survivor or the accused. They must maintain strict confidentiality. They must be trained in CARSV and trauma, and use non-stigmatising and non-derogatory language.

"*Translating the [...] proceedings requires interpreters to make quick and definitive choices daily, even hourly, between analogous words, phrases, and linguistic idioms. These swiftly made decisions ultimately affect the meaning of the testimony, and unfortunately may at times be tainted by human error, fatigue, or stress. The need to check constantly for accuracy in the testimony appearing on courtroom monitors distracts attorneys and judges. Technological glitches can bring the entire proceeding to a halt. In short, interruptions and errors focus attention on the linguistic mode of production rather than on the testimony itself. Undoubtedly, interpretation and translation problems have at times interfered with the overall impact of rape victim testimony and the presentation of evidence of rape.*"[429]

Elements of good practice include:

1. **For survivors who speak a different language than the one used in court, or need sign language assistance or an intermediary to assist with communication, the court must use interpreters and communication assistance who:**
   - are certified and fully familiar with the relevant language and dialect;
   - are independent from the parties in the case and have no ties to the survivor's or defendant's community;
   - have cultural and contextual understanding in order to accurately and sensitively communicate;
   - are non-judgmental, trained in CARSV and use non-stigmatising and non-derogatory language;
   - make survivors feel comfortable and have a sensitive understanding of issues of trauma and stigma (particularly regarding gender, discussion of highly personal topics);
   - interpret in a dispassionate and professional manner;
   - fully explain their role to survivors and become familiar with the survivor's manner of speech before they take the witness stand.
2. **Court Service must carefully monitor the interpretation process to ensure it is conducted with integrity and sensitivity.**
3. **Court Service must develop and provide context and CARSV sensitive language communication tools, such as glossaries.**
4. **Court Service, including all its survivor support and communication services, must ensure quality and CARSV/trauma-sensitive interpretation and translation for all written, spoken and other forms of communication.**

429 Coan, 'Rethinking the Spoils of War: Prosecuting Rape as a War Crime in the ICTY' (2000) North Carolina Journal of International Law 26(1), 233.

PRIORITISE FOR IMPROVEMENT ☐	UNDER PERFORMANCE ☐	BASIC ☐	STRUCTURED ☐	OPTIMAL ☐
☐ Interpreters are hired often last minute on an "*as needed*" basis with little attention paid to assessing their qualifications to ensure quality. ☐ Interpreters have ties to the parties' communities. ☐ Interpreters regularly use judgmental and stigmatising language without correction by others including in court. ☐ Judges do not allow interpreters to meet with survivors before testifying, explain their role, and ensure survivors' comfort-level with the interpreter. ☐ Judges allow interpreters to express judgement and emotion during survivor testimony. ☐ There are no language tools and assistance developed for consistent, sensitive and non-stigmatising communication assistance across court services and in court.	☐ Some interpreters are regularly assigned to the court, but not enough and the court often scrambles to find interpreters. ☐ Many interpreters have ties to the parties' communities and others have no cultural or contextual understanding. ☐ Many Interpreters use judgemental and stigmatising language without correction by others including in court. Isolated examples of interpreters who do not. ☐ Isolated pockets of judges allowing interpreters to meet with survivors before testifying to explain their role and ensure survivors' comfort with the interpreter. ☐ Some isolated pockets of services or individuals have developed communication tools on an ad hoc basis.	☐ The court maintains certified interpreters, a good number of whom have been found to be competent but without specific CARSV or trauma training or awareness. ☐ Interpreters with ties to the parties' communities are used sometimes. Most interpreters have limited cultural and contextual understanding. ☐ Interpreters sometimes use judgemental and stigmatising language, but judges sometimes correct them. ☐ Policy allows interpreters to meet with survivors before testifying to explain their role and ensure survivors' comfort with the interpreter, but practice inconsistent. ☐ Basic communication policy and tools, not specific to CARSV.	☐ The court has some policies, tools and training but not fully implemented in practice. ☐ The court has enough certified interpreters on staff and conducts training and evaluation of its interpreters. ☐ Interpreters with ties to the parties' communities are rarely used and only if no other option is available. ☐ Some cultural and contextual awareness training is provided for interpreters. ☐ Interpreters occasionally use judgemental and stigmatising language and court often corrects when they do. ☐ Clear policy recommending interpreters to meet with survivors before testifying to explain their role and ensure survivors' comfort with the interpreter. Most judges allow this. ☐ Package of communication policies, tools and aids provided across units, but inconsistent awareness and use.	☐ There is a well-established system, regular communication assistance team including trained rosters with policies, tools and oversight. ☐ The court has enough interpreters on staff, and they are certified, highly trained, and regularly evaluated. ☐ An interpreter without ties to the parties' communities is always available. ☐ All interpreters have received context and cultural awareness training and have worked to ensure CARSV and stigma sensitivity in their communication assistance. ☐ Interpreters do not use judgemental and stigmatising language. ☐ All judges allow interpreters to meet with survivors before testifying to explain their role and ensure survivors' comfort with the interpreter. It is standard practice built into the workflow and process. ☐ A full set of shared communication tools about CARSV, trauma and stigma are used as part of workflow across all units and services, and cover all forms of communication with survivors at all stages and by all actors in the process.

Key critical questions:
- How are interpreters hired, trained and supervised? Does this include sign language and other communications assistance?
- Is there a diverse pool of interpreters and are they able to accommodate requests for particular genders, ethnicity, etc.?
- What ethical codes are they required to follow?
- Have the interpreters been trained on sexual violence, stigma and trauma?
- Do the interpreters have sufficient cultural competencies to communicate effectively and sensitively with different groups about CARSV, stigma and to ensure they use non-stigmatising, non-derogatory language?
- Do judges permit interpreters to meet with survivors prior to testimony to fully explain their role and become familiar with their manner of speech?
- Do trial judges fulfil their responsibility to monitor interpreters to ensure the process is conducted with integrity?
- What communication aids, policies, tools, etc. have been developed for use across Court Services?

Data sources:
Internal: Codes of conduct, tools and training materials on survivor-centred and trauma-informed interpretation, language, CARSV competency, communication aids and tools, interpreter training and CPD records, PERs, KAP surveys, hiring policies and certification process records, transcripts.
External: Survivor feedback, trial monitoring, external training providers and feedback.
Interviews and focus groups: Interpreters and translators, judicial leadership and judges, court staff, other court users (prosecutors, defence counsel, VWU/witness support), survivors.

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