SYNERGY *for* JUSTICE

Foreign, Commonwealth & Development Office

CARSV STIGMA TOOLKIT FOR JUSTICE

Part B – Tools

GUIDE TO NON-STIGMATISING LANGUAGE FOR JUSTICE ACTORS AND SUPPORTERS

USING THE RIGHT LANGUAGE
DURING JUSTICE PROCESSES

“CARSV STIGMA TOOLKIT FOR JUSTICE”

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USING THE RIGHT LANGUAGE DURING JUSTICE PROCESSES

"Simply put, words matter. The words we use are key to creating psychologically safe, inclusive, respectful, and welcoming environments."[1]

"Of special concern are words that minimise the harm suffered by sexual assault survivors — that blame the victim, muddle the matter of consent, infer that a survivor must act a certain way to be believed, turn the perpetrator into a passive actor, or linguistically blur rape with healthy consensual sex. Language concerns spread to all corners of the legal system — defence lawyers, prosecutors, judges, law enforcement, and correctional personnel."[2]

"The language of the legal system has an impact beyond just the parties in front of them because it is used to create the narrative for society as a whole. … You don't realise the effect words have. Particularly from the bench, it's a heightened responsibility. Language can perpetuate bias; unless we're aware, we don't change."[3]

1 American Psychological Association (2021) Guide to Inclusive Language.

2 Cooper (2015) Words Matter: How Language Reflects Our Response to Sexual Violence, American Bar Association.

3 Bayliff, former chief of the U.S. Air Force's Sexual Assault Prevention and Response Program, quoted in Cooper (2015) *ibid*.

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1 - INTRODUCTION

This Guide to Non-Stigmatising Language for Justice Actors and Supporters forms part of the Synergy for Justice CARSV Stigma Toolkit for Justice and has been designed as an accompaniment to Part A – The Competency Assessment. It can also be used as a stand-alone guide for training or awareness raising, or as a reference tool for criminal justice actors, such as judges, prosecutors, victim advocates, investigators and others.

Stigmatising language contains and reinforces "*prejudicial, stereotyped or false beliefs about sexual violence, sexual violence victims and perpetrators*", as well as manifesting prejudicial attitudes and other forms of stigma against victims of sexual violence. Stigmatising language devalues 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.[4]

In criminal justice systems, use of stigmatising language by justice actors harms survivors, reduces trust and heightens barriers to accessing and pursuing justice. The use of stigmatising language also impacts the justice process itself, influencing decisions or assessments about evidence and the strength of a case at each step of the process.[5] Furthermore, criminal justice systems serve an important educational function for societies. Judicial pronouncements, prosecutorial comments, etc. can persuade or influence public opinion and policy, in addition to social perspectives. Authoritative communications within the justice process and in court rooms which stigmatise survivors perpetuate and worsen community stigma and deepen internalised stigma in survivors.

On the other hand, when justice actors and justice processes positively counter stigma, this can help tackle community stigma and internalised stigma. Non-stigmatising language has the potential to influence the creation of new positive memories and stimulate post-traumatic growth for survivors of CARSV, and advance a positive mindset and behavioural change in criminal justice actors and supporters. In this way, the justice process can be a more empowering, positive process for survivors.

It is therefore imperative that criminal justice actors recognise language which vocalises or otherwise communicates stigma and 1) proactively counter such communications when they arise and 2) are mindful to use non-stigmatising language in their own communications.

The Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (The Murad Code) contains minimum standards which are relevant to safe and effective justice processes and includes specific provisions about non-stigmatising language and communications.

4 Synergy for Justice (2022) CARSV Stigma Toolkit for Justice – Part A, introductory chapter: Stigma in Justice.

5 Goddu *et al.* (2018) Do Words Matter? Stigmatizing Language and the Transmission of Bias in the Medical Record, J Gen Intern Med, 685-691.

Murad Code Requirements

Principle 1.

Understand Survivors as Individuals

The first principle of The Murad Code (2022) puts emphasis on prioritising survivor safety, well-being, and dignity. It also highlights the importance of understanding risks and repercussions to survivors and those around them which can include stigmatisation; physical, online, information and communications safety risks; and legal risks.

Principle 3.

Be Responsible and Have Integrity

3.3 Do not stigmatise: We will examine and confront our own limitations in understanding perspectives and experiences beyond our own; our own biases, fears, trauma and triggers; and our own attitudes, prejudices and assumptions in relation to sexual violence and survivors. **We will not convey any message to survivors (through our tone, words, body language or other actions) which blames, shames, further harms, judges, belittles, patronises, ridicules or disrespects them. We also will not present or publish any information about them which could do this.**

Principle 6.

Know and Understand the Contexts

6.8 Understand appropriate communications and interactions: We will work to understand the significance and impact of all forms of our communication and interactions in the context, ensuring gender, age, disability, social, cultural and context sensitivity and respect. We will identify and use inclusive and non-harmful forms of communication which reflect survivors' identities, and respect non-harmful social norms and practices. We will also seek to understand cultural and other aspects of communication, including mannerisms, derogatory terms, common expressions and euphemisms, and gaps in language relating to SCRSV [systematic and conflict-related sexual violence] or the survivor.

State actors, such as investigators, prosecutors and judges, are also obligated to take steps to reduce gender discrimination and stigma in justice processes through the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)[6] and the Istanbul Convention (the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence).

6 Vertido v. The Philippines, CEDAW Communication No. 18/2008, 22 September 2010, UN Doc CEDAW/C/46/D/18/2008, *'all legal procedures in cases involving crimes of rape and other sexual offences must be impartial and fair, and not affected by prejudices or stereotypical gender notions.'*

This Guide to Non-Stigmatising Language for Justice Actors and Supporters aims to provide guidance and examples of non-stigmatising language to promote safe, meaningful engagement with the criminal justice process and ensure dignified support for survivors. This tool can:

- ✓ Assist criminal justice actors and supporters in becoming aware of what can amount to stigmatising language, and to understand its impact and how this can hinder access to criminal justice for survivors and affect the outcome of the investigation, prosecution and adjudication processes.
- ✓ Provide guidance and examples of non-stigmatising language to enable survivors to access safe, meaningful justice and dignified support. The use of non-stigmatising language can be viewed as a foundation for survivor-centred, safe engagement and as a vehicle to promote recovery and post-traumatic growth for survivors of CARSV.
- ✓ Influence mindsets, attitudes and behavioural change.

Guidance and examples have been drawn from the authors' and reviewers' lived experiences and professional insights, and from cited case law and literature.

2 - STIGMA AND STIGMATISING LANGUAGE

2.1 What is Stigma?

Stigma is defined as a strong feeling of disapproval that most people in a society have about something.[7] Stigmatisation is a social construct that devalues, judges and marginalises individuals or groups based on a particular characteristic, status or event that the society perceives as different or non-conforming with its values or expectations. Stigma is inherently linked to and shaped by the power structures and dynamics, including gender narratives and expectations of the social and cultural context within which the stigma occurs. The process of stigmatisation leads to behaviour that labels, stereotypes or judges certain characteristics as undesirable, and discriminatorily excludes those labelled as such from social, economic and political spheres.[8]

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.[9] *"Implicit bias is a form of bias that occurs automatically and unintentionally, that nevertheless affects judgements, decisions, and behaviours."*[10]

It is important to recognise that stigma acts at four different levels within society.

1. **Structural level:** in which beliefs and attitudes are institutionalised into laws, internal rules, policies, processes, and institutional culture and practice.
2. **Community level:** where media and civil society reinforce and disseminate stigmatising messages.
3. **Interpersonal level:** where interactions between individuals, including those stigmatised, convey stigmatised or stigmatising messages.
4. **Internal stigma:** at the individual level in which stigma is internalised, and often amplified, for those being stigmatised.[11]

Stigma is strongly associated with sexual violence, and particularly negative attitudes and judgement against survivors. 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.

Users of this guide may find it helpful to read more about stigma in the justice system in the introductory chapter, Stigma in Justice, of the **Synergy for Justice CARSV Stigma Toolkit for Justice Part A** – The Competency Assessment and in the accompanying **Part B – Tools The Myth Debunker**.

2.2 What is Stigmatising Language?

Stigmatising language is any form of communication which conveys any stigmatised or stigmatising misconception or attitude. "*For example, it can be words which communicate 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*

7 Cambridge English Dictionary.

8 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice.

9 Roelen *et al.* (2020) COVID-19 in LMICs: The Need to Place Stigma Front and Centre to Its Response, 1592-1612.

10 National Institutes of Health (2022) What is Implicit Bias?

11 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice.

derogatory term."[12] This can include communication in all forms: including verbal, written, gestures and body language. Often, colloquialisms, euphemisms and slang terms are imbued with cultural prejudices and stigma. Stigmatising language can occur in online communication in all forms in the digital space. Communication also includes non-response, silence and non-correction.[13] "*You want to be acknowledged for you being there. 'Thank you for bringing this to our attention', or something, you know? Or just some kind of acknowledgement that you're there. The whole time [the judge] had his head down. It was a total disregard of morals. I felt he gave more respect to the perpetrator than he did to the victims.*"

Like stigma, use of stigmatising language can often be subconscious, and *"can overlap and [be] deployed subtly."*[14] It is not just the obvious, outrageous statements of victim-labelling, disbelief, shaming or blaming, many of which are shared as examples within this guide. It can be far more subtle and insidious, such as gestures or body language or using quotation marks around words. In one example, a survivor saw her doctor put inverted commas around the word 'raped' in her notes, conveying disbelief.[15]

> *"I went to my GP (family doctor), and he wouldn't believe me. He even wrote 'raped' in inverted commas on my doctor's note. What if I needed my medical records in court?"*
>
> **SV Survivor**

As it has been said, the simple raising of an eyebrow in disbelief can be stigmatising and can deter a survivor from participating in the justice process. "*I remember watching that officer's eyes to see if there was any sign of disbelief or disgust, but I saw only compassion. Just a raised eyebrow or a flippant remark and I would have been as far away from there as possible and would never have reported to the police again.*"[16] Even when a well-intended justice actor is trying to debunk myths or stigma, they can unintentionally use stigmatising language and thereby actually perpetuate stigma. We have tried to include a variety of examples in this guide to encourage readers to consider more subtle occurrences in the course of their own work experience and culture.

Stigmatising language also includes communication which removes the perpetrator from the discussion or from accountability. For example, consider the following graphics illustrating how our use of language 'conspires' to remove the perpetrator from the equation and then labels the victim.

Based on the work of Julia Penelope, the first example above shows how we often do not use the active voice where the perpetrator is the subject of the sentence (far left on the process chart above), but rather the passive voice where the victim become the subject. So often the perpetrator drops out of our sentence entirely, and the victim is reduced to a label or identified by the crime committed against her.

12 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice, and Indicator J5.

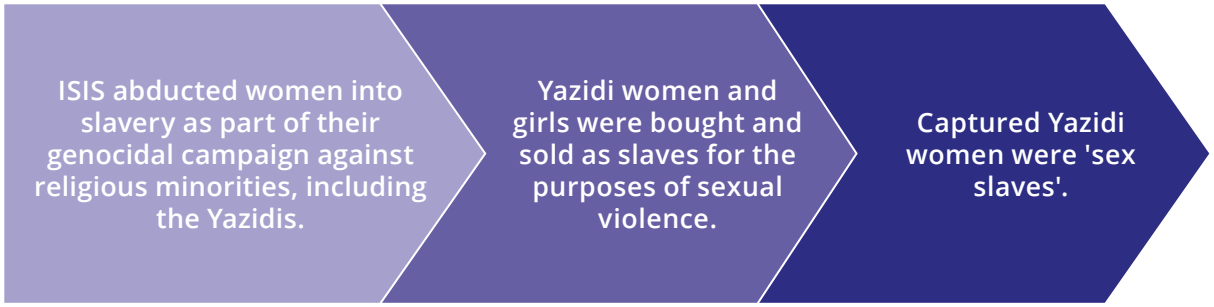
13 See e.g., Gravitas (2018) Improving the Justice Response to Victims of Sexual Violence Victims' Experiences (New Zealand), 83.

14 Law Commission of England and Wales (2023) Evidence in Sexual Offences Prosecutions: A Consultation Paper.

15 Payne (2009) Rape: The Victim Experience Review, UK Home Office, 12.

16 Payne (2009) *ibid*; Angiolini (2015) Report of the Independent Review into the Investigation and Prosecution of Rape in London, 55-56.

This use of passive language and labels leads to a focus on risk reduction for women and girls, rather than tackling perpetration risks (i.e. reducing the risk of perpetration by perpetrators). This is how the subtle framing of our language perpetuates and facilitates victim-blaming, victim-shaming and labelling. Even describing sexual violence or gender-based violence as 'a women's issue' immediately removes the perpetrator's violence and conduct from the conversation.[17]



The second example shows how the same use of passive language has led the media to label Yazidi women who are survivors of a genocide as 'sex slaves', despite the outcry from survivors and their communities.

Common forms of sexual violence stigma which can be reflected in language and communications include:

i) Misunderstandings or misconceptions about sexual violence, sexual violence survivors and sexual violence perpetrators.

ii) Minimisation of the gravity of sexual violence or the harm it does, which can seek to justify or excuse perpetrator conduct.

iii) Stereotyping and labelling.

iv) Victim-blaming.

v) Victim-shaming and victim family shaming (often spoken of as 'dishonour').

vi) Victim doubting or disbelief based on stigmatised beliefs or misconceptions about sexual violence or harmful, discriminatory gender narratives about survivors.

17 Katz (2013) Violence Against Women: It's a Men's Issue, TED Talk.

2.3 Impact of Stigmatising Language

"*Most of us have had one of those days when everything is going well, and someone says a single word that changes everything. That one word does something to us, deep inside; we feel it in our gut, in our heart, and in our soul. In a heartbeat, that one word builds us up or tears us down. Words can inspire, empower, and bring us hope. But they can also bully and scare and destroy our sense of self.*"[18]

Justice actors and supporters must be aware of the use of and impact of CARSV stigmatising language at all four stigma levels: structurally or institutionally within justice organisations and processes; in the community, where their words can reinforce stigmatised attitudes within communities and the public; interpersonally when they interact with survivors and others; and internally for survivors, who may amplify any stigmatising messages, causing greater harm and often silencing and shaming them.

Impact on Survivors

"*These types of comments are everything survivors fear when reporting a sexual assault: victim-blaming, minimising the impacts of the crimes committed against them and not being believed.*"[19] "*The underlying scepticism that sexual assault survivors face when they disclose may be the single most damaging factor in our societal response*".[20]

Stigmatising public communications and personal interactions by justice actors feed survivor fear of stigma, and increase internalised stigma and distrust in the justice system and of justice actors. Stigmatising language creates and exacerbates barriers to accessing justice. Estimates of underreporting for sexual violence indicate that 80%–99% of incidents are never reported to the police.[21] For sexual violence cases which are reported in national justice systems, 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.[22]

> *"It'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 who interviewed me, you know, two or three times since just in passing. Once when I was walking [...] and she walked past with her colleague. 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?"*
>
> **SV survivor**[23]

The message conveyed to survivors when they disclose sexual violence can be devastating, particularly when it includes stigmatising or stigmatised content. "*Stigma and stigmatization play a critical role in shaping survivors' thoughts, feelings and behaviours as they recover; their risk of revictimization; and their*

18 The Well Project (2017) Why Language Matters: Facing HIV Stigma in Our Own Words.

19 Patricia Teffenhart, New Jersey Coalition Against Sexual Violence, quoted in Atmonavage (2019) Judges Comments on Sexual Assault Cases Are 'Everything Survivors Fear,' Discourage Victims from Coming Forward, Experts Say.

20 Lonsway & Archambault (2012) The "*Justice Gap*" for Sexual Assault Cases: Future Directions for Research and Reform, Violence Against Women, 145–68.

21 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice, and Part B – The Myth Debunker, 25-26.

22 E.g., Hohl & Stanko (2015) Complaints of Rape and the Criminal Justice System: Fresh Evidence on the Attrition Problem in England and Wales, Eur J Criminol (finding 67% of survivors withdrew from cases during the police investigation in England and Wales); Skinnider *et al.* (2017) UN Multi-Country Study: The Trial of Rape: Understanding the Criminal Justice System Response to Sexual Violence in Thailand and Viet Nam (finding survivor withdrawal accounted for 36% of cases dropped during investigation in Viet Nam, namely due to fears of stigma and privacy); Machisa *et al.* (2018) Attrition of Rape Matters at the Prosecution Stage of the South African Criminal Justice System (finding survivor withdrawal accounted for 85.9% of cases dropped at prosecution stage in South Africa).

23 Brooks-Hay *et al.* (2020) Justice Journeys: Informing Policy and Practice Through Lived Experience of Victim-Survivors of Rape and Serious Sexual Assault, 22-23.

help-seeking and attainment process". *"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 [post-traumatic stress disorder] and can impede the receipt of effective formal help that meets their needs and facilitates recovery."*[24] Furthermore, "*self-blame, shame and negative social reactions are linked to a host of poor outcomes, including PTSD, depression, psychological and physical distress, affect dysregulation, social withdrawal, maladaptive coping and beliefs, and reduced self-esteem.*"[25] Language, gestures and expressions can act as triggers, reinforcing and amplifying internal feelings of shame and worthlessness.[26] "*Such language can also contribute to negative outcomes such as social isolation, reduced self-esteem, and less likelihood to seek medical help*" or other forms of assistance or support.[27]

> *"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**[28]

> *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 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."*[29]
>
> **SV Survivor**

Priya Gopalan explains the impact of judges' framing of sexual violence as a loss of honour in Bangladesh International Criminal Tribunals (ICTs): *"[T]he judicial narrative in … cases before the Bangladesh ICTs relied upon these very descriptions of rape that embed the shame and stigma that drive social ostracism [framing sexual violence as losing 'honour', 'highest self-worth' or 'supreme wealth']. Thus, the description of the harm endured, and loss suffered by survivors further stigmatises them in the courtroom, where they should be empowered, their voices heard, and their rights upheld. Such a framing of the crime also obscures the fact that rape is fundamentally a violent attack on the body, autonomy and security of a person. When rape is described [by the judges] as an act worse than death and when the loss suffered is depicted as irredeemable and perceived to define the survivor, then the scope for her recuperation and reintegration is greatly truncated."*[30]

24 Kennedy & Prock (2018) "*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, Trauma Violence Abuse, 1-16.

25 Frost (2011) Social Stigma and its Consequences for the Socially Stigmatized, Soc Personal Psychol Compass, 824-839.

26 Lancaster *et al.* (2018) Reducing Stigma and Discrimination for People Experiencing Problematic Alcohol and Other Drug Use, Sydney NSW Australia.

27 Shatterproof (2021) Addiction Language Guide.

28 Brooks-Hay *et al.* (2020) *ibid*, 6.

29 Brooks-Hay *et al.* (2020) *ibid*, 8.

30 Gopalan (2021) Rejecting Notions of "*Honour*" to Mitigate Stigma: Prosecutions for Sexual Violence Before the Bangladeshi International Criminal Tribunals, 9.

Impact on the Justice Actor, Their Colleagues, and the Justice Process

In addition to the damaging impact on a survivor when they hear stigmatising language, there is also clear evidence that the use of stigmatising language directly affects the person who uses that language and can also influence the behaviour of others around them. For example, stigmatising language used by one investigator, verbally in case briefings or in written notes of interviews, could impact the attitude and decision-making of their colleagues, prosecutors who receive reports and recommendations from them, and those hearing their testimony later in court. The same applies to prosecution notes or case assessments, as well as with judges and their legal officers working on decisions and judgements.

This effect has been evidenced in medical settings. The use of stigmatising language in medical records and histories has been shown to lead to reduced empathy and impacts on medical treatment for those reading the notes later. A study of physicians-in-training found exposure to stigmatising language associated with more negative attitudes towards the patient.[31] A separate study in 2010 conducted with more than 500 trained mental health and addiction clinicians to understand whether referring to someone as a 'substance abuser' rather than 'an individual with a substance use disorder' led to different behaviour by health care practitioners. The study found respondents exposed to the term 'an individual with a substance use disorder' were less likely to say the person was personally responsible for their illness, and were less likely to recommend punitive, rather than therapeutic, action.[32]

It is therefore imperative that justice actors are careful with their words and communications to ensure that they are not introducing stigma and stigmatised attitudes into the justice process and decision-making, and that they are not perpetuating such attitudes in the workplace and work culture around them. Such attitudes have been shown to have a profound negative impact on the progress of sexual violence cases through the criminal justice process, as well as to inflict secondary harm on survivors.[33]

Impact on the Community

"*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.*"

"*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. Applying inappropriate mitigating factors can also reflect victim-blaming, perpetrator affinity bias or myths about 'real perpetrators'. Stigmatising language will also perpetuate stigma within the judge's constituent communities and may further harm survivors.*"[34]

However, it is not just judicial pronouncements that can influence community and societal views regarding crimes, perpetrators and victims. Public press statements and statements in court by prosecutors or the defence, as well as written filings, can all circulate and become part of community and civil society discussion. Media reporting of justice processes and the words of justice actors can also amplify stigma and myths within communities.

31 Goddu *et al.* (2018) *ibid*.

32 Kelly *et al.* (2010) "*Does It Matter How We Refer to Individuals with Substance-Related Conditions? A Randomized Study of Two Commonly Used Terms*", Int J Drug Policy, 202-207; Kelly *et al.* (2010) Does Our Choice of Substance-Related Terms Influence Perceptions of Treatment Need? An Empirical Investigation with Two Commonly Used Terms, J Drug Issues, 805-818.

33 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice.

34 Synergy for Justice (2022) *ibid*, introductory chapter: Stigma in Justice, and Chapter Nine: Judicial Function and Court Services.

2.4 Examples of Stigmatising Language in Justice Processes

We have tried to include examples of stigmatising language and communications from all stages and actors in the justice process, whether communicated directly to survivors in interviews, testimony, letters or other forms of communication; publicly pronounced; or shared among colleagues working on cases together verbally or through file notes, reports or other forms of communication. We have also tried to include different types and forms of communication, as well as a spectrum between subtle to the more egregious and obvious. The intention is to raise awareness and aid recognition of stigmatising communications so that these can be avoided or countered.

Victim-Blaming

Victim-blaming attitudes are a deeply ingrained 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.

> **Judge Jacqueline Hatch** said to a victim of sexual abuse by a police officer in 2012: "*If you wouldn't have been there that night, none of this would have happened to you … I hope you look at what you've been through and try to take something positive out of it … You learned a lesson about friendship and you learned a lesson about vulnerability …*." The officer was not sentenced to jail time, despite his conviction.[35]

> A survivor was asked by the Defence Counsel at the International Criminal Tribunal for the former Yugoslavia (ICTY) why she took birth control pills to the camp, insinuating that she was willingly going to be having sex.[36]

> "*Their letters (the prosecutors') had no indication that they were supportive of victims. The phrasing made me feel as though I was the criminal or as if I were a liar. Small details from the case were highlighted as specific reasons which meant the case couldn't be moved forward, which only heightens the blame I put on myself as a victim. It was very damaging.*"
>
> **Female, White, straight/heterosexual, age 16 to 24, reported in 2019**[37]

> "*In the District Court I was just asked all the time what I did wrong, why I didn't prevent the rape. How much I had drunk, why I didn't ask for help, why I didn't get a taxi. No one asked the perpetrator why he started following [me] or why he thought it was okay to start leading someone around town or stop them from getting into a taxi or anything.*"
>
> **'Tiina' from Finland**[38]

35 Deasy (2012) Petition – Judge Jacqueline Hatch should step down for unjust sex abuse case.

36 Sharratt (2011) Gender, Shame and Sexual Violence: The Voices of Witnesses and Court Members at War Crimes Tribunals, 67.

37 Molina & Poppleton (2020) Rape Survivors and the Criminal Justice System, 35.

38 Amnesty International (2019) Time for Change: Justice For Rape Survivors in the Nordic Countries, 8.

Victim-Shaming and Dishonouring

Shame, or specifically the notion that sexual violence somehow brings shame and dishonour to the survivor, is a stigmatising attitude typically tied to a 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. It fails to recognise a woman's right to bodily integrity and autonomy, and the absence of voluntary consent in sexual violence.

> Some countries classify sexual violence as crimes *'against honour' or 'against morals*'.[39] In addition, the language defining individual crimes in criminal statutes also uses similar language.
>
> Examples include:
>
> - '*disgraceful act with a woman*' – Yemen Penal Code
> - '*insult the modesty of a woman*' – Bangladesh Penal Code
> - '*outrages of personal dignity*' – The Geneva Conventions

> The Pakistan Supreme Court reasoned that a delay of eight days in registering a complaint of rape is a valid consideration upon which to base an acquittal for married or divorced women: "*the case of an unmarried virgin victim of a young age, whose future may get stigmatized, if such a disclosure is made, if some time is taken by the family to ponder over the matter that situation cannot be held at par with a grownup lady, who is a divorcee for the last many years.*"[40]

> As the Supreme Court of Massachusetts observed, "*Surely, a jury, no matter how much effort the judge makes to purge their mindsets by admonitory instructions, are more likely to conclude that the impeaching [prostitution] convictions show that the complainant should not be believed, not because she is untruthful, but, because she has been, and thus continues to be, indiscriminate in sexual relations.*"[41]

Disbelief and Victim's Credibility

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. Doubts concerning credibility are typically connected to gender stereotypes that hold women to be generally dishonest or untrustworthy.

39 Denmark Penal Code Chapter 24; Ethiopia Criminal Code Title IV Chapter I; Jordan Penal Code Title VII Chapter I; Indonesia Criminal Code Chapter XIV, cited in International Commission of Jurists (2015) Sexual Violence Against Women: Eradicating Harmful Gender Stereotypes and Assumptions in Law and Practice.

40 Mukhtar Mai et al. v. Abdul Khaliq et al. Criminal Appeals No.163 to 171, S.M case no. 5/2005 (Supreme Court of Pakistan 2011, 36-37, cited in International Commission of Jurists (2015) *ibid*.

41 Commonwealth v. Houston 722 N.E.2d 942, 948 (Mass 2000) (US).

Legislation in the Democratic Republic of the Congo states: *"the credibility, honour or sexual availability of a victim or witness may under no circumstances be inferred from their previous or later sexual behaviour, and no proof regarding such behaviour may be introduced to exonerate the accused."*[42]

Note: While this legislation seeks to counter sexual violence myths in justice processes, it refers to the 'honour' of a victim to do so.

"I was absolutely devastated by the response of the first policewoman I interacted with. I met her and another policeman at [train] station. They then took me to the [survivors' centre]. There was a long wait until I was seen, and, in that time, the police took another written report from me. At the end of me stating what had happened (at that point, two days previously), the policewoman said to me 'There is a difference between regret and rape'. This nearly put me off even going into the [survivors' centre]."

Female, Asian, straight/heterosexual, age 25 to 34, reported in 2017[43]

"That's where the question came in, 'Did you do it and just regret it?' They were like, 'It's very serious if you make a false report.' I thought well, it's very serious that I just got assaulted."[44]

"The police told me I would not be believed in court, that I would be torn apart in court. That it was best if I just put it on record and left it there. I was 15 years old, terrified and interviewed by two male officers."[45]

Female, White, straight/heterosexual, age 25 to 34

"*She lives now in [a foreign country] where raped women get benefits. She didn't want to lose that. You get a lot of benefits when you are a rape victim.*"

Male Judge, Court of Bosnia and Herzegovina[46]

Example of an effort to explain the impact of stigma without countering it:

The South Africa Court of Appeal outlined, *"few things may be more difficult and humiliating for a woman than to cry rape: she is often, within certain communities, considered to have lost her credibility; she may be seen as unchaste and unworthy of respect; her community may turn its back on her; she has to undergo the most harrowing cross-examination in court, where the intimate details of the crime are traversed ad nauseam; she (but not the accused) may be required to reveal her previous sexual history; she may disqualify herself in the marriage market, and many husbands turn their backs on a 'soiled' wife."*[47]

42 Democratic Republic of Congo, Law amending the Code of Penal Procedure (2006), Article 1.

43 Molina & Poppleton (2020) *ibid*, 16-17.

44 Murphy-Oikonen *et al.* (2020) Unfounded Sexual Assault: Women's Experiences of Not Being Believed by the Police, NP8929.

45 Molina & Poppleton (2020) *ibid*, 37.

46 Sharratt (2011) *ibid*.

47 S v. J 1998 (2) SA 984.

> Example of an effort to counter myths about sexual violence but using stigmatising words and harmful gender narratives to do so:
>
> The Indian Supreme Court held, "*Even if the prosecutrix, in a given case, has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. No stigma … should be cast against such a witness by the Courts, for after all it is the accused and not the victim of the sex crime who is on trial in the Court.*"[48]

Minimisation

Stigma also prejudicially affects how society judges the gravity and impact of sexual violence. Sexual violence is prone to trivialisation as a lesser crime through attitudes that minimise the perpetrator's culpability and/or the survivor's experience of harm. As a result, assaults are often only taken seriously when they involve penetration or brute force and result in severe physical injuries. 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.

> An investigator deprioritising rape investigations stated: "*So a bunch of guys got riled up after a day of war, what's the big deal?*"[49]

> ICTY: "*Sexual violence was, at times, regarded as well down the hierarchy. Consistent with this, when the question of charging sexual violence as an underlying act of genocide was first raised, strong views were expressed that this would water down the gravity of the crime [genocide].*"[50]

> A New York judge asked a male victim of sexual violence by a woman, "*[W]hat's your problem? How could you not have liked this?*"[51]

> Prosecutor v. Celebici, ICTY case, Defence Counsel – "*defence attorney telling a survivor that the defendant only raped her once and did not hurt her …*"[52]

48 State of Punjab v. Gurmit Singh 1996 SC 1391.

49 Kuo (2002) Prosecuting Crimes of Sexual Violence in an International Tribunal, Case W Res JIL, 305, 311.

50 Jarvis & Vigneswaran (2016) Challenges to Successful Outcomes in Sexual Violence Cases, 38.

51 Walfield (2018) *"Men Cannot Be Raped"*: Correlates of Male Rape Myth Acceptance, J Interpers Violence, 6408.

52 Sharratt (2011) *ibid*, 66.

> Prosecutor v. Rukundo, International Criminal Tribunal for Rwanda (ICTR) Appeals Chamber: A Catholic priest 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. According to the Trial Judgement, 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'.*"[53]

> A Bosnian court held that a mitigating factor for a female perpetrator found guilty of ordering a male detainee to sexually assault female detainees was that it was "*not too grave or of a far-reaching nature*". The court handed down a three-year sentence.[54]

Perpetrator affiliation/bias

The expectation or acceptance is that perpetrators are 'monsters' or outsiders, or that they will present to us as 'evil' or manifestly 'bad' people. When justice actors see themselves in the perpetrator, they cannot believe that such a person could or would commit sexual violence.

> During a convicted rapist's sentencing in 2017, Utah Judge Thomas Low appeared to praise the man, "*the court has no doubt that Mr Vallejo is an extraordinarily good man … but great men sometimes do bad things.*"[55]

> *"The sentence that he got was laughable. The judge did say he should have got 18 years, I think, and he only got seven or eight because he was a hardworking pillar of society and he had never …. It was only basically, well, [the family] that he did it to."* [56]
>
> **Survivor of childhood sexual abuse**

> *"I found it appalling, judgemental, degrading. How can a rapist be considered a favourable character? I am still very angry and hurt by this decision."*
>
> **Female, White, straight/heterosexual, age 35 to 44, reported in 2018**[57]

53 Prosecutor v. Rukundo, ICTR Trial Judgement (27 February 2009) paras. 366, 381, 574. See Dissenting Opinion of Judge Pocar.
54 TRIAL International (2018) Rape Myths In Wartime Sexual Violence Trials, 4, 52.
55 Friedmann (2017) 9 Horrifying Things Judges Have Said When Ruling on Sexual Assault Cases.
56 Brooks-Hay *et al.* (2019) *ibid*, 26.
57 Molina & Poppleton (2020) *ibid*, 16-17.

Conflation of consensual sexual relations/sex and sexual violence

Failure to distinguish sexual violence from consensual participation in mutually agreed sexual activities ignores the fundamental human right of each person to bodily integrity and autonomy and considers all sexual acts a 'defilement' of chastity and therefore value, regardless of consent or choice. It feeds discriminatory notions that women's bodies are the passive object of men's sexual acts, without agency or choice. It is connected to 'shame stigma' which views sexual violence as a crime of honour, premised on gendered patriarchal narratives that a woman's value is in her 'purity' or chasteness.

> *"Some cases are a question of lust and that's not a war crime."*
>
> **Male Prosecutor, Bosnia**[58]

> *"I do not understand the cruelty of the rapes, the mutilations, the markings, the killings. I can see that if a group of men were fighting in the bush for weeks, when they come [out], they rape. That I understand."*
>
> **Senior male trial judge, ICTY** [59]

> One Bosnian court verdict repeated a witness' description of '*forced … intercourse like homosexuals*' twice, to describe anal rape.[60]
>
> Bosnian district courts have described sexual violence in the following ways:
>
> - *"while driving (the Accused) were pleasuring themselves sexually by putting their sex organs into the mouths of the said female persons … (the Accused), alternating, sexually pleasured themselves by putting their sex organs into (the victims') mouths, and then into their sex organs and anuses*".
> - "*[the Accused] forced her to perform fellatio on him and please him that way as well."*[61]

> Prosecutor v. Ongwen, ICC: in which women were held under guard, and subjected to rape, forced marriage and enforced pregnancy. Consider the words used by Counsel when questioning a victim of forced marriage in court.
>
> "[W]*hen being examined by the Prosecution about* having sex *with Mr Ongwen, P-0214 testified as follows:*
>
> *Q. Thank you, Madam Witness. […] So my understanding, Madam Witness, is that even though you were moving between Kitgum, Pader, Gulu and sometimes Sudan,* you still continued to have sex *with [Mr] Ongwen;* you performed your matrimonial – your sexual duties?"[62]

58 Sharratt (2011) *ibid*, 219.

59 Sharratt (2011) *ibid*, 219.

60 First Instance Verdict, Prosecutor v. Vlačo (S11K00712112Kro) Court of Bosnia and Herzegovina (First Instance Panel), 4 July 2014, paras.319, 331.

61 Prosecutor v. Danilo Spasojevic, Bijeljina District Court, First Instance Verdict, 25 January 2012, 2; Prosecutor v. Mladen Markovic, Istocno First Instance Verdict, 7, quoted in TRIAL International (2018) *ibid*.

62 Prosecutor v. Ongwen, ICC-02/04-01/15 A, Appeals Judgement (15 December 2022) para.1084.

> *Q. And how often did he* have sex *with you after this first time? A. It took a while and then we started again. Q. Madam Witness, did you have a choice about* having sex *with him? Madam Witness, did you hear my question? A. Yes, I heard your question. Q. Madam Witness, could you respond to my question? A. No, it wasn't my choice.*[63]
>
> *The Appeals Chamber notes that in response to the Single Judge's question whether she* has ever slept voluntarily *with Mr Ongwen or whether she was always forced to do so*".[64]
>
> *On that basis, the Trial Chamber found that Mr Ongwen* had sex by force *with P-0101, P-0214, P-0226 and P-0227 and that two of them (i.e., P-0101 and P-0214) became pregnant and gave birth to children fathered by Mr Ongwen."*[65]

> CBC news headline: "*Woman tells BBC she was forced to have sex with Prince Andrew*". This was met with criticism: "*Use the right words – forced sexual penetration is rape. Sex is not by force – rape is.*"

Myths, misconceptions and ignorance

> In a 2008 rape and assault case, California Judge Derek Johnson said, "*I'm not a gynaecologist, but I can tell you something. If someone doesn't want to have sexual intercourse, the body shuts down. The body will not permit that to happen unless a lot of damage is inflicted, and we heard nothing about that in this case. … That tells me that the victim in this case, although she wasn't necessarily willing, she didn't put up a fight.*"[66]

63 Prosecutor v. Ongwen (15 December 2022) *ibid*, fn.2397.
64 Prosecutor v. Ongwen (15 December 2022) *ibid*, para.1086.
65 Prosecutor v. Ongwen (15 December 2022) *ibid*, para.1093.
66 Hagan Cain (2012) Judge Derek Johnson Admonished for 2008 Rape Comments.

The Bangladesh High Court stated, "*In this rape case, victim did not sustain any injury on her face, cheeks or breasts at the time of commission of the alleged rape and the Medical Board also did not detect any trace of sexual violence on her face, cheeks or breasts and also did not detect any trace of sexual violence on the person of the victim. Thus, we find no corroboration with the statement of [the] prosecutrix.*"[67]

One survivor, for example, said she felt suicidal after being given a reason for non-prosecution that she had clearly internalised:

"*They said that I was a bad person who clearly wasn't scared enough because I continued to go to work where he worked.*"

Female, White, age 16 to 24, reported in 2019[68]

Harvey (1984: 186) 6 Cr App R (S) 184, whereby Lawton LJ reduced a sentence to 30 months from 3.5 years on a man convicted of "forced buggery' of a boy who was 12 years old, stating, *"[T]his was an isolated incident … in the experience of this court those who commit this kind of offence usually have fairly marked homosexual tendencies. There is nothing about this case to indicate that this man has got those tendencies (emphasis added).*"'[69]

A Rwandan court pronounced that "*if the complainant was raped, she would have informed her employer or other neighbours. She would not have kept silent while it is clear that this is an adult and bright 23-year-old young woman who would not be victimised and then go to sleep without telling anyone.*"[70]

67 Khairul v. State 13412 MLR 409 (HCD) (2007), para. 24, cited in DAI/Equality Now (2021) Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors.

68 Molina & Poppleton (2020) *ibid*, 33.

69 Harvey (1984: 186) 6 Cr App R (S) 184, whereby described in Javaid (2014) Male Rape in Law and the Courtroom, Web JCLI and Elliott *et al.* (2020) Bridging the Gap Between the Reality of Male Sexual Violence and Access to Justice, J Int Crim Justice, 469-498.

70 PP v. Kwizera Emmanuel and Bashaka Bosco, Rwanda, 27 January 2012, cited in Bizimungu (2018) An Examination of the Impacts of Rape Myths and Gender Bias on the Legal Process for Rape in Rwanda.

2.5 Implicit Biases and Intersectional Stigma

Murad Code Requirements

Principle 1.

Understand Survivors as Individuals

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.[6] We recognise that such elements change over time and context and that our approach may have to be adjusted accordingly.

6 People are complex, dynamic beings with multiple, overlapping and changing characteristics, attributes or identities. They often face more than one form of discrimination, are affected by situational factors such as conflict, displacement, poverty, pandemics and disease, and as a consequence or otherwise face security, health, legal and other risks. Understanding these factors can help us to better understand the survivor, the violations they have experienced, the risks, challenges and barriers they face, their rights and wishes, and their support needs, and helps us to properly tailor our plans and approaches.
Such ***characteristics, attributes and identities*** and related ***forms of discrimination*** that survivors can face include: 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 origin; 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; and political beliefs, opinions or affiliation. This is not an exhaustive list. Survivors often face multiple, compounded forms of discrimination. When multiple forms of discrimination and inequalities overlap, they are referred to as ***"intersectional factors"***.

When we consider the language we use and the messages we convey, we must consider not just sexual violence stigma but other forms of stigma relating to the multitude of intersectional factors affecting individual survivors. Different stigmas and discrimination can combine and compound their impact, including age, gender, gender identity and expression, sexual orientation, race, religion, socio-economic status, health status including mental health consequences, disabilities, family situations, etc. Compounding stigma can also acutely affect specific groups like persons who work in the sex industry, persons who have been trafficked and persons with substance use issues.

The Istanbul Convention stresses in Article 4 the human rights imperative that *"measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status."* This includes ensuring there are no stigmatising communications or language by justice actors (and other state actors) at any stage of the criminal justice process or CARSV response.

The use of stigmatising language in justice processes risks deepening distrust and undermining efforts to promote equity, including racial and gender equality, in criminal justice and supporting systems. It is important to take a holistic view of possible communication barriers and stigmatising language when communicating with survivors of CARSV from diverse groups. It is crucial that the diverse groups are regarded through a lens of respect and a desire to overcome the barriers they can face.

It is essential to commit to putting into practice a survivor-centred approach and to interact with survivors as unique individuals, with an open mind for promoting non-stigmatising language. The table below provides examples of some potential uses of stigmatising language based on survivors' intersectional characteristics.

Description	Potential stigmatising language on the basis of survivor characteristics
Age *Examples of ageist terms:* 'the elderly', 'old man', 'geriatric'[71]	Ageism happens at every level, from internalised ageism in individuals to ageism embedded in our systems and policies. Survivors of sexual violence experience SV stigma differently due to misconceptions about age and sexual violence. For example, attitudes towards survivors under 18 years old often disenfranchise or infantilise them, although survivors of all ages may be subjected to infantilisation based on assumptions of trauma or due to gender.[72] There are frequent stigmatised assumptions that older people are not the victims of sexual violence, often due to misconceptions that sexual violence is driven by lust and that older women are asexual or not a sexually desirable target for sexual violence. Multiple forms of CARSV are inflicted against older adults. *Some examples of compounded stigmatising language:* • *"The police point out that when rape is reported, elderly women make bad witnesses. 'It's very difficult to converse with an 88-year-old woman who has been raped three times,' says Chief Inspector John Dunn, who investigated the Manchester case. Poor eyesight may make identification difficult."*[73] • *"One health care professional stated, 'Who would sexually assault an 80-year-old woman?' .... I was very surprised to understand that this type of sexual assault exists ... I seem to also hold the same stigma – that older women cannot be the object of sexual thoughts ... So, in the most stigmatizing way, you don't perceive them as being sexual people. (Interview 12)"*[74] • Sophie, who was 17 years old when she was raped, *"describes an 'awful' police response and was advised after nearly seven months that it was not in her interests [...] to prosecute."*[75]
Disability *Examples of ableist terms*: 'special needs', 'vulnerabilities', 'birth defect', 'lame', 'falling on deaf ears', etc.[76]	Those with disabilities, including intellectual disabilities, and those with complex communication needs are thought to experience the highest rates of sexual violence, reflecting the gendered nature of sexual violence and its intersection with disability-based discrimination, including disenfranchising and infantilisation. *Examples of compounded stigmatising language:* • *"'Mimi' [autism, PTSD]: She said she was told by officers that her conditions made her 'overly emotional' and therefore not a reliable witness."*[77]
Gender	As described above, stigma and stigmatising language is deeply gendered. This ranges from assumptions that men cannot be victims and the exclusive use of female pronouns and language about survivors, to the introduction of concepts of 'honour' and 'dishonour' relating to the impact of sexual violence on women and girls.

71 See e.g., Changing the Narrative (ND) Style Guidelines for Avoiding Ageist Language, and May (2022) The Necessity of Age-Inclusive Language in Our Daily Lives.

72 See e.g., Hout (2013) Language as a social reality: The effects of the infantilization of women.

73 Grant (1994) Why do young men rape elderly women? And why does nobody care?: A special report by Linda Grant on a shocking crime which it seems we all prefer to ignore.

74 Goldblatt *et al.* (2022) "Who Would Sexually Assault an 80-Year-Old Woman?: Barriers to Exploring and Exposing Sexual Assault Against Women in Late Life, J Interpes Violence, 2763.

75 Thiara & Roy (2020) Reclaiming Voice: Minoritised Women and Sexual Violence Findings, 20.

76 See e.g., Dear Everybody (ND) How to avoid using ableist language, and Nović (2021) The harmful ableist language you unknowingly use.

77 Bateman (2021) Sexual violence allegations brought by disabled women 'not going to court', campaign group says.

Description	Potential stigmatising language on the basis of survivor characteristics
Transgender	Deliberate misgendering is a form of resistance or erasure used against trans individuals.
Sexual Orientation	*Examples of compounded stigmatising language:* • *"They [gay men] live a more promiscuous lifestyle so can be a victim … [A] male who was raped by a canal in Manchester, which is a known area for homosexual men to go and have sex … not a very nice area, so I can see they will have been putting themselves at risk."* (Police Constable, Female)[78]
Race	Race is often used to describe one of several very broad categories that people are divided into that are biologically arbitrary yet considered to be generally based on ancestral origin and shared physical characteristics (especially skin colour).
Ethnicity	Ethnicity is most often used to describe a person's cultural identity, which may or may not include a shared language, shared customs, shared religious expression or a shared nationality. *Examples of compounded stigmatising language:* An Indigenous survivor's experience of reporting to the police*: "They said she's just gonna be drunk, she's drunk; another native, another native woman being a drunk."*[79]
Health Status	The stigma surrounding mental health acutely affects survivors and their access to support. *Examples of compounded stigmatising language:* • A woman with HIV was questioned by the police about her health status, and the comments from the police made her feel blamed: "*Maybe if you would have told him [about HIV] this wouldn't have happened."*[80] • Susmita, age 26, a woman with a psycho-social disability from Kolkata, West Bengal, whom four male neighbours sedated and gang-raped in February 2014: *"I approached the police. The police asked me very nasty things like how it felt for me. I mean – I told them I was totally unconscious, so how would I know? The police said things like: 'She's mental, why should I pay attention to her?' 'She's a gone case, why should I listen?'"*[81]

78 Javaid (2018) Poison Ivy: Queer Masculinities, Sexualities, Homophobia and Sexual Violence, Eur J Criminol, 15.

79 Murphy-Oikonen *et al*. (2022) Sexual Assault: Indigenous Women's Experiences of Not Being Believed by the Police, 1249.

80 Murphy-Oikonen *et al.* (2020) *ibid,* NP8930.

81 Human Rights Watch (2018) Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India.

3 - NON-STIGMATISING LANGUAGE

"Principle 2: Avoid Reproducing Stigma. *Communications used about CRSV [conflict-related sexual violence] and those affected by it, create and entrench stigma in a way that also leads to specific individuals/groups being overlooked in prevention 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."*[82]

Non-stigmatising language is not just about the absence of a stigmatising message. It also encapsulates the principles of survivor-centred, trauma-informed approaches and using language that is more positively empowering, respectful, acknowledging and supportive.

Non-stigmatising language:

- ✓ Means effective and supportive communication with survivors, using knowledge, skills, humility and empathy.
- ✓ Seeks to empower the survivor by prioritising their rights, needs and wishes.
- ✓ Respects and reflects a survivor's own choice of pronouns, gender, and other identifiers.
- ✓ Understands the impact of trauma and minimises the risk of retraumatisation in its pace, framing and content.
- ✓ Describes sexual violence accurately and inclusively as violence in all its forms.
- ✓ Does not convey any form of stigma or discriminatory attitude relating to sexual violence or to any intersectional factors potentially experienced by survivors.
- ✓ Does not impute any blame or choice to survivors regarding the violence that was inflicted upon them.
- ✓ Does not conflate sexual violence with consensual sexual activities or relations.
- ✓ Does not make or reflect any assumptions.

3.1 Some Key Principles for Non-Stigmatising Language

Person First – No Labels

Survivors are more than the violence that was inflicted upon them, and they are more than one single characteristic or event in their lives. Avoid labelling or labels. Referring to an individual first rather than the sexual violence is one of the best ways of dissociating sexual violence with the person.

82 UK FCDO PSVI (2017) Principles for Global Action: Preventing and Addressing Stigma Associated with CRSV.

Murad Code Requirements

Principle 1.

Understand Survivors as Individuals

1.7 Respect self-identity: We will respect and reflect a survivor's choice and expression of identity (such as gender, pronouns, disabilities and other characteristics) and avoid labels or characterisations which offend, sensationalise, marginalise, stigmatise, endanger or are otherwise harmful.

Always address a victim of CARSV by their preferred name. Ask them what it is. Make sure you pronounce it correctly, as this is a basic mark of respect. There are pronunciation guides online for various languages, and sometimes there might be videos online as well. If a name has an accent, use the accent in all written records and communications.

Although 'victim' is a legal definition necessary within the criminal justice system, 'survivor' can be used as a term of empowerment to convey that a person has started the healing process and may have gained a sense of peace or closure in their life. Consider asking the individual their preferred term to use when referring to them in court. Engage survivors and respect their preferences, e.g., the language used when describing torture/assault/violence.

Gender-Neutral and Inclusive

Use non-gendered and inclusive language when discussing sexual violence. There is a tendency to refer only to female survivors when sexual violence survivors are discussed or written about – particularly by systematically using only feminine pronouns. This can create barriers for and exclude those survivors who do not identify or express themselves as female, including men and boys.

When working with individual survivors, ask a survivor how they would like to be addressed. Do not use language which confuses gender identity and expression with sexual orientation.

Contextual and Cultural Awareness

The words we use and the messages we communicate are interpreted and understood in the context and culture of the listener or audience. Cultivate self-awareness and contextual knowledge to eliminate potentially stigmatising language. As a preliminary step, take the time to discuss language, communication and stigma with (gender, sexual violence and language) experts from the communities within which the violence took place, where the survivors lived and where they live now. Survivor networks are an invaluable resource to understanding safe, respectful and non-stigmatising communications.

Murad Code Requirements

Principle 6.

Know and Understand the Contexts

6.8 Understand appropriate communications and interactions: We will work to understand the significance and impact of all forms of our communication and interactions in the context, ensuring gender, age, disability, social, cultural and context sensitivity and respect. We will identify and use inclusive and non-harmful forms of communication which reflect survivors' identities, and respect non-harmful social norms and practices. We will also seek to understand cultural and other aspects of communication, including mannerisms, derogatory terms, common expressions and euphemisms, and gaps in language relating to SCRSV or the survivor.

It is important to consider using interpreters, who are not only fluent in the language and dialect of the survivor but who often are also familiar with and have a fundamental understanding of their cultural background. Interpreters must understand the huge importance of confidentiality when survivors are from small communities. Working closely in advance with an interpreter, you can create a glossary of non-stigmatising language and clearly off-limits expressions and colloquialisms which may stigmatise.

Accuracy

Stigmatising language can derive from lack of preparation, non-mindfulness, feeling embarrassed or awkward, or falling back on using familiar or common words used within our communities. This language can also reflect our own biases and misunderstandings about sexual violence and its impact.

Body Language and Gestures

There are many ways in which our body language and gestures can communicate respect and support, just as there are many ways in which they can convey disrespect. Active, attentive listening and reflecting back the language of the survivor shows respect. Gestures such as lack of eye contact, preoccupation with phones or others in the room, a raised eyebrow, knitted or lowered eyebrows, rolled eyes, pursed lips, and various others send messages of disrespect. Interpretation of body language and gestures is also hugely dependent on culture and context. Be mindful of your body language and your thoughts – as these are often manifested in facial expressions or body positioning.

Intonation and Framing

Consider how other important aspects of communication can affect how your message is interpreted or understood. For example, pay attention to your intonation, pacing, pausing, volume, emphasis and framing. Rushed, fast-paced communication can indicate to the listener that the speaker is feeling discomfort, embarrassment or anxiety, or that they don't have the time for the conversation. Rising intonation can signal doubt or disbelief, but that can vary between cultures.[83]

Rights and Strength-Based Language

Use language and frame communication which focus on the rights of survivors and their strengths. Examples of rights and strength-based words include 'empowerment', 'resilience', 'courage', 'rights', 'respect', 'dignity', 'choice', 'autonomy', 'control', 'power', 'agency', etc.

Note: The use of some of these words would not be appropriate in relation to the violence committed against the survivor, when their rights were violated and during which they did not have control or agency.

Acknowledgement

It is important that interactions with survivors include positive acknowledgement and appreciation of their courage, their choices and their time in working with you and for engaging in the justice process.

Murad Code Requirements

Principle 3.

Be Responsible and Have Integrity

3.2 Dignity and respect: We will support survivors with dignity, respect, humanity, courtesy, appreciation, and as decision-makers. 3.2 Tipsheet on Key Principles of Non-Stigmatising Language

83 Murphy-Oikonen *et al.* (2020) *ibid*, NP8930: "*One participant reflected on the questions she was asked and expressed her discomfort with the approach of the officers, 'it was more like his tone and the way he asked.'*"

3.2 Tipsheet on Key Principles of Non-Stigmatising Language

Do	Don't
✓ Use Person-First Language.	✗ Don't use harmful labels or reduce survivors to single characteristics.
✓ When working with survivors, ask them about language and terminology, how they see what has happened, and how they wish to be described. ✓ Ask a survivor how they wish to be addressed and how to pronounce their name once, then write it down phonetically and practise.	✗ Don't make assumptions about how a survivor perceives and defines the violence against them. ✗ Don't mispronounce names or make no effort to get their name right. ✗ Don't assume that the term 'victim' or 'survivor' is appropriate for everyone.
✓ Use non-gendered terms. Use 'they' when pronouns are unknown. ✓ Use non-stigmatising words in relation to intersectional factors, such as age, gender, race, disability status, ethnicity, health status, socio-economic status, etc.	✗ Don't disrespect a person's gender identity by misgendering them. ✗ Don't use 'it/he/she' when referring to survivor (e.g., when pronouns are unknown). ✗ Avoid using 'ageist' language or conveying ageist messages.
✓ Choose strength-based and rights-based language, such as 'rights', 'respect', 'dignity', 'empowerment', 'choice', 'autonomy', 'control', etc. ✓ Use language which reflects the 'risks' and 'barriers' which are present in the world around survivors, rather than emphasising 'vulnerabilities' which suggest internal issues. ✓ Reflect the language which people with disabilities use to describe their disabilities. ✓ Promote all human rights in the same way regardless of regions.	✗ Don't use language which suggests a culture of 'us and them,' which 'others' survivors rather than including them and working together with them. ✗ Do not use terms that imply helplessness, assume an inability to make informed decisions or which otherwise infantilise survivors. ✗ Avoid using 'ableist' language which assumes inherent 'vulnerabilities' rather than the barriers and risks posed by society to that person.
✓ Consider communication holistically – it's far more than just words: consider tone, pace, context, facial expressions, body language, etc.	✗ Do not suggest someone is more or less affected *than another person or persons.* Remember, impact is not measurable or comparable. ✗ Do not use discriminatory language.
✓ Give an accurate portrayal of objective facts with neutral, non-judgemental language. ✓ Avoid any language which *uncritically* reinforces or perpetuates concepts of shame, honour/dishonour, marriageability, or the reputation or social standing of the survivor or their family.	✗ Avoid sensational language, and any words which suggest blame or shame or perpetuates other stigma such as 'delayed' reporting. ✗ Avoid using language that can imply consensual sex by describing acts of sexual abuse and assault focusing on the coercive elements.
✓ Understand language in its context and culture; know your audience.	✗ Be careful with euphemisms, colloquialisms or slang terms. They are likely to be derogatory or have stigmatising connotations. If used by survivors, seek to clarify what they mean instead of automatically mirroring their language.
✓ Focus on the perpetrator wrongdoing by using active language with the perpetrator as the subject of the sentence. For example, 'The accused forced the young women to parade naked in front of the officers.'	✗ Do not make the perpetrator invisible or remove the perpetrator from the discussion or your sentences by using passive sentences. For example, 'The girls were paraded naked.'

Do	Don't
✓ Understand the difference between gender identity and sexual orientation. ✓ Only mention gender identity or sexual orientation if it's relevant to the context.	✗ Stay away from using terms such as 'lifestyle', 'preference', etc. that frame gender and sexual orientations as a choice as opposed to an orientation/ identity.

3.3 Non-Stigmatising Language in Justice Proceedings

In addition to these initial fundamental principles, there are specifics of criminal justice proceedings which require consideration in terms of language and the messages conveyed.

Use language which accurately describes the sexual violence as violence, a violation of bodily integrity and sexual autonomy.

"*Sexual violence must be excised from the framework of sex and placed squarely in the realm of violent crimes — its sexual component de-emphasised and the crime recognised as the violent attack on physical integrity and individual autonomy that it is. This approach can de-link sexual violence from damaging notions of morality, honour and dignity that perpetuate stigma.*"[84]

"*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.*"[85]

Words to use	Words to avoid
✓ 'crime of violence', 'violent attack on physical integrity and autonomy'	✗ 'honour' or 'morality'
✓ 'severe bodily and mental' harm	✗ 'dishonour', 'shame', 'unclean', 'soiled', 'reputation'
✓ The accused 'committed', 'inflicted', 'perpetrated', 'violated', 'subjected to'	✗ The victim 'experienced', 'performed', 'engaged in'

Avoid any language which uncritically ascribes or imputes shame, dishonour, or damage to reputation and social standing of the survivor and their family.

84 Gopalan (2021) *ibid*, 12.

85 Baig (2016) Sentencing for Sexual Violence Crimes, in Brammertz & Jarvis (eds.), Prosecuting Conflict-Related Sexual Violence at the ICTY.

Avoid language associated with consensual sexual activities, *such as 'sexual intercourse', 'had sex', 'oral sex', etc. Note: If a survivor uses such language in an interview or in testimony, for clarity's sake you may need to mirror or reflect that language to then ask further questions to understand what happened better (having explained why it is important to have that understanding in a criminal case). But take care to clarify what actions took place and to emphasise the non-consensual or coercive element.*

Words to use	Words to avoid
✓ 'Forced penetration by a penis of a vagina'	✗ 'Sexual intercourse' or 'had sex' or 'slept with'
✓ 'Forced penetration by a penis of a mouth'	✗ 'Oral sex' or 'fellatio'
✓ 'Repeatedly forced/pushed/put his penis into her vagina'	✗ 'Fondling', 'massaging', 'foreplay'
✓ Other objective language which narrates the assault or violence against body parts by the accused	

Avoid using slang terms or euphemisms, as these usually have derogatory or discriminatory connotations. *Be extremely careful of this when using an interpreter and when you do not share the same language and culture as the survivor. Consider developing a glossary of safe, respectful and rights-based language with your interpreter and local gender and SV experts in advance.*

Don't quote testimony/language by witnesses which is stigmatising without clarifying and countering the stigma. *For example, in the Bosnian case referred to earlier, if a witness testified to seeing "**intercourse like homosexuals**" take place, it would be necessary to ask them to clarify what body parts were involved in what way (having explained why this detail is needed). The description of that evidence in submissions or the judgement could then refer to the underlying acts which took place which qualify as sexual violence without using stigmatising language.*

Avoid any language that might imply the interviewee is responsible in some way or should have done something differently. *Be careful of asking "**why**" questions, as they often imply blame – for example, asking why a survivor didn't resist, fight back or flee.*[86] *Be careful of assumptions or expectations.*

86 The science tells us that 'fighting' back or physical resistance is far from the norm, and that 'freeze' or 'flop' are much more common. See e.g., Jim Hopper as cited in Percy (2023) What People Misunderstand About Rape "*But if we're going to be professionals, we need to have more precise language that's based on what's actually going on in the brain and how these things can play out. … [F]ight or flight"* is harmful, because it can make victims think there's something wrong with them. It has led to ingrained assumptions about what society expects from victims and what they expect of themselves. Victims … *"feel shame; they beat up on themselves for not fighting or fleeing."*

Avoid language which minimises – double-check words like 'just', 'only' or 'unharmed' *(when referring to physical injuries or their absence).*

Avoid language which creates a hierarchy of sexual violence, with rape being the most serious or grave. *While gravity thresholds create challenges for this, other forms of sexual violence should not be minimised by any suggestion that rape is 'the worst' or 'worse'.*

Avoid language which implies that the survivor is untruthful. *Note: For Defence Counsel this may be unavoidable in the defence of the accused, at least at the submission stage, but it may not be necessary (other than getting inconsistencies on record) in a cross-examination of a survivor. Defence Counsel should have a very clear evidential foundation before suggesting that a victim is making a false claim. Defence Counsel should not rely on or use stigma or inaccurate concepts such as sexual violence myths which would mislead the court.*[87]

Consider what words have negative connotations suggesting untruth or guilt/ blame. *For example:*

Words to use	Words to avoid
✓ 'reported' crime	✗ 'alleged' crime
✓ victim's 'account', 'statement', 'history' (n)	✗ 'story', 'version'
✓ The victim 'reported', 'stated', 'told' (v)	✗ 'admitted', 'confessed'
✓ 'survivor', 'victim' (with their input)	✗ 'prosecutrix', 'accuser'

Use active language with the perpetrator as the subject. *Do not make the victim the active person in a sentence, thereby implying agency. Do not omit the perpetrator in the description of the crime. The goal is to use accountable language that focuses attention on the person who committed the crime. (Note: Defence Counsel may have to address specific aspects of a victim's testimony. As before, Counsel should not resort to stigmatised beliefs or attitudes when making such submissions.)*

87 See Synergy for Justice CARSV Stigma Toolkit for Justice – Part B Tools Guide to Good Defence Practice in CRSV cases.

Describe and contextualise the sexual violence *amongst other patterns of violence related by time, location or perpetrators.*

Do not speak of 'delayed reporting' *– it is not actually delayed since most often, sexual violence is not reported immediately. There should be no expectation that it is or should be, and the use of 'delayed' implies this. Speak of time frames if you have to, using objective terminology based on facts of when something was reported to whom.*

Take care describing impact for gravity and sentencing submissions or judgements. *"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."* [88]

88 Baig (2016) *ibid*.

3.4 Checklist

- ☐ Are you using person-first language? (This means avoiding labels and not defining a person by what has happened to them.)
- ☐ Are you using accurate objective language which reflects the violence and invasion of bodily integrity and loss of sexual autonomy?
- ☐ Are you using language which does not conflate or relate to consensual sexual intercourse or sexual activities?
- ☐ Are you using language which contextualises the sexual violence among the other forms of violence that took place?
- ☐ Are you using language which focuses on the perpetrator's actions, using active language to focus on the charges against them?
- ☐ Is your communication respectful, strength-based and rights-based?
- ☐ Are your body language, gestures and facial expressions aligned with your non-stigmatising words?
- ☐ Have you avoided using slang terms, colloquialisms and euphemisms?
- ☐ Have you avoided using language which suggests placing any agency or blame on the survivor?
- ☐ Have you avoided using language which refers to shame or dishonour, or if you have referred to societal stigma, have you used language to counter or address that?
- ☐ Have you avoided using language which could be seen as minimising the violence or harm in any way?
- ☐ Have you avoided using language which inadvertently conveys disbelief or issues of credibility about the survivor's account? It may be that a court is unable to accept a survivor's account or parts of it but that should happen only for accurate, objective reasons and not be influenced by stigma and myths.
- ☐ Have you used language which acknowledges and appreciates the courage, choice and time of the survivors who have engaged in the justice process?

3.5 Steps to Promote Non-Stigmatising Language

This section has been included for the leadership, management and supervisors within justice systems and functions, as well as for individual justice actors. It sets out some recommended steps and measures which can be taken to promote the use of non-stigmatising language during justice work.

1. **Build language audits into your work processes** by using a trusted second set of eyes across all stages of work, including, for example, by instituting review phases of draft submissions or decisions to ensure no stigmatising language or concepts have crept in.
2. **Create a glossary of non-stigmatising language** covering sexual violence and its impact, and terminology for intersectional factors. Also create a list of terms which should not be used. This can be done for the official language of the court, as well as for any languages which will be used during interviews or during court proceedings, including the language of the survivors.

3. **Train staff and continue awareness raising** by sharing examples of good practice and flagging examples where improvement is needed. Ensure access to appropriate training and resources to enhance staff understanding of stigmatising language.
4. **Individual and team self-reflection** ensures mindfulness and awareness, as well as recognition of one's own conscious and unconscious biases, misassumptions and unintended language use. There are resources online to assist with self-reflection and exploration of unconscious biases.
5. **Practise** by reading earlier judgements, newspaper articles and other communications about sexual violence to see if you can identify stigmatising language. Learn to recognise subtle forms. Then practise converting the example to non-stigmatising language.
6. **Be prepared** to object to and counter the use of stigmatising language during court proceedings or among colleagues or those you supervise.
7. **Consider how you can proactively use non-stigmatising language** or find opportunities to counter stigma.
8. **Consult and seek input from survivors whenever you can,** or if this is not possible, consult internal experts on sexual violence.
9. **Build non-stigmatising language into performance reviews and competency expectations** and monitor demonstrated competency for non-stigmatising language and communications.

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