



Addressing Sexual Violence in the Armed Forces: a Practical Guide



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Designed by Dejan Kuzmanovski



Table of contents

1. INTRODUCTION	5
2. BACKGROUND	9
The international framework	13
What is sexual assault and rape?	15
Sexual harassment and assault in the military	16
The effects of sexual assault	17
Why the correct response matters	20
3. TRAUMA	23
What is a trauma reaction?	23
Why responding in a trauma-informed way matters	25
4. REPORTING SEXUAL ASSAULT	27
Barriers to reporting	27
Myths about sexual assault	31
The importance of providing a safe reporting system	37
a. Who receives the report?	39
b. Confidentiality in reporting	40
c. Mandatory reporting	41
Responding to male disclosures of sexual assault	43
Legal and policy issues to consider in reporting	44
Deployment overseas	46
Supporting a team during and after a report of sexual assault	46
Offender support	48
The importance of self-care	49
Reporting outcomes	49
Creating and using a military Sexual Assault Response Team (SART)	50
a. Key members of the SART team	54
Educating about sexual violence response in the military	54
The role of bystanders	56
a. Bystander training methods	56
b. Bystander training in the military context	57
ANNEXE 1: Bibliography	59
ANNEXE 2: Glossary	62
ANNEXE 3: DSM-5 Diagnostic Criteria for PTSD	68



1

INTRODUCTION

In 1994, the participating States of the Organization for Security and Cooperation in Europe (OSCE) acknowledged, through the OSCE Code of Conduct on Politico-Military Aspects of Security, that armed forces personnel carry both duties and rights in respect of international human rights law. By this written acknowledgement, the OSCE Code of Conduct joined the collection of other international instruments that take the approach that armed forces personnel are entitled to the same human rights and fundamental freedoms as all other citizens, subject to certain limitations imposed by military service.

The unique nature of military jobs is, however, often intertwined with a number of human rights challenges and problems endemic to many armed forces across the world, including in the OSCE region. Chief among them is sexual and other forms of violence within the military. Repeated **reports**¹ of **rape** and other forms of **sexual assault** speak of a systemic issue and undermine the public perception of the armed forces. Sexual violence within the military further diminishes the operational effectiveness and mission readiness of troops, deprives personnel of safe working conditions and is, first and foremost, a human rights violation in its own right.

1 Definitions of the terms in bold can be found in the Glossary at the end of this publication.

This publication seeks to provide guidance to military commanders and policymakers within ministries of defence and general staff of the armed forces on a **trauma-informed** and human rights-compliant response to sexual assault. It intends to unpack some of the prevailing myths surrounding sexual assault within the military and how these hinder effective reporting and, thus, the ability of military systems to address sexual violence. This guide also highlights key considerations necessary for establishing trauma-informed policy and response within the military.

The contents of this guide have been compiled with reference to good practice models from some of the armed forces of the OSCE region and informed by a thorough analysis of the key outcomes from a series of open, online dialogues with subject matter experts from armed forces and their oversight bodies. The guide also incorporates lessons from discussions facilitated by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) between 5 and 16 October 2020, during which teams of participants discussed how to prevent and address harassment, violence and abuse within the armed forces. This guide complements other ODIHR publications of relevance, in particular “Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations”², “Gender and Security Toolkit, Tool 3, Defence and Gender”³, and “Integrating a Gender Perspective into Internal Oversight within Armed Forces”⁴.

2 “Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations”, ODIHR with DCAF, Warsaw 2021, <<https://www.osce.org/odihr/480152>>.

3 “Gender and Security Toolkit, Tool 3, Defence and Gender”, ODIHR with DCAF and UN Women, Geneva, 2019, <<https://www.osce.org/odihr/447043>>.

4 “Integrating a Gender Perspective into Internal Oversight within Armed Forces”, ODIHR with DCAF, Geneva, 2014, <<https://www.osce.org/odihr/118325>>.



2

BACKGROUND

This guidance has been written by applying trauma-informed principles to each aspect.⁵ In order to create and deliver effective policies that direct and support a good practice response to **disclosures** of sexual assault and **sexual harassment**, it is important that there is an understanding not only of what these good practices should be, but why it is important to apply these trauma-informed principles. This contextual understanding is important for policymakers as well as those delivering and receiving the response. Each policy or programme responding to sexual assault disclosure should be supported by training for those who will be applying it and education for the military staff within this system. An outline of the training modules is attached to this guidance. Anyone who is tasked with creating such policies is advised to complete this training in advance as it will complement and inform these policies.

Understanding *why* we should apply a trauma-informed approach to sexual assault is as important as developing and applying the trauma-informed policy itself. By understanding the reasoning behind evidence-based, good practice policy creation, commanders will be able to adapt their response to each unique situation while always staying within the boundaries of best practice. Similarly, knowing that all staff have been educated about what is considered as sexual assault and the process for reporting it gives commanders the confidence that their views on the issue have been given directly and in a consistent manner to their troops. Achieving a common understanding of sexual

⁵ For more information on the importance of trauma-informed principles and a broader discussion around trauma, please refer to the section on [Trauma](#). All terminology used in this guide, including trauma-informed response, are fully defined in the [Glossary](#).

assault is a vital aspect of being able to manage sexual assault quickly and effectively in the military context.

While sexual assault is a gendered issue,⁶ sexual assault can and does happen to people of any gender, at any age. However, it is most common as a form of violent dominance against women. The right of women not to be subjected to violence is covered by a number of international standards, such as those set down in the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Istanbul Convention.⁷ The importance of ensuring that women feel safe to serve in the military has also been expressed in many other documents.⁸ These documents should be referred to while delivering training and support for responses to sexual assault.

Training selected staff to respond to sexual assault mitigates the risks of poor outcomes for the individuals and the unit.⁹ Responding in a trained and professional manner mitigates the negative effects and potential risks of harm from the sexual assault incident on the victim. Well-written policies delivered by trained personnel will provide an immediate appropriate response as well as a **triage system of referrals** to experts in sexual assault response, based on the severity of the case, with options for medical attention and counselling within the defence force system.¹⁰ The policies will also give options for reporting pathways and follow-up support. Assigning a mental health professional with experience in responding to sexual assault — called a Sexual Assault Response Case Co-ordinator — is critical to ensuring that the required attention and support is delivered. The role and tasks of the Sexual Assault Response Team (SART) members is further explained in the section: [Creating and using a military Sexual Assault Response Team \(SART\)](#).

In the context of the complex military environment, with lean professional deployment teams and complex geo-political situations, the prospect of dealing with a

-
- 6 See: Sarah Curtis-Fawley, Kathleen Daly, “Gendered violence and restorative justice: The views of victim advocates,” *Violence Against Women*, 11(5), 2005, pp. 603-638; Michelle E. Deming et al., “Exploring rape myths, gendered norms, group processing, and the social context of rape among college women: A qualitative analysis,” *Violence Against Women*, 19(4), 2013, pp. 465-485; Marcia Texler Segal et al., *Gendered Perspectives on Conflict and Violence* (Bingley, United Kingdom: Emerald, 2013); and Victoria Rawlings, “‘It’s not bullying’, ‘It’s just a joke’: Teacher and student discursive manoeuvres around gendered violence”, *British Educational Research Journal*, 45(4), 2019, pp. 698-716, <<https://bera-journals.onlinelibrary.wiley.com/doi/10.1002/berj.3521>>.
- 7 For a more detailed overview of relevant international human rights standards, please refer to the section on the [International Framework](#).
- 8 For the full list of references used in this publication, please refer to the Bibliography annexe.
- 9 Scottish Centre for Crime and Justice Research website <<https://www.sccjr.ac.uk/>>, 2018.
- 10 For more detailed explanation on the triage system of referrals, please see the [Glossary](#).

highly emotionally-charged sexual assault report can put commanders in complicated, high-risk situations. It may appear that the allegation has created a breach in a unit's cohesion when in fact it is the assault that has done so. A commander's first reaction might be to see the report as 'breaking ranks' by calling into question the good name of a fellow soldier. The thought of having to investigate a sexual assault can seem daunting and as something which, in and of itself, damages morale and causes problems. However, the focus of any response should be that any sexual assault is not only a breach of someone's human rights but will also create disharmony and distrust within the unit.

Policies and procedures attempt to give as much guidance to the commander as possible and to cover all aspects of this issue in one document. The difficulty with attempting to define risks holistically when managing mental health and sexual offence disclosures is that even the most comprehensive policy can miss something, whether political, situational, operational, personal, process driven, etc. Sexual assaults are complex issues to manage and, if one policy were to attempt to define every aspect of every risk in detail, it would likely either fail or look overwhelmingly complex. One way to address this issue without reverting to a tick-box exercise is to assign a set of practice standards to the response, supported by training for key personnel. How this team might look and what training may be required to support it is reflected throughout this document. A checklist for creating a trauma-informed policy and procedure is included as [Annexe 3](#).

Sexual assault and sexual harassment occurs in all societies. Globally, an estimated 736 million women — almost one in three — have been subjected to physical and/or sexual intimate partner violence, non-partner sexual violence, or both at least once in their lives (30 per cent of women aged 15 and older). This figure does not include sexual harassment.¹¹ Similarly, an OSCE-led survey on Violence Against Women revealed that 45 per cent of women in the countries surveyed had experienced sexual harassment and 18 per cent of women had experienced physical and/or sexual violence from the age of 15 at the hands of a partner or non-partner.¹²

There are, however, pervasive myths about sexual assault that create barriers to reporting and preventing sexual assault. [The main barriers to reporting sexual assault](#) and the myths that reinforce them are discussed later in this guide. Again, understanding these barriers is essential when designing policies and procedures

11 UN Women - Headquarters (no date) Facts and figures: Ending violence against women. <<https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>>, [Accessed 5 June 2022].

12 "OSCE-led survey on violence against women, Wellbeing and Safety of Women", OSCE, Vienna, 2019, <<https://www.osce.org/VAWsurvey/publications>>.

to respond to sexual assault so that the procedures do not inadvertently reinforce a barrier or reflect stereotypes or myths about sexual assault.

All personnel involved in these issues are strongly advised to engage in trauma-informed and sexual assault response training and to ensure that they have support to discuss and work through any ideas which concern them about this material. This publication includes a brief overview of the key issues about [trauma](#), [sexual harassment](#) and [sexual assault](#).

Note about terminology: In this document 'victim' is used for contexts in which the formal recognition of a person's status as a victim of sexual violence is directly relevant to obtaining specific legal rights and entitlements. It does not denote a state of being. The term 'survivor' is used for all other contexts, placing emphasis upon the individual lived experience and to denote a person who is surviving or has survived a sexual assault. Being referred to as a survivor is not intended to diminish the trauma of the experience, nor is it intended to force a social label upon someone who does not identify as a 'survivor'.

The international framework

The OSCE Code of Conduct on Politico-Military Aspects of Security, adopted in 1994, outlines the political commitment by the OSCE participating States to ensure that military and armed forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as reflected in OSCE documents and international law, in conformity with relevant constitutional and legal provisions and with the requirements of service. It envisions that each participating State will provide appropriate legal and administrative procedures to protect the rights of all its armed forces personnel.¹³ OSCE participating States have furthermore committed to take all necessary legislative, policy and programmatic monitoring, and evaluation measures to promote and protect the full enjoyment of the human rights of women and to prevent and combat all forms of **gender-based violence** against women and girls.¹⁴

The Council of Europe has also looked at a number of issues relating to rights of military personnel in its work on Recommendation CM/Rec(2010)4 on the human rights of members of the armed forces, which specifies that “members of the armed forces should have the right to the protection of their dignity at work, including the right not be subjected to sexual harassment.”¹⁵ The Parliamentary Assembly Resolution 2120 (2016), while not legally binding, outlined further steps to be taken in this regard.¹⁶

The UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),¹⁷ which entered into force in 1981, constitutes the first comprehensive effort to articulate and codify international legal standards protecting women’s rights. The implementation of this Convention is monitored by the CEDAW

13 “The OSCE Code of Conduct on Politico-Military Aspects of Security”, adopted at the 91st Plenary Meeting of the Special Committee of the CSCE Forum for Security Co-operation, Budapest, 3 December 1994, paras. 28, 32 and 33, <<https://www.osce.org/files/f/documents/5/7/41355.pdf>>. See also Permanent Council Decision 550/Corr.1, “OSCE Code of Conduct for Staff/Mission Members Appendix 1 to the OSCE Staff Regulations and Staff Rules”, 27 June 2003, para. 6, <<https://www.osce.org/files/f/documents/7/d/31781.pdf>>.

14 OSCE Ministerial Council, Decision No. 15/05, “Preventing and Combating Violence Against Women”, Ljubljana, 6 December 2005, <<https://www.osce.org/files/f/documents/c/8/17451.pdf>>.

15 Adopted by the Committee of Ministers on 24 February 2010 at the 1077th meeting of the Ministers’ Deputies. Council of Europe: Committee of Ministers, Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces, 24 February 2010, <<https://www.refworld.org/docid/506979172.html>>, [accessed 18 May 2022].

16 Council of Europe, Resolution 2120 (2016), “Women in the armed forces: promoting equality, putting an end to gender-based violence” <<https://pace.coe.int/en/files/22939/html>>.

17 Ratified by 55 of the OSCE participating States (all but the United States and the Holy See).

Committee, a UN body established in 1982.¹⁸ In 1992, the CEDAW Committee issued General Recommendation 19, acknowledging that gender-based violence is a form of discrimination against women and, as such, a violation of their human rights. This was expanded upon in 2017 by General Recommendation 35, which elaborated further that gender-based violence may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, and acknowledged the need to train professionals on understanding trauma and its effects. It also noted that “States parties are responsible for preventing these acts or omissions by their own organs and agents -including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct- and to investigate, prosecute and apply appropriate legal or disciplinary sanctions as well as provide reparation in all cases of gender-based violence against women, including those constituting international crimes, as well as in cases of failure, negligence or omission on the part of public authorities. In so doing, women’s diversity and the risks of intersectional discrimination stemming from it should be taken into consideration.”¹⁹

Apart from CEDAW, other UN human rights treaty bodies, such as the Human Rights Committee and the Committee against Torture, have also made clear that states that have ratified the International Covenant on Civil and Political Rights (1966) and the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (1984) are under a legal obligation to eliminate public and private violence against women. Furthermore, in 2019, the International Labour Organization adopted the Convention Concerning the Elimination of Violence and Harassment in the World of Work, explicitly recognizing in international law the right to work free from harassment and violence.²⁰

Under international law, it is generally deemed imperative to consider any non-consensual act as a criminal offence. In a 2003 ruling, the European Court of Human Rights noted a “universal trend towards regarding lack of consent as the essential element of rape and sexual abuse” and criticized any “rigid approach” to the crime that requires proof of force or resistance.²¹ In 2010, the CEDAW Committee came to a

18 The OSCE has called on participating States to comply with the Convention and to consider ratifying it if they have not done so. “Preventing and Combating Violence Against Women”, op. cit., note 18, para.2. <<https://www.osce.org/files/f/documents/c/8/17451.pdf>>.

19 CEDAW, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, Para 23.

20 ILO, “Convention Concerning the Elimination of Violence and Harassment in the World of Work” (No. 190), <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190>

21 *M.C. v Bulgaria* application no 39272/98, Council of Europe: European Court of Human Rights (ECtHR), 4 December 2003, §§163 and 166, <https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA_en.asp>.

similar conclusion, noting that unless there is, “unequivocal and voluntary agreement,” or if it happens under “coercive circumstances,” the sexual act will constitute rape.²² The explanatory report attached to the Council of Europe Convention on preventing and combating violence against women and domestic violence (also known as the Istanbul Convention) further clarified the parameters for assessing consent in the context of rape legislation and prosecution of rape cases and explicitly stated the need to take into account behavioural responses to sexual violence.²³

What is sexual assault and rape?

The legal definitions of what constitutes sexual assault and rape vary from country to country, and sometimes between different administrative regions of the same country. The definitions of key terms and the emphasis placed on factors such as gender and age can therefore differ.

In this document sexual assault or sexual violence are used to refer to any act of a sexual nature such as forced nudity, rape, or physically touching the buttocks, breasts or genitals. Rape refers to such acts as penetrating “(a) the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; where such sexual penetration occurs without the consent of the victim”.²⁴

In practice this means that a finger penetrating genitals without consent is considered rape, but a tongue in the mouth without consent is considered sexual assault.

See the [Glossary](#) for an explanation on the definition of these terms.

22 *Vertido v Philippines* CEDAW Committee, Communication No. 18/2008, § 8.9 (b), <https://www2.ohchr.org/english/law/docs/CEDAW.C.46.D18.2008_en.doc>.

23 Council of Europe Treaty Series - No. 210: “Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence”, Istanbul, 11 May 2011. <<https://rm.coe.int/CoERMPublicCommonSearchServices/documentAccessError.jsp?url=https://rm.coe.int:443/CoERMPublicCommonSearchServices/sso/SSODisplayDCTMContent?documentId=09000016800d383a>>.

24 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v Dragoljub Kunarac, Radomic Kovac and Zoran Vukovic*, TC II, Judgement Case No. Case No. IT-96-23-T & IT-96-23/1-T, 22 February 2001, para 460. <<https://www.icty.org/en/case/kunarac>>.

Sexual harassment and assault in the military

This document is more focused on the issue of sexual assault than sexual harassment, but both issues are interconnected. Sexual harassment in the military usually occurs when there is an imbalance in positions of authority between men and women. It can occur in the form of 'jokes' and be excused as 'just banter', but has sexual undertones and can be intimidating and demoralizing, particularly if it is conducted with the overt knowledge, or implicit consent, of those in command. The subliminal message for much of this behaviour is that the object of the harassment — usually a woman in a male-dominated area — is a lesser person than her male colleagues and held up as a sexual object. Even having work areas in which posters of naked women are allowed on the wall is intimidating and demeaning to women who work alongside them. It is not uncommon for sexual harassment to become threatening in the context of the power imbalance experienced by most women in the military. Dismissing these concerns as 'just funny banter' solidifies the misconception that this behaviour is normal and women and other personnel in a minority simply have to conform to hetero-normative and hyper-masculine behaviours, even if they are demeaning to them. Sexual harassment can be covert and subtle and therefore difficult to stop, but overt types of sexual harassment and unacceptable group behaviours can be eradicated by education and training in respectful behaviour by commanders.

Everyone brings their own history to this topic. Each person carries their own pre-set social standards and ideas of which behaviours are acceptable and which are not. This includes their views on what the position of women should be, what the concepts of equality and equal opportunity actually mean and whether individuals are actively reflecting upon these views or if they are subliminally held. It is the responsibility of those who draft policies and procedures within the military to enunciate clearly what is expected of those who serve within the military. Policies written for national armed forces should always refer to, and adhere to, national law as a minimum standard. However they should strive to use the unique military context to develop and deliver the best possible protections for those reporting and surviving sexual assault. Policymakers working on these issues have an opportunity to deliver innovative human rights responses, grounded in an evidence-based understanding of sexual assault, and to create a framework for an equitable and safe community for everyone. These procedures and policies need to be underpinned by education and backed, in a consistent and vocal way, by a visible command.

The effects of sexual assault

It is important to put some context around why trauma-informed responses are necessary and why the training to apply them correctly is so vital. While most people understand that sexual assault is a traumatic event, the extent of the damaging effects of the assault on victims is rarely fully understood.

This has an added dimension in the military. The military forms a family for those who join. It becomes integral to a person's sense of who they are; more than a uniform, it is a person's identity, their values, and their pride in their country. They willingly potentially risk their lives to follow orders and do their duty to serve. Abuse by a team member, by someone within their own military force, can feel similar to abuse by a family member. It is a profound betrayal of trust by someone with whom they have been trained to stand alongside and protect. For a military organization to ignore, disbelieve, downplay or vilify someone's disclosure of abuse can hamper the victim's ability to overcome the trauma.

As discussed below, harmful gender stereotypes and myths around sexual assault often exacerbate the traumatic experience of the victim in sexual assault. Commonly, the narrative turns to discussing how the victim was to blame for the assault, or to a sympathetic discussion regarding the damage done to the perpetrator's future or reputation if found guilty of the crime.

BOX 1. CASE STUDIES

Case 1: "On 3 March 1977, a judge in Norwich [England] passed a three-year prison sentence on Thomas Holdsworth, a nineteen-year-old guardsman who, in attempting to rape seventeen-year-old Carol Maggs, had caused her serious internal injuries and broken ribs. Maggs had been unable to work for four months and continued to suffer severe psychological stress. However in June [1977], the Court of Appeal reduced the sentence to a suspended sentence of six months. Justice Roskill told the guardsman that, 'the best thing you can do now is to go back to your unit and serve your country'. Justice Wien justified the decision by saying that 'we have a man of previous good character whose Army career would be completely destroyed if this sentence were to stand.' He also observed that 'Miss Maggs would probably have been less severely injured had she submitted to rape', thus suggesting that refusing to be raped was a kind of contributory negligence."

"Contempt of Court", The Times, 21 June 1977, p.15 quoted in Bourke, J. Rape: A history from 1860 to the present (United Kingdom: Virago Press, 2007), p.370.

Case 2: In 2016, Santa Clara County (United States) Superior Court Judge, Aaron Persky, imposed a six-month prison sentence to be served on probation on Brock Turner after he was found guilty of penetrating an unconscious woman with sticks outside a Stanford University party. Judge Persky noted that Turner had been an excellent swimmer, had the support of his parents, and that a prison sentence would have a severe impact on him.

Sam Levin, "Stanford sexual assault: read the full text of the judge's controversial decision", The Guardian, 14 June 2016 <<https://www.theguardian.com/us-news/2016/jun/14/stanford-sexual-assault-read-sentence-judge-aaron-persky>>.

These are common narratives in which the victim of sexual assault is diminished in comparison to the damage that the consequences of the assault would have on the perpetrator. It is cases like these that contribute to delegitimizing the experiences of many victims of sexual assault and to minimizing the psychological and physical damage done to those who are abused, particularly if the perpetrator is already known to the victim. These cases also foster an environment where it will be harder for future victims of sexual assault to come forward.

In a similar manner in the military context, the 'good soldier' defence is used to negate the evidence and effects of sexual assault. On such occasions the concept of the 'good soldier' is presented in such a way that anyone wishing to report an assault will have to consider beforehand that, by reporting an assault against 'the good soldier', they will be ruining the reputation of a good soldier, who many consider as an honourable and useful member of society. This narrative can distract from and downplay the effects of sexual assault on the victims.

The following are descriptions, taken from testimonies from various countries, from people who reported being sexually abused in the military:²⁵

- "I blame myself. I trusted him. He was my sergeant and I had known him for years. He said he would help me home and I froze when he had sex with me. I feel betrayed. I cannot say anything because he is so popular. I carry this around like acid in my chest."

25 These testimonies have been collected during professional work in sexual assault response and have been used with the permission of those who gave the testimonies and de-identified.

- “My husband and I serve at the same base. He got deployed and his best friend visited me to cheer me up. Everyone knew him. They said I was so lucky to have his support. One night I got so drunk when he was over. I went to bed and I passed out. I felt ‘different’ in the morning. I thought I could remember him being in my bedroom. I was only really sure he had raped me when I found out I was pregnant weeks later. I had to deal with that myself and I can’t say anything to anyone. Who would believe me? I am not the same person now. I feel as if all the joy I had has been taken away from me.”
- “I feel like less a man. I am terrified this makes me less of a man. I could not fight back. I am physically sick when I remember what happened and the memories come when I don’t expect them. They just hit me, and I can’t move again.”
- “I do not trust anyone anymore. I used to believe that I had a family in the [military] and now that has gone. It’s a man’s club. I don’t sleep. I drink a lot more now and it does not help really. I know that. I just don’t want to constantly feel sick and angry. I have never felt like that before and it won’t go away. I loved my job but now I need to leave.”

The **post-traumatic stress disorder (PTSD)** symptoms displayed by people who have been sexually abused are the same as the symptoms displayed by people who have been to war. They include but are not limited to:

- Higher rates of suicide
- Drug and alcohol misuse
- Sleeplessness
- Depression
- Anxiety
- Anger issues
- Flashbacks and invasive thoughts
- Self-esteem issues including guilt, shame, and self-blame
- Self-harm
- Lack of sex drive
- Withdrawal from social connections
- Higher levels of homelessness
- Higher levels of economic worries

It cannot be stressed enough that the effects of sexual assault on a person can be devastating.

An effective recovery is only possible when:

- The victim is believed when they first disclose what has happened to them; are supported in a trauma-informed manner;
- Have the opportunity to function with agency and in collaboration with the process to address what happened;
- Feel safe to report and
- Trust the system they have pledged to serve.

Why the correct response matters

Responding to sexual assault is difficult and requires background training and understanding. A recent study in Chicago, United States, noted that anywhere between 65 to 92 per cent of sexual assault survivors disclose the assault to at least one person²⁶ and, on average, sexual assault survivors tell three people.²⁷

26 Courtney E. Ahrens et al., “Deciding Whom to Tell: Expectations and Outcomes of Rape Survivors’ First Disclosures”. *Psychology of Women Quarterly*, 31(1), 2007, pp. 38-49. <<https://journals.sagepub.com/doi/abs/10.1111/j.1471-6402.2007.00329.x?journalCode=pwqa>>.

27 *Ibid*, Noted in Courtney E. Ahrens et al., “Healing or Hurtful: Sexual Assault Survivors’ interpretations of social reactions from support providers”, *Psychology of Women Quarterly*, 33, 2009, pp. 81-94, <<https://journals.sagepub.com/doi/10.1111/j.1471-6402.2008.01476.x>>.

The first responses to such disclosure and the support that is given are key to overcoming the consequences of sexual assault.²⁸ An appropriate first response is necessary to engender best recovery in the longer term in all sexual offences. If the first contact is not validating and supportive it can lead to extremely negative long-term consequences in terms of recovery.²⁹ It is reported that survivors receive positive social reactions, including emotional support and tangible aid, but that they also receive overtly negative social reactions, including blaming or doubting they are a victim. Sometimes a throw-away comment can irreparably damage a person when they are at their most vulnerable.

In one such case, a woman, who had been attacked in a park and sexually assaulted, woke up in a hospital and felt immediately calm and safe. During the examination conducted by a **Sexual Assault Nurse Examiner (SANE)** and a sexual assault support worker, all went well and she felt a sense of control returning. Back in the room, however, a general nurse came in with some water. She said, “What an awful thing to happen to you dear. What were you thinking though, walking across that park at night?”, and then she left the room. The last sentence devastated the woman. She spent years focusing on that comment by the nurse as affirmation that she had done something wrong and that, if she had only chosen not to walk that way home, this would not have happened. This spiralled into the woman believing that she could not trust herself.³⁰

Even overt concern for the victim can leave them feeling responsible for the pain they are causing the person they told. In one case, the survivor was concerned that the person they reported to was so invested in what had happened that they would seek revenge.³¹

Within a tight-knit military unit, it is important that anyone who reports feels they are supported, safe and in the company of those who have basic training around what to do from that point on. They need to be reassured that reporting is the correct action and is exactly what command wishes them to do.

28 Tina Skinner, Helen Taylor, “Being shut out in the dark: Young survivor experiences of reporting a sexual offence”, *Feminist Criminology*, 4(2), 2009, pp.130-150. <https://www.researchgate.net/publication/249786246_Being_Shut_Out_in_the_Dark_Young_Survivors'_Experiences_of_Reporting_a_Sexual_Offence>.

29 Rebecca Campbell, “The Psychological Impact of Rape Victims’ Experiences with the legal, medical and mental health systems”, *American Psychologist*, 63 (8), 2008, pp. 702-717. <<https://doi.org/10.1037/0003-066X.63.8.702>>.

30 Testimony collected during a counselling session and shared with the informed consent of the individual affected.

31 Courtney E. Ahrens et al., “Healing or Hurtful: Sexual Assault Survivors’ interpretations of social reactions from support providers”, *Psychology of Women Quarterly*, 33, 2009, pp. 81-94, <<https://journals.sagepub.com/doi/10.1111/j.1471-6402.2008.01476.x>>.



3

TRAUMA

What is a trauma reaction?

Sexual assault has been recognized as causing trauma,³² with PTSD found in a large percentage of rape victims long after the assault.³³ In a 1992 study of PTSD in rape victims, 94 per cent of them met the PTSD criteria approximately two weeks post rape, and 47 per cent continued to meet the criteria after three months.³⁴

When someone feels threatened, their brain reacts to protect them. Their amygdala sends hormones through the body and their ‘primitive brain’ prepares them for one of fight, flight, freeze or appease. These instinctive reactions are largely beyond the direct control of the ‘thinking brain’. They are designed by the brain to prevent the person from thinking for too long and therefore not

32 Judith L. Herman, *Trauma and Recovery*, rev. ed., (New York: Basic Books, 1997); Bryant-Davis, T., (ed.), *Surviving sexual violence: A guide to recovery and empowerment*, (Plymouth, United Kingdom: Rowman & Littlefield, 2011).

33 Ronald C. Kessler et al., “Posttraumatic Stress Disorder in the National Comorbidity Survey”, *Arch Gen Psychiatry*. 52(12), 1995, pp. 1048–1060. <<https://jamanetwork.com/journals/jamapsychiatry/article-abstract/497313>>.

34 Barbara O. Rothbaum, et al., “A prospective examination of post-traumatic stress disorder in rape victims”, *Journal of traumatic stress*, Vol. 5 (3) 1992, pp. 455-475, <<https://doi.org/doiLanding?doi=10.1037%2F0022-006X.59.5.715>>.

surviving an attack. When a person is sexually assaulted, the most common response is to freeze.³⁵

Survivors of assault often recall that “it was as if [their] mind had left [their] body.” This reaction to sexual assault is common for both men and women. What people think they would do if they were attacked is not always what the brain allows them to do. After an attack, asking someone “Why didn’t you fight back?” is an inexplicable question for the victim, even if it appears unnatural to the investigator that the person did not fight back. This can seem even stranger if the victim of the assault is a trained military professional. It is, however, often beyond their control to move, or speak, or fight back. The lack of control and their own inaction (regardless of their ability to control that inaction) often adds to the shame, anger and trauma of the survivor when recalling what happened.

If the body and brain’s natural defence mechanisms could be countered, or neutralized by military training, then trained military professionals would never get PTSD. Sadly, PTSD is common among human beings who have been to war, or who have had their lives placed in danger, regardless of their training. This is also the case with sexual assault and the freeze reaction and the potential for trauma afterwards. Sexual assault is most often perceived as a life-threatening event and so the reaction to it is commonly beyond the control of the victim. As the event is received in the brain as a traumatic event, the memory of it is not processed like other memories. Some aspects can be crystal clear, while other key features such as time, or even place, may not be recalled clearly. This can cause difficulties for any investigators who are not experienced in interviewing or working with someone attempting to recall a traumatic memory. Crucially, if they get facts out of order or change some recollections, it can result in the conclusion that the victim is not being truthful.

The freeze reaction to sexual assault also raises the issue of consent and whether it is justified for a person to assume that silence is consent. Someone who is frozen

35 Michael Honig, Dan Porat, “Fight, flight or freeze: the three approaches to teaching difficult past events”, Oxford Review of Education (Taylor and Francis e-Library 2020), <<https://api.taylorfrancis.com/content/books/mono/download?identifierName=doi&identifierValue=10.4324/9780203880968&type=googlepdf>>; Karen Roelofs, “Freeze for action: neurobiological mechanisms in animal and human freezing”. *Philosophical transactions of the Royal Society of London. Series B, Biological sciences*, 372(1718), 20160206, 2017, <<https://doi.org/10.1098/rstb.2016.0206>>; Moriah Schiewe, “Tonic immobility: The fear and freeze response as a forgotten factor in sexual assault laws”, *De Paul Journal Women and Gender*, 2019, <<https://paperity.org/p/216301596/tonic-immobility-the-fear-freeze-response-as-a-forgotten-factor-in-sexual-assault-laws>>; Jim Hopper, “Freezing during Sexual assault and harassment: Three Brain based responses, keys to understanding experiences and behaviours”, *Psychology Today*, 3 April 2018, <<https://www.psychologytoday.com/us/blog/sexual-assault-and-the-brain/201804/freezing-during-sexual-assault-and-harassment>>.

during a trauma reaction is not consenting. It is important that this is articulated clearly in policies and procedures that deal with sexual assault. It is equally important that this trauma reaction, and the possibility of memory loss or memory alteration, is explained as part of the training and education on these policies and procedures given to all troops.

Why responding in a trauma-informed way matters

It is important to understand the impacts of trauma on people in order to respond in an effective and appropriate way. Individual reactions to a traumatic event can vary, with some people displaying openly distressed emotions such as crying and anger, while others display no emotions at all, or even laugh and joke about the assault. It is vital that both the responders to sexual assault and the officials tasked with investigating sexual assault within the military are trained in understanding trauma and trauma reactions.

As explained above, it is incorrect to assume that, just because someone does not remember the incident clearly, it did not happen or that they are not telling the truth. The usual methods and techniques of crime investigation, such as relying on a first response statement and asking the victim to recall accurate and small details to corroborate statements, need to be adapted for investigating sexual assault. It is recommended that all people who are to have direct contact with victims and manage the investigation and response to sexual assault receive appropriate training in sexual assault response.



4

REPORTING SEXUAL ASSAULT

Any policy or procedure which encourages the reporting of sexual assault should take into account that there are myths, barriers and stigmas attached to being a victim of sexual assault.³⁶ These are often intertwined and jointly create an institutional context in which very few victims may feel able to report abuse. This makes it difficult for the leadership/management to take action to prevent or address sexual assault, particularly within the military.

Barriers to reporting sexual assault

In those countries that conduct confidential crime surveys, it is generally believed that around 80 per cent of those who report having been sexually assaulted at some point in their life have never reported this to the police or authorities.³⁷ For example, an OSCE-led survey in North Macedonia in 2018 found that only two per cent of women who had experienced violence at the hands of their current partner actually reported what they considered the

36 Courtney E. Ahrens, et al., “Healing or hurtful: Sexual assault survivors’ interpretations of social reactions from support providers,” *Psychology of Women Quarterly*, 33(1), 2009, pp. 81-94.<<https://doi.org/10.1111%2Fj.1471-6402.2008.01476.x>>.

37 Michelle A. Mengeling, et al., “Non-reporting and Hidden Recording of Sexual Assault: An International Literature Review”, 2014, found only a quarter of those surveyed who had experienced sexual assault in the military had actually reported the crime. <https://www.dss.gov.au/sites/default/files/documents/05_2012/hidden_recording_sexualassault.pdf>.

most serious incident to the police.³⁸ In Spain, the Ministry of Equality conducted a large-scale survey on Violence Against Women in 2019 which found that just eight per cent of the women who had suffered non-partner sexual violence had reported some of these aggressions to the police or courts. This percentage rises to 11 per cent when complaints filed by another person or institution are also included.³⁹

Men have particular difficulty with reporting sexual assault as support systems are generally focused on women survivors.⁴⁰ Men fear that they will be considered ‘less of a man’ if they report having been assaulted. In the military context, with the visible dominant masculine images of strength and invincibility, this fear of being seen as weak or unable to defend oneself is likely to be increased and form an almost insurmountable barrier to reporting sexual assault. It is also therefore likely to worsen the mental health outcomes for male survivors. Many of the barriers are the same for men and women, with additional social stereotyping depending on the gender of the person involved.

Some of these barriers include:

Feelings of guilt and shame that, in some way, the victim is to blame for the assault or should have fought back. This is causally related both to the traumatic aftermath of assault and to the myth that people can control their trauma reaction. Sexual assault is most commonly perceived, at the time of the assault, as a life-threatening event, even if the perpetrator is an intimate partner or well-known by the victim of the assault.⁴¹ The most common trauma reaction to this is to freeze, as discussed in the previous section.

38 “OSCE-led survey on violence against women: North Macedonia”, OSCE, 2019, <https://www.osce.org/files/f/documents/3/5/419264_1.pdf>.

39 “Macrosurvey on Violence against Women” [Macro encuesta de violencia de género contra la mujer], Ministry of Equality of Spain (Ministerio de Igualdad), 2019, <<https://violenciagenero.igualdad.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta2019/home.htm>>.

40 A research study in the United Kingdom found that among 115 men who eventually reported, 79 per cent had not sought any help after the incident and only 15 per cent had reported the assault to the police. The time before seeking help was on average 7.3 years for those assaulted at 16 years and over. Michael King, Earnest Woollett, “Sexually Assaulted Males: 115 Men Consulting a Counseling Service”, *Arch Sex Behav* 26, 1997, pp. 579–588, <<https://link.springer.com/article/10.1023/A:102452022519>>

41 Clive R. Hollin, *The Psychology of Interpersonal Violence* (Chichester, West Sussex, United Kingdom: Wiley-Blackwell, December 2015). Additionally, see Lori Haskell, Melanie Randall, “The Impact of Trauma on Adult Sexual Assault Victims”, 2019, <https://www.justice.gc.ca/eng/rp-pr/jr/trauma/trauma_eng.pdf>.

The investigation and criminal justice process. There are countless reports of victims of sexual assault stating that the investigation process, starting with a police interview through to a court trial, was “like being raped again, over and over.”⁴² During the process, the investigators may typically ask the victim why they did not fight back, what they were wearing, whether they were drunk, and question their motivations: why did they walk home alone or go back to the house with the ‘alleged offender’. While these might be seen as reasonable/legitimate investigative questions, they can be interpreted by the survivor as laying the foundations of ‘victim blaming’ or at least placing some blame onto them.

Furthermore, it is rare for an investigation and court process to acknowledge that, when ‘disclosing’ or reporting this crime, the victim of the assault has to describe, in very intimate detail, what happened at a time when they had lost all agency in the most profound and violent way. This may not be something they feel able to do for a long time after the assault.

This barrier is further compounded by the experience of having to undergo medical/forensic examination, which can be both distressing and overwhelming. The results of these examinations are unlikely to address the key issue of consent and will most likely only demonstrate that a sex act took place. However, medical/forensic examination is commonly required by investigators.

Knowledge about the lack of prosecution of other cases. In the civilian world it is relatively common for reported sexual assaults not to lead to prosecution or conviction. As an example, a Griffith University report (2010) noted that in the United States, Australia, Canada, England, Wales and Scotland only seven per cent of cases reported to the police resulted in a conviction for the original offence charged and only 13 per cent led to a conviction of any sexual offence.⁴³ In Denmark in 2017, 890 rapes were reported to the police and only 94 resulted in conviction while, in 2019, 1017 rapes were reported to the police, but just 79 resulted in convictions.⁴⁴

42 Oona Brooks and Michele Burman, “Reporting rape: victim perspectives on advocacy support in the criminal justice process”. *Criminology and Criminal Justice*, the Scottish Centre for Crime and Justice Research, 14 September 2016, <<https://doi.org/10.1177/1748895816667996>>.

43 Kathleen Daly and Brigitte Bouhours, “Rape and attrition in the legal process: a comparative analysis of five countries”, *Crime and Justice*, Vol. 39 Issue 1, 2010, <<https://www.journals.uchicago.edu/doi/10.1086/653101>>.

44 “Criminalization and prosecution of rape in Denmark”, Amnesty International, 1 June 2020, <<https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR1824302020ENGLISH.pdf>>.

According to the Czech Republic's Statistical Office, in 2016, of the 649 cases recorded as rape by the police, 227 resulted in a court conviction.⁴⁵

The same issue arises in the military context. In the United Kingdom, for instance, the conviction rate for rape cases heard at military court-martial was just four per cent in 2017.⁴⁶ In the United States, of the 5,640 unrestricted reports of sexual assault received by the Military Services in 2020, only 156 (2.85 per cent) resulted in a conviction.⁴⁷ Because military circles are closely connected to each other, people will be aware of the actions of others and know if someone else has reported an offence without conviction. Therefore, a low level of reporting caused by lack of prosecutions is likely to be even more prevalent within the military than in the civilian context.

Fear of retribution. This is a key barrier in the military context, where the likelihood of prosecution might be small, but the likelihood that the perpetrator will remain in the sphere of influence of the victim throughout the victim's service life there is high. This is exacerbated by the probability that others in the team either like or support the perpetrator.

Popularity of the perpetrator. This is linked to a key myth regarding sexual assault; that the perpetrator will look like a predator. It is likely, in fact, that the perpetrator is seen as a 'player' by male counterparts and could also be a current or previous sexual partner of the person they have abused. Those who are a minority in the military can find it extremely difficult to counter the popularity and demographic support of a man who appears confident and popular and is a good soldier.

An additional offence. This is a key barrier to reporting in the military. If, for example, it is a general offence for troops to have alcohol in their rooms, but there is a party after which a person is sexually assaulted, they may not wish to report the

45 Petra Trglavcnik, "A Critical Assessment of the key reasons for low conviction rates for rape cases in the Czech Republic", Department of Criminology and Social Sciences, College of Business, Law Social Sciences, 2018, <<https://www.profem.cz/shared/clanky/676/DISSERTATION%20petra.pdf>>.

46 "Sexual Violence and Sexual Harassment in the Armed Forces", Centre for Military Justice website, <<https://centreformilitaryjustice.org.uk/guide/sexual-violence-and-sexual-harassment-in-the-armed-forces/>>. [Accessed on 5 June 2022].

47 "Appendix B: Statistical Data on Sexual Assault – Fiscal Year 2020", United States Department of Defense, 2021, pp.7-8. (Main Report: United States Department of Defense, "Department of Defense Annual Report on Sexual Assault in the Military – Fiscal Year 2020", 2021, <<https://media.defense.gov/2021/Jul/02/2002755437/-1/-1/0/IRC-FULL-REPORT-FINAL-1923-7-1-21.PDF>>.

sexual assault for fear they will be punished for the offence of having had a party in their room.

Fear of being thought a liar. In cases where unproven allegations are recorded as ‘false reports’, the accuser may be painted as a liar. Therefore, the victim of a sexual assault, knowing there may not be enough evidence to convict in a criminal court, may feel unable to report the crime in case they are not believed. Similarly, if the case goes to trial but there is not enough evidence to convict, this fear can be difficult to resolve, as the accusation may have been genuine but the criminal standard of proof too hard to reach.

It is difficult to accept that insufficient evidence does not necessarily mean the same as full exoneration. In particular, when the case centres on the question of consent, there is generally no other evidence, except perhaps reports of intoxication or previous behaviour. This is a real and difficult issue to address, both in the writing and execution of policy and the response process for sexual assault. It requires policy writers and investigators to understand how the majority of sexual assaults are perpetrated. It requires the policy to be written in a way that allows flexibility in the approach to the allegation, without dismissing it offhand. It also requires training for commanders so that, when they execute this policy, they can work with flexibility in a trauma-informed and safe manner.

Myths about sexual assault

Barriers to reporting exist alongside myths about sexual assault. To explain the use of the term ‘myths’ rather than simply calling them falsehoods, Joanne Bourke, in her book *Rape, a history from 1860 to the present*, writes: “Myth is a shorthand way of referring to a structure of meaning permeating a particular culture [...] They create unified communities by clarifying positions and transforming commonplace assumptions into objective truths.”⁴⁸ Identifying and understanding the weight of these myths about sexual assault is critical to understanding the barriers to reporting sexual assault. These myths are both the foundations of, and the bricks which build these barriers. They are cemented by social beliefs and years of cultural and, on occasion, legal support. They are believed by both men and women because they are socially ingrained.

48 Bourke, Joanna: *Rape, A history from 1860 to the present*. (London: Virago, 2007), p.24.

There are a great many myths about sexual assault, rape, and sexual harassment which, without education and correction, become embedded in policies, procedures and practical responses.⁴⁹

The most common and pervasive myth is that sexual assault is only ‘genuine’ if it is an attack by a stranger holding a knife or a gun, or otherwise using physical force. Sexual assault is a criminal and violent act in itself in which one person forces a sex act on another person without the person’s consent. In most sexual assaults, the perpetrator is known to the victim of the assault.

If a sexual encounter starts with mutual consent but at any point one person is no longer able to consent (if they become unconscious or fall asleep) or withdraws consent, then the sexual activity should immediately stop. Any act after this point is sexual assault. Unless it is explicitly given, consent should not be assumed for any sex act. Consent can be withdrawn at any point and should be respected by the other party.

Some other common myths include the following:

“Women make false reports to punish a man.” Despite empirical evidence indicating that false reporting of sexual assault is between four and ten per cent of all cases reported, there remains a pervasive belief that women use the allegation of rape to harm innocent men.⁵⁰ This belief is so widely held that, in the United States,

49 The importance of addressing myths surrounding violence against women has been acknowledged by the CEDAW Committee in their General recommendation No. 35, which highlighted the need for “Awareness-raising programmes that (1) promote an understanding of gender based violence against women as unacceptable and harmful and inform about available legal recourses against it encourage its reporting and by-standers’ intervention; (2) address the stigma experienced by victims/survivors of such violence, and (3) dismantle the commonly held victim-blaming beliefs that make women responsible for their own safety and for the violence they suffer. These programmes should target: (a) women and men at all levels of society; (b) education, health, social services and law enforcement personnel and other professionals and agencies, including at the local level, involved in prevention and protection responses; (c) traditional and religious leaders; and (d) perpetrators of any form of gender-based violence, so as to prevent recidivism.” <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en>.

50 Claire Ferguson & John Malouff, “Assessing police classifications of sexual assault reports: A meta-analysis of false reporting rates,” *Archives of Sexual Behaviour*, 45(5), 2015, pp. 1185-1193. <<https://doi.org/10.1007/s10508-015-0666-2>>; Kimberley A. Lonsway., “Trying to move the elephant in the living room: Responding to the challenge of false rape reports”, *Violence Against Women*, 16(12), 2010, pp. 1356-1371, <<https://doi.org/10.1177/1077801210387750>>; David Lisak et al., “False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases,” 2010, <<https://cdn.atixa.org/website-media/atixa.org/wp-content/uploads/2016/03/12193336/Lisak-False-Allegations-16-VAW-1318-2010.pdf>>.

a substantial number of police officers interviewed estimated the level of false reporting to be fifty per cent or higher.⁵¹ Between 2000 and 2003, United Kingdom Home Office research initially concluded that nine per cent of reported rape accusations were false. This figure was analysed in greater depth and individual instances previously defined as ‘a false report’ were reviewed. The cases reviewed in this nine per cent contained a wide range of cases which did not definitively amount to a false report. One example of a case reviewed was that of a woman who had regained consciousness in a public place with her clothes dishevelled and was unable to recall what had happened and attended the police station concerned that she had been assaulted. The police were unable to clarify what had happened to her. This had been marked as a ‘false report’ although the woman had not actually reported a sexual assault. Once these and other similar cases had been removed, the report concluded that only three per cent of allegations could reasonably be deemed as false.⁵²

False reporting is often described as ‘regretful sex’. There is an assumption that some women make allegations of sexual assault after they wake up and regret having had sex the night before. It is not impossible that this could happen, but it would be unlikely. The process of reporting sexual assault generally exposes both the victim and the perpetrator to colleagues and family, which is itself a major barrier to reporting. Regretful sex generally does not elicit trauma responses.

While some people may make false reports regarding sexual harassment or sexual assault in order to gain something other than justice, it is highly unlikely that this occurs on any greater scale than false reporting of other crimes. That being said, the fact that false reporting remains an open reason to disbelieve someone who reports sexual harassment itself creates another barrier to reporting. The default should be belief, if only to counter the very real barriers that exist to reporting a sexual assault or incidents of sexual harassment.

“Rape is not serious unless the perpetrator is a stranger.” This is combined with the notion that most victims are raped by strangers and the idea that women have no rights to claim sexual assault if they are in an intimate relationship with someone. Yet sexual assault is often perpetrated by someone known to the victim,

51 Kelly L., “[The \(In\)credible Words of Women: False Allegations in European Rape Research](https://journals.sagepub.com/doi/pdf/10.1177/1077801210387748),” *Violence Against Women*, Vol. 16(12): 2010, pp.1345-1355, <<https://journals.sagepub.com/doi/pdf/10.1177/1077801210387748>>.

52 Liz Kelly, Jo Lovett, & Linda Regan, “A Gap or a Chasm? Attrition in Reported Rape Cases: A Home Office Research Study”, Home Office Research, Development and Statistics Directorate, February 2005 London, 2005, pp. xi and 46-7. <https://www.researchgate.net/publication/238713283_Home_Office_Research_Study_293_A_gap_or_a_chasm_Attrition_in_reported_rape_cases>.

including by an intimate partner, and several OSCE participating States have acknowledged that sexual assault can occur within marriage.

Examples of countries that have acknowledged that sexual assault can occur within marriage and the dates these became law.

Russia – marital exemption removed in 1922

Italy – 1976

Belgium – 1979, later enshrined in law in 1989

Canada – criminalized in 1983

Austria – 1989

France – 1990

Ireland – marital exemption removed in 1990

United Kingdom – 1991

Spain – 1992

Finland – 1994

Germany – marital exemption removed in 1997

Bosnia and Herzegovina – the Penal Code removed the 'marital exemption' for rape in 2003

Greece – 2006

“Women who dress in a manner that some men consider provocative or who go out drinking until they are very drunk are asking for sex.” This and other myths around questioning the behaviour of the assault victim, detract from the actions of the perpetrator by shifting some, if not all, of the blame on to the victim. All people have the right to dress and drink how they choose, within the context of the social rules of the country where they are deployed. Furthermore, they have the right to decide whether they wish to have sex or not. If a person is under the influence of alcohol to the point they cannot give consent, then any sex act while they are incapable of consent is sexual assault. Similarly, if the victim of the assault had sex earlier that evening, or was known to have had sex with others, this may also be used to blame the victim and justify the behaviour of the perpetrator.

The self-blame and guilt of a sexual assault survivor will need to be worked through with a trained counsellor. The blaming of victims of sexual assault for ‘walking home alone’ or ‘wearing short skirts’ or ‘getting drunk at a party’ should be understood as a destructive myth and a barrier to reporting which also exonerates some of the act of control and violent dominance perpetrated by the abuser.

“The person lay silently during sex, so consent is assumed.” Consent, or more precisely whether consent has actively been given to proceed with a sex act, is the most common point of contention for investigators, courts and military commanders. It is vital that commanders are aware of the national, specific legal definitions of what is defined as sexual assault and what evidence, if any, is necessary under legislation when determining consent. It is also vital that commanders and policy-makers are aware of trauma reactions and the freeze response.

Some thought should be given to the military policy on the ability of someone to consent to sex while intoxicated. During sexual assault response training, a common question concerns both parties being intoxicated; in general, if a man can penetrate a woman without him being coerced, then he is continuing to retain a cognitive ability to stop the act if he notices his sex partner is disengaged.

“Once sex has started a man cannot stop.” This was suggested as a defence for a man continuing to have sex after his partner had fallen asleep during sex and was vocally defended by the majority of a large male audience during training on respectful relationships for armed forces personnel.⁵³ This is part of the general, male-focused narrative that a man is ‘entitled’ to have sex. This is particularly noted if the woman has let him kiss or touch her or has invited him back to her room for a drink, etc.

This myth again removes agency from the man as not being responsible for his actions and that continuing sex when he no longer has active consent is beyond his ability to control. Not only is this myth untrue, it also perpetuates harmful stereotypes about men.

“The assault could have been avoided if the victim had done something differently.” Victims of sexual assault often regain some sense of control by blaming themselves about aspects of the assault. On occasion, they may consider that if they had avoided a specific action they would have been able to prevent an assault. Likewise, some victims blame themselves, regardless of the reality of the event, in an attempt to maintain some feeling of agency.

53 2013 experience of a trainer affiliated with ODIHR

Third parties (particularly bystander women) might arrive at similar conclusions if they identify something as a ‘contributing factor’ to the assault, such as if the victim was drinking in the bar and went home with someone, or if they wore a short skirt. The bystander might then think that they could avoid a similar occurrence by not taking similar decisions. This can be either a subconscious or deliberate defence mechanism to help people feel that they can be in control of what happens in their lives. This creates an often subconscious sense that we can prevent sexual assault from happening to us by behaving in a certain way. The unexpected consequence of this line of thinking, however, is that it exonerates or mitigates some of the responsibility of the perpetrator. It buys into and confirms other myths about sexual assault, such as that women should not drink until they pass out, or the clothes they wear invite sex.

“It never happened to me.” This is a surprisingly common response when the development of sexual assault response is presented in the military. Women (and men) who served for years without ever having encountered sexual assault or sexual harassment consider the issue overrated and an exaggerated complaint as a by-product of contemporary politics.

Some of the ‘hazing’ or ‘initiation ceremonies’ that have been claimed to bond men together in shared tradition and experience are increasingly seen for what they are — sexual assault. These have included young recruits being held down and having their testicles covered in boot polish and then having the polish scrubbed off with a sharp brush; being made to run naked through a line of other men while being hit with wet towels or shoes in pillowcases; forced insertion of items into their anus; getting someone to put their anus or genitals on someone else’s face; having their genitals wrapped in duct-tape, being beaten on their genitals; being forced to conduct, or pretend to conduct, sexual acts on each other, and being gang-raped by older conscripts.⁵⁴ These hazing ceremonies have caused irreparable mental health damage to many young men and women who joined the military to serve their countries.

The reality is that while specific population groups are disproportionately targeted, sexual assault can happen to anyone.

54 ICOAF 2021 speech of the Acting Commonwealth Ombudsman Penny McKay, “The wrongs of passage: Inhuman and Degrading Treatment of New Recruits in the Russian Armed Forces”, Human Rights Watch, 2004, <<https://www.hrw.org/reports/russia1004.pdf>> ; also see: Joanita Miley, “Traditional hazing crosses line to sexual assault” US ARMY, 2020, <https://www.army.mil/article/242011/traditional_hazing_crosses_line_to_sexual_assault>, and C. Todd Lopez, “Male hazing most common type of sexual assault, expert reveals”, US ARMY, 18 April 2016, <https://www.army.mil/article/166188/male_hazing_most_common_type_of_sexual_assault_expert_reveals>.

The importance of providing a safe reporting system

As discussed above, the many barriers to reporting sexual assault exist as much in the military as they do in civilian life. It is important to develop a reporting system and process that recognizes and mitigates the damage these barriers create. Prosecution of sexual assault is extremely difficult to achieve under most current judicial systems, where evidence is considered paramount and inconsistent trauma memories are considered helpful to the defence. Most issues of sexual assault hinge on whether consent was given or not, rather than on physical evidence. Having a reporting process that is solely dedicated to a prosecutorial outcome is bound to lead to a continuation of the myth that it is pointless to report sexual assault or that no conviction is proof of a ‘false report’. The recommendation is, therefore, that reporting mechanisms are put in place that appreciate both the complexity of sexual assault and sexual harassment cases and the complexity of the potential outcomes that the reporting person is seeking.

It is important to remember that during a sexual assault the victim had their agency removed in the most profoundly intimate and violent manner. Having a reporting process which allows them, as far as possible, to retake control of what happens to them and to be able to collaborate in the outcomes, restores some measure of trust and safety. It is even more important when this support is delivered through a militarily sanctioned process to which they belong and can again feel supported by.

In order to do this, one thing to consider is the different motivations the survivor might have when reporting the sexual assault. People report sexual assault for a variety of sometimes contradictory reasons. If the intention is to create a process that can only lead to investigation and potential prosecution, then only those people who want this

The Canadian Armed Forces has set up a dedicated website to support anyone who reports an experience of sexual assault or sexual harassment. <https://www.canada.ca/en/department-national-defence/services/benefits-military/conflict-misconduct/sexual-misconduct.html>.

In 2014, the French Ministry of the Armed Forces created the Thémis unit. The purpose of this Unit is to allow victims of sexual harassment, sexual violence and discrimination of a sexual nature, to refer the situation — through an intermediary — to the competent hierarchical authority. They also offer psychological support and liaise with relevant non-governmental organizations, like *France Victimes* and *SOS homophobie*.

outcome will report sexual assault through this policy. This will inevitably exclude many people who just want support, who just want the behaviour to stop, who want some level of “restorative justice” without going as far as prosecution, or who want to report a historic abuse. It should also be noted that forcing someone to engage in an inquisitorial prosecution after reporting can be, and is likely to be, as traumatic as the assault. Where possible, the victim of the assault should be given as much agency as possible in determining whether they wish to proceed with an allegation or request some other outcome.

Having a multi-strand reporting system covers all aspects of these complex reasons for reporting. However, it is critically important that a multi-strand reporting system is developed in full acknowledgement of the need to uphold and ensure free and informed consent by the affected victim/survivor, in full compliance with General Recommendation No. 35 of the CEDAW Committee.⁵⁵

What could a multi-strand reporting system look like?

- Allowing someone to report sexual assault but not name the perpetrator;
 - This would enable them to receive counselling support;
 - They could also request to be posted elsewhere;
 - It could be that they are not ready to proceed fully with reporting and will need more time to fully disclose. (In many sexual assault medical centres it is possible to freeze evidence such as clothes, blood, tissue and semen samples, for use months later);
 - There are some risks around this type of reporting stream. A commander will be aware of a potential sexual abuse perpetrator in their team and is unable to respond. Pressure, however, should not be placed on the person to disclose the name of the perpetrator. Women survivors, in particular, carry guilt for, ‘not being the first’ to disclose once there are multiple reports about a perpetrator. Being the first to disclose still requires that person to surmount the barriers and dispel the myths of sexual assault.
- Allowing someone to report sexual assault and request a restorative justice outcome;
- Reporting a sexual assault, naming the perpetrator and engaging with an investigation;

55 CEDAW General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, 14 July 2017, CEDAW/C/GC/35 para 45, <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf>.

- There should be some mechanisms for people who wish to report historical abuse, particularly within a new reporting system that may not have existed when the abuse occurred.

It may not be possible for the survivor to have complete control over how the investigation will go; the commander may determine that it is in the best interests of the team and his command to pursue an inquiry. In exceptional circumstances, there should be a mechanism, clearly articulated and tested, for overruling the preference of the survivor not to prosecute. This may be necessary if there is an active level of violence in the assault or the commander is aware of more than one report of sexual assault coming from that team and there is a reasonable suspicion that there is an active serial offender in the team. It may be that the team is about to deploy and the commander is concerned that this could endanger the mission if not dealt with proactively. However, this action should not be taken lightly as there is a possibility this will further traumatize the survivor with feeling they have been misled or, once again, had their agency and choice removed. This will need to be managed sensitively and with trained personnel, noting that the survivor of the assault may not be able to support this course of action.

The reporting process should cover all aspects of what follows. It should be disseminated to every person in the unit, with regular reminders throughout the year about where to report and what will happen. The reporting process and attending principles should be part of an annual education module for all, so that any member of the team can clearly understand their options and the process they enter should they decide to report.

a. Who receives the report?

One of the first issues to address is whether there should be one person on the team to whom the victim can report or multiple team members who are trained in receiving reports. This issue has several considerations:

- First person reports, if recorded correctly, can be used in evidence at a potential hearing;
- The first report can often give solid evidence, which can later be forgotten or confused;
- The person receiving the report can offer valuable guidance and support to the assault victim if they have been trained in this. This support can be accurate and unit specific and, if this is delivered in a trauma-informed manner, can aid recovery.

It is key, however, to note that it is not unusual for there to be a delay of weeks, months or years between the assault and its reporting. There are many reasons for such a delay including fear, shame, uncertainty and mistrust of how they will be treated by the system. Sometimes the person needs time to process what happened and to come to terms with having had their agency removed from them.

It is often not possible to have a dedicated person/place to report to in a small unit or work area. However, the advantages of having a dedicated person are that the person will be trained to take notes correctly, treat the survivor with respect and trauma-informed care, and be able to give consistent and accurate options and support to the person reporting. The disadvantages are that the person is likely to hold the support role in addition to their normal, full-time duties. This can be seen as an additional burden on top of their usual level of duties. The extra responsibility, training and tasks associated with being a support person can seem overwhelming. It is also likely that the support person will need to be trained for the role with every new deployment or posting cycle. This can leave an operational gap at the start of each new posting. One of the solutions to this is to offer payment for the role; an extra duties' allowance similar to those offered to health and safety and first aid officers or room wardens.

It is also possible that having just one person in this role may present barriers to reporting, such as an imbalance in rank, or a gender or personal background mismatch. This will leave the survivor without another option. It is worth noting, too, that women are more likely to be asked to perform this duty and become burnt out by the work. Men, particularly those who are well trained in this work, can empower whoever reports, provided they respond in a trauma-informed manner. One suggestion is to rotate the role or to have a number of different people advertised as points of reporting, including those who are generally considered to be pre-trained such as medics, counsellors, religious chaplains, etc.

b. Confidentiality in reporting

Confidentiality is an important issue. This should be considered in the light of other, mandatory reporting. Many active units require all serving members to be physically and mentally fit for active duty and to be reported as such at all times. If someone reports a sexual assault, it may be that mental health, medical or physical fitness rules and regulations require that person to be reported as unfit for duty, or at least to report to psychology services for assessment. This is based on the understanding that sexual assault is a traumatic event that can cause a person to have PTSD and therefore be unfit for active duty. This may be a barrier to reporting and consideration should be given to allowing anyone in uniform receiving a report of a sexual assault to hold that information in confidence.⁵⁶ It is important, both when

56 There will be exceptions to this discussed below in the section on mandatory reporting.

drafting new reporting procedures and when examining existing ones, to consider the ability of serving members to access support, such as a sexual assault counsellor or medical attention from outside the military. Service-providers from outside the military, or not in service, are not obliged to report to command in the same way as serving medics may have to. This may be the preferred option for victims of sexual assault as an initial point of support and help. If this is not allowed under the current regulations, then it may pose a barrier to immediate reporting to their preferred option. Understanding why a victim may initially need to receive external help is important for policymakers so that they can explain the need for wider regulatory changes and can get support from command for these changes.

It is also important to allow those wishing to report unacceptable behaviour to give information to command and others safely. Consideration should be given to having robust and clearly articulated secondary reporting mechanisms.

Secondary reporting is when someone who is not directly involved — such as a bystander — reports unacceptable behaviour. It is important to have clear and safe mechanisms for people in the unit, bystanders, those who have been confided in by the victim or others, to report incidents that are unacceptable to command.

Scenario planning for each aspect of the policy will help with this process; consider mapping the process of what would happen and how confidentiality would be maintained or denied should a bystander report that they are aware of an assault on a third person.

c. Mandatory reporting

Mandatory reporting of sexual assault usually exists to protect the most vulnerable in society. For example, it is common that certain professionals, such as social workers and doctors, are required by law (and by their professional standards) to report all known and reasonably suspected abuses against children to police and care services.

In the military context there are many examples of mandatory reporting regulations around ensuring that all members are fit for active duty. These mandatory reporting requirements usually focus on the obligations for serving members to seek medical advice and support only from military medical and mental health staff. This is supported by mandating that all military medical and mental health staff are obliged to report if they consider a serving member has PTSD or has sustained an injury which may render them unfit for service. In most cases the immediate af-

termath of a sexual assault will be considered enough to warrant ongoing monitoring and a formal report on record. Consideration should be given to allowing staff to maintain confidentiality, even if this might contradict their military obligations to report potential mental health trauma, particularly among deployed staff.

It may be impossible to maintain confidentiality if there is a danger to the victim or to others. This caveat to confidentiality is understood by many professionals and is considered a mandatory reporting trigger. The suspicion of harm has to be reasonably held and the danger must be either imminent or possible. It should also be noted that most professionals limit even this reason for a breach of confidentiality; the breach is only considered reasonable if the disclosed information is enough to eliminate or mitigate the danger but no more. The danger can be to others, including to those the person is caring for or commands. Therefore, whoever holds the role of receiving reports of sexual assault will need to be trained to fully understand their obligations in terms of confidentiality and when it can reasonably be breached. Each element needs to be accurately supported and clearly articulated in accessible procedures and policies.

Reiterating an earlier point, all concepts within the reporting policy which explain the expectations for reporting sexual assault and the subsequent process (such as what is considered to be consent) should be supported by training and education, both for those applying the process and all troops.

Responding to male disclosures of sexual assault

Any system which addresses, responds to and recognizes sexual assault needs actively to address and acknowledge that male sexual assault can and does occur. According to a 2011 study of the German Armed Forces, 12 per cent of male personnel had experienced sexual assault.⁵⁷ The United States Department of Defence estimated in 2016 that one per cent of servicemen will be sexually assaulted during one year, as opposed to five per cent of women in uniform. Due to the higher representation of men within the United States Armed Forces, this means that ultimately more men than women are victims of sexual assault in any given year.⁵⁸ In 2021, the Chief of Staff of the Canadian Armed Forces revealed that 42 per cent of the complaints received of sexual misconduct had been made by men.⁵⁹ Moreover, as detailed above, many hazing practices have a strong sexual component and can constitute sexual assault.⁶⁰

In a research article published in 2018 on United States servicemen's perception of sexual assault barriers, men reported a lack of awareness about male sexual assault in the military, a tendency to blame or marginalize male victims and substantial barriers to reporting sexual assault. Reserve/national guard participants in the study emphasized the barriers, including a perception of greater stigma due to their unique status as citizen-soldiers, an ethos of leadership modelling, and a lack of confidence in leadership and the reporting processes.⁶¹

Males who reported sexual assault noted that they felt as if their masculinity had been questioned, had been accused of being 'gay' in some cases and that they had not been able to fight off their attacker, either freezing or not having been in a position to fight back. While these are similar barriers faced by women, they are

57 Gerhard Kümmel, "Truppenbild ohne Dame? Eine sozialwissenschaftliche Begleituntersuchung zum aktuellen Stand der Integration von Frauen in die Bundeswehr" [Troop image without a lady? A social science accompanying study on the current status of the integration of women in the Bundeswehr], Bundeswehr Centre of Military History and Social Sciences, 2014. <<https://opus4.kobv.de/opus4-zmsbw/frontdoor/index/index/year/2019/docId/108>>.

58 C. Todd Lopez, "Male hazing most common type of sexual assault, expert reveals", US ARMY, 18 April 2016, <https://www.army.mil/article/166188/male_hazing_most_common_type_of_sexual_assault_expert_reveals>.

59 Amanda Connolly, "Over 40 per cent of military sexual misconduct class action claims are from men", Global News website, 27 November 2021, <<https://globalnews.ca/news/8405606/canadian-forces-sexual-misconduct-class-action-claims-men/>>.

60 For a more detailed discussion of this, please refer to the section above covering hazing and initiation.

61 Anne G. Sadler, Ann M.Cheney & Michelle A. Mengeling, "Servicemen's perception of Male Sexual Assault and Barriers to Reporting During Active Component and Reserve/National Guard Military Service", *Journal of Interpersonal Violence*, 15 June 2018, <<https://journals.sagepub.com/doi/full/10.1177/0886260518780407>>.

exaggerated for men in the context of the male-dominated culture of the military, the expectation that they should be able physically to fight back and the gendered nature of sexual assault.

It is recommended that any policy and procedure to educate about and actively respond to sexual assault takes into account the gendered barriers for males reporting sexual assault, particularly in the military.

Legal and policy issues to consider in reporting

To respond effectively to sexual assault in the military it is important to keep in mind the different areas and actors that will be impacted by, or intersect with, the proposed policies and procedures on sexual assault. This is notable in the military context as almost everything is regulated, including the reporting chain. While this can be a complex exercise, it also presents a unique opportunity for meaningful institutional change. Unlike the civilian world, the military offers a central body from which change can be created if there is a co-ordinated, agreed and understood objective.

It is essential that, within the military system, all legal avenues support and mirror the policy and procedure for reporting and managing sexual assault.⁶² There may be areas in which the types of legal support will need to be adapted; for example, aspects of allowing reporting without investigation and allowing external experts to provide military personnel with mental health support for what can be categorized as trauma without this immediately triggering a medical assessment. These changes often come with identified risks that need to be managed. One vital form of risk management is to ensure that there are defined points of concern that would trigger a mental health report, or an investigation, and that these scenarios are clearly articulated and delivered in training to those managing responses.

62 For OSCE participating States this also facilitates implementation of OSCE Ministerial Council Decision No. 4/18 “Preventing and Combating Violence Against Women”, Milan, 7 December 2018, in the context of military personnel. This decision calls on participating States to: “Ensure access to justice, effective investigation, prosecution of perpetrators, as well as provide, while respecting their rights and privacy, adequate protection, rehabilitation and reintegration support for victims of all forms of violence against women and girls; (...) Take action, including through awareness-raising and capacity-building for the armed forces, law enforcement agencies, judicial systems and other legal professionals, on preventing and combating all forms of violence against women and girls (...) Adopt measures, as appropriate, to encourage education on gender equality, human rights and non-violent behaviour thus contributing to the prevention of all forms of violence against women and girls, which can include: harmful practices, sexual violence, domestic violence, as well as sexual harassment.” <<https://www.osce.org/files/f/documents/e/e/406019.pdf>>.

BOX 2. EXAMPLES OF DEFINED POINTS OF CONCERN

A defined point of concern could be attached to a person or relate to the assault report itself.

An example of a defined point of concern for a person would be if they had been sexually assaulted and were not sleeping and were unable to focus but were required to fly a fighter jet. This may trigger a requirement for them to undergo a mental health report.

An example of a defined point of concern that may trigger an investigation would be if the perpetrator was already known or suspected by command, or if the level of violence in the attack would cause concern of potential immediate harm to others.

These scenarios and the identification of points of concern would be dependent on the specific military unit. They are essential to risk management.

Mental health reports are usually conducted on returning service men and women after deployments. They recognize that deployments and other life stresses can cause mental health issues, particularly PTSD, which can lead to performance issues at work as well as complex personal issues. If, for example, a fighter pilot had reported experiencing a sexual assault, it is unlikely that they would immediately be cleared to fly by psychology services and/or command. Military health services have a duty to protect serving men and women by ensuring that everyone is at their best in terms of physical and mental acuity. This, however, can become a barrier to reporting as the consequences of being 'stood down' for mental health assessments can be immediate, particularly for the survivors.

An in-depth review is needed to ensure that all aspects of the local legal requirements of reporting and investigating a criminal offence (or statutory offence, e.g., an offence against the state) are complied with and that a new military reporting policy does not create unexpected legal consequences. One such potentially unexpected legal consequence could be if state law requires a mandatory report to police if a crime is committed; anyone in a local defence unit who receives a confidential report of sexual assault could be required to inform local police. This could put them at odds with a military regulation that allows confidential reporting.

Consideration should be given to whether the process will support individual legal representation. If there is enough evidence to proceed, will the matter be dealt with through the military system (a court martial) or will it proceed through home-country criminal courts? Passing a matter to the criminal courts will prevent the military assigning various outcomes that they may wish to retain the power to deliver, such as a restorative justice outcome.

It is important to consider the implications of the cost of legal representation and for the policy to consider whether legal representation will be paid through the military for both parties, or whether it will be paid just for the survivor of the assault.

Deployment overseas

All processes and procedures for responding to sexual assault will need to be ‘war-gamed’ to ensure that their core activities can be replicated in a deployment situation. This usually means that there are trained responders available and that systems have been pre-approved to manage the removal or distancing of one of the parties to any assault disclosure or report. Conflict zone deployments can create specific barriers to reporting and to managing a report, but some of the processes for managing reports of internal unit conflicts in war zones can be thought through in advance.

Among the issues that need pre-planning are the practical and material aspects of managing a report. This can mean, for example, that any provisions for conducting a forensic ‘rape’ test that can be provided in-country should also be available during deployment. There are mobile and transportable forensic kits that medics can be trained to use in mobile surgical units. Transporting and storing these kits should be factored into the provision of medical services on deployment. Alternatively, if the deployments are not to conflict zones, planning should consider whether there are trusted medical facilities nearby that deployed staff could use and whether the home-country forensic and investigative services would admit forensics from the country of deployment.

Supporting a team during and after a report of sexual assault

This is one of the most complex but necessary aspects of managing a report of sexual assault or sexual harassment in the military context. There are general ‘basic rights’, including rules about confidentiality and maintaining the integrity of an investigation by not discussing details of what has happened with potential witnesses. It is, however, unreasonable to assume that other members of the unit are not aware of what has happened and will not be deeply affected by it. Within deployment scenarios, having a fractured team, particularly when deployment numbers are generally lean and each person is essential, can be devastating not only to morale but for mission outcomes. Thought should be given, within the policy, on how to manage this aspect of the investigation and outcomes.

Solutions can be tailored to the individual military context and be based on a deeper understanding of the nature and culture of the unit. Some points should be kept in mind:

- The team will quite possibly have witnessed such behaviours as sexual harassment on several occasions and they may have either condoned the behaviour by staying silent or explicitly joined in. While they may be pleased that this behaviour has been reported, they may also feel concerned about their role in previous behaviours or feel guilty for turning a blind eye to it. Support should be given to the team to work through these aspects of how they feel and extra training should be given if they downplay the issue with statements like “it was just a joke” or “they used to laugh about it”;
- Teams often divide into those who support the victims and those who support the perpetrator. It is notable too that the perpetrator is likely to be popular and gain support, while the victim is doubted, vilified, and blamed for breaking up the team. This is reflected in the myths about sexual assault and the barriers to reporting. Caution should be applied when assuming that the support of the team for either party is indicative of whether the allegation is true or not;
- While it is important to focus on the mission, thought should be given to re-deploying the victim of the assault or sending them home while leaving the alleged perpetrator on the team. This is particularly difficult if the team is on-board a ship or in small, close contact quarters. It may seem the ‘kindest’ thing to send home someone who has been traumatized and, presuming innocence, to wait for the outcome of an investigation before removing the accused, but this sends a clear message to anyone else who wants to report sexual assault: the outcome is vilification of, and disruption to the victim’s life, while the perpetrator’s life continues unchanged. If it is necessary to separate them for protection, then removing both is the best option if possible;
- Concerns and questions from the team will be mitigated if they have already received training/education on what happens when an allegation of sexual assault and sexual harassment has been made. Remind the team and the command support that such behaviour will not be tolerated; and
- A close review of the team should be considered and team morale and any future bullying or harassment should be noted and acted upon. Members of the Military Sexual Assault Response Team (SART) can assist with this.⁶³

63 See section on SART teams for further information on the composition and tasks of this team.

Offender support

How to articulate offender support is a difficult matter. There are limited means of support in the civilian world and it is unlikely there are enough resources available to cover all aspects of support to all personnel involved. In a military context, it is important to consider how to manage the situation if the mission has to continue while the alleged perpetrator remains on the team.

It may be possible to tap into external support resources. When creating a policy, one should consider allowing external support to be brought in for a defined reason and period of time. Offenders can be expected to be shocked, hurt, angry, upset and concerned that an allegation has been made against them, even if they are a serial offender. They are likely to gather all their local support from their team members, colleagues and connections, but they are most likely to look for legal support during an investigation. When developing the policy, it is important to consider what legal support will be given to each party.

Offering mental health support to an offender during and after the process should also be considered.⁶⁴ However, the policy should make it clear what reporting responsibility, if any, the counsellor will be assigned before any investigation. Confidentiality is a cornerstone of any counselling relationship, but it is an accepted fact that military counsellors, who have qualifications in mental health yet serve in uniform, are often expected and required to report worrying mental health issues to command. It should be made clear from the outset whether they can and should be called as a witness if they have delivered counselling and support to the alleged offender before the trial. The alleged offender should be made aware of the mandatory reporting expectations before they willingly engage with a uniformed counsellor.

If external support is required, the same parameters about reporting pertinent disclosures (such as admitting they committed the crime) should be agreed before the counselling starts and should be reflected in both the military policy and the supporting legislation.

64 OSCE participating States have also acknowledged the importance of this. OSCE Ministerial Council Decision No. 7/14 on “Preventing and Combating Violence Against Women”, Basel, 5 December 2014, encourages states to “Develop programmes to work with the perpetrators of violence against women, both during and after their sentence in order to avoid repeat offenses”, <<https://www.osce.org/files/f/documents/8/e/130721.pdf>>.

The importance of self-care

Vicarious trauma is often described as ‘compassion fatigue’ and can look similar to ‘burn out’. The symptoms of vicarious trauma can range from sleeplessness to general dissatisfaction with their job, depression, increased anxiety, emotional exhaustion, cynicism and avoidance of situations in which they may feel the need to express themselves. People come into the military with complex backgrounds and experiences. Some team members will have been sexually assaulted as children and as adults, outside the military context. These incidents have the potential to trigger memories of their own trauma. There will be those in teams who have been abused themselves in the military and those who may have participated in hazing and other inappropriate behaviours which they believed to be ‘part of the military ritual’. Even the most resilient and well-trained people can be affected by vicarious trauma. Support from mental health services should be encouraged to those on the SART, to commanders and to those managing and dealing with sexual assault response.

Reporting outcomes

Once there is a system in place that offers a choice of reporting mechanisms and is demonstrably supported by senior command, people will use that system to report sexual assault and sexual harassment, both contemporaneous and historic. These reports can be useful tools for commanders to assess whether the sexual assault and gender equity policies are working and to gauge morale in the ranks, performance levels and the deployment capabilities of teams. The feedback from these processes will allow commanders to consider whether there are aspects of the policies and processes which require adaptation or correction. Consideration should be given to how reports are collated and centralized while maintaining a balance between active, useful information and the confidentiality of those involved.

It is also important that there is tacit recognition that, if these policies are sound and accurate and the commanders genuinely take care when applying them, there will be an increase in reporting sexual assault within their ranks. Increased reporting does not mean an increase in incidents, but rather is a definitive sign that assault victims are feeling a sufficient degree of safety and trust in the commander and in the system to report. Therefore, it is essential that commanders do not feel that increased reporting will reflect negatively on their leadership. This can be prevented through direct support for these policies from the most senior officers in a vocal and consistent way that is seen through all ranks.

Creating and using a military Sexual Assault Response Team (SART)

When responding to sexual assault in the military context, each aspect of the intervention, from the point of disclosure through to the support offered during and after the matter has been finalized, should be done in a trauma-informed way and in line with the principles described in this publication. There are two key differences and often competing points of focus; support for the victim of the sexual assault and a potential conviction of the offender. The investigation cannot get to their case for conviction until they have interviewed the victim of the assault, with the risk that this interview re-traumatizes the victim of the assault and/or concludes that they can do nothing more to pursue the matter. The commander must consider the length of time this process will take and the impact on the morale and fighting capability of the team while this is happening. The most effective way to respond is to have capacity to assemble a pre-trained SART from among existing team members. This team should have both the essential background skills and training in managing a military response to sexual assault.

Re-assigning a team from other duties, particularly when a team is already lean, may seem like a risk for the deployment. However, it can and should yield a quick, equitable and more sustainable response. The SART model can be adapted to the specific nature of the military context in which it is functioning. It has three core elements — investigation, mental/physical health support and response support — and can be expanded or contracted to fit the nature of the investigation and support required.

The SART model was first used in San Diego County, United States and has been adapted by many other sexual assault services since 1991. It is a multi-jurisdictional and interdisciplinary team which comprises a range of disciplines, all of which work together to respond to sexual assault. This system represents a collaborative effort between law enforcement, health care and victim advocacy organisations.⁶⁵ Such co-ordinated service programmes for rape victims are found to be beneficial to those that have experienced sexual assault.⁶⁶ SART programmes also promote

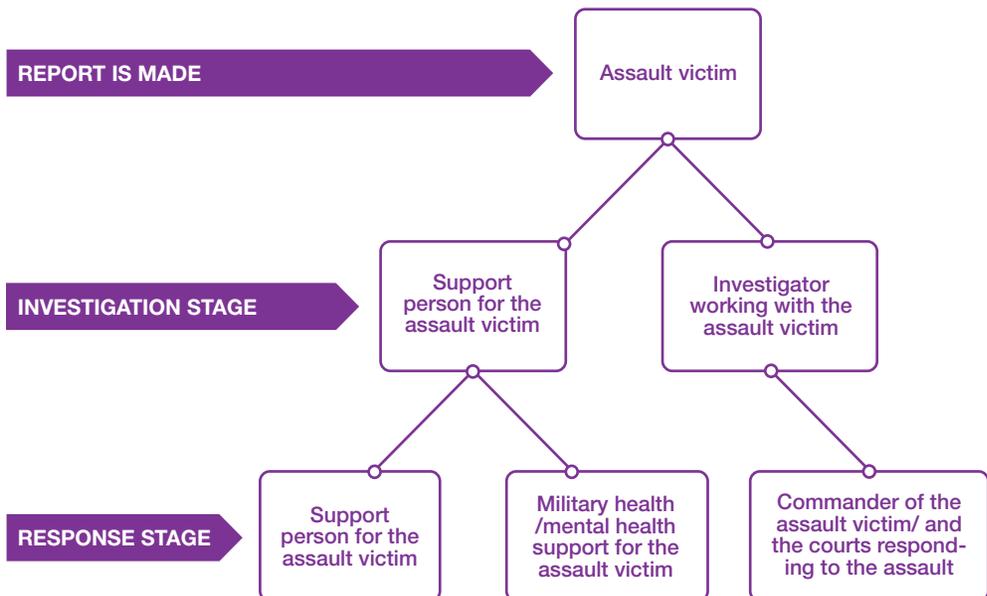
65 San Diego County Sexual Assault Response Team Systems Review Committee Report” 2012-2013, County of San Diego Health and Human Services Agency Public Health Services Emergency Medical Services, August 2015, <https://evawintl.org/wp-content/uploads/SARTReport2012_2013.pdf>.

66 Rebecca Campbell, Courtney E. Ahrens, “Innovative community services for rape victims: An application of multiple case study methodology”, *American Journal of Community Psychology*, 26(4), 1998, pp. 537-571, <<https://onlinelibrary.wiley.com/doi/abs/10.1023/A%3A1022140921921>>.

efforts to increase the rate of arrest and conviction of those who commit sexual assault by ensuring that trauma-informed, focused interviewing and sensitive forensic evidence collection takes place in a framework that understands sexual assault.⁶⁷

It is likely that each defence force has a strong service delivery ethos. The full range of sexual offence response services available to serving members should be contained in the wider military structures. What is often missing is the actual model and infrastructure for centrally co-ordinating that response, the principled framework for service delivery (articulating these principles and supporting their implementation) and a central point of expertise and support for all service delivery agents. Incorporating this framework into a policy, and training to deliver this framework, fills this gap.

Basic SART model



67 Ann Burgess et al., "SANE/SART Services for Sexual Assault Victims: Policy Implications". *Victims & Offenders*, 1, 2006, pp. 205-212. <<https://doi.org/10.1080/15564880600767363>>.

The support person could be allocated from those with social work, chaplaincy, mental health, counselling, or nursing backgrounds who are willing and able to offer support directly as well as to refer and guide a victim to the existing and appropriate support services in the military. The support person works alongside the investigator and can sit with the assault victim during interviews but cannot speak for them.⁶⁸ The support person should have adequate mental health training and should be able to tell the commander or others if extra support is required. The support person — if available immediately — can arrange a medical check with an appropriately trained Sexual Assault Nurse Examiner (SANE).⁶⁹ In this way, the investigator can be assured that evidence is gathered under the required forensic conditions while ensuring that the examination is delivered to the standards expected by a SANE.⁷⁰

The support person can explain to the victim of the assault the process for reporting and can spend time with them, allowing the time and space to decide how they want to proceed. It is essential that the investigator, commander and support person are consistent in articulating the limits of their ability to allow the assault survivor to determine how they wish to proceed.

While SARTs in the community appear to show some success in improving survivor experiences — receiving services, improving some legal outcomes and enhancing the relationships between service sectors⁷¹ — the process of joining together and bridging professional boundaries is understandably complex and not always smooth.⁷² Research suggests that SART co-ordination is a contested process in which conflict between disciplines is frequent.⁷³ The creation of a SART within the military is therefore best supported by having a clear set of objectives and skills deliv-

68 Karen Rich, “Trauma-informed police responses to rape victims,” *Journal of Aggression, Maltreatment & Trauma*, 28(4), 2019, pp. 463-480. <<https://doi.org/10.1080/10926771.2018.1540448>>.

69 Stacey B. Plichta et al., “Why SANEs matter: Models of care for sexual violence victims in the emergency department”, (Pitman New Jersey: International Association of Forensic Nurses, 2005). <<https://doi.org/10.1111/j.1939-3938.2007.tb00088.x>>.

70 Valerie Sievers, “Sexual assault evidence collection more accurate when completed by sexual assault nurse examiners: Colorado’s experience”, (St. Louis, Missouri: Mosby, 2003). <<https://doi.org/10.1016/j.jen.2003.08.010>>.

71 Megan Greeson, Rebecca Campbell, “Sexual assault response teams (SARTs): An empirical review of their effectiveness and challenges to successful implementation”, *Trauma, Violence & Abuse*, 14(2), 2013, pp. 83-95. <<https://doi.org/10.1177/1524838012470035>>.

72 Carrie Moylan, et al., “Sexual assault response teams (SARTs): Mapping a research agenda that incorporates an organizational perspective,” *Violence Against Women*, 21(4), 2015, pp. 516-534. <<https://doi.org/10.1177/1077801215569607>>.

73 Jennifer Cole, “Victim confidentiality on sexual assault response teams (SART),” *Journal of Interpersonal Violence* 26(2), 2011, pp. 360-376, <<https://doi.org/10.1177/0886260510362895>>; and Jennifer Cole & Tanesha Logan, “Interprofessional collaboration on sexual assault response teams (SART): The role of victim alcohol use and a Partner—Perpetrator”, *Journal of Interpersonal Violence*, 25(2), 2010, pp. 336-357. <<https://doi.org/10.1177/0886260509334406>>.

ered through training for those professionals who could potentially be called upon to form a team. Each member of the team should be able to articulate their role in responding to the victim (and perpetrator) of a sexual assault and have their role accepted by the other members of the team. It should be clear who has the ‘final say’ when objectives clash.

The creation of a SART, or the availability of pre-trained members of the military who can form a SART, quickly provides essential support for commanders to respond to complex issues, usually outside the remit of management. The SART can be used to respond to all types of gender-based violence, including sexual harassment and stalking. Familiar with the military context, the members of the SART can better understand the nuances of deployment, service rules, military medical limitations and the issues of inter-team relationships. They can assist all parties with navigating these issues while supporting positive outcomes and actively responding to gender-based violence.

A key action would be to designate two or more sexual assault response co-ordinator roles. This role would:

- ✓ Be trained to deliver sexual assault response and trauma-informed and bystander training to the unit;
- ✓ Co-ordinate the response team;
- ✓ Engage and inform the SART members of case progression, even if those SART members have not been used in that particular case;
- ✓ Stay informed about legal and policy developments in sexual assault matters and transfer that knowledge to the processes;
- ✓ Keep the commander apprised of action which may need to be taken;
- ✓ Support other members of the team with advice and direction;
- ✓ Engage experts when necessary;
- ✓ Ensure confidentiality within the process;
- ✓ Support, advise and assist in delivering restorative justice outcomes, if possible;
- ✓ Advise the commander on actions resulting from outcomes;
- ✓ Ensure that reporting and statistics are both relevant and confidential; and
- ✓ Develop a review and audit of processes undertaken and deliver best practice advice to the commander.

a. Key members of the SART team

Within the military, the key team members of a SART team will be:

- Legal/policy creation teams
- Command
- Investigation (military police)
- Medical services
- Counselling/psychologist/chaplaincy
- Judicial services
- Deployment/personnel support

It is important that each team member is aware of their role and has a direct agreement to work within the policy framework for managing these matters, rather than reverting to their own internal service delivery frameworks. This will require advance meetings and pre-deployment training. It is also best practice to scenario plan (war game) potential cases to work through each person's role. An essential prerequisite for this framework to be successful is to make sure that all legal arrangements and policies reflect and support each other.

Educating about sexual violence response in the military

Specialized training programmes are an important tool for equipping those addressing and responding to sexual assault in the military.⁷⁴ Furthermore, each person in any military unit should be given a basic education on what is expected of them while serving in the military, including what is considered respectful behaviour. These training modules should set out the values and expectations of behaviour of the military organization and apply these to all members of the unit. It should explicitly note that sexual harassment and sexual assault are used as a means of dominance and are not acceptable. It should contain details of reporting and actions that can be taken if a member is a victim or a witness. It should begin with an endorsement by the highest command. Box 4 provides an outline for how such training could look.

74 This type of training also supports implementation of OSCE Ministerial Council Decision No. 7/14 “Preventing and Combating Violence Against Women”, Basel, 5 December 2014, in the military context. This decision encourages states to “Provide treatment, counselling and training courses and other measures to prevent re-victimization and trauma, including during judicial processes”, <<https://www.osce.org/files/f/documents/8/e/130721.pdf>>.

BOX 3. PROPOSED OUTLINE FOR EDUCATING ABOUT SEXUAL VIOLENCE RESPONSE IN THE MILITARY

The education module should begin with:

- What is sexual assault?

This module should explain the mechanism of trauma and the fight, flight, freeze and appease reactions. It should contain real examples so that those attending can identify with the dilemmas and discuss their thoughts around mythology, experience and social norms.

This should be accompanied by discussions on:

- consent
- power imbalances
- alcohol use
- hazing
- sexual harassment

It is likely that this first session will engender discussion and concern from many attending. It is important that it is followed up with discussions about:

- Barriers and myths around sexual assault
- The common effects on those who have experienced sexual assault
- A trauma-informed response and how it can be practically applied

Finally, it is essential to have a dedicated session on bystanders and the role that everyone can play in eliminating, identifying and calling out bad behaviour. This helps not only with group cohesion but also to form a common understanding of behavioural expectations within the unit, setting the standards expected, rather than those of previous cultures.

The role of bystanders

The bystander intervention model is a strategy that engages everyone in a given peer culture or community. It is also well aligned with OSCE commitments.⁷⁵ A ‘bystander’ is anyone who plays some role before, during or after an act of harassment, abuse, or violence, but is neither the perpetrator nor the victim. They can be present during the incident and therefore potentially in a position to discourage, prevent, or interrupt it. Or they may be absent at the time of the incident but have relationships with people who might be perpetrators or victims. A bystander can also be a teacher, trainer or a military commander who is in a position to respond assertively to incidents once they have occurred or to initiate prevention programmes before a sexual assault happens.

It is important to note that, when sexual assault prevention educators talk about bystanders, they typically mean people who know each other, such as friends, classmates, colleagues, teammates or fellow military members. The dynamics of bystander behaviour, and the impediments to action, are very different when people know the perpetrator or victim versus when they are strangers.⁷⁶

a. Bystander training methods

Ensuring that bystanders are equipped to understand the nature of sexual assault and sexual harassment is a key part of addressing such incidents and of changing

75 OSCE participating states have repeatedly acknowledged the importance of involving everyone in preventing and eliminating all forms of violence against women and girls. An important part of this is increasing the engagement of men and boys in the prevention and elimination of all forms of violence against women, including sexual and domestic violence. OSCE Ministerial Council, Decision No. 7/14, “Preventing and Combating Violence Against Women”, Basel, 5 December 2014, <<https://www.osce.org/files/f/documents/8/e/130721.pdf>>. Furthermore, OSCE Ministerial Council, Decision No. 4/18 “Preventing and Combating Violence Against Women”, Milan, 7 December 2018, calls on the participating States to “Incorporate initiatives into relevant national level policies and strategies to promote the engagement of men and boys in preventing and combating violence against women and girls, including by implementing awareness-raising activities focusing on the positive, equitable and non-violent roles men and boys can play in this regard, and by recognizing and addressing negative attitudes, behaviours, and gender stereotypes that perpetuate such violence.” <<https://www.osce.org/files/f/documents/e/e/406019.pdf>>.

76 Note: There is extensive social psychological literature that examines the ‘bystander effect’, a societal phenomenon in which people are reluctant to get involved in potentially dangerous situations on the streets and elsewhere. Unfortunately, this use of the term ‘bystander’ is easily confused with the bystander approach utilized in sexual assault and relationship abuse prevention, which typically focuses on known peer culture such as sports teams or military units.

culture so they do not happen at all. Sexual assault and sexual harassment would not happen without a culture that either accepts these behaviours as ‘normal’ or ignores their aftermath and impact. Equipping the entire cohort with the understanding of what this behaviour looks like, its effects and what they can do to intervene, prevent and support the survivors of such behaviour is essential to creating a strong response across the whole military.

Bystander training can incorporate a variety of educational modules, including leadership exercises and small-group work. However, at the heart of bystander training is a highly interactive dialogue, organized around a range of scenarios that position participants as bystanders in situations that cover a continuum of abuses, from seemingly innocuous sexist comments to cyber-bullying and harassment, all the way to brutal gang rape. The scenarios describe common situations in which the potential for abusive behaviour exists, such as parties at which many people are drinking, as well as situations where an incident has already occurred and where people know either the reported victim, the alleged perpetrator, or both. Whether in civilian or military settings, participants are urged to reflect upon a number of relational concerns (e.g., “Will I jeopardize my friendship if I say something?”) and ethical considerations (e.g., “If no one else is stepping in, why should I?”). They are then instructed to discuss and debate a range of options for intervention before, during or after the fact.

What typically emerges during the discussion is a focus not only on individual factors but also on peer culture dynamics, including those which function to keep people silent even when they know something is wrong. The idea is that bringing these dynamics to the surface allows for a more candid conversation about why people do, or do not, interrupt or intervene in situations of harassment or abuse involving friends, teammates, fellow military personnel and others.

b. Bystander training in the military context

Bystander training is ideally suited for military populations in part because, in practice, it is a form of leadership training. When bystanders assess a situation, consider their options and take action, they are executing a basic leadership protocol. Being an active bystander requires someone to possess the qualities of a leader precisely because it is not easy for men — or women — to intervene and challenge various forms of sexual misconduct or the belief systems that allow it to occur. When people know each other, the impediments to action are often less about physical fear and more about social anxiety: “Won’t this be awkward?”, “What if I’m overreacting?”, “How will my standing in the group be affected by my actions?” These sorts of social anxieties can be even more intense in cohesive groups like athletics teams or military units, where people not only know each other, but often live, socialize and work alongside each other on a daily basis.

Active-duty military personnel are obliged to intervene when they witness or observe situations of harm or potential harm that involve their fellow military colleagues (this also applies to situations outside combat theatres of operation, when other rules might apply). However, the social dynamics in peer cultures can make it difficult for people to intervene, even when it is their job to do so. Bystander training gives people the opportunity to discuss their responsibility to act, including their formal responsibilities and their ethical obligations towards their military colleagues.

FURTHER RESOURCES:

Bystander training, also known as bystander intervention, was introduced to the sexual assault, domestic violence and sexual harassment fields in the early 1990s by a United States-based programme called Mentors in Violence Prevention (MVP); one of the earliest prevention initiatives that focused on men in the athletics world and in broader university campus communities. In 1997, a version of MVP was implemented in the United States Marine Corps, <<https://mvpstrat.com>>, the first system-wide prevention programme in the United States military.

The work of Michael Flood, associate professor of Sociology at the School of Justice of the Queensland University of Technology, also provides a wealth of material on bystander training. This webpage <<https://xyonline.net/content/bystander-intervention-xy-collection>> provides a range of resources recommended by Professor Flood that can be modified and used as the basis for training modules.

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Annexe 2: Glossary

Acquaintance rape/sexual assault (sometimes called ‘date rape’)

This is thought to be the most common form of rape or sexual assault, outside rape in a marriage or an intimate cohabiting relationship. It is a form of sexual violence that happens between people who know each other, are ‘dating’ or work together. It is the most difficult form of sexual violence to prove not mutually consensual, as witnesses will often describe seeing the couple leave a bar together or have seen them talking in work together.

Bystander

A bystander is a person who is present when an event takes place but is not directly involved. The use of the term bystander in the context of sexual assault, however, means that the person is aware of (or should be) that a sexual assault or an instance of sexual harassment could potentially take place or has taken place. Bystanders are important in the context of sexual assault as statistically most people do not report sexual assault or sexual harassment. Teaching people that consent matters and that being drunk negates consent, for example, can empower bystanders to intervene if they suspect someone is unsafe and drunk. The role and intervention of bystanders can change culture, as well as protecting vulnerable people; they are required to be educated to understand situations, to be supported and empowered to act.

Coercion

This (in tandem with ‘control’) is now recognized in many countries as being an illegal act and can be included in the definition of domestic violence. Coercion can also be part of a ‘grooming’ tactic. Coercion is common in military settings as a pre-defined and enforced hierarchy already exists and power dynamics are clear. Examples of coercion are:

- Constantly putting pressure on a victim to agree to an act;
- Hinting at or actively threatening that there will be some consequence to one’s career or friends if they do not ‘agree’ to the act;
- Emotionally manipulating someone; and
- Plying someone with drinks to make them inebriated can also be coercion.

Cyberviolence

This is a growing phenomenon. It is defined as online behaviour that constitutes or leads to harm against the physical, psychological and/or emotional state of an individual.⁷⁷ Cyber violence is when someone stalks another person on social media, makes unwanted advances through social media, or text, etc. Cyber violence can also include sending pictures of genitals, threatening to send intimate pictures to others, etc. Pictures can be altered to make images look more sinister, particularly taken out of context.

Disclosure (also see Report)

A person is generally considered to be making a ‘disclosure’ of a sexual assault when they first start to tell someone. At this point, the information they share should be kept confidential. At the point of first disclosure, it is common for the survivor of the assault to be working out what they want to do about what happened. They are often ‘testing’ the person they first disclose to, in order to see if they can be trusted and if they are believed. Sometimes people have difficulty defining what happened to them as sexual assault; particularly if they have a pre-existing relationship with the person who assaulted them. Making a disclosure is often the point where a survivor either withdraws and does not mention it again for many years or can start to seek help, or make a report. Making a disclosure should not be treated as making a report. A report generally means that some action will be taken which may include interviewing people. One of the main concerns about making a report is that information is disseminated to a wider variety of people and cannot be guaranteed to remain confidential. Making it clear there is a difference between making a report and making a disclosure is essential to a response policy and practice. Making a report needs to be done with full understanding of the process and in full consideration of the potential consequences.

Gender-based violence (GBV)

Gender-based violence is used in this guide to refer to all harmful acts inflicted on someone because of normative assumptions about their gender. GBV is an umbrella term for any harmful act that is perpetrated against a person’s will and is based on socially ascribed (gender) differences between women and men. The nature and extent of specific types of GBV vary across cultures, countries and regions.

⁷⁷ Susan Herring, “Cyber Violence: Recognizing and Resisting Abuse in Online Environments,” *Asian Women*, vol 14, 2002, <<http://ella.slis.indiana.edu/~herring/violence.html>>.

Examples include sexual violence, including sexual exploitation and abuse; domestic violence; harmful traditional practices such as female genital mutilation; and homophobic and transphobic violence.⁷⁸ GBV also includes emotional and psychological violence, such as intentional misgendering, intentional ‘outing’, and use of gendered slurs.⁷⁹

Post-Traumatic Stress Disorder (PTSD)⁸⁰

PTSD is defined in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) as a disorder arising from the experience of a life-threatening event. Sexual assault is perceived as a life-threatening event. The way survivors are treated after they disclose what happened to them can determine whether they develop PTSD as much as the assault itself.

Rape

Rape is defined differently in various countries. Some countries, for example, do not consider that rape is possible within marriage. The United States Department of Justice defines rape as, “the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim”.

In its case law, the International Criminal Court has defined rape similarly and added that “consent for this purpose must be consent given voluntarily, as a result of the victim’s free will, assessed in the context of the surrounding circumstances.”⁸¹

Rape Culture

This has been described as a culture or social setting that is dominated by the normalization of male dominance, particularly in a sexualized way. Examples of this

78 “Gender and Security Toolkit: Defence and Gender”, OSCE/ODIHR, UN Women, DCAF, 2020, p.3, <<https://www.osce.org/odihr/447043>>.

79 Office for Sexual Violence Response, Support and Education, website, Montreal, Quebec, <<https://www.mcgill.ca/osvrse/>>.

80 Exhibit 1.3-4 DSM-5 Diagnostic Criteria for PTSD. For easy reference included in this Guidance Document as an Annexe.

81 International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v Dragoljub Kunarac, Radomic Kovac and Zoran Vukovic*, TC II, Judgement Case No. Case No. IT-96-23-T & IT-96-23/1-T, 22 February 2001, para 460, <<https://www.icty.org/en/case/kunarac>>.

include a mechanics' room with pictures of naked women on the walls (either in calendar pictures or just posters). In a rape culture, sexual violence (or men engaging in sexual acts without consent) is considered funny, minimized, trivialized or incorporated into traditions and initiations. Stepping outside, or not conforming to this aggressive male sexual dominance, results in belittlement, bullying and humiliation.

Report (also see Disclosure)

A report of sexual abuse is defined as a purposeful action of someone entering a known official system that creates a set of official actions. A report is therefore defined as an official process to distinguish it from a disclosure, which can be informal and intended to support the person with no formal outcome. The distinction is important particularly in institutions like the military. A formal report requires a formal response, which can be out of the control of the survivor of the abuse. The survivor of the abuse needs to have full understanding of these potential outcomes before they make the informed decision to report.

Restorative justice / restorative engagement

Restorative justice aims to restore some level of 'justice' and reparation to the person harmed. For example, if a young person has destroyed a school building, then they are required to assist in the restoration of the building and apologize to those the destruction has harmed. In the context of sexual assault, it is often not possible to engage a restorative justice programme around the perpetrator apologizing to those they harmed, primarily because the person may not be in a position to face them; the power dynamics of sexual assault are extremely complex and individual. What has evolved in some places is a formal institutional apology to the individual.⁸² This gives the individual a voice, the ability to be heard, recognized and to have what happened to them formally acknowledged through a supportive and therapeutic process.

82 In the Australian Defence Force (run by the ADF), the Defence Form Ombudsman (Ombudsman Regulations 2017) run by Commonwealth Ombudsman; the National Redress Scheme (Response to Institutional Childhood Sexual Assault) run by Australian Human Services, and the Response to Stolen Generation run by the National Indigenous Australian Agency.

Sexual abuse

This is generally a ‘catch all’ phrase that can describe rape, grooming, sexual assault and sexual harassment. It is generally any act that is abusive and sexual (and sometimes gendered) in nature.

Sexual assault

Sexual assault refers to any act of a sexual nature carried out in circumstances in which an individual has not freely agreed or consented. Sexual assault includes unwanted physical contact of a sexual nature, from unwanted kissing and touching to forced sexual intercourse and/or oral sex. Sexual assault is defined differently from country to country. In some countries, sexual assault specifically needs to have a physical act without which it is considered sexual abuse.⁸³ Rape is considered as a specific type of sexual assault.

Sexual harassment

Any unwanted sexual communication or attention that is offensive, intimidating or humiliating, whether this is delivered and received verbally, written or visual. This can include psychological violence, coercion, grooming and manipulation. Sexual harassment is often dismissed as ‘joking’, particularly in a dominant gender group. The CEDAW Committee considers sexual harassment to include, “unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions.”⁸⁴

83 The ICTY has noted, however, that physical contact between the perpetrator and the victim is not required for an act to be considered sexual assault, if the actions of the perpetrator serve to humiliate or degrade the victim in a sexual manner. *Prosecutor v. Milutinovic et al.* (Judgment) - Volume 1, IT-05-87-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 26 February 2009, <<https://www.refworld.org/cases,ICTY,49a7bec12.html>>, [accessed 11 June 2022].

84 CEDAW Committee, General Recommendation No. 19, Violence against Women, XI session, 1992, paragraph 18, <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fGEC%2f3731&Lang=en>.

Sexual Assault Nurse Examiner (SANE)

This is a role specifically trained to support and assist someone through the medical and forensic examination activities required for anyone who has disclosed or reported being sexually assaulted.

Trauma-informed response

A trauma-informed response incorporates a set of principles that define the way anyone is interacted with, if there is the potential for trauma to exist. It creates a relationship with the person that is the opposite of the experience of a traumatic event. The trauma-informed principles are: to create safety, be trustworthy, to create real meaningful choice, be collaborative and empower the person to interact and engage in a meaningful and true way.

Triage system of referrals

This refers to the mechanism created to respond to sexual assault disclosures and reports. Triage is a system of assessing the needs of those at first contact and deciding who needs emergency care and who can wait longer. This is particularly useful if resources are not readily available. Having a defined triage system in terms of sexual assault referrals also allows teams to educate each other and fully contextualize their systems.

Annexe 3: DSM-5 Diagnostic Criteria for PTSD

Note: The following criteria are taken from the DSM-5. This is a manual for the assessment and diagnosis of mental disorders and does not include information on, or guidelines for the treatment of any disorder. These criteria apply to adults, adolescents and children older than six. For children six years old and younger, see the DSM-5 section entitled “Post-traumatic Stress Disorder for Children Six Years and Younger”⁸⁵

A. Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways:

1. Directly experiencing the traumatic event(s);
2. Witnessing, in person, the event(s) as it occurred to others;
3. Learning that the traumatic event(s) occurred to a close family member or close friend. In cases of actual or threatened death of a family member or friend, the event(s) must have been violent or accidental; and
4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s), (e.g., first responders collecting human remains; police officers repeatedly exposed to details of child abuse). **Note:** Criterion A4 does not apply to exposure through electronic media, television, films, or pictures, unless this exposure is work-related.

B. Presence of one (or more) of the following intrusion symptoms associated with the traumatic event(s), beginning after the traumatic event(s) occurred:

1. Recurrent, involuntary and intrusive distressing memories of the traumatic event(s). Note: In children older than six, repetitive play may occur in which themes or aspects of the traumatic event(s) are expressed;

85 “Diagnostic and statistical manual of mental disorders. 5th ed.” (Arlington, VA: American Psychiatric Association ;2013), <https://www.ncbi.nlm.nih.gov/books/NBK207191/box/part1_ch3.box16/>.

2. Recurrent distressing dreams in which the content and/or effect of the dream are related to the traumatic event(s). **Note:** In children, there may be frightening dreams without recognizable content;
3. Dissociative reactions (e.g., flashbacks) in which the individual feels or acts as if the traumatic event(s) were recurring. (Such reactions may occur on a continuum, with the most extreme expression being a complete loss of awareness of present surroundings.) **Note:** In children, trauma-specific re-enactment may occur during play;
4. Intense or prolonged psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event(s); and
5. Marked physiological reactions to internal or external cues that symbolize or resemble an aspect of the traumatic event(s).

C. Persistent avoidance of stimuli associated with the traumatic event(s), beginning after the traumatic event(s) occurred, as evidenced by one or both of the following:

1. Avoidance of, or efforts to avoid distressing memories, thoughts, or feelings about, or closely associated with the traumatic event(s); and
2. Avoidance of, or efforts to avoid external reminders (people, places, conversations, activities, objects and/or situations) that arouse distressing memories, thoughts, or feelings about, or closely associated with the traumatic event(s).

D. Negative alterations in cognition and mood associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:

1. Inability to remember an important aspect of the traumatic event(s), (typically due to dissociative amnesia and not to other factors such as head injury, alcohol, or drugs);
2. Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world (e.g., “I am bad,” “No one can be trusted,” “The world is completely dangerous,” “My whole nervous system is permanently ruined”);

3. Persistent, distorted cognition about the cause or consequences of the traumatic event(s) that lead the individual to blame himself/herself or others;
4. Persistent negative emotional state (e.g., fear, horror, anger, guilt, or shame);
5. Markedly diminished interest or participation in significant activities;
6. Feelings of detachment or estrangement from others; and
7. Persistent inability to experience positive emotions (e.g., inability to experience happiness, satisfaction, or loving feelings).

E. Marked alterations in arousal and reactivity associated with the traumatic event(s), beginning or worsening after the traumatic event(s) occurred, as evidenced by two (or more) of the following:

1. Irritable behaviour and angry outbursts (with little or no provocation), typically expressed as verbal or physical aggression toward people or objects;
2. Reckless or self-destructive behaviour;
3. Hypervigilance;
4. Exaggerated startle response;
5. Problems with concentration; and
6. Sleep disturbance (e.g., difficulty falling or staying asleep or restless sleep).

F. Duration of the disturbance (Criteria B, C, D and E) is more than 1 month.

G. The disturbance causes clinically significant distress or impairment in social, occupational or other important areas of functioning.

H. The disturbance is not attributable to the physiological effects of a substance (e.g., medication, alcohol) or another medical condition.

SPECIFY WHETHER:

With dissociative symptoms: The individual's symptoms meet the criteria for post-traumatic stress disorder and, in addition, in response to the stressor, the individual experiences persistent or recurrent symptoms of either of the following:

1. **Depersonalization:** Persistent or recurrent experiences of feeling detached from, and as if one were an outside observer of one's mental processes or body (e.g., feeling as though one were in a dream; feeling a sense of unreality of self or body or of time moving slowly); and/or
2. **Derealization:** Persistent or recurrent experiences of unreality of surroundings (e.g., the world around the individual is experienced as unreal, dreamlike, distant or distorted). Note: To use this subtype, the dissociative symptoms must not be attributable to the physiological effects of a substance (e.g., blackouts, behaviour during alcohol intoxication) or another medical condition (e.g., complex partial seizures).

SPECIFY WHETHER:

With delayed expression: If the full diagnostic criteria are not met until at least six months after the event (although the onset and expression of some symptoms may be immediate).

Source: "Diagnostic and statistical manual of mental disorders, 5th ed.", American Psychiatric Association, (Arlington, VA: 2013), pp. 271–272.

