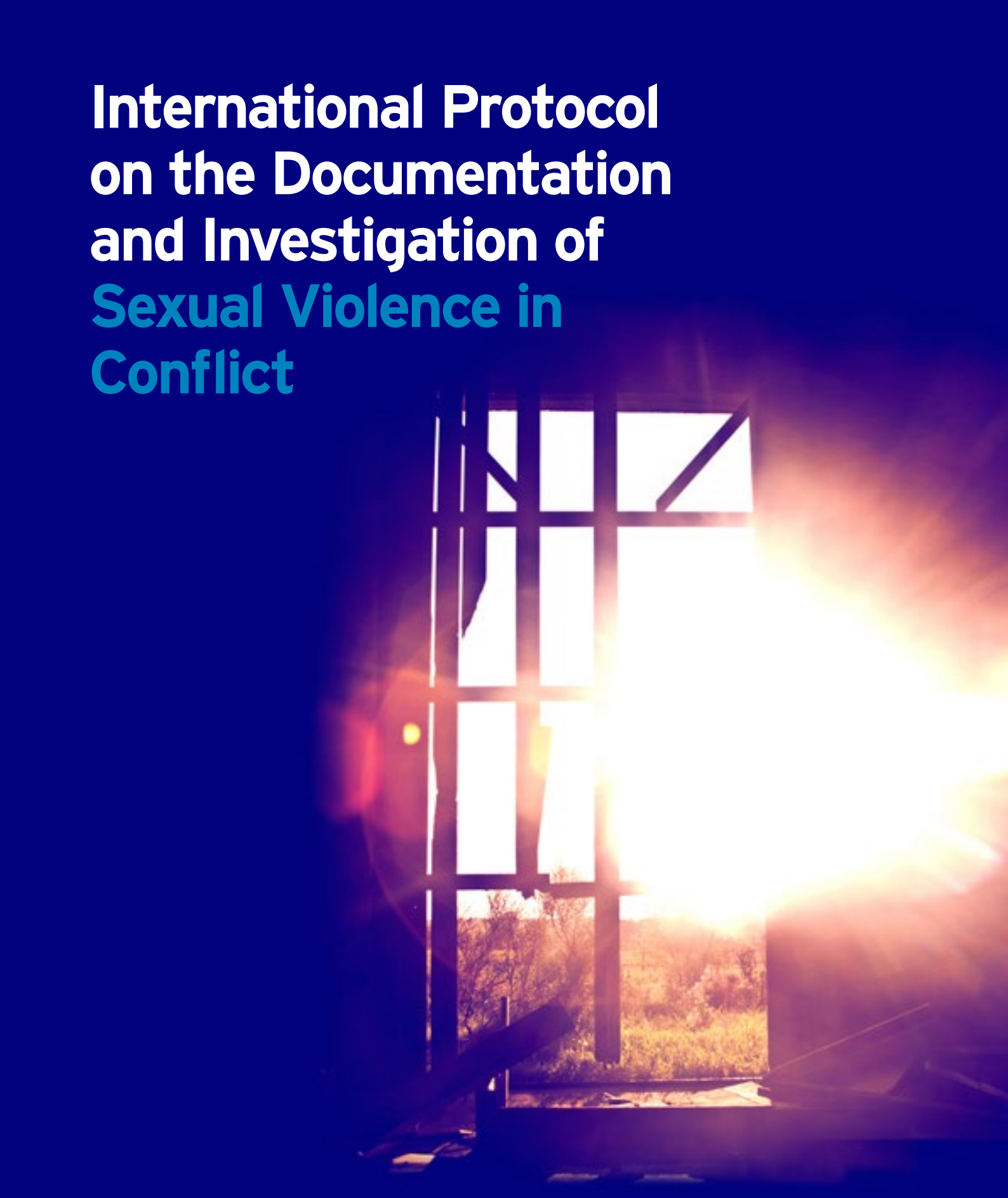


International Protocol on the Documentation and Investigation of Sexual Violence in Conflict



Basic Standards of Best Practice on the Documentation of
Sexual Violence as a Crime under International Law

FIRST EDITION: JUNE 2014

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FOREWORD

This International Protocol, the first of its kind, is the product of the wisdom and experience of hundreds of people worldwide. We want to thank the more than 200 experts, survivors and organisations who have shared their knowledge and collaborated in the drafting.


For decades - if not centuries - there has been a near-total absence of justice for survivors of rape and sexual violence in conflict. We hope this Protocol will be part of a new global effort to shatter this culture of impunity, helping survivors and deterring people from committing these crimes in the first place.

We pay tribute to the courageous national and international practitioners who investigate and document sexual violence worldwide. The Protocol is intended to help them in their work, and to help ensure that the perpetrators of rape and sexual violence in conflict are held to account.

We hope that the Protocol will not only be a vital practical tool that is improved and strengthened over time, but also a means of inspiring continued global attention, action and advocacy on this critical issue.



Rt Hon William Hague MP
Secretary of State for Foreign and
Commonwealth Affairs



ANGELINA JOLIE
Special Envoy of the UN High Commissioner
for Refugees

“For decades – if not centuries – there has been a near-total absence of justice for survivors of rape and sexual violence in conflict. We hope this Protocol will be part of a new global effort to shatter this culture of impunity, helping survivors and deterring people from committing these crimes in the first place.”

Rt Hon William Hague MP,
Secretary of State for Foreign and
Commonwealth Affairs

i. INTRODUCTION

The context: Sexual violence, whether committed as a war crime, crime against humanity and/or as an act of genocide, is often part of the tragic and brutal pattern of criminal acts committed during armed conflict and in the context of mass atrocities. Sexual violence not only affects hundreds of thousands of women and girls, but also affects and victimises men and boys. In addition to the extreme physical and psychological trauma suffered by survivors/witnesses, sexual violence may engender and aggravate ethnic, sectarian and other divisions in communities. This engrains conflict and instability and undermines peace-building and stabilisation efforts. Yet the overwhelming majority of survivors never receive justice and face considerable challenges in accessing the medical, psychosocial and economic support that is necessary to help them rebuild their lives. The lack of accountability of those who commit crimes of sexual violence in conflict exacerbates impunity. The international community is beginning to recognise the strong links between a lack of accountability and justice and a lack of reconciliation.

This Protocol does not aim to tackle the entire sphere of crimes of sexual violence; its aim is focused on the specific subject matter of documentation and investigation of crimes of sexual violence under international criminal law. It should be clear, however, that the survivors of crimes of sexual violence outside this context are also in dire need of justice, support and remedies; it is hoped that this Protocol will be the catalyst for increased action on both prevention and accountability for all forms of sexual violence in conflict.

Drafting the Protocol: A series of stakeholder consultations were conducted in 2012 in order to capture existing international best practice on documenting and investigating sexual violence in conflict and to assess the gaps and challenges that need to be addressed by the international community. These consultations and the international conferences that followed revealed general support for a new, non-binding International Protocol that sets out basic standards of best practice on the documentation and investigation of sexual violence as a crime under international law.

Further support for the development of the Protocol was obtained through the G8 Declaration on Preventing Sexual Violence in Conflict in April 2013 and the Declaration of Commitment to End Sexual Violence in Conflict that was launched during the United Nations (UN) General Assembly Ministerial Week in September 2013.

The UK Foreign & Commonwealth Office would like to thank all of those who contributed their knowledge, experience and time to the development of this Protocol. In particular, the Foreign & Commonwealth Office acknowledges the contributions of those individuals and organisations that took part in the expert meetings in The Hague and London in May, June and July 2013 and February 2014:

Expert Working Group Meetings participants: Letitia Anderson, UN Action Against Sexual Violence in Conflict; Gloria Atiba-Davies, International Criminal Court (ICC); Véronique Aubert, Save the Children; Stephanie Barbour, Amnesty International; Shamila Batohi, ICC; Veronica Birga, Office of the High Commissioner for Human Rights (OHCHR); Théo Boutruche, (formerly) REDRESS, (currently) Teaching Fellow in Human Rights, University College London; Diane Brown, Women's Initiatives for Gender Justice; Gloria Carrera, UN Team of Experts on Sexual Violence in Conflict and OHCHR; Evelyn Chijarira, Pan African Lawyers' Union; Božidarka Dodik, Special Department for War Crimes for the Prosecutor's

Office of Bosnia and Herzegovina and Judge at the Supreme Court of Federation of Bosnia and Herzegovina; Erin Gallagher, Physicians for Human Rights; Claudia García Moreno, World Health Organization (WHO); Liesl Gertholtz, Human Rights Watch; Niamh Hayes, Institute for International Criminal Investigations; Brenda J. Hollis, Residual Special Court for Sierra Leone; Brigid Inder, Women's Initiatives for Gender Justice; Michelle Jarvis, International Criminal Tribunal for the former Yugoslavia (ICTY); Kristin Kalla, Trust Fund for Victims, ICC; Erin Kenny, UN Population Fund (UNFPA); Maxine Marcus, (formerly) ICTY, (currently) Senior International Criminal Law and Gender Advisor to PSVI; Cristina Michels, OHCHR; Kate Orlovsky, Women's Initiatives for Gender Justice; Martina Pomeroy, Office of the UN High Commissioner for Refugees (UNHCR); John Ralston, Institute for International Criminal Investigations; Madeleine Rees, Women's International League for Peace and Freedom; Cristina Ribeiro, ICC; Indira Rosenthal, Amnesty International; Nina Sahinpasic, Special Department for War Crimes for the Prosecutor's Office of Bosnia and Herzegovina; Susannah Sirkin, Physicians for Human Rights; Danaé van der Straten Ponthoz, TRIAL (Track Impunity Always); Silke Studzinsky, Trust Fund for Victims, ICC; Margriet Veenma, UNHCR; and Monika Volkhausen, Public Prosecutor's Office, Cologne (Generalstaatsanwaltschaft Köln).

The UK Foreign & Commonwealth Office also acknowledges the contributions of those individuals and organisations that took part as additional reviewers of the Protocol:

Additional reviewers: Kelly Askin, Open Society Justice Initiative (OSJI); Elisabeth Baumgartner, Swisspeace; Leah Bellshaw, U.S. Department of State; Linda Bianchi, Canadian Public Prosecution Service; Megan Bradley, Brookings Institution; Anne-Marie de Brouwer, Tilburg University; Jeannette Böhme, Medica Mondiale; Jorge Calderón Gamboa, Inter-American Court of Human Rights; Danya Chaikel, International Association of Prosecutors; Juliet Cohen, Freedom From Torture; Alison Cole, OSJI; Shukria Dini, Somali Women's Study Centre; Ingrid Elliott, UK PSVI Team of Experts; Laura Francis, Survivors Speak OUT!; Renata Giannini, IGARAPE; Gavin Ganendran, Freedom From Torture; Erica Hall, World Vision; Kolbassia Haoussou, Survivors Speak OUT! Network and Members; Claire Hawkins, UN Women; Elizabeth Howe, International Association of Prosecutors; Amrita Kapur, International Center for Transitional Justice; Andy Keefe, Freedom From Torture; Baudouin Kipaka, Arche d'Alliance; Gisela de León, Centre for Justice and International Law; Anna Lise Domanski, Canadian Peace Operations and Fragile States Policy Division; Mendy Marsh, UN Children's Fund (UNICEF); Faiza Mohamed, Equality Now; Jaimie Morse, Northwestern University; Lars Munk Plum, Deputy State Prosecutor, Denmark; Tamah Murfet, International Rescue Committee; Antonia N'Gabala-Sodonon, Peace and Security Department of African Union Commission; Valerie Oosterveld, University of Western Ontario; Blake Peterson, U.S. Department of State; Feride Rushiti, Kosova Rehabilitation Centre for Torture Victims; Alejandro Sanchez, Sexual Violence in Conflict Unit, MONUSCO; Duong Savorn, Cambodian Defenders Project; Sandesh Sivakumaran, University of Nottingham; Isabelle Solon Helal, Governance and Human Rights Specialist, Canada; Kim Thuy Seelinger, Human Rights Centre, University of California - Berkeley; Sidney Thompson, Public Prosecution Service of Canada; Charlotte Triggs, Crown Prosecution Service; Diana Trimiño, International Rescue Committee; Catherine Turner, World Vision; Aneeta Williams, Tearfund.

The UK Foreign & Commonwealth Office further acknowledges the extremely valuable contributions of those individuals and organisations that took part as participants in the field-consultations on the Protocol in Bosnia, Colombia, Democratic Republic of Congo, London and Uganda.

I. INTRODUCTION

The Protocol is the result of a participatory drafting process incorporating extensive consultations with the experts listed above. Editorial authority for the Protocol has rested with the UK Foreign & Commonwealth Office and lead author on the Protocol, Sara Ferro Ribeiro, with Chido Dunn, project coordinator on the Protocol (on secondment from Freshfields Bruckhaus Deringer LLP) and Maxine Marcus, Senior International Criminal Law and Gender Advisor to PSVI. The UK's role has been to enable, fund and encourage the development of the Protocol, ensuring the involvement of the best expertise and promoting its objectives with states and international partners. The UK Foreign & Commonwealth Office aimed to build on existing work and provide the opportunity to explore and globally disseminate original and effective approaches of proven success at the grassroots level.

The UK Foreign & Commonwealth Office would also like to thank the additional organisations that supported this process: Freshfields Bruckhaus Deringer LLP, Save the Children and TRIAL (Track Impunity Always).

“For the perpetrators, there can be no hiding place; no amnesty; no safe harbour. They will be pursued by any and all means at our collective disposal.”

Zainab Hawa Bangura, G8 Foreign Minister's Meeting,
April 2013

ii. USING THE PROTOCOL

a) Purpose

The main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law. It does this by setting out the basic principles of documenting sexual violence as a crime under international law, gleaned from best practice in the field. The Protocol is not binding on states. Rather, it can serve as a tool to support efforts by national and international justice and human rights practitioners to effectively and protectively document sexual violence as a crime under international law – as a war crime, crime against humanity or act of genocide.

Accountability for sexual violence can come in many forms. It can be achieved through criminal prosecutions, but can also be realised through human rights litigation against responsible states or non-state actors, civil litigation, reparation claims for survivors/witnesses of sexual violence, and transitional justice processes.

Whether accountability mechanisms are in place in a conflict or post-conflict context or whether they are a long way off, the information gathered by practitioners with immediate and facilitated access to survivors and witnesses can become critical evidence for future accountability efforts. In particular, the manner in which the information is accessed and collected and the methodology employed in the documentation process are key to ensuring the integrity of the evidence, the protection of the beneficiary community, and the empowerment of survivors through participation in the justice process. This Protocol sets out simply and clearly the basic principles to follow with these aims in mind.

The Protocol's focus is on documentation of crimes of sexual violence under international law. However, many of the basic principles set out in the Protocol will also be relevant to the documentation of these crimes in other contexts, human rights violations and abuses, and international criminal law violations not involving sexual violence.

b) Audience

These guidelines are designed for use primarily by human rights and justice actors, at national and international levels, and any other individual or organisation faced with the challenge of documenting sexual violence as a crime under international law.

Use of the Protocol is also recommended in capacity-building efforts for national and local security, judicial, law enforcement, forensic medicine and science, and investigative institutions aiming to improve their understanding of how to collect and document information on sexual violence as an international crime.

The guidelines are not specifically directed at humanitarian organisations, health professionals, social workers or other service providers who may document sexual violence according to their own methodologies and for purposes in line with their mandates. However, a multi-sectoral approach that includes collaboration between health professionals, lawyers, police and the judiciary is essential to securing justice for survivors.

Therefore, it is hoped that those practitioners may find certain elements of the guidance included in the Protocol useful in their work, in recognition of the need to improve coordination and consistency of approach between all practitioners working to treat, support and represent the rights of survivors and witnesses of sexual violence, whether in the context of national or international justice, accountability mechanisms or advocacy.

Critically, the individuals and organisations that endeavour to document sexual violence according to the guidelines in this Protocol should first ensure that they are adequately trained and equipped to do so. Practitioners should also be aware of the relevant national laws regarding third party investigations in the area where they are operating, in particular those laws regulating evidence collection and any obligations to turn evidence in to national authorities.

c) What is the Protocol

Part 1 of the Protocol provides a definition of sexual violence as an international crime: what it is, acts that constitute sexual violence crimes, and what the requirements are to prosecute sexual violence as a crime under international law. It also describes the grave consequences associated with sexual violence, the obstacles faced by survivors and witnesses when accessing justice, and some myths and misconceptions about sexual violence that can hinder efforts to effectively investigate and document crimes and support survivors/witnesses.

Part 2 outlines what documentation looks like in practice: what to do to research, prepare and set up an investigation and documentation process, how to conduct safe and effective interviews, and the minimum requirements when dealing with audiovisual, physical and documentary evidence of sexual violence. The key principle of “do no harm” is engrained in this section, and it suggests practical strategies that practitioners may employ in order to mitigate and address the possible risks associated with documenting and investigating sexual violence in conflict, and to overcome some of the obstacles that can interfere with accountability efforts.

The annexes contain some tools and further information, which it is hoped will prove directly useful to documenters as they carry out their investigations. This includes an Evidence Workbook (**see Annex 1, “Evidence Workbook for Documentation of Crimes of Sexual Violence: A Tool to Assist Investigators in Filling Evidentiary Gaps”**), which sets out examples of what type of information is useful to collect to prove the specific, contextual and linkage elements of sexual violence as a war crime, crime against humanity or act of genocide. The annexes also include summaries and guidelines on interviewing, dealing with physical and documentary evidence, and working within the multi-sectoral support model, as well as information on key types of referrals and medical documentation for evidentiary purposes.

II. USING THE PROTOCOL

d) Future use

In the future, we hope that the Protocol will act as a practical tool to overcome some of the challenges faced by those who document and investigate sexual violence as a crime under international law. It will be a living document that will need to be updated as best practice evolves.

In particular, we hope that: States will support, facilitate and empower documentation of sexual violence crimes in accordance with the basic principles and methods set out in the Protocol; donor States, when funding overseas initiatives related to accountability for international crimes of sexual violence, will encourage these initiatives to incorporate the basic principles and methods in this Protocol into their projects; conflict-affected States will develop national action plans using the Protocol to raise awareness and build capacity within government, civil society, medical and legal professions, and other relevant partners; donors will provide financial support for governments and non-governmental organisations (NGOs) using the Protocol, and/or develop training packages to raise awareness and build capacity; and leading NGOs working in the field will use the Protocol as their primary and baseline methodology for training staff to document sexual violence as a crime under international law in conflict zones.



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PART I: SEXUAL VIOLENCE

1. Understanding Sexual Violence

1.1 Contextualising sexual violence

Sexual violence is a particularly heinous form of violence, and includes rape and any other attack of a sexual nature perpetrated against women and girls, men and boys. Its consequences can be brutal, may include acute physical and psychological repercussions for survivors and witnesses, and have a deep destabilising effect on communities and populations as a whole.

It is important to recognise that women, men, girls and boys can all be victims of sexual violence. Nevertheless, the historical and structural inequalities that exist between men and women, and the different forms of gender-based discrimination that women are subjected to all over the world, contribute to women and girls being disproportionately affected by sexual violence in conflict settings. Additionally, the prevalence of sexual violence against children in particular is extremely high, and can have a devastating impact.

Some groups may be more frequently targeted for acts of sexual violence than others. This includes those who are internally displaced, refugees, children, female heads of household, women human rights defenders, detainees (including those under the control of an armed group), those associated with armed forces or armed groups, those belonging to a specific ethnic group, and other vulnerable groups.

In conflict settings, and settings in which mass atrocities are being committed whether in conflict or not, sexual violence is often committed by members of armed groups against many individuals, including civilians: as a strategy to advance military objectives and can form part of a widespread or systematic attack directed against a civilian population. Sexual violence can be used to weaken and gain control over communities. It can be used to punish or destroy a particular group, instil terror in them, retaliate against them or cause them to flee from a location. Sexual violence also includes acts - taken as part of the attack or not - that are committed as a consequence of the breakdown of community and family structures, lack of security and absence of rule of law. These are characteristic of situations of conflict, emergency and displacement, where perpetrators may take advantage of the insecurity and atmosphere of impunity to commit sexual violence.

In certain circumstances, sexual violence constitutes a crime under international law: a war crime, a crime against humanity and/or an act of genocide, where the elements of those categories of crimes are satisfied, and can be investigated and prosecuted as such at both the national and international levels. Sexual violence as a crime under international law is often committed as part of a broad pattern of violations against individuals and communities - a pattern that includes both sexual and non-sexual crimes. In the context of war crimes, crimes against humanity and genocide, rape and other forms of sexual violence crimes can be committed as one of many acts of brutality which form part of the attack on the civilian population, can be linked to the armed conflict, and/or could have been committed with the intent to destroy a particular group in whole or in part.

Understanding the impact caused by sexual violence is key to both referring survivors/ witnesses to appropriate services and accurately documenting the harm that sexual

violence causes to individuals, their families and communities. Sexual violence may have long-term and life-threatening physical and psychological consequences, as well as social, economic and legal repercussions, and result in increased risk and vulnerability for survivors.¹ Importantly, women, men, girls and boys can be affected differently by sexual violence. Communities and communal structures can be destroyed or damaged at their core by the commission of crimes of sexual violence against their members.

1.2 Responding to sexual violence

Responding to sexual violence requires a strong multi-sectoral approach involving the coordinated provision of health services, protection, psychosocial support, and access to justice for survivors (see Annex 2, “Basic Elements of Multi-Sectoral Response to Sexual Violence”). Putting these support services in place is key to increasing the likelihood that survivors report crimes of sexual violence.

However, survivors of sexual violence face significant barriers to accessing services, justice mechanisms and other post-conflict remedies. Some survivors do not access justice because of the stigma, shame, humiliation and trauma experienced by survivors and their families. Others fear ostracisation from spouses, other family members and their community, are afraid of further violence, and have a lack of trust in national police.

Those practitioners responding to, and in particular investigating and documenting, sexual violence should not assume that survivors do not come forward because they feel insurmountable shame - often their inability to access justice is due to the lack of a safe and supportive environment in which to do so, and/or because of the risks that the survivor/witness takes in coming forward. All practitioners should endeavour to collectively enable a safe and supportive environment in which survivors and witnesses of sexual violence feel sufficiently secure and comfortable to come forward and report crimes.

It must be noted that the primary responsibility to investigate and document sexual violence lies with States. National security and justice institutions should be appropriately trained and equipped to respond effectively and justly to survivors of sexual violence, investigate crimes, and protect survivors and witnesses. However, where national institutions are unable, or unwilling, to investigate and document crimes of sexual violence, when national definitions of sexual violence are restrictive, or domestic remedies are exhausted, practitioners with the appropriate training, tools and mandate are in a position to effectively, and protectively, document sexual violence as an international crime.

2. Sexual Violence as a Crime under International Law

2.1 Background

Over the past 20 years, international law has developed in the direction of seeking greater accountability for the most egregious crimes, including crimes of sexual violence when committed as war crimes, crimes against humanity or acts of genocide. As international criminal jurisprudence has developed - first in the context of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda (the

¹ For additional information on the impact and consequences of sexual violence, see: UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, 2003; Institute of Medicine, *Social and Economic Costs of Violence Against Women: The Value of Prevention*, 2011; and World Bank, *The Costs and Impacts of Gender-Based Violence in Developing Countries: Methodological Considerations and New Evidence*, 2004.

ad hoc tribunals, or ICTY and ICTR), then subsequently further codified in the Rome Statute of the International Criminal Court (ICC), and advanced yet again by the Special Court for Sierra Leone (SCSL) - rape and other forms of sexual violence are being investigated and prosecuted: as war crimes when committed in the context of and associated with an armed conflict;² as crimes against humanity when committed in the context of a widespread or systematic attack on a civilian population; and/or as an act of genocide when committed with the intent to destroy an ethnic, religious, national or racial group in whole or in part.³

The starting point for discussion of international crimes applicable to acts of sexual violence in the context of this Protocol is the Rome Statute of the ICC (the Rome Statute). The provisions codified in the Rome Statute are likely to be reflected in many national systems as states ratify the Rome Statute and incorporate these international provisions into their domestic legislation. The Rome Statute is not, however, the most comprehensive elaboration of applicable international criminal law; customary international law is in many ways far broader. The ad hoc tribunals, the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the SCSL have all applied principles of customary international law,⁴ and the jurisprudence emerging from those institutions is also instructive and reflective of these broader principles. While this Protocol has a focus on the provisions as set out in the Rome Statute, practitioners should bear in mind the importance of the jurisprudence of the ad hoc and hybrid tribunals as a source of applicable principles, in particular because many provisions of the Rome Statute have not yet been litigated or resolved. In this case, the jurisprudence of the ad hoc and hybrid tribunals may provide the only available guidance.

The definitions of the criminal acts, and the elements that comprise them, may vary somewhat according to the jurisdictions in which the crime(s) are being investigated and prosecuted. Although many States party to the Rome Statute have incorporated the Statute's definitions of sexual violence into national law, many others have not. Practitioners documenting crimes of sexual violence should be familiar with both the elements of crimes as defined by the Rome Statute and those of the legal framework in which they are operating, as well as bearing in mind the jurisprudence of the ad hoc and hybrid tribunals.⁵

2.2 General definitions of crimes of sexual violence

As set out in detail in the Evidence Workbook (**see Annex 1, "Evidence Workbook for Documentation of Crimes of Sexual Violence: A Tool to Assist Investigators in Filling Evidentiary Gaps"**), in order for each act of rape and sexual violence to qualify as an international crime, practitioners need to find information to prove three categories of elements:

- **specific elements** (satisfied by information that shows what particular act was committed);

2 Under the statutes of the ICTY and ICTR, there must be a nexus between the act and the armed conflict.

3 Sexual violence crimes can also be prosecuted as torture, cruel treatment and persecution (which internationally would be investigated and prosecuted under international criminal law as a war crime or a crime against humanity as appropriate.) in accordance with well-established jurisprudence. Torture, in some domestic jurisdictions, could be investigated and prosecuted as a standalone crime.

4 Note that within this Protocol these institutions will be referred to as "the ad hoc and hybrid tribunals".

5 As set out in detail in the Evidence Workbook (**see Annex 1**), the elements of crimes as defined by the Rome Statute can serve as a useful checklist to assist practitioners in gathering comprehensive information on sexual violence. Practitioners can improve the integrity and efficacy of their investigation by keeping in mind what information is needed and why; and the elements of crimes applicable in the jurisdiction in which the practitioner is operating can serve as a guide to assist in this. Practitioners should endeavour to prepare their own "evidence workbook" (based on the model of the Evidence Workbook) as a reference tool to ensure that no gaps are left in the information-gathering process.

- **contextual elements**⁶ (satisfied by information that describes the circumstances in which the particular act was committed and elevates the act to the level of a war crime, crime against humanity or act of genocide); and
- **linkage elements**⁷ (satisfied by information that describes the manner in which one or more alleged perpetrator(s) committed this act as an international crime).

These three categories of information can be considered to constitute Parts A, B and C of the complete information required to demonstrate that sexual violence crimes (or any other crimes under international law) may have been committed and to suggest who may be individually criminally responsible for the commission of those crimes.

The next sections will set out what is required for each of the three steps in a practitioner's investigation into crimes of sexual violence. Examples of questions which could be asked of witnesses and testimonial, documentary and photographic/visual evidence which could satisfy those elements are all included in the Evidence Workbook (**see Annex 1**).

2.3 Part A: Specific crimes of sexual violence or crimes which may be committed through sexualised violence: "what happened?"

Individual criminal responsibility for acts of sexual violence as war crimes, crimes against humanity and/or acts of genocide can attach through crimes explicitly containing a sexualised violence component as well as through crimes not containing a sexualised violence component, depending upon the facts.

Some examples of the kinds of crimes which can be grounded on acts of sexual violence are set out below. The list of examples of enumerated crimes as set out in this Protocol includes crimes explicitly containing a sexual or gender-based violence component, as well as a few examples of crimes which may be applicable to acts committed which involve sexual and gender-based violence but which do not explicitly refer to the sexualised nature of that crime. There are other crimes in the Rome Statute which could be committed in either a sexualised or non-sexualised manner which are not listed here because of length. There are also other crimes which have been grounded on acts of sexual violence which are not contained in the Rome Statute, some of which have been adjudicated internationally. For example, at the SCSL, there were convictions for the crimes of forced marriage as inhumane acts (a crime against humanity).⁸

There are crimes under international law which always involve acts of sexual violence, such as rape or forced prostitution, but there are other crimes which can be committed by either sexual or non-sexual conduct, such as torture. Some examples of both kinds of crimes are set out below.

It is recommended that when practitioners begin the process of qualifying the crimes that they will be documenting and investigating, they do not restrict themselves solely to those crimes that can only be committed with acts of sexual violence. Rather, provided that the facts support it, they should seek to document and investigate sexual violence

⁶ Often referred to as "chapeau" elements or "common" elements.

⁷ Also known as the "mode of liability".

⁸ Note that this crime of forced marriage or forced conjugation can be prosecuted as an inhumane act or as other forms of sexual violence under the Rome Statute as well.

conduct under both enumerated sexual violence crimes and other crimes. This may help to increase accountability for sexual violence conduct by demonstrating that, as a crime under international law, such conduct is another form of criminal violence and not something apart from the other crimes being committed in the context of mass atrocities. This can also help to ensure that the nature of the particular harm is accurately reflected and adjudicated.

The Rome Statute lists crimes of sexual violence which can constitute war crimes, crimes against humanity and acts of genocide. It also includes crimes that can be sexualised and which can amount to war crimes, crimes against humanity and acts of genocide. These could also be investigated and charged based upon facts which include sexual violence.

Specific crimes of sexual violence and some crimes applicable to acts of both sexual and non-sexual violence are set out with their elements in the Evidence Workbook ([see Annex 1](#)). A broader compilation of crimes under international law and their elements as set out in the Rome Statute are contained in the ICC Elements of Crimes. In addition, the statutes and elements of crimes of the ad hoc and hybrid tribunals and the provisions of domestic criminal codes can serve as additional sources of applicable provisions and definitions.

Some of the crimes enumerated in the Rome Statute which could apply to acts of sexual violence are listed below.

War crimes (international armed conflict) (Article 8.2(b))

Specific sexual violence crimes:

- Committing rape, sexual slavery, enforced prostitution, forced pregnancy,⁹ enforced sterilisation, or any other form of sexual violence.

Other crimes that could involve criminal conduct of a sexualised nature:

- Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.¹⁰
- Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party.¹¹
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment.¹²

9 "Forced pregnancy" means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy.

10 For example, detaining civilians and conducting an experiment on them involving causing harm to their genitalia, or conducting an experiment on them involving forced nudity such as stripping them naked and pouring increasingly hot water on them to "test" how long it takes them to show signs of burning.

11 In circumstances where the rights which are declared abolished result in sexual violence, e.g. the perpetrator (in his/her position) orders women who are nationals of the hostile party to have forced abortions.

12 This provision can be used for crimes of sexual as well as non-sexual violence – e.g. forcing a male detainee to lick the genitalia of the perpetrator or another person, or forcing the detainee to lick the shoes of the perpetrator or another person, could both constitute humiliating and degrading treatment. This provision was traditionally used as the catch-all for crimes of sexual violence; however, gender jurisprudence has encouraged the accurate reflection of the harm caused by sexual violence, which, although an outrage on human dignity, is also a violent act of physical and mental harm constituting torture and cruel treatment.

- Conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities.¹³

War crimes (internal armed conflict) (Article 8.2(c)-(e))

Specific sexual violence crimes:

- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions.

Other crimes that could involve criminal conduct of a sexualised nature:

- Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment.
- Conscripting or enlisting children under the age of 15 years into armed forces or groups, or using them to participate actively in hostilities.
- Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons.

Crimes against humanity (Article 7)

Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

Specific sexual violence crimes:

- Rape.
- Sexual slavery.
- Enforced prostitution.
- Forced pregnancy.
- Enforced sterilisation, or any other form of sexual violence of comparable gravity.

Other crimes that could involve criminal conduct of a sexualised nature:

- Murder.¹⁴
- Extermination.¹⁵

13 The “use” of children to actively participate in hostilities could include, for example, forcing the children to commit acts of sexual violence or obliging them to engage in sexual acts with a view towards somehow having an impact upon their willingness to commit other acts of violence. It could also include a scenario where child soldiers are repeatedly sexually tortured so that they will in turn carry out such acts of sexual torture against civilians.

14 For example, gang rape leading to death.

15 For example, gathering civilians together, detaining them, stripping them, beating them in their genital area (and other areas) to death, as part of a mass killing of civilians.

- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law.¹⁶
- Torture.
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3 of Article 7, or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the ICC.
- Enforced disappearance of persons.¹⁷
- Crime of apartheid.¹⁸
- Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Genocide (Article 6)

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group:¹⁹

- Killing members of the group.
- Causing serious bodily or mental harm to members of the group.
- Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- Imposing measures intended to prevent births within the group.
- Forcibly transferring children of the group to another group.

Torture as a standalone crime

In international criminal practice, sexual violence as torture is prosecuted as a war crime or crime against humanity. However, many domestic criminal codes criminalise torture as its own standalone crime not under the umbrella of war crimes, crimes against humanity or genocide. In their relevant jurisdictions, practitioners can carry out investigations and initiate prosecutions for crimes of sexual violence as the crime of torture. In order to do so, they should ensure that they are familiar with the applicable elements of the crime of torture in the domestic criminal code.

16 For example, detention facilities where civilians are enslaved both sexually and non-sexually, and tortured both sexually and non-sexually

17 For example, where women or girls are abducted and disappear, and during their disappearance they are sexually tortured.

18 For example, forced marriage committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group.

19 While there is scant international criminal jurisprudence on sexual violence crimes as acts of genocide, the little jurisprudence that does exist links the crimes of sexual violence to genocide via the provision of “causing serious bodily or mental harm”. It is certainly feasible, however, to investigate and prosecute crimes of sexual violence as acts of genocide other than via this provision; for example, a detention centre where male detainees are systematically subjected to castration with the intent to prevent births and thereby destroy their group in whole or in part could also be prosecuted under the provision of imposing measures to prevent births or creating conditions of life calculated to bring about their destruction.

PART I:
Sexual Violence



Other crimes

Both the Statute of the SCSL and the Rome Statute provide for the crime against humanity of “other inhumane acts”. This crime serves as a residual, or catch-all, for other criminal acts which are not specifically enumerated. At the SCSL, this crime was used as the basis for the investigation, prosecution and ultimate conviction of the conduct of forced marriage. Other criminal conduct which could be charged as the crime against humanity of “other inhumane acts” could include forced conjugation, forced abortion and forced nudity.

As domestic legal practitioners move towards documenting and bringing cases involving crimes of sexual violence in the domestic context, there may be other provisions in any given criminal code which can be implicated by these criminal acts. Practitioners should ensure that they familiarise themselves with the relevant provisions to maximise the possibility of accessing justice.

2.4 Part B: Contextual elements of international crimes:

“what was the context in which (the act of sexual violence) happened?”

Prosecuting acts of sexual violence as crimes under international law requires proving the contextual elements of those crimes, in addition to those elements related to the acts of sexual violence themselves. The contextual elements are the elements that raise the specific crime to the level of an international crime – a war crime, a crime against humanity or an act of genocide. In order to allege the commission of crimes of sexual violence as violations of international criminal law, the information obtained by the practitioner’s team must include facts which would support the contextual elements of the category of the applicable international crime. The contextual elements (as codified in the Rome Statute) are set out in brief below.²⁰ In the Evidence Workbook (see [Annex 1](#)), practitioners can view examples of the kinds of questions which could be asked during an interview to elicit this information, and some examples of testimonial, documentary and photographic/visual evidence which can serve to prove the contextual elements of these international crimes. A brief overview is set out below.

(i) Sexual violence as a war crime or a violation of the laws and customs of war

An act of sexual violence may constitute a war crime or a violation of the laws and customs of war if committed in the context of and associated with an international or non-international armed conflict, by a perpetrator who is aware of the factual circumstances that make the situation one of armed conflict.²¹ The Rome Statute itemises crimes of sexual violence as war crimes in international and non-international armed conflict. Practitioners

²⁰ The jurisprudence of the ad hoc and hybrid tribunals is informative of the manner in which international criminal law provisions have been interpreted. Many of the developments in the jurisprudence are reflected in the Rome Statute, while some others are not. Although the definitions and elements of international crimes may vary somewhat between courts, consulting the tribunals’ jurisprudence can prove very useful in understanding how some of these issues have been interpreted by judges, and in potentially anticipating how the facts and the law may be analysed in future contexts.

²¹ The international law of armed conflict sets out a complex regime in relation to the status of the victim of war crimes. As a general rule, it must be shown that the victim was a “protected person” under the Geneva Conventions in order for a crime to constitute a war crime or violation of the laws and customs of war. Simplified, this means in general that the victim must either be a civilian or “hors de combat”, i.e. not actively participating in hostilities at the time the crime was committed. For crimes of sexual violence committed during armed conflict, however, there is no requirement to prove that the victims were protected persons provided that the other elements of war crimes or violations of the laws and customs of war are satisfied, an act of sexual violence would constitute a war crime or a violation of the laws and customs of war regardless of the status of the victim as a civilian, person hors de combat or otherwise. See Jean-Marie Henckaerts and Louise Doswald-Beck, ICRC Study on Customary Rules of International Humanitarian Law, Vol. I Rules, Vol. II Practice, Cambridge University Press, March 2005: Rule 93: Rape and other forms of sexual violence are prohibited in international and non-international armed conflicts. See also ICRC, Sexual violence in armed conflict: questions and answers (7 March 2014), “Every single rape committed during and in connection with an armed conflict constitutes a war crime and must be prosecuted” available at <http://www.icrc.org/eng/resources/documents/faq/sexual-violence-questions-and-answers.htm>.

gathering information on crimes of sexual violence committed in the context of an armed conflict (according to the Rome Statute definitions) need to ensure that they gather sufficient information to demonstrate that the act was committed in the context of and associated with the armed conflict, and to support the conclusion that there was awareness of the armed conflict on the part of the direct perpetrators.²²

(ii) Sexual violence as a crime against humanity

Sexual violence may also constitute a crime against humanity where the act of sexual violence was committed as part of a widespread or systematic attack upon a civilian population. *It is not the sexual violence itself which must be widespread or systematic in order for it to constitute a crime against humanity; it is the attack²³ on the civilian population, and where the direct perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population. In fact, a single act or rape or other form of sexual violence can be a crime against humanity.*²⁴

The ICC has included an additional requirement specific to its jurisdiction:²⁵ that the attack which constitutes a crime against humanity must have been committed “pursuant to or in furtherance of a state or organisational policy to commit such an attack”. This requirement may or may not be required by the jurisdiction in which the practitioner is gathering information; it is the obligation of the practitioner to know what is legally required in the context in which s/he is gathering information, in order to be sure to gather sufficient information upon which to conclude that crimes against humanity may have been committed.

Crimes against humanity do not require a connection with armed conflict – they can take place in peacetime. However, it is common that war crimes and crimes against humanity are committed within the same or a similar context.

(iii) Sexual violence as genocide

Genocide is defined as any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group. Sexual violence can constitute an act of genocide where the contextual elements of genocide are satisfied by information gathered. If, for example, sexual violence is “committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group” by causing “serious bodily or mental harm to members of the group”, that act of sexual violence may constitute an act of genocide.²⁶

22 The “direct” or “physical” perpetrators are those who actually personally and directly commit the crime. The accused persons and targets of international criminal investigations can be the direct perpetrators; but they can also be perpetrators who were removed from the actual crimes, but who nonetheless were individually criminally responsible for the commission of the crime. See the “[Modes of liability](#)” section for clarification.

23 Rome Statute Article 7 defines “attack” in this context as a “course of conduct involving the multiple commission of acts” which are crimes against humanity.

24 If it was committed as part of a widespread or systematic attack directed against a civilian population.

25 As this is a jurisdictional requirement, it is not considered a contextual element of crimes against humanity under customary international law. The statutes of the ad hoc and hybrid tribunals do not contain this additional requirement. The inclusion of this requirement in the ICC elements of crimes against humanity circumscribes those crimes against humanity which could be subject to ICC jurisdiction.

26 Note that other acts of genocide as listed in the contextual elements (other than “causing serious bodily or mental harm”) might also apply to acts involving sexual violence.

Practitioners investigating alleged acts of genocide should look for information to support that: (a) the sexual act amounted to an underlying act of genocide (killing, serious bodily/mental harm, conditions of life, imposing measures to prevent births, etc.); and information to support the conclusion that the act was (b) committed with an intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

2.5 Part C: Modes of liability for commission of international crimes: “how is the alleged perpetrator(s) responsible for that act of sexual violence as a crime against international law?”

The “mode of liability” describes the legal theory applied to attribute criminal responsibility to the accused for the various crimes outlined above. For example, did the accused commit, aid and abet, order, plan etc.? In order for someone to be found individually criminally responsible for a crime under international law, the elements of the substantive/specific crime (such as rape), the contextual elements of the category of crime (such as crimes against humanity), and the mode of liability (such as committing) must be proved beyond a reasonable doubt.

Taken together, the statutes of the ad hoc and hybrid tribunals and the ICC enumerate numerous forms of individual criminal responsibility according to which an individual may be held criminally responsible for the commission of sexual violence as a war crime, a crime against humanity or an act of genocide. The modes set out here are examples from the Rome Statute, itemised for the reasons set out above. Practitioners should again recall that the domestic legislation of a particular context in which they are working may set out very different modes of liability than those applied internationally.

The basic principle underlying this section is that as well as gathering information about the criminal act itself, and in addition to gathering information on the context in which that criminal act was committed, the documentation process must also aim to gather information regarding how the alleged perpetrator(s) may be responsible for the crime. This means how the crime was allegedly committed and what the nature of the role of the alleged perpetrator was in carrying out this criminal act of sexual violence.

The Rome Statute sets out modes of liability applicable to perpetrators being prosecuted at the ICC.²⁷ Some of those are set out below.

Co-perpetration (Article 25(3)(a)) and common purpose liability (Article 25(3)(d))

These modes of liability apply to groups of persons who join together to plan and carry out crimes under international law. The ad hoc tribunals have developed case law on co-perpetration under theories of what has been called “joint criminal enterprise”.

Indirect perpetration (Article 25(3)(a))

If the facts suggest that the perpetrator(s) may be responsible under the indirect perpetration mode of liability, practitioners would need to gather information showing that the alleged perpetrator exercised control over the crime. This control can be shown in different ways, such as by exercising control over the will of the direct perpetrator or

²⁷ Note that the modes of liability under customary international law are potentially far wider than those codified in the Rome Statute.

by exercising control over an organized apparatus of power, such as a police or military structure. In addition, the perpetrator has to have held the intent to commit the crime, and have had awareness of the circumstances that enabled him/her to exercise control over the crime.²⁸

Ordering (Article 25(3)(b))

In order to suggest that the perpetrator(s) may have ordered the crimes of sexual violence, practitioners would need to gather information showing that the perpetrator had the authority to issue orders and expect that they would be carried out.

Soliciting/inducing (Article 25(3)(b))

Information which would show that an alleged perpetrator solicited or induced someone else to commit crimes of sexual violence as crimes under international law would demonstrate that the perpetrator encouraged, provoked, incentivised or convinced the direct perpetrators to commit the crimes.

Aiding and abetting (Article 25(3)(c))

To show that a perpetrator aided and abetted in the commission of sexual violence as an international crime, it must be demonstrated that the perpetrator provided to the direct perpetrators practical assistance (e.g. by providing the means for the commission of the crime), or encouragement or moral support.

Responsibility of commanders and other superiors (Article 28)

Perpetrators of sexual violence as a crime under international law might also have committed these crimes in their capacity as a superior or commander over the direct perpetrators.

If the perpetrator is a military commander, practitioners need information which demonstrates that s/he had effective control over subordinates, that s/he knew or should have known that the subordinates were committing crimes, that s/he failed to take reasonable measures to prevent or punish or submit to competent authorities to investigate, and that, as a result, the crime was committed.

If the crimes were committed by a civilian superior, the information gathered by the practitioner must demonstrate that there was a superior-subordinate relationship between the superior and the direct perpetrators on the ground, that the superior knew or consciously disregarded information which clearly indicated that subordinates were committing crimes, that the crimes were activities within the effective responsibility and control of the superior, that s/he failed to take all necessary and reasonable measures to prevent or submit to authorities for investigation, and that, as a result, the crime was committed.

²⁸ Note that some of the factual underpinnings of this mode of liability may also serve to prove other modes, such as command responsibility of military commanders pursuant to Article 28(a).

“The paucity of domestic prosecutions for crimes of sexual violence, the limited volume of international prosecutions for these crimes, and the scale worldwide of crimes of sexualised violence – particularly in situations of armed conflict – continue to leave a distinct impunity gap...”

Jane Adong Anywar, Women's Initiatives for Gender Justice, UNSC Debate, 2013

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PART II: DOCUMENTATION IN PRACTICE

3. Preliminary Considerations

3.1 “Do No Harm”

Engaging individuals, their families and communities in order to investigate and document information of sexual violence must be done in a way that maximises the access to justice for survivors, and minimises as much as possible any negative impact the documentation process may have upon them.

When documenting information about sexual violence, practitioners must strive to “do no harm” or to minimise the harm they may be inadvertently causing through their presence or mandate.

To this end, practitioners should at a minimum:

- 1. Understand the risks involved in documenting sexual violence.**
- 2. Ensure team members documenting sexual violence are appropriately trained.**
- 3. Ensure survivors and witnesses give their informed consent to participate in enquiries.**
- 4. Protect the information documented.**
- 5. Take special precautions when working with child survivors and witnesses.**

Strategies to ensure that the principle of “do no harm” is applied during the documentation process are embedded throughout the Protocol.

3.2 Training

Practitioners should have the appropriate level of skills and training to undertake documentation of sexual violence. In particular, practitioners should:

- Ensure that all members of the team, including interviewers, interpreters, analysts and support staff are appropriately vetted, and trained to document violations according to the basic standards as set out in this Protocol.
- Ensure that all members of the team have knowledge and experience of dealing with cases of sexual violence and, in particular, are familiar with the proper interview techniques, terminology and strategies to respond sensitively to disclosure of sexual violence by both female and male survivors/witnesses.
- Where possible, train staff in dealing with trauma and the ways in which to recognise and respond to post-traumatic stress disorders and risks of suicide and self-harm.

When working with child²⁹ survivors and witnesses, practitioners should in particular:

- Have training specific to approaching, interviewing and referring children to enable practitioners to respond to the specific vulnerabilities and capabilities of the child.
- Understand how to apply the principles of “do no harm”, confidentiality and informed consent specifically to working with children, including the use of age-appropriate techniques when communicating with survivors and other witnesses.³⁰
- Have training on child interviewing skills that are age-sensitive, and take into account that interacting with very young children requires different skills from those required when dealing with adolescents.
- Have training on techniques to prevent re-traumatising children, such as allowing them to feel bodily sensations and emotions (trembling, shaking and crying).
- Understand the distinct challenges that different groups of vulnerable children may face, such as the risk of rejection by communities that young girls associated with armed groups and forces can experience.

3.3 Assessments

There are many issues that should be thoroughly assessed and researched by practitioners prior to starting a documentation process. That information can form the foundation upon which the documentation plan should be grounded – it takes great care and knowledge of the communal context to ensure that survivors of crimes of sexual violence are not disempowered, can have access to justice, and do not have their safety compromised.

As a first step, practitioners should assess, to the extent possible, whether the information required has already been documented by other practitioners and organisations, whether that information is accessible, and whether re-documentation, including interview, is necessary. If the aim is accessing a justice mechanism then it may be that re-interviewing is unavoidable. However, if the mandate is advocacy, this may not be necessary.

Before interviewing survivors and other witnesses or gathering any additional information, practitioners should: **(i) research the alleged crimes, context and community; (ii) assess risks to the survivors, practitioners and information and (iii) determine what services survivors may have already accessed.** Practitioners are advised that these tasks do not need to be undertaken in a specific order, but rather should be considered concurrently. For example, it is impossible to assess particular security risks to survivors without researching the pattern of violations in a specific area; similarly, researching obstacles to accountability for survivors will invariably involve some level of risk assessment.

²⁹ The Convention on the Rights of the Child defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. Ascertaining the exact age of an individual survivor/witness is key to establishing how to secure informed consent, as well as having implications for criminal proceedings. Where children do not possess birth registration documents, other measures should be taken to identify the age of the child, including through baptismal records, community records of births, and temporary or emergency systems set up by humanitarian organisations. For additional guidance see UNICEF, Innocenti Research Centre, *Innocenti Insight: Birth Registration and Armed Conflict*, 2007.

³⁰ See IRC, UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for Health and Psychosocial Service Providers in Humanitarian Settings*, 2012.

(i) Research

Below are some of the key topics particularly related to documentation of sexual violence that practitioners should familiarise themselves with as a starting point for their inquiries.

Some of the information below will be readily available from open source reports, documents and websites. Some will require more thorough research, and may be available from the UN and other international organisations, international and national NGOs, local and grassroots organisations, and think-tanks. Other information will be directly and locally available to practitioners working in their own national context. Practitioners may not be able to answer all of these questions prior to the information-gathering process itself. However, answering as many of these questions as possible will enable practitioners to better plan their approach, gather the most relevant and useful information, and reduce the risk to survivors/witnesses and themselves.

Preliminary research into the specific crimes

- What are the gender dynamics in the area - both at country and local level - in which the violations are occurring? What are the traditional and cultural beliefs in the community in relation to gender roles? How may this impact the ability of survivors to report sexual violence crimes and access justice?³¹
- What is the nature and scope of acts of sexual violence that have allegedly occurred? What is the pattern of these criminal acts and how do they fit into the overall pattern of the attack?
- What has been officially reported? To whom have the reports been made? Where have individuals been targeted?
- What is the community understanding of, and attitudes towards, different forms of sexual violence, including against children? What are the repercussions, if any, for survivors/witnesses? How would the community or family react if they become informed of a crime of sexual violence perpetrated against a member of their community? Would the reaction differ based on the age or gender of the survivor/witness?
- What is the security situation and what are the obstacles in the path of survivors in attempting to access accountability mechanisms?
- How are different forms of sexual violence criminalised, if at all? What are the legal requirements to prove charges of sexual violence? Does the national legal system provide for equality before the law? If yes, is it applied in practice? Do the rules of procedure and evidence facilitate or obstruct access to justice for survivors? For example, are testimonies of men and women given equal weight? Are there specific legal provisions in place with regards to children?
- How do cases get investigated and prosecuted at the national and local levels? Are there specialist police units trained to investigate and prosecute crimes of sexual violence, including units with particular expertise in dealing with children?

31 A useful tool to conduct this research is the Women's Initiatives for Gender Justice's Gender Equality Traditions (GET) Indicators Checklist checklist from its publication *Gender in Practice: Guidelines and Methods to address Gender Based Crime in Armed Conflict*, pp 9-14 (accessible at http://www.iccwomen.org/whatwedo/training/docs/Gender_Training_Handbook.pdf).

- What are the different forms of justice, both formal and informal, available to survivors/witnesses? What are the strengths and weaknesses of these forms of justice? Do informal mechanisms reflect or entrench gender inequalities in the country? Are men and women treated equally in informal justice mechanisms? What are the consequences to a survivor/witness who chooses not to proceed within the customary mechanisms but rather turn to the State-level mechanisms (if such exist)? Does s/he have access to both? Do children have access to both?

Preliminary research into the context

- What is the political and security situation? What is the history of the conflict or hostilities? Is there a history of ethnic, religious or racial persecution? Is there a history of gender-based persecution in particular (i.e. severe deprivation of fundamental rights on the ground of gender)?
- Who has been targeted? Have specific groups been targeted? Are children being specifically targeted? How is it known that those groups have been targeted? Who has targeted them? Have they been targeted by men, boys, women or girls?
- Have there been reports or records made of other criminal acts committed as part of the attack? Have there been reported incidents of house raids, arrests and detention of civilians, attacks on villages or at checkpoints, or reports of sexual and non-sexual torture? What is the pattern of crimes?

Preliminary research into the alleged perpetrators

- How is the military and security infrastructure organised? Which armed groups are operating in the area? What is their relationship with the local population?
- Where do armed groups come from? What is their affiliation? Are these groups comprised of men and women? Are these groups comprised of girls and boys? What are the different roles of the groups?
- What is the affiliation (if any) between the alleged perpetrator group and the security forces present in the area where the documentation would be taking place? Do the perpetrators or any of their affiliates have any influence on the affected community at the time the investigation is being conducted?

Preliminary research into available and accessed services

- What medical care and psychosocial services have survivors received?
- What health, psychosocial, legal, and economic assistance options are available for survivors/witnesses of sexual violence? What referral systems or pathways are in place?
- Which actors are providing these services at local, regional and national level?
- Are there any obstacles to survivors/witnesses accessing these services (e.g. security concerns, financial constraints, or discriminatory attitudes or policies)?

(ii) Risk assessments

When planning for documentation and investigations of sexual violence, practitioners must assess threats (real, imagined or perceived) that could potentially cause harm to survivors and other witnesses, along with the risk that these threats will be carried out. Prior to developing a documentation plan, practitioners should also assess risk and safety concerns for all members of the documenting team and all those who will be interviewed. Considerations about staffing, logistics, interpretation and translation, systems for organising information and strategies for accessing survivors/witnesses will be better informed after conducting an assessment of risk to survivors/witnesses, the practitioner's team and the information itself.

Assessing risks to survivors/witnesses

1. Risks for survivors/witnesses associated with the documentation of sexual violence include:

- retaliation/intimidation/threats by alleged perpetrators/their families/their supporters against survivors/witnesses and/or their families;
- punishment, including physical violence, by members of the immediate community/family/caregiver;
- coercive pressure to force survivors/witnesses to reconcile with perpetrators (survivors/witnesses may be forced to marry or live with perpetrators);
- attempts to secure financial gains for families of survivors/witnesses take priority over justice for survivors/witnesses;
- re-traumatisation;
- rejection by spouses, other family members or the community, resulting in isolation, or abandonment of children;
- loss of livelihood;
- loss of access to schools and vocational opportunities for children; and
- in some extreme cases, arrest and punishment - for example when sexual conduct outside marriage, or homosexual acts, are criminalised.

2. In particular, practitioners should ask themselves:

- Is there a nearby medical facility, and, if so, can you access it? Will it serve all the survivors/witnesses you are interacting with or only some of them, and if not all then who can provide care for the others?
- Will the documentation occur in an area where hostilities are ongoing, offenders are still in the area, or survivors/witnesses are at risk of intimidation, further attacks (including retaliation for speaking) or displacement? If so, what strategies will you put in place to overcome these obstacles?

- Has the information about the location of a site originated from a survivor/witness at risk of exposure if that information is linked back to him/her? If so, what mechanisms will you employ to protect the survivor/witness or source from any risk?
- Will visiting particular crime scenes risk placing individuals who told you about these locations in additional danger? If so, are there other ways (such as via an intermediary) to gather information about these locations?
- What particular risks are faced by children if they come forward? Are children likely to be stigmatised or isolated if they report a crime? What protocols are in place to address identified risks or harm to children?
- Have you taken into account both your own knowledge of risks and that of the survivors/witnesses? Practitioners must consult survivors/witnesses, as only they may be aware of certain individual, local or community-specific risks.

Assessing risks to practitioners

1. Is access to the area, and travel within it, potentially risky?
 - Is there a risk of armed groups, terrorist or criminal networks operating in the area or in the site itself?
 - Is your team at risk of being targeted specifically? Is there a risk that you or your team may be subjected to threats from perpetrators, their families and supporters (this is especially problematic for national practitioners)?
2. Have you considered any additional, non-physical risks? (in particular to national NGOs)? For example, national NGOs may be threatened with de-registration if they carry on working.
3. Are particular sites physically safe to visit?
 - Is access to the area or site safe and not at risk of floods, landslides or extreme weather conditions?
 - Are particular sites too far to access without an overnight stay, and if so is an overnight stay possible?
 - Is there risk of unexploded ordnance at the site?
 - Is the site inside or near a structurally unsound building?
4. What will be the impact of being found in possession of any information and evidence you may gather?
5. What procedures can you put in place to mitigate against risks?
 - Do you have a security and evacuation plan?
 - Do you have a communication plan?

- Will you be adequately equipped to deal with any eventualities? For example, will you have sufficient extra fuel, supplies, first-aid kits and communication devices?
 - Can your team access a nearby medical facility?
 - If necessary, can you remove overt signage on your vehicles and equipment?
 - Do you have a plan, policy and referral options in place regarding emergency assistance or transportation of any survivors/witnesses, unaccompanied children or other individuals you find in particular sites?
- 6.** Is there a risk of you or your team suffering vicarious trauma? When dealing with vicarious trauma, practitioners dealing with many cases should be encouraged to take extended/frequent leave to recover. Practitioners should also be encouraged to talk about the stress they are under.

Assessing risks to information

- Do you have a plan in place to safely collect and store information?
- How will you keep information that you gather safe and confidential? When, why and how will you destroy information at risk of confiscation? **(see section 9, “Storing Information”).**
- How will you transport any information and evidence you gather?
- Are you able to maintain “Chain of Custody” and do you have the capacity to safely secure the information for long periods of time? **(see Annexes 6 and 7, “Physical Evidence: Principles on Chain of Custody” and “Documentary Evidence: Principles on Chain of Custody”).**

3.4 Overall planning

Before embarking on a sexual violence documentation process, practitioners must formulate a clear strategy or plan that takes into consideration the above issues and answers the following key questions:

In light of your research and risk assessments:

- **Why are you documenting sexual violence?** What is the outcome, or outcomes, that you seek?
- **Do you have the capacity to properly document sexual violence?** Are you adequately trained, equipped and prepared to do so? Are you aware of the legal framework in which you are operating?
- **What will you do with the information?** How will you safely organise it, assess it and store it. Who will you submit it to? What will you make public, and what will you endeavour to keep confidential?

- **How will you choose priorities and select leads to follow?** You may have more information to follow up than time or resources allow - if so, how will you make your choices?
- **Where will your efforts be concentrated?** What is the basis for choosing to focus on a particular area or incident or community? Will your strategy be geographic or thematic or a combination?
- **What are the safety concerns for survivors, the information and your team?** What strategies can you put in place to mitigate against those risks? What referral options can you put in place?
- **How are you going to document?** What are your logistical, financial and expertise needs?
- **What sources of information are available to you?** What sources of information will you seek to access? How will you access them? What sources of information will you limit yourself to?
- **How are you going to communicate the purpose of your research to communities and survivors?** What process will you use for obtaining informed consent, including for minors?
- **How long will you spend doing this?** What is your time limit?

4. Key Planning Topics

4.1 Coordination

At any given time, there may be multiple efforts under way to collect, record and analyse information on sexual violence in conflict-affected areas. This is especially true in areas where sexual violence is believed to be highly prevalent, where humanitarian responses have been established, or where official international or national investigations have been launched. The existence of multiple forms and lines of inquiry can be harmful to individuals and communities, impact the quality of information collected and its ability to be used in a criminal trial, and affect the work of organisations operating in the area. Some of the consequences of multiple inquiries include the following:

- Survivors/witnesses may have to repeatedly tell their story on numerous occasions, for different purposes, to different people. In some cases this might lead to re-traumatisation. Being asked questions, however sensitively, can be experienced by the survivor/witness like an interrogation.
- Assessment fatigue - communities become saturated from multiple inquiries, intrusions and promises with no delivery of assistance.
- Individuals and communities are placed at risk from the increased attention and perception they are betraying members of their own community or accusing others.

In order to respect survivors/witnesses and ensure the best information is collected, these processes should be coordinated where possible. To this end, practitioners should:

- Develop relationships with other organisations prior to travelling to the area, and where possible assess the type, quality, frequency and purpose of the information they may or may not have collected.
- Find out about the existing gender-based violence coordination mechanisms at national, regional and local levels. Being aware of existing systems may facilitate information-sharing and access to data, as well as securing protection solutions for survivors/witnesses.
- Be aware of security and additional concerns of other organisations collecting information. Certain organisations may be collecting information discreetly and should not be approached publicly with requests for information.
- Be aware of organisations and individuals who have been mistreating the affected community by manipulating information, threatening them with consequences should they come forward, and putting out false information with the aim of undermining documentation efforts.
- Be familiar themselves with existing systems collecting data on sexual violence: their purpose, how they are implemented, and what the limitations are on sharing information collected by them. This includes the Gender-Based Violence Information System (GBVIMS)³² and the Monitoring, Analysis and Reporting Arrangements (MARA)³³ introduced by UN Security Council Resolution 1960.³⁴
- Respect the mandate of other organisations working according to different agendas with communities. Often service providers are working to offer impartial assistance to all, and mediating conflict, remaining independent of prosecution efforts, and integrating with the whole community is key to that role. Practitioners should take extra precautions when visiting organisations and communities in refugee and displacement camps and sites, offices of aid workers, clinics and community safe spaces. Where appropriate, they should plan those visits beforehand and not show up unannounced requesting information.
- Be aware that often service provision to survivors/witnesses is based on expectations of confidentiality that should not be breached, including through sharing of anonymous data that may be useful to establish patterns, location, responses and types of sexual violence that occurred.

32 The GBVIMS initiative, launched in 2006 by UNOCHA, UNHCR and the IRC, was created to harmonize data collection on gender-based violence (GBV) in humanitarian settings, to provide a simple system for GBV project managers to collect, store and analyse their data, and to enable the safe and ethical sharing of reported GBV incident data. (See <http://www.gbvims.org>).

33 The purpose of MARA is to ensure the systematic gathering of timely, accurate, reliable and objective information on conflict-related sexual violence against women, men and children in all situations of concern. The information collected through MARA is used to promote increased and timely action to prevent and respond to conflict-related sexual violence. See Provisional Guidance Note: Implementation of Security Council Resolution 1960 (2010) on Women, Peace and Security (Conflict-related Sexual Violence).

34 OP8, UN Security Council, Security Council resolution 1960 (2010) [on women and peace and security], 16 December 2010, S/RES/1960 (2010).

- Keep in mind UN Security Council Resolution 1888,³⁵ in which UN and government agencies and NGOs, at both the national and international level, are called on to support improved monitoring, documentation and reporting of crimes of sexual violence. Service providers and other institutions supporting survivors may choose to respond to this call by sharing information on survivors according to best ethical practices and the informed consent of survivors.

4.2 Interpretation

Interpreters are often a key part of the practitioner's team. Interpreters should be appropriately trained, not only in interpretation itself but also in working with survivors/witnesses of sexual violence and, where relevant, with children.

Interpreters should be able to provide the practitioner's team with interpretation during any interaction practitioners may have with members of the community, including during interviews. They should also be able to provide practitioners with the right linguistic and cultural interpretations of key words, behaviours and expressions associated with sexual violence in a particular setting, without changing or influencing the information as provided by the survivor or other witness.

During interviews in particular, interpreters must be able to work sensitively and professionally, and according to the ethical principles of "do no harm". They must also fully understand the concept of informed consent, and abide by the team's codes of confidentiality.

In particular, interpreters should:

- Be comfortable from a security point of view working in the region and context in which practitioners will be asking them to operate.
- Understand the local context but be objective in their viewpoint.
- Have experience with (and be sensitive to) the interplay between sexual violence and the local culture, and understand how these issues might affect communication with those being interviewed.
- Be comfortable with the detailed subject matter of sexual violence and its terminology, including the words and euphemisms likely to be used to describe sexual violence in the relevant area.
- Use only the words of the survivor/witness and the interviewer; none of her/his own words should be used during the interview.
- Be sensitive to the individual needs and capabilities of children - including training on techniques to deal with children's particular communication difficulties.
- Show empathy but not pity, shock or judgement.

³⁵ The purpose of MARA is to ensure the systematic gathering of timely, accurate, reliable and objective information on conflict-related sexual violence against women, men and children in all situations of concern. The information collected through MARA is used to promote increased and timely action to prevent and respond to conflict-related sexual violence. See Provisional Guidance Note: Implementation of Security Council Resolution 1960 (2010) on Women, Peace and Security (Conflict-related Sexual Violence).

- Have a sensitive awareness of the impact their physical presence may have on a survivor/witness, and be careful to enter, move around the room and sit in a way which does not intimidate or threaten the survivor/witness.

An interpreter should *not*:

- Exchange any words in relation to the information provided with the survivor/witness other than those spoken directly by the practitioner. The interpreter is not a party to the conversation, but rather a valuable means of communication between the interviewer and interviewee. Words exchanged between the interpreter and the survivor/witness should be limited to non-substantive matters such as where to sit and friendly communal interactions, and should only be exchanged on breaks in the interview process.
- Explain anything to the survivor/witness or the interviewer, unless explicitly instructed to do so by the practitioner.
- Change anyone's words. If a survivor/witness uses a euphemism the interpreter should use that same term to the practitioner and suggest that this might have another meaning so that the practitioner can ask clarifying questions.
- Omit parts of the interview that are in their view unimportant.
- Make suggestions about how to carry out the interview.

When selecting interpreters

- Allocate adequate financial and human resources to locating and retaining trained independent interpreters. Such persons are not always readily available.
- Never use family members as interpreters for reasons of confidentiality. For the same reason, interpreters should only be drawn from the same community as the survivors/witnesses as a last resort - in particular when it comes to indigenous communities.
- Take time to assess potential interpreters. Vet any potential interpreters for criminal records, impartiality, trustworthiness, capacity for the role, affiliations and ability to work with children.
- Recognise that the interpreter's sex, age, identity and ethnic, cultural and political affiliations might be a factor affecting the extent to which the survivor/witness trusts them, but be sensitive in consideration of such factors so as not to perpetuate stereotypes or persecutory ideologies.
- Always assess the candidate's personal views on sexual violence and gender equality prior to hiring them. Ensure they have a degree of comfort with the terminology of sexual violence so that their own discomfort (e.g. distress, shock) does not impact negatively upon the evidence-gathering process.
- Include, where possible, female and male interpreters in the team.
- When interviewing children, only use interpreters who have received special training and have prior experience of working with children.

PART II:
Documentation in Practice



4.3 Organising information

The way in which the information is gathered, organised and stored is a critical aspect of the documentation process and needs to be carefully thought through in advance of any documentation exercise. Ideally, an electronic database should be used, and populated with all the information gathered. The data should be linked internally, and include at a minimum the following information (**see also section 9, "Storing Information"**):

- Personal data of each survivor/witness interviewed.
- Security concerns of each survivor/witness interviewed.
- Evidence of informed consent to participate in the interview.
- Testimonial information given by that survivor/witness.
- Documentary information provided by that survivor/witness.
- Information regarding the existence of medical or police records.
- Photographic or audiovisual information relating to that survivor/witness.
- If applicable, translations of any of the above.

If at all possible, the database should be sufficiently developed such that the data will be searchable by many different criteria.

5. Identifying survivors and other witnesses

Identifying survivors and other witnesses of sexual violence can at times be more challenging than identifying survivors and other witnesses of other crimes under international law. Even in areas where multiple anecdotal reports of sexual violence have been made, survivors and other witnesses may be unwilling to come forward formally for many different reasons. Survivors may be unwilling to risk experiencing traumatic memories of the sexual violence, think the sexual violence was their fault, or think no one will believe them if they do not have proof. Depending on the communal and traditional or cultural context, survivors of sexual violence crimes might be at risk, or be manipulated, within their communities. This might be from members of the perpetrator group in close proximity, or even from their own community or family, who may behave in an accusatory fashion, make them feel ashamed, punish them, or use the sexual violence as an excuse to separate survivors from their homes, families, livelihoods and educational opportunities. Survivors may be willing, but unable, to speak out. Some may have particular difficulty if they have mental or physical disabilities.

It is important to create a supportive and safe environment in which survivors and witnesses feel secure to come forward and report crimes. If outreach is advisable, determine the level of outreach that is necessary to undertake prior to receiving information about cases of sexual violence in any given community. Additionally, practitioners should keep in mind that useful information about sexual violence can be collected from many sources, not just from survivors/witnesses. (**See section 6, "Testimony".**)

5.1 Direct identification

Survivors and other witnesses will sometimes come forward and offer to give testimony of their own volition. Practitioners should be well prepared to respond speedily, effectively and securely when this occurs. Most research, risk assessments and plans should be in place before practitioners engage with survivors/witnesses.

Survivors are sometimes directly identified through assessments, screening tools and other surveys. When this is the case, it is important that any approaches made to survivors/witnesses are in line with the explicit wishes and preferences expressed by them when they agreed to take part in the assessment, including any requests to remain anonymous or any safety precautions that must be taken before approaches are made.

Identifying children. Great care must be taken in approaching child survivors and witnesses – if practitioners are not certain that they can approach children appropriately, cannot guarantee children are appropriately referred, or do not know how to access resources to support children in case of a crisis, they should not attempt to approach them. Practitioners should also note that if they come into contact with children they believe have been harmed they are required to communicate this to the appropriate authorities.

In cases of sexual violence committed by children associated with armed groups and forces, practitioners must remember that children who commit acts of sexual violence have often been manipulated or coerced into such acts and are victims themselves. Children should be treated as survivors/witnesses and not as perpetrators, in accordance with UN Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime³⁶ and the UN Convention on the Rights of the Child.³⁷

5.2 Intermediaries

Intermediaries are individuals that practitioners may enlist to help them to identify and liaise with members of the community, overcome cultural and social barriers, and identify potential survivors and other witnesses. Intermediaries can be used in cases where the practitioner is unfamiliar with the community and its members and dynamics, where survivors and other witnesses may be endangered if they approach practitioners directly, or where survivors and other witnesses are apprehensive about interacting with people from outside the community.

Intermediaries can be very effective community interlocutors, although care should be taken to ensure their impartiality. They will often be members of local grassroots organisations, national and international non-governmental organisations (NGOs), service providers, and other community networks and support structures such as churches and women's groups.

Before attempting to identify survivors and other witnesses through intermediaries, practitioners should:

- Obtain information about all the actors present in the community surrounding the survivor/witness to enable practitioners to effectively select the right intermediaries.

³⁶ UNICEF, UNODC, Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime, 2005. For the official version of the UN Guidelines see Economic and Social Council resolution 2005/20 of 22 July 2005. The above version, which has been produced by UNICEF and UNODC with the support of the Innocenti Research Centre and IBCR, is meant as guidance for children and child professionals and is not an official UN document.

³⁷ UN General Assembly, Convention on the Rights of the Child, 20 November 1989.

This includes mapping out the communal hierarchy, including the women's leadership within the community (e.g. the elders, midwives, teachers, female village chiefs or female religious leaders). Every community has a leadership structure and every community of women will have a leader or leaders who may either facilitate or impede practitioner access to survivors/witnesses. Most often the women leadership will serve as critical support to the work done by the team, but only if the team is operating in a manner which is principled, respectful and transparent.

- When attempting to identify male survivors specifically, seek out appropriate intermediaries – for example members of civil society organisations working just with male survivors – and be aware of the particular cultural attitudes and sensitivities surrounding sexual violence against men.
- Assess carefully whether or not proactively seeking out survivors and other witnesses via intermediaries will place survivors and other witnesses, individual members of the community or organisations they approach at risk. Assess in particular whether or not intermediaries are coercing participation or exposing survivors and not acting according to basic ethical standards.
- Ensure intermediaries prioritise identifying children specifically, particularly those in vulnerable groups such as unaccompanied and displaced children, and children associated with armed groups and forces.
- Be aware of any divisions in the community, and whether members from opposing 'groups' coexist within the same community.
- If it is considered safe, work closely with community members, community leaders, medical service providers and support groups and institutions to help identify potential survivors and other witnesses.
- Connect with local organisations and set up initiatives to enable survivors and other witnesses to come forward, including development of women's empowerment forums, safe spaces, confidentiality and other protective measures.
- Vet any potential intermediaries (for criminal records, impartiality, trustworthiness, capacity for the role, affiliations and ability to work with children).
- Take care that neither practitioners themselves nor any intermediaries are perceived as offering anything of value in exchange for testimony, including financial and material assistance or improved access to aid. However, this should not preclude referral to services, which should be made where possible (**see Annex 5, "Referring Survivors of Sexual Violence for Assistance"**).
- Set clear expectations with intermediaries concerning their role and its limitations, and the level of support and guidance that they can expect from practitioners.
- Ensure that any intermediaries have a reliable way of contacting the practitioners.
- Document their own interactions with intermediaries such that they are in a position to justify any decisions made in relation to those intermediaries.

- Remember to ensure that intermediaries do not become involved in the investigation beyond their mandated roles and capacities.
- Limit the amount of information that any intermediaries are given about the type of survivors/witnesses that the practitioner is seeking out.
- Avoid allowing any intermediaries to coach any of the survivors/witnesses identified by those intermediaries.

6. Testimony

Testimony from survivors/witnesses is often the type of information most readily available to practitioners, but it is also the type that must be treated with the most care. Survivors/witnesses can provide practitioners with critical information on the attack itself - either having experienced it, or through having observed it - but can also provide information on the contextual elements surrounding the attack and the perpetrators and their method of participation in the criminal acts witnessed. "Overview" witnesses such as doctors, nurses, counsellors and local leaders who may have information on the existence of many survivors/witnesses, timing and location of the acts are of particular importance in establishing the contextual elements of potential crimes.

Testimonies can be from:

- The survivor/witness of sexual violence him/herself.
- Family members, members of the community, service providers, relief workers or insiders who witnessed or have knowledge of the attacks through, for example, witnessing the attack, hearing about it from the survivor/witness, or treating the survivor/witness after the attack.
- Family members, members of the community, service providers and relief workers, who can provide information on the circumstances surrounding the attack, the ongoing, widespread or intentional commission of such crimes, the location and type of additional evidence, the alleged perpetrators, the command structure, the nature and type of conflict, the political landscape and local power dynamics.
- Insiders and former members of security forces or armed groups, who can provide information on the circumstances surrounding the attack, the ongoing, widespread intentional commission of such crimes, the location and type of additional evidence, the alleged perpetrators, the command structure, the nature and type of conflict, the political landscape and local power dynamics. Remorseful co-perpetrators often provide the most critical evidence linking directly to the perpetrators - but approaching insider witnesses is something which should be done with the utmost care and only by trained investigators.

In addition, practitioners and intermediaries should not only seek survivors/witnesses who may have information relevant to the act itself but also those individuals that might help to prove contextual elements of the crime, or identity of perpetrators and modes of liability. Practitioners should be aware that useful information can come from:

- all members of the community, and not just the most vocal, prominent, educated, outspoken or usual leaders; and

- beyond the community itself and extend to members of organisations working in the area, who may have witnessed events themselves or have knowledge that will prove useful to the documentation process.

6.1 Informed consent

Observing the principle of 'informed consent' is critical when gathering information about sexual violence, irrespective of the nature of the information obtained. All survivors and witnesses must give their informed consent to be interviewed and examined, to be photographed, to have their information recorded, to be referred to any support services, and to have their information and contact details shared with third parties.

Obtaining informed consent before documenting testimonial information ensures that the survivor/witness maintains full control and power over her/his own experiences, and that s/he is a knowledgeable and willing participant in the justice process. Not obtaining informed consent violates the rights of the survivor/witness, disrespecting her/him, and causing her/him harm. The results of an interview conducted without securing proper and informed consent may also not be accepted in certain legal proceedings, on the grounds that the information was provided under some kind of duress or coercion, or based upon misleading assurances.

Informed consent is not only a fundamental principle of participation in the justice process; it is an ethical obligation of anyone gathering information about crimes under international law, including gross violations of human rights, from survivors/witnesses.

The meaning of informed consent

All persons providing information about sexual violence or consenting to data collection must be informed about, and understand:

- the purpose and content of the data collection exercise;
- the meaning of confidentiality and how it applies, or not, to the information they provide;
- the procedures that will be followed - including that the information may need to be disclosed in future, and its intended use; and
- the risks and benefits to themselves of participating.

In order to ensure informed consent is observed, practitioners should:

1. Take time to explain all the relevant factors to survivors/witnesses

- Identify members of the team present, their functions, who they work for and for whom the information is being gathered.
- Fully explain the purpose and nature of the information-gathering exercise, and the composition, affiliation and mandate of the team.
- Describe all possible uses of the information provided, including the possibility that the information may need to be disclosed, whether or not the person is asked to testify in any type of proceeding.

- Disclose the types of questions that may be asked of the survivor/witness.
- Present the information in a way that is clear to the survivor/witness and ensure the information has been understood. It is good practice for practitioners to ask the survivor/witness to explain back to them what the survivor/witness has understood about the process.

2. Ensure the consent given by the survivor/witness is based on her/his free will

- Create situations of genuine trust that will enable the survivor/witness to agree freely and voluntarily or feel comfortable enough to refuse. Some suggestions as to how to actually build this trust are set out in **Annex 3, "Interviewing: Fundamental Principles and Top Practical Tips"**.
- Clearly explain to the survivor/witness that they have a choice whether or not to speak to practitioners and that this choice can be exercised at any time throughout the process.
- Handle the power of your position as practitioner with care and interact respectfully with the survivor/witness.
- Ensure that the survivor/witness has sufficient time to make a decision. This should take into account the significant and complex consequences of participation for survivors, their families and communities, now and in the future. It should also recognise the challenge of having to assess risk while in a vulnerable situation and within the rapidly changing circumstances of conflict.
- Each time you make contact with the survivor/witness, confirm with the survivor/witness that they have not changed their mind about the use of their statements or the transmission of information to certain third parties.
- Choose a language that is readily understood by the survivor/witness, and in particular provide any forms in the survivor's/witness's own language.
- Use interpreters who are competent in word-for-word interpretation and ensure that they fully understand the meaning and requirements of informed consent.

3. Obtain explicit consent for specific activities

- Consent must be given for using devices such as a tape recorder or video camera during an interview. Ensure that the survivor/witness knows that an audio or video recording is being made.
- Survivors/witnesses need to expressly agree to the transfer of identity, contact and substantive information to third parties, in particular to national or international investigators or organisations, courts and the police.

4. When interviewing children, secure consent appropriately

- All children must give their assent to participating in an inquiry.
- Understand that securing informed consent must be done with the child's specific age, needs and level of understanding in mind. For example, for those under 18, informed

consent is typically obtained from the parents; however, older adolescents are capable of providing informed consent.

- Secure informed consent for children's participation from a parent or guardian.
- Be aware that children may or may not have had the courage to come forward and share the details with their parents or guardians; it is possible that neither the children nor the guardians or parents realise that the child was sexually victimised until the practitioner approaches them.
- Children should be informed of the risks associated with providing information in a careful, age-sensitive manner in order to avoid frightening them unnecessarily. A private discussion with the guardians or parents out of the presence of the child is advisable before commencing any interview of a child.
- Children must be given all possible options and consequences of options by trained staff who can respond to the individual capabilities of the child. Children have the right to be told what rights are available to them under the UN Convention on the Rights of the Child and the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.³⁸ Practitioners should carefully explain to children what happens at each stage of the process and what is expected from them.

6.2 Confidentiality

Confidentiality is an ethical principle in documenting sexual violence that requires practitioners to protect information they gather on sexual violence, and apply that principle throughout the documentation exercise. Conditions of confidentiality are often essential to building trust with the survivor/witness; however, there are limits to confidentiality and these must be clearly explained to the survivor/witness.

In particular, practitioners must:

1. Ensure all members of the team understand and apply the parameters of confidentiality established in the documentation exercise, and do not discuss case details with family, friends or colleagues who are not part of the team.
2. Ensure information protection measures are in place with regards to all identifying information on the survivor/witness and their testimony, as well as any referral options implemented or protective measures put in place (**see section 9, "Storing information"**).
3. Fully and clearly explain to survivors/witnesses the conditions and limits of confidentiality; that is:
 - What confidentiality measures are in place, if any, and how their information will be protected?
 - The limits to confidentiality that can be assured by those gathering information - including the difference between practical measures to keep information confidential and the inability to assure confidentiality as a legal right.

³⁸ UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: resolution adopted by the General Assembly, 29 November 1985.

- How confidentiality may be breached if there arises a risk of suicide or self-harm to the survivor/witness or a child-protection issue.
- The limits to confidentiality, including the specific ways in which his/her information may be disclosed if the survivor/witness consents to the information collected being transferred to third parties, including the police, investigators and courts (**see section 6.1, “Informed consent”**).

6.3 Referrals

Before initiating any documentation process, practitioners should endeavour to identify options for referring survivors/witnesses for assistance and support, and put in place procedures for the referral process itself. The survivors/witnesses they encounter may be in need of immediate medical, psychosocial or security assistance, or they may also find that the process of disclosing information itself is emotionally difficult, traumatic or puts them at additional risk. All survivors and witnesses have a right to know what health, psychological, legal and social services are available to them prior to being interviewed.

If formal services are not available or accessible, practitioners should assess what informal systems are in place that can be of support to the survivor/witness, including family and community support systems. These forms of family and social support must always be considered when identifying child survivors and witnesses.

Practitioners should note that the ability for a survivor/witness to access referral and assistance services may be determined by gender - male and female victims are sometimes treated differently when seeking assistance. Practitioners should also note that if they come into contact with children they believe have been harmed they are required to communicate this to the appropriate authorities.

The types of assistance that may be available to survivors/witnesses are set out in **Annex 5, “Referring Survivors of Sexual Violence for Assistance”**. When seeking to refer survivors and witnesses to further support, practitioners should:

1. Find out if there are any established referral systems in place. These may include:

- national, regional or local gender-based violence referral mechanisms among international and national relief agencies;
- referral pathways for vulnerable children, including informal community leaders and focal people, child-led groups, and specialised trauma support;
- national standard operating procedures for dealing with cases of sexual violence;
- survivor/witness call centres or hotlines; and
- multi-sectoral response services in place in sexual assault referral centres/“one-stop-shops”.

2. Develop links with support services:

- Put in place agreements, standard operating procedures and memoranda of understanding with service providers in order to facilitate efficient referrals.

- Be aware of the logistical, financial and ethical limitations of organisations providing support services to survivors/witnesses and plan accordingly.

3. Assess safety and feasibility of accessing support services:

- Determine what the limitations are on your ability to refer appropriately, and whether this will affect your capacity to interact with the survivors/witnesses. Limitations may include:

Safety limitations:

- Will referral to a support service put survivors/witnesses at further risk? For example, there may be problems where health and security services are supplied by the government or where information is not treated according to standards of confidentiality.
- Will community groups or focal people support survivors and witnesses or pressure them to act against their wishes?

Logistical and financial limitations:

- Are the support services too far or otherwise difficult for survivors/witnesses to access?

Other limitations, such as exclusionary cultural beliefs and discriminatory attitudes:

- Are there any prevailing cultural beliefs, such as discriminatory stereotypes or policies, which prevent referral of a survivor/witness to local services?

4. Implement internal standard operating procedures for referring survivors/witnesses:

- Establish criteria that set out:
 - Who practitioners will actively refer for further support - this may include survivors/witnesses, family members or members of the community at large.
 - Why practitioners will make the referral.
 - What kind of services practitioners will refer individuals to.
- Determine what the policy is on transporting survivors/witnesses.
- Establish how and when the referral will be made - at what stage in the documentation and interviewing process.

5. Communicate clearly with survivors/witnesses:

- Explain clearly to survivors/witnesses the limits of the assistance practitioners can provide.
- Communicate fully the available options to the survivor/witness.
- Explain that assistance is not dependent on provision of testimony, nor must testimony be given in a certain way to guarantee assistance.

6. When dealing with child survivors and witnesses, practitioners must ensure that children are referred to appropriate services

- Understand that the long-term needs of children must be met to ensure a child's physical and emotional safety, regardless of the child's decision to testify. Long-term needs include:
 - Physical: After referrals for emergency medical treatment children can have long-term health problems and will need effective treatment.
 - Psychological: Children may need support to cope with post-traumatic stress and with forming trusting relationships and understanding their feelings.
 - Social: Children may need support to reintegrate into school and help to develop positive relationships.
 - Care arrangements: Children need a secure place to recover if abuse happened in the home.
- As well as the detailed referral options mapped out in [Annex 5, "Referring Survivors of Sexual Violence for Assistance"](#), referral services for children should additionally:
 - be specific to the age and gender of the child victim;
 - provide access to child- and adolescent-friendly spaces; and
 - provide access to community-based child-protection systems, including child-protection committees and child-led groups.
- Make appropriate referrals where children are at risk from reduced or absent social support, including the risk of children becoming isolated from families and experiencing social stigma.
- Establish clear practices on sharing confidential information to ensure that children's best interests are always prioritised.
- Support parents and carers, informing them of services available to help both child and family.

7. Interviewing

Once survivors and other witnesses are identified, interviewing them is the most common and often most useful method of gathering information, but it is also the most likely to negatively impact their well-being, place them at additional risk, and, if not carried out properly, affect the quality and reliability of information provided.

Sometimes, interviewing survivors/witnesses is not necessary nor is it recommended, and practitioners must be able to clearly justify the need to do so.

If carrying out an interview, practitioners must be appropriately trained to conduct it, with particular experience in interviewing survivors/witnesses of sexual violence. When interviewing children in particular practitioners must be trained to respond appropriately to the individual needs and capabilities of the child.

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7.1 Interview settings

1. Consider the location of the interview:

- Conduct the interview in a location that is safe, private, appropriate and comfortable for the survivor/witness.
- Find out if there are locations that are off-limits for reasons of religion, cultural significance, or notions of appropriateness.
- Conduct the interview in a location the survivor/witness can easily access and is not too far, and consider in particular:
 - Does the survivor/witness have the financial means to arrive at the location?
 - Will practitioners provide transport to and from the location? If so, consider how this may compromise the safety and privacy of the interviewee.
 - Will it be unsafe for the survivor/witness to arrive or leave? Will it be dark when the interview concludes?
- Practitioners must avoid:
 - overtly public areas at risk of surveillance;
 - public areas where there is a risk of the interview being overheard;
 - clinics, offices of relief workers, community spaces and women's centres without prior agreement and arrangements being made with the staff and community members running these spaces;
 - interviewing survivors and other witnesses in the presence of other survivors/witnesses, to avoid accounts being affected by each other;
 - interviewing survivors and other witnesses in the presence of others who may influence the interview or intimidate them;
 - interviewing survivors and other witnesses in the presence of children who may become distressed, or who may increase the risk of a breach of confidentiality.

2. Consider whether the survivor/witness will have access to support:

- The survivor/witness may request to be accompanied by someone who can support him or her. This person:
 - Should not be another witness. If they do turn out to be a witness, they must be interviewed separately.
 - Should be someone the interviewee trusts to be discreet and not reveal that contact has been made.
 - Should be present only during breaks, and not during the interview itself.
 - Exceptions should be made for children, who should be allowed close family, or their guardian, present if this will help them.

3. Be familiar with the specific cultural and social nuances that may affect who will conduct the interview:

- Find out about the gender roles, limitations on interacting with married or unmarried women, and interacting with children.

4. Consider the day, and time of the day, that the interview should be conducted in:

- Find out about the routines of the individuals and the community, which times are most convenient for them, as well as any times or days which are off-limits, inconvenient or sacred, and should be respected.

7.2 Interview key checklist

Regardless of the subject matter of the interview, all interviews must include at a minimum the following actions:

- 1 Introduce yourself and your team and explain the roles of each person present and your organisation's mandate and objectives.
- 2 Introduce in particular the interpreter to the survivor/witness, explain their role and make it clear that the interpreter will treat the interview and its contents according to the same confidentiality guidelines as the rest of the team.
- 3 Secure the informed consent of a survivor/witness before initiating the formal interview (**see section 6.1, "Informed consent"**). Practitioners should secure the survivor/witness's informed consent both before and after the interview.
- 4 Explain the types of questions that may be asked of the individual.
- 5 If the survivor/witness consents to the information collected being transferred to third parties, including the police, investigators and courts, clearly explain the limits to confidentiality including the specific ways in which his/her information may be disclosed.
- 6 Clearly explain to the interviewee that they have a choice whether or not to speak to you. It is important that all survivors/witnesses, including children, understand their right to privacy.
- 7 Assess the expectations of the survivor/witness regarding the process, your role, the information they provide and the assistance they may receive. Ensure these expectations are realistic and correct them if they are not.
- 8 Record the full information on the survivor/witness, including name, date of birth, sex and contact details, and nationality, ethnicity and religion where relevant.
 - Where telecommunications are absent or unreliable, and conventional addresses are irregular, known by different names, or non-existent, use alternative means to record the contact information of the survivor/witness, including name of clan, tribe or community, or of an organisation or group that the survivor/witness is in close contact with.
- 9 Ask the survivor/witness about their preferred method of being contacted.

- 10 Consider how to contact and locate the survivor/witness many months, or a year, after interviewing them. For example, with the survivor's consent, record the names of family members, close friends in the community, local church or group - anyone who may be in a position to help practitioners locate the survivor.
- 11 Consider how the survivor/witness can contact the practitioners.

7.3 Types of questions

The **"Evidence Workbook for Documentation of Crimes of Sexual Violence"**, **Annex 1 of this Protocol**, contains examples of questions and answers organised according to the elements of crimes, to assist documenters in gathering sufficient information during the documentation process. The Evidence Workbook contains examples of the types of questions that can be asked to elicit information that may satisfy each element of each crime alleged to have been committed. The text below is only a summary of parts of this workbook, which has been included as an annex to facilitate its use as a practical tool. Practitioners are advised to consult the detailed workbook in full in order to effectively gather evidence of sexual violence as an international crime.

When conducting the interview, the types of questions practitioners must ask of the survivor/witness should elicit information of any one or more of the following:

- (i) **Information to prove that the particular act (e.g. rape, sexual slavery, etc.) was committed.**
- (ii) **Information to prove that that act took place in a context which makes it a crime against humanity, a war crime, or an act of genocide.**
- (iii) **Information to prove that a particular individual was personally criminally responsible for that act (through what mode of liability - i.e. directly or through command/superior responsibility?) .**

(i) Types of questions to gather information about the act

In interviewing survivors/witnesses about the act, practitioners should ask questions that help to prove all the elements of the specific crime.

For example, for the crime of rape, practitioners must ask questions that will elicit information that supports the allegation that:

- 1) The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

And that:

- 2) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of

power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

Examples of questions for (1) and (2):

- (1) If possible, if not too difficult for you, could you please try to describe for me what they did to you? I know this may not be easy, please take your time. (If she says either that they “raped” her one after another or uses some kind of slang or communal terminology which you know to mean rape, you must follow up again to get the factual description of penetration.) When you say they raped you, can you please tell me precisely what they did when raping you? What did they use, what part of your body did they harm?
- (2) Please could you describe for us the circumstances in the surroundings when these events took place? Could you tell us where you were, who was around, what was happening, and describe the surroundings?

(ii) Types of questions to gather information about the context

In order to establish whether the specific crime occurred as a war crime, crime against humanity or act of genocide, practitioners must ask questions that elicit information to satisfy each element of these crimes.

For example, for rape as a *crime against humanity* practitioners must ask questions that will elicit information that supports the allegation that:

- 1) The crimes were committed as part of a *widespread* or *systematic* attack.
- 2) The attack was against any civilian population.
- 3) The direct perpetrator knew of the attack against the civilian population.
- 4) (Jurisdictional element which may or may not be required in the jurisdiction in which practitioners are documenting): The attack was carried out pursuant to or in furtherance of a state or organisational policy to commit such attack.

Examples of questions:

(1) and (2) Can you tell me what else was going on before, during and after the acts you have described? Can you tell me about the people whom you say were attacked - what were they wearing, what were they carrying? Where were they staying and was there any military facility or equipment or personnel of any kind in the vicinity? Can you describe the way in which the attack you speak of took place? What happened first, and what next, and what after that? Were you able to discern any pattern to the attack of any kind? What led you to that conclusion? Did you witness any other incidents involving attacks such as that which you have just described? (S/he provides you with detail of these incidents she witnessed so that you are able to discern who, what, when, where, why, how, and how she knows.)

(iii) Types of questions to gather information about the perpetrator

In order to gather information on the manner in which an individual perpetrator or perpetrators (allegedly) committed the crime – practitioners must ask questions to establish who is allegedly responsible and through what mode of liability – directly or through command/superior responsibility.

For example, to establish direct responsibility, practitioners must ask questions to help determine who the accused is and whether the s/he:

committed (directly, indirectly, or as a co-perpetrator), *ordered*, *solicited*, *induced*, *aided and abetted*, or otherwise contributed to the commission (or attempted commission) of the crime by a group acting with a common purpose.³⁹

Examples of questions: Can you describe those you say were carrying out the acts you have told me about? Can you please tell me about their clothes? Any insignias? Their head/footgear, what they were carrying, any other distinctive aspects to their appearance? Their weapons, their equipment, their vehicles, etc. Did you have occasion to observe someone in a position of authority? Who, what, when, where, why, how, and how do you know, or what led you to conclude that this individual had a position of authority? Did you have occasion to hear this individual (these individuals) say anything? What did they say, to whom did they say it, under what circumstances, and what was the result or reaction to what they said? Did you have occasion to observe the interaction among the individuals in this group? What were you able to observe about their interaction? Did you have occasion to hear them refer to each other, by name, by title/rank, by position, etc.?

7.4 Interviewing techniques

Employing the right techniques, behaviour and attitude while interviewing is critical to making a survivor/witness feel respected, empowered and comfortable to share information. To this end, practitioners should:

1. Be careful and strategic with the manner in which they ask questions:

- Encourage the survivor/witness to narrate his/her story and allow them to provide information in the manner of his/her choosing before asking questions specific to the act of sexual violence.
- Do not ask leading questions.
- Repeat back her/his words whenever possible to make sure you understood – then ask for clarification if any of those words require more explanation. Never change her/his words – that would be leading.
- Always ask “how do you know” or “what led you to that conclusion?”
- Ask additional questions when necessary to support, strengthen, or expand on a statement made.

³⁹ Commission (ICC Statute Article 25 3 (a)) can be either individual/direct physical commission or committing a crime jointly with others. Co-perpetration is based on joint control over the crime, or committing a crime through another person. Ordering is directing another person to commit a crime. Soliciting/inducing is prompting another person to commit a crime. Aiding and abetting is assisting in the commission of the crime in a way which has a substantial effect on the commission of the crime.

- Never assist the survivor/witness with finding the answer or remembering a fact.
- Never assume any fact - even if the last 50 survivors/witnesses identified the location of a particular incident, never assume that the 51st survivor/witness will report the same location. Ask the question of every survivor/witness.
- Never force survivors/witnesses to remember details which they cannot at first remember (this could have severe consequences for survivors/witnesses).
- Take particular care over how the interview ends, especially where the survivor/witness becomes very distressed or disassociates. Try to end the narrative at a point where the survivor/witness feels relatively safe.

2. Behave in a way that respects and empowers the survivor/witness:

- Prioritise the survivor/witness over the information.
- Sit at the same eye level or sit lower than the survivor/witness.
- Consistently give the survivor/witness the power to agree or not to agree, to answer or not to answer, to ask questions and have the answers repeated as many times as necessary, or to stop or continue the interview.
- Remember that informed consent is a process: consistently provide information to ensure that the choices s/he is making before, during and after the interview are based on full information. If you are not sure if s/he understood, ask her/him to explain to you some of this information in her/his own words.
- Show admiration and respect, not pity.
- Always be polite, respectful and attentive. Be especially aware of the cultural expectations of your demeanour in relation to the societal status, role and particular characteristics of the individual you are interviewing.
- Be professional. Take particular care not to appear judgemental, disapproving or disbelieving at any point, including through use of body language or facial expressions you may employ.
- Be flexible with time (remember to leave sufficient time for the interview) and be patient with how survivors/witnesses answer your questions.

3. Make no promises of any kind. Recognise that promises can be made affirmatively, or can be suggested by an absence of clarification. Do not promise (by word or silence), for example:

- Confidentiality (**see section 6.2, "Confidentiality"**).
- To help him/her with provision of any services.
- To bring justice.
- To protect him/her or his/her family.

- To come back and see him/her again - you may agree to a follow-up meeting, but be clear that this is not guaranteed.

4. Consider the language that you use when dealing with a survivor/witness:

- Speak clearly and provide explanations or clarifications if the survivor/witness does not understand the questions.
- Interviewers and interpreters should work together to create a list of the words and euphemisms that are likely to be used by survivors/witnesses to describe sexual violence and sexual organs.

5. When involving an interpreter in the interview:

- Ensure the interpreter looks at and speaks directly to the survivor/witness, and is aware of pitch, tone, pacing and voice inflections.
- Speak to the survivor/witness directly (“what did you say after that?”), and not to the interpreter (“ask him what he said next”).
- Avoid or minimise writing notes while the interpreter translates his or her questions (it is important to observe the survivor’s/witness’ body language and tone of voice).
- Ensure that you are familiar with sexual violence-related words in the interviewee’s language so that you can react appropriately when sexual violence is discussed. Actively listening (e.g. nodding, even when the survivor/witness speaks a different language to the practitioner) will enhance trust and promote disclosure.

6. Be aware that survivors/witnesses will behave and react in distinct and varied ways when telling or retelling their story. There is no “one” way to behave. Do not assume the survivor/witness will behave or react in a particular way:

- Survivors/witnesses may become distressed, have difficulty expressing themselves, or become upset and withdrawn.
- Survivors/witnesses may become angry, expressive, defensive, agitated, refuse to answer certain questions, or speak at length about details that are seemingly irrelevant.
- Survivors/witnesses may be calm, poised, clear, and be able to recollect and relay with accuracy all the events and circumstances surrounding the act.
- Survivors/witnesses may have difficulty recalling minor details and the sequencing of events may change. There is no direct connection between trauma and credibility - nor memory. Each individual is affected differently by trauma; make no assumptions.
- Explain to survivors/witnesses that they may choose to stop the interview at any time if they feel uncomfortable or distressed.

7. Do not assume any of the following:

- The survivor/witness will be ashamed.
- S/he will not want to talk.

- S/he is extremely fragile.
- S/he is traumatised.
- Her/his trauma will impact upon her/his credibility.
- Female survivors/witnesses will only want to talk to female investigators and male survivors/witnesses will only want to talk to male investigators. However, it should always be asked, where the option is available, what the survivor's/witness's preference is.
- The sexual violence was the "worst" part of their experiences from their point of view.
- S/he will have physical injuries.

8. Take particular care when interviewing children

Practitioners documenting sexual violence involving children must prioritise the best interests of the child throughout the documentation process. Practitioners must ensure that children are aware of their right to be treated with dignity and compassion, to privacy, to be informed, to have assistance, to safety, to reparation and to preventable measures. Children must be made aware of their right to be heard and special attention should be given to ensure that the process is explained according to the child's individual capabilities.

When interviewing children, practitioners should be specifically trained to do so, and should interact with children according to the comprehensive guidance set out in IRC, UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for Health and Psychosocial Service Providers in Humanitarian Settings*⁴⁰ and the UNICEF, UNODC, *Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime*.⁴¹

When interviewing children, practitioners should at a minimum:

- Take into account that children may not fully comprehend the sexual nature of certain behaviours and adapt approaches to that effect.
- Rather than qualifying a particular act as rape or assault, stick to the purely descriptive words to describe body parts and acts that occurred.
- Rather than asking "did he hurt you in your private parts?" and behaving with your body language as if you know this is a frightening question to ask or answer, just simply ask the child to share in detail what happened.
- Consider using diagrams or dolls to assist the child in explaining what has happened to her/him.
- Ensure that you do not convey a sense of horror or project any shock onto what the child is saying - what documenters may find shocking may not correspond to the emotional thoughts of the child survivor/witness.
- Sit at the same height as the child; keep your eyes aligned with the child's and do not bend over or look down at the child in order to promote feelings of respect and to minimise intimidation.

40 IRC, UNICEF, *Caring for Child Survivors of Sexual Abuse: Guidelines for Health and Psychosocial Service Providers in Humanitarian Settings*, 2012.

41 UNICEF, UNODC, *Guidelines on Justice Matters Involving Child Victims and Child Witnesses of Crime*, 2005.

“...as survivors we have experienced horrible ordeals at the hands of those that were supposed to protect us – either in or outside of conflict. Participating in the documentation process should not cause further harm. Speaking out to achieve justice should be an empowering experience for survivors.”

Survivors Speak OUT! Network, 2014

- Limit the number of times a child is interviewed and questioned and interview in child-friendly environments at appropriate times, ensuring breaks during testimony.

7.5 Recording interview information

When interviewing survivors/witnesses and taking notes, make sure to do the following at a minimum:

1. Include as much personal data as possible (**see Annex 4, "Template for Personal Data to be Collected from Survivors/Witnesses"**).
2. Keep comments and thoughts and analysis by the interviewer separate from notes of the interview.
3. Take notes in the first person as the survivor/witness says it.
4. Do not summarise or cut down or cut out parts of the survivor/witness information.
5. Read back the statement to the survivor/witness prior to finalising the interview. Although this is time-consuming, it is critical to ensuring the information you have gathered from the witness is as accurate as possible.
6. Note down any other evidence obtained through this survivor/witness - photographs taken of physical evidence, within the statement, and use a numbering system, to enable cross referencing.
7. Keep names and other personal data separate from statements for security reasons.
8. Use a standard system for naming statements given in interviews.
9. Keep each survivor's/witness's evidence separate.
10. Keep other information about the survivor/witness separate - security concerns, living situation, health issues, or other issues relating to the survivor/witness.
11. Keep leads given by the survivor/witness separate - your list of leads is a work product and should be kept in a secure separate place.

8. Additional Sources of Information

8.1 Physical evidence

Physical evidence refers to any physical object or matter that can provide information and help to establish that a crime took place, or provide a link between a crime and its victim or between a crime and its perpetrator.

As a general rule, practitioners should not collect any item of physical evidence unless they have been trained as an investigator or as a health practitioner in the proper collection of forensic evidence. If practitioners choose to collect physical evidence without having undertaken the proper training, they can severely harm a survivor, and may contaminate evidence, making it unusable. That said, in some very limited circumstances, where safe and where it is the only viable option, the collection of physical evidence may be appropriate.

The decision to collect physical evidence should be taken with seriousness and care, and be thought through very carefully.

Practitioners may come across physical evidence of sexual violence:

- on survivors/witnesses themselves, depending on the time frame and nature of injuries; and/or
- at the site where the sexual violence took place.

Depending on the time frame involved and the nature of the injuries, survivors of sexual violence may have physical signs on their bodies in the form of marks or injuries that corroborate their accounts of the attack. They may also have medical consequences of the assault, including internal physical injuries, pregnancy, sexually transmitted diseases and mental trauma. Ideally, a victim should be able to access immediate medical assistance following a sexual assault and a trained clinician should record any injuries and the other health impacts in a confidential medical record which a survivor can access at any time (**see Annex 10, "Sample Sexual Assault Medical Certificate"**).

Before even considering collecting an item of physical evidence, practitioners should firstly:

- take a note of the item(s) that they have found;
- sketch the crime scene;
- take photographs of the item and the crime scene; and
- if possible take video recordings of the item and the crime scene (**see Annex 8, "Guidance on Photographing, Video-Recording and Sketching Crime Scenes, Physical Evidence and Physical Injuries"**).

Practitioners should also, where possible and safe, conduct interviews with any survivors/witnesses near to the crime scene and follow leads to other witnesses of the crime (**see Annex 3, "Interviewing: Fundamental Principles and Top Practical Tips"**). This other information - if collected properly - can be very powerful and may remove the need for the physical evidence. When collecting this other information, practitioners must undertake measures not to touch or impact it in any way, or destroy or move the physical evidence (both within the site itself or to another site entirely).

It is very important to remember that although physical evidence might appear to be the "best" evidence of a crime, this is not necessarily the case. Physical evidence without survivor/witness testimony describing the origin, ownership and use of the item or events leading up to the collection of the item will not be very useful from an evidentiary point of view. While survivor/witness evidence can replace physical evidence, the reverse is not true; physical evidence cannot in most instances replace survivor/witness evidence. In systems which require corroboration of testimonial evidence of sexual violence (e.g. in some national jurisdictions), collection of physical evidence may be a higher priority than in those systems which do not require it (e.g. before the ICC) (**see Annex 9, "Rules of Evidence and Procedure as Tools for Protection of Survivors/Witnesses"**). Increasingly, police and medical practitioners are collaborating in collecting evidence from a crime scene and, in the best of cases, are trained together in best practices for documenting sexual violence crimes in a safe and effective manner that respects the rights of the victims.

Additionally, if practitioners are not criminal investigators they may wish to avoid putting themselves in a position where they are called as witnesses to explain how they came across an item of physical evidence. In some cases, the collection of physical evidence by anyone other than the police is illegal and may carry a penalty.

In the very unusual circumstance where a practitioner decides to collect physical evidence, the “Chain of Custody” principles set out in [Annex 6, “Physical Evidence: Principles on Chain of Custody”](#) should be followed.

However, the practitioner must note that the collection of the physical evidence must at all times be accompanied by the collection of other corroborative and/or explanatory evidence in order for it to be of any use.

(i) Sites of attacks

Practitioners may also have access to, or locate, the sites where crimes of sexual violence took place. Not only is the site of an attack useful as a potential source of valuable physical evidence, but the location and existence of the site in itself can help to establish the presence of alleged perpetrators in the area, and be analysed as part of the pattern of movement of the alleged perpetrators, and other contextual elements or elements of modes of liability. It is important to note that “sites of attack” may include victims’ bodies or the bodies of perpetrators, either living or deceased. Collaboration with medical or forensic science experts may be critical in retrieving such evidence.

Physical evidence found in sites can help to establish:

- that an attack on civilians took place;
- that an act of sexual violence took place;
- the circumstances surrounding the act, including form and/or duration of detention and use of force;
- the identity of the alleged perpetrators;
- the organisation and structure of the perpetrator group; and
- corroboration of survivor/witness testimony (in legal systems that require this).

Evidence found in sites may include:

- clothing, including uniforms or parts of uniforms and clothing that may have been worn by the survivor/witness, bed sheets and blankets;
- weapons, knives, bullets and bullet casings;
- stains, blood, vomit, semen, vaginal fluids and/or faecal matter;
- documentary evidence;
- computers and communication equipment;
- bodies or body parts;

- any evidence that may point to the site being occupied or lived in; and
- evidence of layout and physical descriptions of premises that may match witness testimony.

When dealing with sites of sexual violence, and physical evidence found in those sites, practitioners should not move physical evidence and should instead:

- 1 accurately record the location of the site of sexual violence;
- 2 appoint someone as site manager and establish a log of everyone who visits the site;
- 3 sketch out the scene, including the location of potential physical evidence;
- 4 photograph the scene, including location and details of potential physical evidence; and
- 5 leave the site as they found it.

1. Record the location of the site

Practitioners should accurately record the location of a site where suspected sexual violence took place. This will enable investigators or those with the capacity to effectively document and collect evidence from the site to locate it in future.

Practitioners should:

- record the location using GPS coordinates or map references;
- record any useful features of the area, including landmarks, physical features and the name(s) of the location and nearby communities, villages and towns, in case a GPS or map reference is unavailable or inaccurate; and
- keep this information safe and do not disclose to the broader community the existence or location of the site.

2. Appoint someone as site manager and establish a log of everyone who visits the site

The site manager should:

- establish and keep the log; and
- determine how to secure the site if necessary.

3. Sketch out the scene and location of evidence

Practitioners should sketch out the scene with as much detail as possible given any time, resource and safety constraints.

Practitioners should:

- draw a sketch in the form of an overhead view;
- include scale and measurements in the sketch;

- indicate key features;
- indicate the location and type of possible evidence found; and
- sign and date the sketch.

4. Photograph the scene and evidence

Photographing the scene, the surrounding area, and key features or evidence within the site may prove extremely valuable to future investigators or experts analysing the evidence.

Practitioners should:

- take photographs of the site and its contents without disturbing or removing them;
- take overall, contextual and close-up photographs of and at the site:
- overall photographs should include photographs of the surrounding area, geographical and physical features, buildings and streets;
- contextual photographs should show the relationship between the feature the practitioner is photographing and other objects or features; and
- close-up photographs should show detail of the evidence or feature the practitioner is recording;
- where possible, take the photograph with and without a scale; and
- log photographs as they are taken. Include on the log the name and role of the person taking the photograph; the date, time and location; the type of film; and the camera settings. Give a brief description of each frame.

5. Leave the site as you found it

It is important to take care not to disturb the site, move objects or remove evidence from the site. Doing so can negatively affect the usefulness and relevance of the site and its contents and its evidentiary value. Most of the time, simply accurately recording the evidence you have come across is enough.

Collecting physical evidence from the site should only be done by those with mandate, capacity and skills to do so. Physical evidence should only be removed from sites if:

- practitioners have no means whatsoever of recording the evidence and are aware of its high risk of destruction or interference; and
- practitioners have the skills and capacity to collect evidence and remove it from the scene; and
- practitioners are able to ensure strong documentation of the handling, transportation and storage of the evidence removed, thereby ensuring its proper “Chain of Custody” (see [Annex 6](#), “Physical Evidence: Principles on Chain of Custody”).

8.2 Documentary evidence

Documents, both official and non-official, can be the source of extremely relevant information when documenting and investigating sexual violence. The information found in documents can help to establish the following:

- The pattern, frequency and intensity of reported sexual violence: This can be found in records kept by medical and health personnel and facilities, case management statistics, evidence-based reports, surveys and studies of sexual violence.⁴²
- The identity of perpetrators and superiors: Information found in official military or government records establishing movement and presence of alleged perpetrators, organisation, command structure, and formal and informal authority; records of survivor/witness testimony describing appearance, clothing and significant marks of alleged perpetrators; and records of national and international organisations containing information, profiles and/or movements of alleged perpetrators.
- The existence of a plan or strategy and modes of liability: In copies of orders given, plans made to attack certain areas, and records of communications made between units/sections immediately prior to, during or after the attack.
- Avenues for further investigation: Information found in official or non-official documents may not conclusively determine any facts in themselves but may provide lead information for future investigative efforts.

(i) Types of documents

Types of useful documents which practitioners may find, or already have in their possession, include the following.

Official

- Records and reports linked to the acts of sexual violence and/or the alleged perpetrator(s), including superiors, such as logistics records, duty logs, situation-reports of activities, border records, military plans or strategies, communication records, written directives and orders.
- Other official documents such as medical certificates, notes and reports. However, these types of documents cannot be obtained without the informed consent of survivors, and many health providers will choose not to share these types of documents due to privacy concerns.
- Prisoner lists and police records.

Non-official

- Reports and records by international and national organisations, such as registration and profiling records of displaced populations and monitoring and tracking mechanisms;

⁴² Although these types of data on sexual violence can be useful as background research, or to support a particular allegation or allegations of sexual violence, data collected through surveys, case reports and other assessments do not represent the totality of incidents that have occurred. For further guidance on the dos and don'ts of using data on sexual violence, see UN Action, Reporting and Interpreting Data on Sexual Violence from Conflict-Affected Countries: "Dos And Don'ts", 2008.

incident data; and human rights reports, in particular those containing analysis of violations committed, the impact of such violations, early-warning mechanisms in place, and statements from survivors and other witnesses.

- Notes of reports of crimes received by local traditional and religious leaders, and contemporaneous notes made by survivors or other witnesses.
- Evidence-based surveys, reports, studies and assessments capturing information on the type, frequency and breadth of sexual violence committed, the identity of the alleged perpetrators and superiors, and the impact on and needs identified by survivors/witnesses.
- Photographs, videos and satellite imagery.

When dealing with documentary evidence, practitioners must at a minimum:

1. respect confidentiality;
2. accurately record and copy if possible; and
3. not seize documents.

1. Respect confidentiality

- Any sharing of records, reports, studies and statistics of cases of sexual violence should be done safely and ethically and with respect for applicable survivor/witness confidentiality (**See sections 6.1 and 6.2**).
- Statistical information must be anonymous, but practitioners must assess whether even anonymised information can be linked to a particular group or community, which would place survivors/witnesses at risk.⁴³
- Individual-level information must only be shared with the informed consent of the survivor/witness.

2. Accurately record and copy if possible

- At the very least, make an accurate record describing the contents of the document found or received, the circumstances under which it was found or received, the location where it was found, from whom it was received, and who else was present when the document was found or received.
- If the documentary evidence is provided by a third party, obtain a statement from the third party setting out the circumstances under which the third party obtained the document; when and from whom they received it; whether the document is an original or a copy; an explanation of the meaning or significance of seals, signatures and names in the document; and how the third party knows this information.
- If the document is copied, ensure that the copy is clear and that both the front and the back are copied if necessary, and record how and when it was copied and by whom.

43 See UN Action, Reporting and Interpreting Data on Sexual Violence from Conflict-Affected Countries: "Dos And Don'ts", 2008.

3. Do not seize documents

- Non-investigators should, as a rule, avoid seizing documents from any organisation, government or military body, or individual. Practitioners should put in place procedures that set out what steps to take if they should find themselves in a situation where they are being provided with documentation relevant to their work. Although practitioners should never seize documentation without express authorisation to do so, it may be possible to accept documentation voluntarily handed over, providing that procedures are in place and that the practitioner collects sufficient information relating to the document itself (**see the section “2. Accurately record and copy if possible” above**).
- Storing documents should only be done if the document has been found or delivered to practitioners.
- However, accurate information regarding the contents and location of certain records can be of use to future investigations with the mandate to seize evidence.
- See [Annex 7](#), “**Documentary Evidence: Principles on Chain of Custody**” for more information.

9. Storing Information

If practitioners collect information on sexual violence (e.g. photographs of a crime scene or a document recording their interview with a survivor/witness) it is vital that they store and maintain this information in a manner that does not compromise its integrity or put survivors and witnesses at risk of further harm.

The sensitive nature of sexual violence information and the potential harm that could occur if the information is misused makes it extremely important for anyone collecting this information to store it in a manner that ensures the safety of the survivor/witness, the community and those collecting the information

To store and maintain information on sexual violence in a safe manner, practitioners should:

1. Plan where the information will be stored and who will have control over it. Ideally, practitioners should use a central storage location that is overseen by an information custodian, even if their organisation retains “ownership” of the information.
2. Store information that identifies a survivor/witness separately and securely from the statements and evidence given by that survivor/witness (e.g. an index for matching code numbers with identifying information/names of survivors/witnesses).
3. Where possible, avoid storing public and sensitive information together, in order to ensure better protection of the latter.
4. Organise information so that it can be easily and logically found when subsequently needed.
5. Train staff in the appropriate procedures for: (i) relocating stored information once the files have been closed; and (ii) securing the information during an emergency evacuation.
6. Only carry information that is absolutely necessary when undertaking a journey that might include checkpoints, as practitioners may be asked to disclose or hand over the information they are storing on their person or in their vehicle. Consider the use of technology to store and/or encrypt information.

9.1 Storing documents and other physical information

- If practitioners are storing information in the form of documents or other physical items, they should keep the information in a locked cupboard or safe with limited access. There should be a clear policy on who can access the information and why.
- In emergency settings, it may be necessary to ensure the personal safety of those staff with access to the storage areas.
- Keep a record of the access granted to that cupboard (e.g. the name of the person, the date, the time and the purpose of access should be recorded).
- If the information is perishable (e.g. conventional photography negatives), keep it away from heat and light.
- If the information is part of a set (e.g. a collection of documents or printed photographs), bind it with a note stating what makes up the full set.
- All photographs and video recordings (and other physical information) should be catalogued within an established numbering system, and that numbering system should link to the other corroborative evidence in relation to this particular photograph/video (e.g. survivor/witness evidence).
- If audio or video recordings have been made for purposes other than simply recording an interview, the person responsible must be able to justify their continued storage and make provision for preserving the confidentiality of those individuals featured in the recordings, especially if the recordings are going to be stored for any length of time.

9.2 Storing digital information

- The advantages of using a digital storage system (where this is available) rather than a manual storage system are that a digital system does not use as much physical space, usually facilitates easy searching and analysis, is usually easier to update and generate reports from and can be protected to some extent. However, the disadvantages of a digital storage system are that it can be more time-consuming to input data, access is dependent upon an electricity supply and sometimes web access, and the system is susceptible to hacking and viruses. Additionally, if information is transmitted via mobile phones or via the internet, there is a risk of authorities compelling mobile or internet service providers to hand over sensitive information.
- Before starting the collection of information that will be stored digitally, a risk assessment should be conducted and a digital security protocol should be put in place. Information management and digital security specialists should be consulted for this purpose.
- All digital information should be password protected (and the access to that password limited) and encrypted. Where possible, practitioners should take additional measures to protect sensitive information by using more advanced procedures and methods such as encrypting drives and ensuring safe transmission of digital information.⁴⁴

⁴⁴ For additional guidance on data protection, see ICRC, *Professional Standards for Protection Work*, 2013, revised edition, in particular Chapter 6 on managing sensitive information.

- In emergency settings, it may be necessary to ensure the personal safety of those staff with access to those passwords.
- If the information is digital, transfer the content to a computer, burn a WORM (Write Once, Read Many) CD or store the information on a memory key. Two copies of it should be made.
- Take appropriate precautions such as anti-virus software and backing up database files.
- Consider using advanced data collection tools, such as GPS cameras, mobile documentation applications that collect a range of metadata (i.e. information about when, where and how the data was collected), and mobile documentation applications that by default encrypt all data.
- Consider using mobile data collection applications that do not store copies of the data on the mobile phone, thus minimising the risk of sensitive data exposure in case of loss, theft or confiscation of the device. An additional added value of using apps that transmit data to a secure remote server is the preservation of "Chain of Custody".
- It may be appropriate to use cloud storage data solutions when securing information. The benefits of such systems include resistance to physical damage to storage devices, remote accessibility and redundancy. If using a commercial provider of such services, extreme caution must be taken to ensure data integrity, ownership and exclusivity of data access.
- Have an edit-trail facility on the database so that any alterations to a note or record are logged to a particular user.

9.3 Storing medico-legal/forensic evidence

- Only those specifically trained in the collection of medico-legal evidence (e.g. blood, semen or soiled clothing) should do so. If practitioners have not been trained in collection of medico-legal/forensic evidence they may cause more harm than good by collecting it (**see Annex 6, "Physical Evidence: Principles on Chain of Custody" and Annex 10, "Sample Sexual Assault Medical Certificate"**).
- Forensic medical examinations/collection of medico-legal evidence should be done at the same time as the provision of medical care - and ideally by the same person (**see Annex 10, "Sample Sexual Assault Medical Certificate"**).
- If the evidence is biological (e.g. blood, semen or clothing) and practitioners are trained to collect it, this information should be sealed in separate containers and taken to a laboratory immediately after collection, as it is likely that it will need to be refrigerated or frozen.
- For further guidance on collecting medical forensic evidence, practitioners should consult the World Health Organization Guidelines on Clinical Management of Survivors of Rape: A Guide to the Development of Protocols for Use in Refugee and Internally Displaced Person Situations, 2004; and PHR, OHCHR, Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1999.



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I want to tell the world that we need
peace - stop the war

We need to make sure women and
children are protected

People who rape need to be arrested.

Felicite (not her real name, DRC)

Annex 1

Evidence Workbook for Documentation of Crimes of Sexual Violence: A tool to assist investigators in filling evidentiary gaps

Warning: Before using this framework to organise your documentation exercise, it is essential that you do the following:

- A. Carefully consider whether you are the right person to gather this information effectively and safely.**
- B. Carefully consider all aspects of security risks for the survivor, her/his information, her/his family and community, and for the documenting team.**
- C. Consider the fundamental principles, as summarised in Annex 3.**

Introduction to the Evidence Workbook:

The Evidence Workbook is a tool that has been suggested as a resource by those who gather evidence of international crimes. The Evidence Workbook can assist practitioners in ensuring that, as they investigate and document alleged crimes, no gaps are left either at the level of the individual interview/document or at the level of overall analysis of the case. The contents of this workbook are mainly based on the definitions of crimes and the elements of the crimes, as set out in the Rome Statute and Elements of Crimes of the International Criminal Court (ICC). That said, the structure is relevant to all manner of evidence and can be adapted to the relevant context. The way it is structured, the Evidence Workbook can be revised to reflect the definitions and elements of any violations, in whichever jurisdiction the crimes are being investigated. This tool is meant to help maximise the efficiency of the evidence-gathering process, to protect witnesses from repeated interviews, to facilitate assessment of leads, and to reduce the need to return to the field in order to gather additional evidence to fill in gaps. Human rights documenters can utilise the Evidence Workbook as a tool, to organise the information they collect - adapting it as necessary and gathering evidence of state responsibility, rather than individual responsibility. By working within the structure of the workbook and filling it with as much detailed evidence as possible, the evidence gathered by human rights documenters will be more broadly useful, should there ultimately be a justice or transitional justice mechanism, whether national or international.

The Evidence Workbook is divided into three parts, as follows.

Part A: The elements of the specific crime

What happened (what act was committed)?

WHAT HAPPENED? (precisely and in detail, who, what, when, where, why, how, and how do you know?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/ INFORMATION which describes what happened
What evidence/information do you need to satisfy Element 1 of this crime?	What questions can you ask to get evidence to satisfy Element 1?	What is an example of information that you might obtain which would satisfy Element 1?
What evidence/information do you need to satisfy Element 2 of this crime?	What questions can you ask to get evidence to satisfy Element 2?	What is an example of information that you might obtain which would satisfy Element 2?

Part B: The elements of the category of crime (war crimes, crimes against humanity or genocide)

What were the circumstances in which this act was committed?

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/ INFORMATION which could help prove that this act constituted a crime against humanity, a war crime or an act of genocide
What evidence/information do you need to satisfy Element 1 of the category of crime (i.e. war crimes, crimes against humanity or genocide)?	What questions can you ask to obtain evidence to satisfy Element 1 of the category of crime?	What is an example of information that you might obtain which would satisfy Element 1 of the category of crime?

Part C: Mode of liability**How did the alleged perpetrator commit this act?**

WHO MAY BE RESPONSIBLE, and HOW?	Examples of questions which could elicit information about who may be responsible	Examples of EVIDENCE/ INFORMATION which could help prove that this individual or these individuals may be responsible for these acts in this manner
What evidence/information do you need to satisfy Element 1 of the mode of liability (for example, ordering or command responsibility)?	What is an example of questions that you can pose to obtain evidence to satisfy Element 1 of the mode of liability?	What is an example of evidence you might obtain which might satisfy Element 1 of the mode of liability?

There follow charts for Parts A, B and C of the documentation exercise. These contain detailed examples of how to ensure that all areas of information are covered in the evidence-gathering process.

Important note: These questions - as set out in all three parts - are not intended to serve as a template for interviewing. If used in that manner, they may lead the interviewer to gather incomplete or inaccurate information; or even worse, they could cause damage to the final evidentiary product or harm to the witness. No template can be prepared which would cover all aspects of interviewing witnesses. These questions are examples, setting out simply a few possible ways in which the evidence sought could be elicited from a witness. Interviewers are strongly advised to use this workbook as a guide to ensure that all areas of information required are addressed, rather than as a template for an interview, and to ensure that they apply interviewing skills that have been acquired through training and that adhere to the principles set out in this Protocol. It is always useful to keep in mind the “TED” principle: “Tell me, Explain to me, Describe for me.” This principle is applicable to any interview - including interviews that relate to evidence of sexual and gender-based violence.

The factual scenarios set out in the third column are illustrations of the kind of evidence which might go to support that particular element of that crime.

Part A: What happened (what act was committed)?**Torture⁴⁵****Elements:**

- 1) The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

⁴⁵ In some domestic jurisdictions, torture can be prosecuted as a standalone crime (i.e. not only under the rubric of war crimes, crimes against humanity or genocide.) Practitioners in such jurisdictions will need to adapt the elements they are striving to satisfy according to the applicable domestic provisions.

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- 2) Such person or persons were in the custody or under the control of the perpetrator.
- 3) Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
- 4) The perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind (applies only to torture as a war crime).

WHAT HAPPENED? (Have you obtained information which supports the allegation that torture was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons (the first element)?</p>	<p>Can you tell me, please, precisely what happened? If you would be able to describe in detail what he did right after, as you said, he threw you down onto the floor on a pile of rags, please do so? Can you tell me what you were feeling when this was being done?</p>	<p>Testimonial:⁴⁶ “He dragged me into that corner of the room and threw me roughly onto the floor onto a pile of rags. At that point I was in sheer terror, knowing very well what was going to happen, and being so afraid that I would lose my baby as I was only four months pregnant. I was shaking with fear and began vomiting. He threw rags over my face to cover the vomit, ripped off my clothes from the waist down, kicked me to turn me over to my side with his foot, took out his penis, and put his penis into my anus. The pain was unbearable and my gagging did not stop although my stomach was empty. It was God who protected my baby, and my baby survived.”⁴⁷</p> <p>Alternate testimony: “They made us gather in the courtyard every day, and the commander would walk up and down looking at us and grabbing at us before choosing one girl. She would tell us that it was that girl’s</p>

46 Three categories of evidence are indicated as examples in some of the Evidence Workbook, but not in all sections. For each and every element of every crime which must be proved, there can be testimonial, documentary and photographic/video evidence. The more evidence the better, but an absence of documentary or photographic/video evidence or an absence of corroborative testimonial evidence does not necessarily mean that the testimonial evidence of a survivor or eyewitness will be insufficient as a basis on which to allege the commission of a particular violation or crime. In fact, testimonial evidence is often the only available evidence of a crime of sexual violence, and international criminal cases have been brought (and convictions obtained) for crimes of sexual violence based purely upon testimonial evidence from survivors or eyewitnesses. In international criminal practice, for crimes of sexual violence, no corroboration of the survivor’s testimony is required, as a general rule of procedure and evidence. However, corroborative evidence is often required under domestic legislation. Investigators should be aware that these various categories of evidence exist and should seek corroboration wherever possible, to allow, as the case may be, for prosecution at the domestic level where most cases should and will be prosecuted. However, it is advisable to avoid making determinations about the strength of the evidence based purely on the absence of documentary, photographic/video, or corroborative witness evidence of the violation.

47 Note that the evidence examples are not intended to be all from the same witness, even within the same crime elements. The intention is to give the reader as many possibilities as possible regarding possible factual scenarios which could satisfy a particular element.

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WHAT HAPPENED? (Have you obtained information which supports the allegation that torture was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		<p>turn today, but it would be one of us tomorrow. She would make the person she had chosen take all her clothes off and then knock her to the ground and let the soldiers violate her in front of everyone. If we tried to look away or hide our faces the guards would slap or beat us.”⁴⁸</p> <p>Alternate testimony: “They took me away to a room on the second floor for questioning every day. They would tie me to a chair up against the wall, and then tie a rope around my penis and testicles. The other end of the rope was attached to the door handle, and if I gave them an answer they didn’t like, they would slam the door. I was in terrible pain, but if I complained or if they saw me flinch they would tug hard on the rope or kick me in the genitals. One day they tied the rope to a cement block and threatened to drop it out the window. They were taking bets on whether the weight would be enough to rip off my penis or if I would die from the blood loss. They burned me with hot knives and threatened to ‘make me a woman’ if I did not tell them what they wanted.”</p> <p>Documentary: The witness provides you with medical documents prepared by physicians who are trained in ensuring coordination between medical and legal professionals working together to help survivors. These medical documents set out in detail the medical condition of the witness on the day after the events she described, as well as information</p>

⁴⁸ Being forced to witness someone else being raped or sexually assaulted has been found to cause enough mental pain or suffering that it can constitute an act of torture by itself. In addition, being forced to carry out a sexual act in public (such as two prisoners who are forced to commit fellatio on each other in front of guards) or being raped or sexually assaulted in public or in front of family members can also constitute an act of torture.

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WHAT HAPPENED? (Have you obtained information which supports the allegation that torture was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/ INFORMATION which describes what happened
		<p>about what she reported had caused her injuries. The medical reports describe, among other injuries, broken ribs and bruising on her side, and tears in the lining of her anus.</p> <p>Photographic/video: The witness provides you with photographs of injuries. Physical: You manage to obtain access to the crime scene. You take careful photographs of the crime scene. If your mandate permits, and if you have the skills and means to do so, you collect some remaining rags, prepare the documents associated with physical evidence, and store that evidence safely and appropriately for use in a future criminal proceeding.⁴⁹</p>
<p>What facts help prove that such person (or persons) was in the custody or under the control of the perpetrator (the second element of torture)?</p>	<p>What were the circumstances under which you were taken to that place? Who were the perpetrators? Can you tell me if there was anyone else in the room when this was taking place? Can you describe what the person who did this to you was holding, if anything? What did he say to you? Who else was there, if anyone? What were they holding? What were they wearing? What did they say to you? Could you have left? Why, or why not?</p>	<p>Testimonial: “He was there with his friend, another guard, who stood at the door pushing people away who came to see what the screaming was about. Both of them were armed, and the one who was assaulting me put his weapon next to the pile of rags while he assaulted me. The one who was assaulting me told me that if I tried to run away he would beat me until my baby died. He told me that what he was doing to me would show the men in my community what they can expect if they do not leave the area.”</p>

49 Please note that it is not generally advisable for practitioners without a mandate to collect physical evidence. Furthermore, even with a mandate, without experience in collecting and storing physical evidence the collection of such evidence is not advisable. In very rare circumstances - such as if there is no other possibility of the physical evidence being collected and if there is a well-founded fear that the evidence might be tampered with or destroyed - practitioners may face a situation where they decide to collect physical evidence. In such cases, those practitioners are urged to follow the guidelines on collection of physical evidence, as set out in the Protocol, and to study beyond those provisions, as well to ensure that the evidence is safeguarded.

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WHAT HAPPENED? (Have you obtained information which supports the allegation that torture was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/ INFORMATION which describes what happened
What facts help prove that such pain and suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions (the third element of torture)?	What were the circumstances under which you were taken to that place? Who were the perpetrators? What group/authority structure did they belong to and how do you know? ⁵⁰ Did they ever explain why you were being held and mistreated?	Testimonial: "There was an attack on our village and all the men were rounded up and taken away. At the time we did not know where they were being taken, but later we learned that most of them had been shot and thrown into the river. The women and teenage girls were put into the school, where we were kept under armed guard for weeks. The elderly and other children were either left in their homes or put into the school with the women and teenage girls; it was in this school that the events I have described took place."

Rape**Elements:**

- 3) The perpetrator invaded⁵¹ the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
- 4) The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such a person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.

50 Note that many of the examples of questions that are set out in this Workbook presume that other questions have been asked previously in the course of the interview.

51 The Elements of Crimes of the Rome Statute indicate that the "concept of 'invasion' is intended to be broad enough to be gender-neutral".

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1

WHAT HAPPENED? (Have you obtained information which supports the allegation that rape was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body (the first element of rape)?⁵²</p>	<p>If possible, if not too difficult for you, could you please try to describe for me what they did to you? I know this may not be easy, please take your time. (If she either says that they “raped” her one after another or uses some kind of slang or communal terminology which you know to mean rape, you must follow up again to get the factual description of penetration.) When you say they raped you, can you please tell me precisely what they did when raping you? What did they use, what part of your body did they harm?</p>	<p>Testimonial: “He forced me to my knees and instructed me to give him fellatio. He pushed his penis so far into my mouth that I gagged, and each time I gagged he slapped me.”</p> <p>Alternate testimony: “When the men came to our village, they told my family to gather in the back of the house where we did the cooking. They hit my mother on the back of the head and shoulder with the ends of their guns until she fell to the floor. They did the same with my sister. Then they grabbed me and my father and told us to remove our clothes and lie on top of them - me on top of my mother and my father on top of my sister. The rest of the children were standing watching us and crying. Then they stood behind us with their guns against the back of our necks and told us that we had to prove we were real men and not enemies by having sex with the women. We were all crying and pleading, but whenever we refused they hit us and beat us and told us they would shoot us on the ground where we lay if we did not do as they told us. My father said that he would rather die than do that to his own daughter and tried to fight the men, so they shot him on top of my sister. I did not know if she was also killed, but she was not moving or speaking. They grabbed my youngest brother and held a gun to his head and said they would shoot him unless I did what they told me to do, so I did it because I did not want any more of my</p>

52 The ICC has made it clear that the element of penetration does not have to be carried out by the perpetrator him/herself. It can also include situations where the perpetrator is the person who is being penetrated, or where another person is forced to carry out the penetration of the victim.

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1

WHAT HAPPENED? (Have you obtained information which supports the allegation that rape was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		family to be killed. Afterwards I wished that they had killed me, because I could not live with my mother or family after what I had done. God forgive me. I do not know what kind of a person could do that to their own mother, but I had no other choice."
<p>What facts help prove that the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such a person or another person, or by taking advantage of a coercive environment, or that the invasion was committed against a person incapable of giving genuine consent (the second element of rape)?⁵³</p>	<p>Please could you describe for us the circumstances in which these events took place? Could you tell us where you were, who was around, what was happening, and describe the surroundings?</p>	<p>Testimonial: "The armed men had entered our village two nights previously. Our men and boys were hiding in the woods, so only women, the elderly and children were in the village. The armed men had been screaming and firing into the air, setting houses ablaze and looting. Many villagers gathered together in one room of their house to hide together, terrified of what was to come. At night we tried to put together whatever food or scraps we could find, and we would sneak out for water in small groups. That day, five armed men entered the house where I was hiding with my sisters and my mother. They took three of us, the oldest girls, and my mother screamed. mother screamed. They kicked her hard and she fell to the floor, they fired a shot into the ceiling, and they told her that if she uttered a word they would kill all three of us in front of her. They took us away and put us into the back of a truck under armed guard. They took us to a hut in the woods, and we were kept there overnight. Three of them at a time took each of us into another room, where there was a filthy mattress on the floor, while the other two guarded the remaining two girls. It seemed as if the more we screamed the more they wanted to harm us."</p>

53 The ICC has held in the Katanga case that proving any one of these elements is sufficient to prove that an act of penetration constituted the crime of rape. It is not necessary to prove the absence of consent by the victim, except in circumstances where the perpetrator committed the act against someone "incapable of giving genuine consent" due to age, incapacity or other circumstances.

Sexual slavery⁵⁴**Elements:**

- 1) The perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such person or persons, or by imposing on them similar deprivation of liberty.
- 2) The perpetrator caused such person or persons to engage in one or more acts of a sexual nature.

WHAT HAPPENED? (Have you obtained information which supports the allegation that slavery was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove the first element of sexual slavery (perpetrator exercised powers attaching to the right of ownership)?⁵⁵</p>	<p>Can you tell me what the perpetrator said, if anything, about what your relationship to him was? How did he consider you in terms of himself? How did he introduce you to others? Did he give you the opportunity to object or choose - and if so, under what circumstances? If the perpetrator did not say anything specific, can you describe what caused you to feel you had no choice?</p> <p>Did anyone else say something about your relationship to the perpetrator?</p>	<p>Testimonial: “My captor often said I could not do anything without him deciding I could do it - he said he owned me. He treated me as if he owned me by telling me what to do all the time and threatening me that if I did not do what he told me to do, he would harm my family.”</p> <p>Alternate testimony: “Two men came to the apartment where we were being held. I was told to go to the kitchen with another girl so our captor could talk to these men. We crept out of the kitchen and hid in the hallway in order to listen to their conversation. We heard our captor agree to sell us to the men for 50 dollars each and a truckload of washing powder. When we heard the men stand up to leave, we rushed back to the kitchen and hid there. The next day, the men came back to the apartment with a car and took me and the other girl away. When they put us in the car, we heard them laughing about the fact that we had been sold for such a small amount of money and some washing powder.”</p>

⁵⁴ The crime of sexual slavery is applicable to trafficking in human beings.

⁵⁵ The ICC provided a more detailed definition of this element of the crime of sexual slavery in the Katanga trial judgement. The Court indicated that it is necessary to take a case-by-case approach when analysing the type of acts which would satisfy this element. For deprivation of liberty, the Court noted that facts relating to detention or captivity (including its duration) would be relevant, as would information that relates to efforts to limit freedom of movement or freedom of choice, and information on measures to prevent or discourage attempts to escape. Facts that show the use of threats, force or other forms of physical or mental coercion are relevant to proving this element, as are facts that show the exercise of psychological pressure, the vulnerability of the victim or an obligation to engage in forced labour. The Court also emphasised that the right of ownership over others does not automatically equate to a commercial transaction - the socio-economic conditions under which the powers of ownership are exercised is a relevant factor, but the fundamental nature of servitude comes down to the inability of the victim to amend or modify his/her situation.

WHAT HAPPENED? (Have you obtained information which supports the allegation that slavery was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
What facts help prove the second element of sexual slavery (sexual act)?	You said he “took you out” almost every night. Can you tell us in detail what you mean by that? Where did he take you out from? What did he do to you? Could you please describe specifically what he did? What did he make you do?	Testimonial: He would make me undress until I was completely naked and he would insult me, calling me [an ethnic slur] and touching me all over my body.”

Forced conjugation or forced marriage

Elements:

- 1) The imposition of a forced conjugal association by the perpetrator over the victim
- 2) by threat or physical force arising from the perpetrator’s words or other conduct.⁵⁶

⁵⁶ The Rome Statute does not include the crime of forced marriage or forced conjugation. However, forced marriage was adjudicated to be an inhumane act as a crime against humanity in the context of the Special Court for Sierra Leone. The crime was defined in the Armed Forces Revolutionary Council (AFRC) Trial Judgement, Partly Dissenting Opinion of Justice Doherty, paragraph 53. Justice Doherty stated in paragraph 36 of her Partly Dissenting Opinion: “the abduction of girls and their coercion into marital unions, as described by the Prosecution expert and by witnesses, is not the same nor comparable to arranged or traditional marriages”. In paragraphs 46-51 she states: “The evidence shows ‘forced marriage’ in the context of the armed conflict of Sierra Leone involved the forceful abduction of girls and women from their homes or other places of refuge and their detention with the AFRC troops as they moved through the various Districts. The girls and women, without their consent, were taken as ‘wives’ by individual rebels. Girls and women forced into marriage benefited from their ‘marriage’ insofar as their ownership by a particular rebel may have offered them some protection from rape and other forms of abuse by the other rebels. However, given the overwhelming environment of coercion, I consider this to be a relative benefit or a means of survival, which cannot be understood as indicative of consent or the exercise of autonomous power within the relationship by the victims and which in no way diminishes the severity of the acts. Women and girls subjected to ‘forced marriage’ are often very young, and thus particularly vulnerable. Their vulnerability is heightened by their removal from their families and placement in a context of physical and sexual violence. Serious psychological and moral injury follows ‘forced marriage’. Women and girls are forced to associate with and in some cases live together with men whom they may fear or despise. Further, the label ‘wife’ may stigmatise the victims and lead to their rejection by their families and community, negatively impacting their ability to reintegrate into society and thereby prolonging their mental trauma. On the evidence I find that the intention of the ‘husband’ was to oblige the victim to work and care for him and his property, to fulfil his sexual needs, remain faithful and loyal to him and to bear children if the ‘wife’ became pregnant. In return, he would protect the ‘wife’ from rape by other men, give her food when food was available and, depending on his status, confer a corresponding status upon the wife. In effect, these are rights and obligations of the type referred to by the Defence expert as being involved in traditional marriages but in there is no agreement of the family or kin of the ‘wife’ and the status is forced by violence or coercion upon the female partner. I would therefore distinguish the phenomenon from sexual slavery. The evidence of witnesses shows that victims had no protection from rape and were available to any rebel but were not stigmatised as ‘rebel wives’ or ‘bush wives’. Additionally, I am satisfied on the basis of the testimony of the Prosecution expert witness that the use of the term ‘wife’ is indicative of forced marital status which had lasting and serious impacts on the victims. I find the label of ‘wife’ to a rebel caused mental trauma, stigmatised the victims and negatively impacted their ability to reintegrate into their communities. I would therefore have found that the actus reus and mens rea of an Other Inhumane Act, Forced Marriage, are satisfied with regards to the foregoing evidence.”

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WHAT HAPPENED? (Have you obtained information which supports the allegation that forced marriage or forced conjugation was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
What information would demonstrate that a conjugal association was imposed on the victim (the first element of forced marriage or forced conjugation)?	What did he call you? What obligations did you have toward him? What were you meant to do each day and night? How did other people treat you or behave toward you - other fighters, the other detainees/ captives, other community members? Can you describe what your position was considered to be by your captor? What was expected of you?	Testimonial: "I was abducted from my family in the middle of the night. I was brought to a location deep in the forest where the rebels were based. I was handed over to Captain John and told that I will be his wife. He had a high position so I was safer than the other women who were not rebel 'wives', who were gang raped after every battle. Captain John did whatever he wanted to me sexually whenever he wanted; but no one else was allowed to lay a hand on me. I also had enough food, while many others did not. I was held by Captain John for over 1.5 years and I gave birth to his child, a boy, who is now 10. After the war was over, no one in my family would speak to me. I was exiled with my son. I have been on my own ever since."
What information would demonstrate that the act was committed by threat or physical force arising from the perpetrator's words or other conduct (the second element of forced marriage or forced conjugation)?	Can you tell me the circumstances under which you were captured? Can you describe what your captor said? Were you free to leave? Why or why not?	Testimonial: "When he came for me he was with five other armed men and they were very aggressive. They fired shots through the window and smashed through the house with machetes. They looked around at my family and pointed to me, saying, 'She's a good one.' They took me to the woods and I had no idea where I was. The men around me were armed and at least some of them were around all the time. When Captain John instructed me to do something - whether it was cooking, cleaning, serving, shining shoes or the horrible things he did to me at night - I could not refuse. One time I had malaria and had a very high fever and I was fainting if I stood up - he called me to come to him and when I did not come he came and beat me so bad I could not move for days."

Enforced prostitution**Elements:**

- 1) The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
- 2) The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature.

WHAT HAPPENED? (Have you obtained information which supports the allegation that enforced prostitution was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent (the first element of enforced prostitution)?</p>	<p>Can you, if possible, please tell me specifically what happened? Could you clarify specifically what you mean when you say, "He forced them to assault each other"? Could you tell us specifically what he did, using what? What did he instruct should be done, and by whom to whom? Can you tell me about the circumstances, where did this take place? What was the place like? Where were you when you saw this taking place? What else did you see? Who else was there? Can you describe the space? Were there windows and doors? Where is this place within the village/town? What is it near? Who was inside and around the location?</p>	<p>Testimonial: "I was in my village and all of us had gathered in the school. As a teacher, I knew all the hiding places in the school and I tried to make sure everyone was safe. But I was powerless against the militiamen who entered the school. They stormed from room to room yelling insults such as 'You are all worms, look at all the worms in this place!' Before I knew it, the militiamen burst into the room where we were hiding. One of them picked all the teenage young girls and ordered them to line up against the wall. The other militiamen were laughing. They were talking about which pair would be the most valuable.</p> <p>After what seemed like ages, with everyone screaming and crying and with the militiamen pointing their weapons at all of us to silence us, a huge militiamen who was clearly someone with authority - everyone else stood and saluted when he came in and he was barking instructions to all the others - strode proudly into the room with a grin on his face. 'Time for the circus of worms', he said. He snapped his fingers and some other militiamen escorted into the room the boys who had earlier been taken out of the room. All of them in their teens as</p>

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WHAT HAPPENED? (Have you obtained information which supports the allegation that enforced prostitution was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
	<p>Can you describe what these people were wearing? Did they wear anything on their heads? What kind of shoes did they wear? Did you have occasion to see any vehicles? Can you describe the vehicles? Did you have occasion to see any of the weapons? Were you able to hear anything they said to each other? Can you tell us all that you heard? Who specifically said that?</p>	<p>well. He said, 'Let the bargaining begin!' He then started asking his men which couple would bring the most wealth. His men put the girls and the boys two by two in front of him, and some girls with girls and boys with boys. The militiamen were all laughing all around. The leader pointed to two boys and said 'These two are the golden pair.' He told everyone else to make a circle; his militiamen were in a circle with weapons, and the inner circle had the boys and girls there. He snapped his fingers and one of his militiamen went over to the two boys and pulled down their trousers right there in front of everyone. The boys' mothers were both in the room, and one of their sisters was there as well. Everyone who screamed or cried was smacked to the floor and threatened with death. He ordered one boy to put the penis of the other boy in his mouth and to suck."</p>
<p>What facts help prove that the perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for, or in connection with, the acts of a sexual nature (the second element of enforced prostitution)?</p>	<p>The questions above relating to the first element are likely to elicit answers to this element as well, provided the investigator follows up carefully.)</p>	<p>Testimonial: "The longer they did this, the more money they were worth - so the militiamen were all getting louder and louder, yelling 'Keep going, keep going!' When the boy who was on his knees fell over to the ground - at the time I did not know if he had fainted or not - the leader said, 'Worm to worm, you know what to do!!' The other boy was pushed by two militiamen onto the back of the boy who had fallen to the ground and he was made to put his penis into the anus of the boy on the floor. They were all crying and screaming, but the boy on the floor was still. The leader said the final amount was 500 and that the golden boys had done their job. They were kicked to the corner of the room and another two were chosen to be worth silver. This continued until all the girls and the boys had been assaulted, for hours and hours."</p>

Forced pregnancy**Elements:**

- 1) The perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

WHAT HAPPENED? (Have you obtained information which supports the allegation that forced pregnancy was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator confined one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law (the first element of forced pregnancy)?</p>	<p>Can you tell me when you became pregnant? Did the perpetrators say anything about your pregnancy? If so, what did they say?</p>	<p>Testimonial: “It is so difficult to talk about this, but I will try. The time I described earlier to you, when I was harmed by that militiaman, while he was raping me he kept saying, ‘I’m going to make a light-skinned baby!’ I cried and cried because I knew that there was really a chance I would fall pregnant, especially because he did this to me so many times over the course of three days, I was in such pain, but he paid no heed to my screams. He kept saying, ‘light baby, light baby’. I was not surprised when my next menstrual period did not come. He kept me there until I gave birth because he was afraid I would try to abort the baby. I have never told anyone this, and I love my child and wish to protect her. She does not know who her biological father is, and I do not plan to tell her until she is 18. If you cannot guarantee that my daughter will never find out, I will not allow you to keep the notes of our meeting.”</p> <p>Alternate testimony: “When I was 14 I was recruited as a child soldier. I was sent out into the bush to serve with my assigned unit. The commander was a woman, and as soon as we arrived she came out to inspect us. She noticed me immediately and said, ‘This one is mine.’ She sent the rest of</p>

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WHAT HAPPENED? (Have you obtained information which supports the allegation that forced pregnancy was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		<p>the unit off with one of the sergeants. She told me that I was going to be her bodyguard and that I had to do whatever she said - cooking, cleaning, fighting, anything. She came to me in the night and climbed on top of me and made me do things to her. She said if I did not do what she told me to do, if I did not give her pleasure, then she would send me to the front line with no weapon and leave me to be killed. This happened every night for weeks and weeks. One day she told me that she had decided that she wanted a baby, and that it was my job to give her a baby. She made me have sex with her many times a day and told me that if she did not get pregnant she would know it was my fault and would have me beaten or killed. After some weeks she realised that she was pregnant and told me that I had to stay with her in the camp to look after her and make sure the baby was healthy. I was so upset that this woman was going to have my baby when I did not want it, but she was the commander and there was nothing I could do. She made me stay with her for months, but before the baby was born she sent me away. I do not know if the child was a boy or a girl or if they survived, but I carry around a pain in my heart to think that a child of mine is under that woman's control and does not even know me."</p>

Enforced sterilisation**Elements:**

- 1) The perpetrator deprived one or more persons of biological reproductive capacity.
- 2) The conduct was neither justified by the medical or hospital treatment of the person or persons concerned, nor carried out with their genuine consent.

WHAT HAPPENED? (Have you obtained information which supports the allegation that enforced sterilisation was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator deprived one or more persons of biological reproductive capacity (the first element of enforced sterilisation)?</p>	<p>During the course of the events you have been telling me about, can you tell me if you were ever told to remove your clothes? You have explained to me that due to the events which took place in your community five years ago, you and your wife have not been able to have children. Can you explain to me what it was that caused this?</p>	<p>Testimonial: “What happened is that the militiamen came through all the villages and abducted me and all the men and boys from our village who had not managed to flee. We were detained and taken to an isolated location in the forest. There were numerous militiamen there, and we were taken out of the truck one by one. When it came to my turn, they screamed at me and dragged me off the truck. They took me over to an area by some trees which was covered in blood everywhere, with a fire burning and machetes all around covered in blood. I saw my male neighbours a short distance away and heard them screaming, while they were surrounded by militiamen and some other men in white coats like they worked in a laboratory. They tied me down by my hands and pulled off my trousers, they tied my legs open. When they took one of the machetes out of the fire, I realised what they were going to do. They said, ‘Your seed will no longer spread!’ I felt the most horrific pain as they cut off my testicles; from that moment on it is a blur of pain. I realised later on that the men in white coats were there to sew up our wounds so that we would not bleed to death. They left the lot of us in a pile unconscious, lying in our own blood. After many hours our wives</p>

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WHAT HAPPENED? (Have you obtained information which supports the allegation that enforced sterilisation was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		and other women from the village were able to come and find us. Two of my cousins did not survive.”
What facts help prove that the conduct was neither justified by the medical or hospital treatment of the person or persons concerned, nor carried out with their genuine consent (the second element of enforced sterilisation)?	Where did this happen [i.e. getting at whether it was in a hospital or under medical supervision]? Did you agree to this?	(The evidence given above would satisfy this element as well.) Alternate Testimonial: “When we arrived at the camp they told us that they were giving us medicine to protect us against diseases in the water, so that we would not get sick. When we first arrived, they gave us an injection and told us that we would be able to drink the water. After that time, they asked us if we had gotten sick from the water and we said yes, so they told us we would need an operation to remove some parasites. It was a small operation, but we experienced some pain afterwards. Later that month, I noticed that I did not start bleeding when I usually would. Some of the other women mentioned that they were bleeding less or not at all. We were worried that we might be pregnant, but as time passed and our stomachs did not grow we thought it must have been from the illness or what we had been through. It was not until we escaped from that place and went to the city that I got to see a woman’s doctor who worked for an NGO, and she told me I could not have any more children because of what they had done to me. The medicine and the operation that they told us was to protect us had made us barren and the doctor could not do anything to fix it. None of the women I was with in the camp have had any more children, so I know it was them that did it to us.”

Sexual violence

Elements:

- 1) The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
- 2) Such conduct was of a gravity comparable to the other crimes against humanity.
- 3) The perpetrator was aware of the factual circumstances that established the gravity of the conduct.

WHAT HAPPENED? (Have you obtained information which supports the allegation that sexual violence was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent (the first element of sexual violence)?</p>	<p>Can you describe for me, please, what happened? (See additional suggested questions above.) What did the perpetrator say?</p>	<p>Testimonial: "One by one we were lined up in the corridor and one by one each of us was taken into a room. Those of us waiting could hear the boys who went in screaming in the room, and when they emerged, their clothes were gone and around their waist was only a rag with blood on it. They limped out crying and crying, some fainted from the pain and shock. We later realised that the rebels were conducting a ritual scarring of our penises."</p> <p>Alternate Testimonial: "They had separated homosexual men and women from our whole region and brought us to a deserted rural school, where we were kept under guard. Each day the men were taken out to a room with a rack, where they were hung up by their hands and feet and sodomised. The guards who did this to us kept saying, 'Isn't this how you like it?!' Sometimes they would bring in other prisoners and force them to do things to us, and if the men got an erection they would laugh and say, 'Now you are all gay.'"</p>

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WHAT HAPPENED? (Have you obtained information which supports the allegation that sexual violence was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		<p>Alternate Testimonial: “They gathered us in the village square and made us take all our clothes off, including our undergarments. We were there in the main square in front of everyone. Then they chose from among us and put those of us whom they selected into trucks. All of us were women and all between the ages of 14 and 22, approximately. They drove for what seemed like hours to an isolated location. There they took us to an abandoned hut. There they ordered us to lie next to each other on filthy mattresses on the floor. With a smile on his face, the apparent leader of this group brought out a rolled-up cloth from the other room. The other armed men whistled and clapped as he opened the cloth, revealing six knives of different sizes, from small to large. Each of us was cut in our genital area with one of the knives, while the others watched and commented on the different results of the different knives. I was fourth in line.”</p>
<p>What facts help prove that these acts of sexualised violence reached a level of gravity similar to other crimes against humanity (the second element of sexual violence)?</p>	<p>Please tell me what it was like? What did you experience physically? How did you feel mentally during this time? What were you able to do and what not? What consequences resulted?</p>	<p>Testimonial: “The scarring took weeks to heal; three of the boys got digging we were told to do each day. The less we dug the less food we were given, but since most of us were too sick and in too much pain to do anything, we ended up doing hardly any digging and as a result were given barely enough food to survive. Thankfully we had water, which, though contaminated and often causing diarrhoea, I believe kept us alive.”</p>

WHAT HAPPENED? (Have you obtained information which supports the allegation that sexual violence was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
What facts help prove that the perpetrator was aware of the factual circumstances that made these acts sufficiently grave to constitute a crime against humanity? (the third element of sexual violence)?	Did you hear the rebels say anything while they were carrying out this scarring? Where were they when this happened? Was it always the same rebels who carried this out?	Testimonial: "The rebels were few in number in the location - maybe seven of them - but they were armed to the hilt. The whole purpose of taking us there, as they said, was to 'initiate us as men and mark us as slaves'. They claimed this was their 'cultural tradition' and said they do this to 'all their slaves'."

Persecution⁵⁷

Elements:

- 1) Contrary to international law, the perpetrator severely deprived one or more persons of their fundamental rights.
- 2) The perpetrator targeted the person or persons because of the identity of a group or collectivity, or targeted the group or collectivity as such.
- 3) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender **(as defined in Article 7, paragraph 3 of the Statute)** or other grounds that are universally recognised as impermissible under international law.
- 4) The conduct was committed in connection with any act referred to in article 7, paragraph 1 of the Statute or any crime within the jurisdiction of the Court.

⁵⁷ Note: any of the above-mentioned crimes, when carried out in a persecutory manner, on political, racial, national, ethnic, cultural, religious or gender grounds, can also constitute persecution as a crime against humanity. It is critical to ask the witness questions about words that were spoken, in order to determine if there was any persecutory intent. Acts of persecution need not be sexual in nature, but if individuals are targeted on the basis of their political views, or on the grounds of race, nationality, ethnicity, culture, religious affiliation or gender, and if the acts are sexualised violence crimes, the crime of persecution may also be relevant.

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WHAT HAPPENED? (Have you obtained information which supports the allegation that persecution was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that, contrary to international law, the perpetrator severely deprived one or more persons of their fundamental rights, (the first element of persecution)?</p>	<p>Any questions above which elicit evidence of any of the crimes herein or of other grave violations will also satisfy this element of persecution.)</p>	<p>(Any description by a witness of an act such as is set out in the above entries in this column will also satisfy this element of persecution.)</p>
<p>What facts help prove that the perpetrator targeted the person or persons because of the identity of a group or collectivity, or targeted the group or collectivity as such (the second element of</p>	<p>Did you come to learn why you were attacked? Did the attackers say anything about who was being attacked? What did they say?</p> <p>If the witness has explained that certain individuals were targeted: Did you come to learn why you were targeted? How do you know?</p>	<p>Testimonial: “We were considered to be slaves, property, not people. We were dehumanised and each time we were mistreated, whether sexually or not, we were told that women and girls were created to serve men.”</p> <p>Alternate Testimonial: “They told us they knew that we were gay because they had spied on us in a meeting. They followed us home and told us that we should ‘stop dressing and acting like faggots’ and that we ‘needed to start doing what real men are supposed to do and not pretend to be women’. They told us that we were unnatural and weak and that what we did was sinful and disgusting, that we were a threat to the safety of the country because we were liars and could not be trusted. They beat us and told us they needed to inspect our anuses ‘to see how much damage we had done’. Later they brought in two female prostitutes and told us they were going to ‘re-educate us on how to be a man’. They made the women carry out sex acts on us, and if we were not aroused, they beat us and cursed us. Then they made us have sex with the women in front of them and shouted out things as we were doing it. They told us that, when the new state was created, there would be ‘no room for girls like you, only real men’.”</p>

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WHAT HAPPENED? (Have you obtained information which supports the allegation that persecution was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
		<p>Video: One of a severely stigmatised community's members escaped and managed to bring out with him one of the guard's telephones. The video shows the commander of the base beating the community's women with a truncheon on their genitals and breasts, while calling them thieves, kidnappers and perverts. The commander yelled at the women: "We are beating the evil out of you so you will be good enough to carry our seed." The video is stamped with the date and time it was taken.</p>
<p>What facts help prove that the targeting of the group or group members was based on a protected ground or characteristic (the third element of persecution)?</p>	<p>On what do you base your comment that you were treated this way because you were women/girls?</p>	<p>Documentary: A police insider witness provides you with a document that is on letterhead of a branch of the Ministry of the Interior that covers the area where women and girls reported that they had been taken to various houses, detained, sexually and otherwise assaulted, and forced to work to serve the police, wash their clothes, cook their food, serve them drinks, etc. The document is from the head of that branch of the police, and it sets out their instructions for the week, including the passage: "Authorisation to engage female labour in any way in support of the war effort is granted to all branches. Any female who resists shall be deemed a traitor to the cause and punished as such." The document is signed by the highest-level police official in that branch, and stamped with the official branch stamp.</p>

ANNEX

1

WHAT HAPPENED? (Have you obtained information which supports the allegation that persecution was committed?)	Examples of QUESTIONS about WHAT HAPPENED	Examples of EVIDENCE/INFORMATION which describes what happened
<p>What facts help prove that the conduct was committed in connection with any crime against humanity (the fourth element of persecution)?</p>	<p>Why do you think you were treated this way? You have described how you were mistreated, and you told us earlier that you came to believe that it was because you were women.⁵⁸ What led you to that conclusion? What else was happening to you and around you? What was happening to others - men, women, boys, girls, the elderly...?</p>	<p>Testimonial: “Throughout the time that we were held, whether they were assaulting us, or beating us, or ordering us to clean the floor, or carry out any other activities, they would consistently repeat insulting, derogatory remarks about us, calling us ‘dirty whores’ or ‘stinking bitch’. They only held women and girls in this condition, and they consistently expressed their distaste for women and girls. We kept hoping they would finally find us so distasteful that they would let us go; but instead, they kept us, teased us for being weak women and girls, and caused us terrible physical pain and daily fear of the evenings, when most of the sexual assaults happened.”</p>

58 This technique is known as “reflecting”. Often, by repeating what the witness has said, you do not even have to add further to the question: it will prompt the witness to say more. Even if additional questions are needed, repeating back to a witness the words she has just spoken is a useful mechanism for building mutual trust and respect; it demonstrates careful listening and makes the witness feel as if she has been correctly heard. It is critical, however, that her words not be changed from the way in which she spoke them. If the interviewer alters them, this could impact upon the witness’s evidence. It would be considered leading.

Part B: What was the nature/pattern/context of the crime (was that crime it committed as a war crime, a crime against humanity, an act of genocide, or more than one of those?)?

Crimes against humanity

Elements:

- 5) The crimes were committed as part of a widespread or systematic attack.
- 6) The attack was directed against a civilian population.
- 7) The direct perpetrator knew of the attack against the civilian population.
- 8) The attack was carried out pursuant to, or in furtherance of, a state or organisational policy to commit such attack (a jurisdictional element which may or may not be required in the jurisdiction in which you are documenting).

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a crime against humanity
<p>What information supports the conclusion that this act (for example of sexual slavery) was part of a widespread or systematic attack?</p>	<p>Can you tell me what else was going on before, during and after the acts you have described? Can you describe the way in which the attack you speak of took place? What happened first, and what next, and what after that? Were you able to discern any pattern to the attack of any kind? What led you to that conclusion? Did you witness any other incidents involving attacks such as that which you have just described? (The woman provides you with details of the incidents she witnessed, so that you are able to establish the who, the what, the when, the where, the why and the how, as well as how she knows.)</p>	<p>Testimonial: The witness describes how, over the course of her eight months of fleeing from place to place, she saw many villages attacked and was an eyewitness to many incidents of killing and beating, of detention and removal at gunpoint. The witness says that in several villages she observed first that there were air strikes; then the ground forces swept into the village and ordered everyone to leave immediately; and then finally armed men on foot and on horseback came and shot villagers as they tried to run away. Trucks came and captured villagers were taken away. The witness has not seen them since. (The woman provides you with details of those incidents she witnessed, so that you are able to establish the who, the what, the when, the where, the why and the how, as well as how she knows.)</p> <p>Documentary: A UN military observer's daily mission report describes armed attacks taking place on numerous residential areas far from the combat areas, occurring at the same time and apparently coordinated.</p>

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WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a crime against humanity
		<p>Video/photographic: A witness provides you with a video he has taken of women in civilian clothes being captured by armed men. The video shows the broader area, then a closer-in area, to the extent possible, and the video is marked with the date and time of recording. Together with the video, the witness provides you with a statement describing the who, the what, the when, the where, the why and the how, as well as how he knows. It gives all the details about the circumstances in which the video was recorded.</p> <p>Satellite: Satellite images over a period of time show villages prior to the attack (with people caring for their livestock and tending their fields) and then villages post-attack. Each post-attack image reveals similar details, including columns of women and girls being marched away from the village.</p>
<p>What information supports the conclusion that the attack was directed against a civilian population?</p>	<p>Please describe what else was going on at the time you witnessed/ experienced these terrible things. What was happening in the area where you live? What kind of people lived there? What did they do? Can you tell me about the people who you say were attacked - what were they wearing? What were they carrying? Where were they staying and was there any military facility or equipment or personnel of any kind in the vicinity? To your knowledge, were there any fighters present within your area at the time of the events you describe?</p>	<p>Testimonial A witness describes the victims in her village as wearing civilian clothing. They were not in possession of any weapons whatsoever, and there was no military or armed group presence during the attack:</p> <p>“In the days and weeks before we were captured and held, our village and all the villages in our province were overrun with armed men. The local fighters had left our area a long time prior, but the armed men behaved as if we were all part of the village defence. They drove their tanks through our village, killing all livestock and destroying our fields. Then they started bulldozing houses, and this caused most of us to run out of our houses and right into the open area where the attack was taking place. They picked up the women and girls, and young boys as well, threw us roughly into the back of trucks.”</p>

ANNEX
1

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a crime against humanity
<p>What information supports the conclusion that the direct perpetrator knew of the attack against the civilian population?</p>	<p>Can you tell us if, to your knowledge, there was any connection between the men who came into your village and carried out the acts you have described, and the men whom you have described as having held you in the locked rooms and mistreated you in the night?</p>	<p>Testimonial: “The men were dressed in the same way, and used the same language, and they were among those taking over our village - in other words, some of the men who invaded the village gathered in a group, and started loading us onto trucks. They then were the ones who held us in the facility, where, as it turns out, they had their base.”</p>
<p>What information supports the conclusion that the attack was carried out pursuant to, or in furtherance of, a state or organisational policy to commit such attack (jurisdictional element)?</p>	<p>Were you able to draw any conclusions about any pattern to the attack? Were you in a position to hear or observe any rules being followed? Were there any repeated actions which stood out? Did you come to learn why this attack was launched? Was this the reason throughout the attack? Was there, to your knowledge, a goal or aim of the attack? Who set that goal or aim and how do you know?</p>	<p>Testimonial: “We [the witness is an ‘insider’ from the authority structure of the alleged perpetrator group] were discussing the plan for how to ensure our territorial goals. At this meeting, we decided to set a policy to exclude anyone of the [X] group. Our aim was the creation of a pure nation, [X]-free. Our military strategy was aligned with this aim.”</p> <p>Documentary: A military order which makes reference to the overall military strategy of scorched earth, for example.</p>

ANNEX

1

War crimes**Elements:**

- 1) The crime was committed during (international or internal) armed conflict.
- 2) The crime had a nexus to the armed conflict.
- 3) The victim was a protected person (not an element for crimes of sexual and gender-based violence (SGBV)).⁵⁹
- 4) The perpetrator knew that the victim was a protected person.
AND
- 5) The perpetrator was aware of the factual circumstances that established the situation as one of armed conflict.

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
What information supports the conclusion that this act (e.g. of sexual slavery) was committed during (international or internal) armed conflict?	Please describe what was happening in the area around your town when the event you are describing took place. You describe shooting and explosions: can you tell me how often you heard these, and how heavy the shooting and explosions were?	Testimonial: "There was the sound of shooting and explosions constantly in the days leading up to the invasion. We kept listening to the radio and hearing of the number of casualties on the front lines, and we knew that the fighting was heading in our direction. We tried to move from place to place, but in the end nowhere was safe."
What information supports the conclusion that the crime had a nexus to the armed conflict?	Can you tell me about the circumstances in which the acts you have been describing took place? You have already described hearing shooting and explosions and hearing reports of frontline fighting. What happened when your town was attacked? What do you believe was the relationship between the fighting you heard about and what happened in your town?	Testimonial: When the army entered the town, awful things began to take place. The army had surrounded the town, and it entered on foot and by tank and on horseback. They would block off a street and enter from both ends; people tried to flee between houses, but there were so many military troops there that most were shot on trying to escape. They were shooting all over the place, setting fire to homes and bushes, firing everywhere. They captured some boys and men, tied their hands behind their backs, kicked them to the ground and kicked them in the face. We found out later that the opposition forces had not

⁵⁹ Protected persons are those who are either civilians or are not actively taking part in hostilities.

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
<p>What information supports the conclusion that this act (e.g. of sexual slavery) was committed during (international or internal) armed conflict?</p>	<p>Please describe what was happening in the area around your town when the event you are describing took place. You describe shooting and explosions: can you tell me how often you heard these, and how heavy the shooting and explosions were?</p>	<p>and that most of them had been either killed or captured just outside town, leaving the town defenceless. It was in this situation that the soldiers found us in the basement of a building full of abandoned apartments, hiding under the table in the back corner. They took us out, inspected us by flashlight, and started laughing. One of them said, 'Let the fun begin! We'll teach you to support the opposition; we'll show you what the regime does to traitors!'"</p>
<p>What information supports the conclusion that the victim was a protected person (not an element for SGBV crimes)</p>	<p>Can you describe the men who were, you say, captured, had their hands tied, were kicked to the ground and had their faces kicked? Do you know who they were? Do you know if they were ever serving members or involved in any way with any armed group of any kind?</p>	<p>Testimonial: "These men and boys were the ones who were members of a civil society group called Residents for Peace. They refused to join the opposition - I know because my brother and uncle were among them. They did not want to take up arms. They wanted peace and refused to fight. They were in a prayer gathering when the town fell; to my knowledge, there were no weapons of any kind in the place they were staying, and they were all wearing civilian clothes, as they refused as a matter of principle to put on anything resembling military clothing."</p>
<p>What information supports the conclusion that the perpetrator was aware of the factual circumstances that established the situation as one of armed conflict?</p>	<p>Were you ever able to find out what happened when the soldiers entered the place where the Residents for Peace were gathered in prayer?</p>	<p>Testimonial: "My brother was released later, but I have never seen my uncle again. My brother told me that the soldiers entered and found them on the floor in a circle praying. The room was lit and the electricity had not gone off yet, and my brother and others heard the soldiers coming, but they strengthened their prayer and did not move from their prayer positions. As the soldiers entered, my brother said, he stood up to go over to my uncle because he was so scared. My uncle apparently told my brother loudly, 'Don't worry, my child, these military men would never harm peaceful</p>

ANNEX

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WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
		people in prayer.' Just then they were all dragged outside, hands tied, kicked, and taken away in the back of a truck. This is what my brother told me when he got back." "
What information supports the conclusion that the perpetrator was aware of the factual circumstances that established the situation as one of armed conflict?	Did you come to learn anything about the men who attacked the village? Did the attackers mention anything about the fighting outside your village? Did they refer to actions (of their own or of their comrades) beyond the events of your village that day?	Testimonial: "All I know is that these were men from the regime forces: their uniforms had the regime badge on them and they wore army-issue boots. Their vehicles were full of army weapons - I don't know what they are, but they are huge and those weapons were not used at the time the town was attacked in the area in which I was - at least, I did not see those heavy weapons being used. Mostly only machine guns, pistols and grenades seemed to be their tools of attack on the residents, but of course also clubs and their feet, as they kicked people. The women and girls who were captured were not only sexually assaulted, but also burned. I know this because I was one of them: after I saw what I saw during the invasion of our village, I was captured and mistreated along with the others. Mostly the soldiers were laughing. The more we cried, the more they laughed."

Genocide⁶⁰**Elements:⁶¹**

Any of the following acts, committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such:

- 1) Killing members of the group.
- 2) Causing serious bodily or mental harm to members of the group.
- 3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.
- 4) Imposing measures intended to prevent births within the group.
- 5) Forcibly transferring children of the group to another group.

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
<p>What information supports the conclusion that this act (e.g. of sexual slavery or other acts of sexualised violence) was committed with the specific intent to destroy members of the group (and what information is there to show that this group shared a characteristic of a national, ethnic, religious or racial group)?⁶²</p>	<p>Did you have occasion to see anyone who appeared to be in a position of authority come through the barracks during the time you were detained there? If so, how did you know that they were in a position of authority? What led you to that conclusion? Did you have occasion to hear any of them say anything? You mentioned that you and the others who were held with you were called "cockroaches". Do you know what was meant by</p>	<p>Testimonial: "In fact, I saw a high-level official⁶³ come through the barracks twice in the 10 months that I was held there. Once was on the religious holiday of Han, which is the holiday celebrated by the religious and ethnic group with which the militants were affiliated, the Han. The other was on a day of inspection of the militant troops. On both days I was asked to dress up and I was given nice clothes to wear; those were the only times I was given nice clothes. My captor (who called me his wife) took me out to show off his beautiful 'bush wife', and I had to dress accordingly. I liked those days because, for a few days beforehand, my captor would leave me alone so that I would be able to 'function properly' in front of the important guests; what he meant was</p>

60 This Evidence Workbook focuses on crimes of sexual violence; thus certain acts are not included here, such as killing and forcible transfer.

61 Genocide may require two separate steps: 1) evidence which shows that the act of sexual violence constitutes one of the five enumerated acts of genocide, and 2) evidence which shows that the alleged perpetrator carried out these acts with the intent to destroy, in whole or in part, a group on the enumerated prohibited grounds. The chart below selects one act of sexual violence as an example and runs that through the elements.

62 This element is the specific-intent element of genocide, which is required to be satisfied in order for anyone to be convicted of any of the underlying acts of genocide. The specific intent to destroy the group must be demonstrated with specific evidence. This is in addition to satisfying the mode of liability, as set out in Part C.

63 There is no requirement that the person allegedly responsible for acts constituting genocide be a high level official. This is simply one example for the purposes of this workbook.

ANNEX

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WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
	<p>that? Who were the persons who were called “cockroaches”? Could they have meant anyone else? Do you know anything about what happened to other members of the group?</p>	<p>that he was so brutal with me when he assaulted me that I was often not able to walk well for a few days afterwards, and I often fell ill and could not get up at all. But in anticipation of these high-level visits, my captor would feed me well, let me sleep alone, and not lay a hand on me. He would allow me to shower and dress well and I had a vacation from his abuse. When the high-level visitor came through, they called him ‘King’. I don’t know what position he held, but he was someone important, as he arrived in a whole line of cars, with more than 20 armed militants surrounding him. He had gold chains around his neck. When he arrived, he said things like this, very loud and clear so all could hear: ‘Ah, so this is your cockroach wife! I have heard much about her. Bring out all the cockroach women for me to inspect. I want to make sure my men have the best of the insects to make them as strong as possible in cleaning up the place. Let your cockroach wives show you where all the cockroaches hide; then once your job is done, at least you will have filled the world with half-Han babies and killed all the whole-blood roaches around you.’ When they called us cockroaches they meant my tribe; our people build houses into the ground; that is our tradition. No one called a ‘cockroach’ was a member of any other ethnic group.”</p>
<p>What information supports the conclusion that this act (e.g. of sexual slavery) was committed with the intent to cause serious bodily or mental harm to members of the group?</p>	<p>Did you come to understand or learn what your captor’s thoughts were, and what he wanted to gain, if anything, from the harmful way in which he treated you? Did he ever say anything about why he was mistreating you?</p>	<p>Testimonial: “I could not read his mind. But I can tell you that he continued to be extremely rough with me and to try new levels of cruelty. For example, he tried once to see if he could insert a lit candle into my vagina without it going out. He tried this six times before giving up, and when he raped me after that, the pain was unbearable. My screams seemed to make him find more ways to harm me. He would tell me about all the members of my tribe he had killed that day, using</p>

ANNEX
1

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of QUESTIONS about THE CONTEXT IN WHICH IT HAPPENED	Examples of EVIDENCE/INFORMATION which could help prove that this act (e.g. of sexual slavery) constituted a war crime
		the energy that I 'gave him' at night. He would sometimes mention the names of families he and his fellow fighters had killed, and would tell me that he was going to hunt down each and every member of my family if I ever 'left him'."
What information supports the conclusion that this act (e.g. of sexual slavery) was committed with the intent to cause serious bodily or mental harm to members of the group?	Did you come to understand or learn what your captor's thoughts were, and what he wanted to gain, if anything, from the harmful way in which he treated you? Did he ever say anything about why he was mistreating you?	Testimonial: "Actually ironically I was one of the so-called 'lucky' ones. Most of the other girls and women were taken along with their husbands and fathers to another facility, where they were kept intentionally separated. This separation plan lasted for so long, and over time it became clear that the separation was intended to ensure that we did not give birth to any more babies of our ethnicity. They forbade the men and women to meet, other than through a fence for 30 minutes once a week. They then sent in Han women to rape the men and Han men to rape the women, and so many Han women and women of our tribe fell pregnant as a result of these rapes. The pregnant women were kept in another area, and if the babies came out too dark they were killed on the spot. Over time, it became clear to everyone that they had set up a system to create lighter-skinned babies and to prevent us from giving birth to children of our own tribe. I know this because all the other women in my family, with the exception of my elder sister, were held in that facility. When the war was nearing an end, the captors got desperate, and their plan to create lighter-skinned babies and to eliminate our tribe turned into only the latter: they started mutilating all the genitalia of the detainees of my ethnic group. Many of them died in the process, and the others are wounded for life."
What information supports the conclusion that this act was committed with the intent to impose measures intended to prevent births within the group?	See above questions.)	(The facts as set out above appear to satisfy this element as well.)

Part C: Who (allegedly) committed the crime? (Who is allegedly responsible and through what mode of liability⁶⁴ - i.e. directly or through command/superior responsibility?⁶⁵)

Direct responsibility

Elements:

The accused committed (directly, indirectly, or as a co-perpetrator), ordered, solicited, induced, aided and abetted, or otherwise contributed to the commission of the crime (by act or omission) - or an attempted commission (by act or omission) - by a group acting with a common purpose.⁶⁶

WHO MAY BE RESPONSIBLE, and HOW?	Examples of questions which could elicit information about who may be responsible and how	Examples of EVIDENCE/INFORMATION which could help prove that this individual or these individuals may be responsible for these acts in this manner
What facts serve to identify the individual(s) and group(s) alleged to have committed these crimes? What facts are there to show that a particular individual planned the crime (e.g. sexual slavery) as a crime against humanity? What facts are there to show that a particular individual may have committed, ordered, solicited, induced, or aided and abetted the crime?	Can you describe those you say were carrying out the acts you have told me about? Can you please tell me about their clothes? Any insignia? Their head/footgear, what they were carrying, any other distinctive aspects to their appearance - their weapons, their equipment, their vehicles, their language, etc.? Did you have occasion to observe someone in a position of authority? How do you know, or what led you to conclude, that this individual was in a position of authority? Did you have occasion to hear this individual (these	<p>Testimonial: A survivor of sexual slavery as a crime against humanity describes the alleged perpetrators as wearing blue uniforms, carrying machetes and grenades, wearing gloves and berets, and carrying radios. She reports that the alleged perpetrators saluted a particular individual whom they called Mr X, and she observed him giving instructions and the others who had saluted him carrying out those instructions. She was within hearing and seeing distance at night, when Mr X and the others would sit and plan the next day's events. She was present on numerous occasions when Mr X received orders from someone via the radio/walkie-talkie.</p> <p>Documentary: You obtain access to an archive of the armed group which contains hundreds of daily and weekly combat reports from senior</p>

64 This category of evidence has traditionally been the weakest element in sexual violence prosecutions and is the reason behind the vast majority of acquittals or dropped charges for sexual violence. It is worth spending time on the mode of liability and asking careful questions, because without it, the rest of the evidence cannot carry the day. There have been many situations where the judges have said, "We are satisfied beyond reasonable doubt that the sexual violence absolutely happened, but there is not enough evidence to prove the individual criminal responsibility of the defendant for those acts." This part of the documentation process is absolutely critical.

65 It is often thought that only a particular "kind" or "category" of witness (such as high-level insider witnesses) will possess information about alleged perpetrators, in particular if the perpetrator being investigated is remote from the crimes and the link between the act and the perpetrator is not direct. It is advised that documenters and investigators strive to avoid assumptions about any particular witness. Victim witnesses who have never seen the senior-level remote (alleged) perpetrator often give the most powerful linkage evidence in relation to senior-level officials who are accused of committing crimes on the ground. Each witness should be questioned on these matters; not asking risks loss of critical linkage evidence.

66 Commission (ICC Statute Article 25(3)(a)) can be either individual/direct physical commission or committing a crime jointly with others; co-perpetration is based on joint control over the crime, or committing a crime through another person; ordering is directing another person to commit a crime; soliciting/inducing is prompting another person to commit a crime; aiding and abetting is providing practical assistance (e.g. by providing the means for the commission of the crime) or providing encouragement or moral support to the direct perpetrators.

WHO MAY BE RESPONSIBLE, and HOW?	Examples of questions which could elicit information about who may be responsible and how	Examples of EVIDENCE/INFORMATION which could help prove that this individual or these individuals may be responsible for these acts in this manner
	<p>individuals) say anything? What did they say, to whom did they say it, under what circumstances, and what was the result or the reaction to what they said? Did you have occasion to observe the interaction among the individuals in this group? What were you able to observe about their interaction? Did you have occasion to hear them refer to each other by name, by title/rank, by position, etc.?</p>	<p>authorities down to troops on the ground, as well as combat reports from the troops on the ground up to the commander or high-level officials.</p> <p>Video/audio: “You obtain an audio recording of Mr X receiving instructions on the hand-held radio, recorded by an insider witness. Along with the audio, this witness provides you with a statement containing full details of the who, the what, the when, the where, the why and the how, as well as of how he knows that this was Mr X receiving instructions, plus all the information he has about who was providing those instructions - and what led him to that conclusion.</p>

Command/superior responsibility

Elements:

Military commanders

- The de jure or de facto military commander had effective command and control over subordinates.
- S/he knew or should have known that the subordinates were committing crimes.
- S/he failed to take reasonable measures to prevent the crimes, to punish the perpetrators, or to submit to the competent authorities for investigation.
- As a result, the crime was committed.

Civilian commanders

- The superior-subordinate relationship was characterised by effective authority and control over subordinates.
- S/he knew or consciously disregarded information which clearly indicated that subordinates were committing crimes.
- The crimes were activities within the effective responsibility and control of the superior.
- S/he failed to take all necessary and reasonable measures to prevent the crimes or submit to the authorities for investigation.
- As a result of his/her failure to exercise proper control over subordinates, the crime was committed.

ANNEX

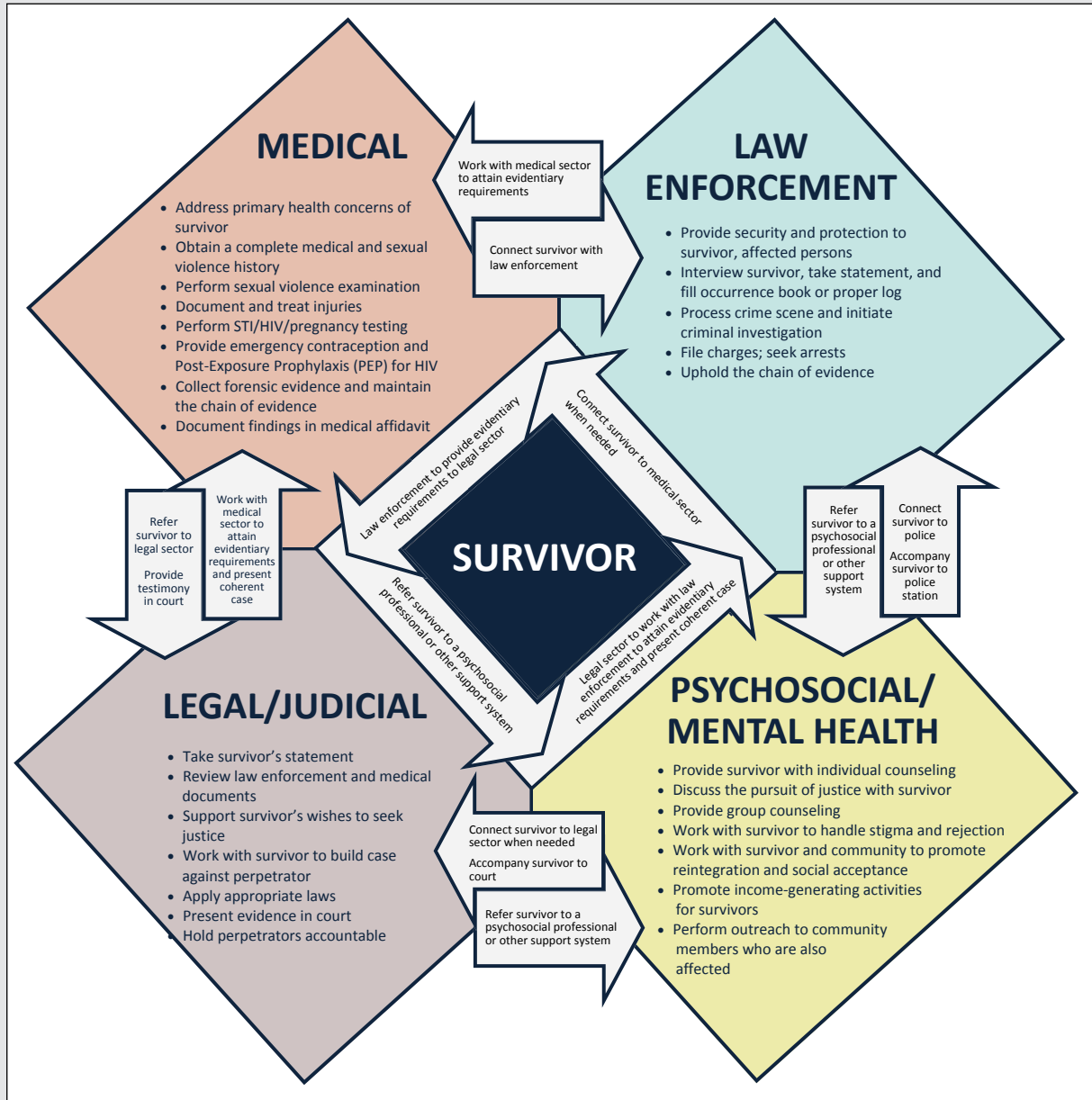
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WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of questions which could elicit information about who may be responsible and how	Examples of EVIDENCE/INFORMATION which could help prove that this individual or these individuals may be responsible for these acts in this manner
<p>What facts demonstrate that a particular individual had effective control (for a military commander) or a superior-subordinate relationship (for a civilian commander) over his/her subordinates?</p>	<p>Were you able to come to any conclusions regarding any of the armed men who may have been in a position of authority over the others? Can you tell me what specifically led you to draw that conclusion? Can you explain? Did you observe any interactions between the people who did this to you and others from their group who may have come and gone? What did you see and hear? Was there someone, or a few people, who seemed to have more power or authority than the others? Please explain.</p>	<p>Testimonial: "I saw Commander Alex come to the detention centre where I was being held. I saw this at least twice a month. He had two bodyguards next to him on either side at any time; he rode in the back of the jeep and his bodyguards got out and opened the door for him each time he arrived. I could see and hear everything, as they always made me prepare sweets and strong drinks and bring them out to serve them when the commander arrived. They all rose to salute him, stood to attention and did whatever he asked. I don't know what his surname was, but the others called him Commander Alex. Even the head guard at the detention centre - his name was Milo Omin - was clearly Alex's subordinate - Omin stood to attention, and when Commander Alex announced to Omin 'The tour!', Omin jumped to lead Commander Alex through the facility."</p>
<p>What facts demonstrate that this particular individual knew or should have known (for military commanders) that the subordinates were committing crimes (in this case of sexualised violence), or consciously disregarded (for civilian commanders) information which clearly indicated that subordinates were committing crimes?</p>	<p>In your experience, do you have any reason to believe that Commander Alex knew that you and the other young women were being mistreated, either sexually or otherwise? What leads you to say that he knew? What was it that you observed or heard that would indicate that Commander Alex knew? Alternatively, what leads you to say that he should have known, or that he consciously disregarded information which would have indicated clearly that his subordinates were</p>	<p>Testimonial: "Omin showed Commander Alex around the centre and updated him on who was being held there. Commander Alex saw me each time he arrived and toured the room where I was held with other young women. We were held there for over a year and he visited regularly, having a tour each time. There was a lock on our door. The room was spartan, and many of us were being kept in there, as could be observed from the number of mattresses on the floor and the few items around the room, as well as from the fact that many young women were in there when Commander Alex had a tour. Over time, he saw the same women there. He would have seen our health and weight declining. He would have seen that we were in that room</p>

WHAT WAS THE CONTEXT IN WHICH IT HAPPENED?	Examples of questions which could elicit information about who may be responsible and how	Examples of EVIDENCE/INFORMATION which could help prove that this individual or these individuals may be responsible for these acts in this manner
	committing crimes (in this case of sexualised violence)?	together, and he would be aware that his subordinates were far from their homes. He would also have seen the interrogation rooms on his tour, and in the interrogation rooms there were mattresses, cloths of all kinds and buckets of water."
What facts demonstrate that the individual failed to prevent the act (in this case of sexual violence), to punish the direct perpetrators (his subordinates), or to submit to the authorities for investigation?	Could you tell me if you observed any of the guards being reprimanded or in any other way facing any consequences for what they were doing to you and the other women? Did you ever observe the person in charge correcting or disciplining the guards in any way? Please explain what happened. Did he ever say or do anything about their treatment of you and the other women? If so, what happened?	Testimonial: "During the time of our detention there, which was more than one year, none of the guards who mistreated us, who beat and cut us, who sexually assaulted us - none of them were, to my knowledge, ever given punishment. In fact, after Commander Alex's visit, and over time, the same guards appeared to feel more and more free with us, and we were increasingly taken out at night, more of us at a time and more frequently. None of them were transferred; and one of them was promoted to deputy head of the facility during our time in detention. Once when Commander Alex visited and saw our room and us in there, he laughed and said to Omin, 'I envy the fun you have, young man!'"
What facts demonstrate that, through a failure to take steps to prevent the crimes, to punish the perpetrators, or to submit to the authorities for investigation, the crime was committed?	What do you believe would have happened if he had done something to punish the perpetrators? What if he had ordered them not to do it before they had done it?	Testimonial: "Testimonial: "He had such complete control over the others, they would do absolutely anything to please him. I observed them afraid to ever take a step without his instruction. There is no doubt that they would have followed his instructions if he had told them not to do this; they would not breathe if he told them not too, he was that authoritative. I observed him beating his men for insubordination many times; but never for harming the women."

Annex 2

Basic Elements of Multi-Sectoral Response to Sexual Violence



Annex 3

Interviewing: Fundamental principles and top practical tips

Detailed guidance on the fundamental principles that apply to practitioners conducting interviews of survivors/witnesses of sexual violence crimes is set out at section 7 of the Protocol. This annex summarises that guidance into a number of top practical tips.

Preliminary considerations

1. Consider which referrals and support/protection systems are available to the survivor/witness (and explain clearly to the survivor/witness the limits of that support/protection). In particular, find referrals for psychosocial support and for witness protection, if they exist.
2. Assess the risk factors involved in the survivor/witness meeting you, and conduct a thorough risk assessment.
3. Gain an appropriate understanding of the context in which the sexual violence is occurring and of the different elements of the crimes under national and international law.
4. Be aware of the gender dynamics in the country or region where the crimes of sexual violence took place.

Training and vetting staff

5. Obtain for your team members (e.g. interviewers and interpreters) training that is as broad and robust as possible (e.g. in interviewing victims of sexual violence and/or interviewing children, if relevant).
6. Vet your support staff (e.g. interpreters, any intermediaries and any drivers) and discuss with them issues such as confidentiality and the purpose/approach of the interview. Ensure that they undertake to comply with the confidentiality and protection-of-information guidelines you have developed. Vetting should consider, in particular, a person's criminal record, but also (where available) any records that specifically address an individual's ability to work with children; prior or current associations with any armed groups; associations with others who are associated with armed groups; objectivity and sensitivity; discretion and respect for authority; and an ability to set aside communal and traditional constructs and work within the framework and mandate set by the practitioner's team.

Preparing for the interview

7. Prepare an interview plan (e.g. a preliminary interview "template" or outline, plus a list of questions/topics specific to the elements of the crimes applicable to the context in which you are documenting). Make sure to cover the "who", "what", "where", "when" and "how" of the crimes (while remaining wary about asking the survivor/witness any "why" questions, so as not to apportion blame to the survivor/witness). (Remember you should not stick too rigidly to this list, and should ensure that you react to what you hear from the survivor/witness.) Do not forget to ask "How do you know?" or "What led you to that conclusion?" The answer to those questions will often give you the most critical evidence.

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8. Consider the language that you will use during the interview, and discuss it with the interpreter. In particular, identify appropriate terminology for sexual acts and body parts. Remind yourself and the interpreter to be prepared to address terminology issues with the survivor/witness, should they arise during the interview.
9. Prepare any documents, diagrams, photographs, maps, videos, etc. that you might show the survivor/witness. Have sketch paper and pens available. Bring a camera and a ruler in case you need to take photographs of the injuries. (Be careful, however, not to show a survivor/witness any diagram or photograph or video which would lead them to alter their evidence. If you are unsure whether showing any material to the survivor/witness may lead her/him to alter her/his evidence, do not show it.)
10. Allow enough time to conduct a full interview (i.e. 3-6 hours at a minimum, with breaks). These are not interviews to try to cram in between others; they can be lengthy. Do not hesitate to return the next day to continue, in order to avoid exhaustion or too much disruption to the survivor's/witness's daily routine.
11. Ask the survivor/witness whether s/he would prefer a male or a female interviewer and/or interpreter. (Remember not to assume that all female survivors/witnesses will prefer female interviewers/interpreters or that all male survivors/witnesses will prefer male interviewers/interpreters; each survivor/witness can make his/her own choice. Wherever possible, always ask what the survivor's/witness's preference is.)
12. Regarding the physical setting of your interview, choose a location that is safe, private, culturally appropriate and comfortable (e.g. avoid too public an area). Prepare the location for the interview (e.g. if possible in the circumstances, have drinking water available in the room, as well as access to a toilet; turn off your telephone and ensure that there will be no interruptions). If possible, arrange the seating (e.g. chairs, desks, where each person will sit) so that it feels comfortable and secure for the survivor/witness and the interviewer. Consider how your survivor/witness will get to and from the interview (e.g. consider safety, the distance and cost of travel for the survivor/witness, and the time of day). Consider childcare arrangements.
13. Determine a safe and confidential system for recording the information obtained during the interview. If the interviewee has sensitive information develop a system to protect his/her identity (**see Annex 4**).

Beginning the interview

14. Obtain the survivor's/witness's informed consent to the interview (e.g. discuss the purpose/nature of the interview and all possible uses of the information obtained from the survivor/witness, including the limits of confidentiality) and address any concerns that the survivor/witness may raise. Explain clearly that the survivor/witness has a choice whether or not to speak to you, and that s/he can exercise this choice before, during and after the interview. Discuss the issue of informed consent with the interpreter. Ask the survivor/witness if s/he has any questions before continuing.
15. Ask if the survivor/witness has made any prior statements or been interviewed, and/or ask who else s/he has discussed these issues with.
16. Introduce everyone in the interview room to the survivor/witness and explain clearly their roles, addressing any concerns raised.

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17. Discuss with the survivor/witness how long the interview might take and emphasise your willingness to remain flexible during the interview (e.g. to have the discussion over more than one session, if preferred). Also make it clear that the survivor/witness can take a break or end the interview at any time.

During the interview

18. Remember to be aware of your demeanour towards the survivor/witness before, during and after the interview (i.e. remain polite, respectful, patient and attentive; look straight at and speak directly to the survivor/witness; and be aware of your pitch/tone and that of your interpreter). Sit at the same eye level as the survivor/witness (or below).
19. Consistently give the survivor/witness the power to agree/disagree, answer/not answer, ask questions and have information repeated. Give the survivor/witness enough information to make an informed decision.
20. Show empathy and respect, not pity. Avoid making promises of any kind (e.g. with regard to confidentiality). Remain flexible throughout the process.
21. Encourage the survivor/witness to provide information in the manner of his/her choosing before asking questions specific to the acts of sexual violence (i.e. gain rapport, avoid leading questions, discuss broader and less sensitive issues before moving on to sensitive subjects, ask for clarifications and additional information, remain flexible).
22. Remember never to assume anything about the survivor's/witness's feelings or thoughts, about the facts, about his/her preferences, or about how trauma has impacted him/her.
23. Remind yourself that survivors/witnesses will behave and react in distinct and varied ways when telling or retelling their story - i.e. s/he may become:
 - distressed/upset/withdrawn; or
 - angry/defensive/dismissive; or
 - calm/poised/clear.
 There is no "one way" to behave.
24. Remember not to assume that the survivor/witness will be:
 - ashamed/afraid to talk; or
 - fragile/traumatised/discredited/wary of men; or
 - most upset about the sexual violence (as opposed to other aspects of his/her experience); or
 - physically harmed.

Ending the interview

25. Record enough information about the survivor/witness to enable you to contact them if further information is needed, and give them enough information to enable them to contact you. Ascertain the preferred method of contact (**see Annex 4**).

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26. Repeat back to the survivor/witness their concerns and the information they have provided, and address any issues that they have raised (e.g. safety concerns, future contact arrangements and referrals). Acknowledge the survivor's/witness's participation in the interview.
27. Ask the survivor/witness again whether they give their informed consent for the interview (to allow them to change their mind or withdraw consent if they wish).
28. Thank the survivor/witness for talking to you.
29. If the survivor/witness appears distressed as a result of the interview, try to bring them back to the present and to a positive frame of mind.
30. Remember to use culturally appropriate gestures (e.g. shaking hands, etc.) when departing.

Annex 4

Template for Personal Data to be Collected from Survivors/Witnesses

This is a list of basic information that practitioners should collect from a survivor/witness when conducting an interview:

1. Code (this will be the coding system used by the practitioner and his/her team for security purposes to match this personal data sheet with the survivor's/witness's actual statement).
2. Name of survivor/witness (first and last, and any previous or alternative names by which the survivor/witness is known).
3. Sex of survivor/witness.
4. Date of birth of survivor/witness.
5. Place of birth of survivor/witness.
6. Name of father of survivor/witness.
7. Name of mother of survivor/witness.
8. Languages spoken by survivor/witness (including the survivor's/witness's preferred language).
9. Language of interview.
10. Current residence/address of survivor/witness.
11. Permanent residence/address of survivor/witness.
12. Phone number(s)/email(s) of survivor/witness.
13. Occupation/work of survivor/witness - current or former.
14. Family status (names, age and location, if known, of any stated family members).
15. Nationality of survivor/witness.
16. Religion of survivor/witness (if relevant and contextually appropriate).
17. Ethnicity/tribal origins of survivor/witness (if relevant and contextually appropriate).
18. Date, place and time of interview.
19. Persons present during interview and positions/roles.
20. Additional evidence provided by the survivor/witness in the context of the interview (e.g. photographs, diagrams, maps, videos, medical reports, other documents, etc.) and coding of same.

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21. Information regarding whether the survivor/witness agrees to be contacted again.
22. Information regarding whether the survivor/witness requires psychosocial support.
23. Information regarding whether the survivor/witness agrees to have her/his evidence shared with national judicial authorities (specify which).
24. Information regarding whether the survivor/witness agrees to have her/his evidence shared with international judicial authorities (specify which).
25. Survivor's/witness's signature after read-back (if the practitioner has decided to have the statements signed).

Annex 5

Referring Survivors of Sexual Violence for Assistance

Before initiating any documentation process, practitioners should endeavour to identify options for referring survivors/witnesses for assistance and support, and should put in place procedures for the referral process itself. All survivors and witnesses have a right to know prior to interview what health, psychological, legal and social services are available to them.

Practitioners should make reasonable efforts to assess whether the services they refer survivors to are appropriate and accessible. This is particularly true of referring children, whose long-term needs must be met to ensure their physical and emotional safety.

Practitioners should note that the ability of a survivor/witness to access referral and assistance services is determined by gender - male and female victims are treated differently when seeking assistance.

The types of assistance that may be available to survivors/witnesses are set out below.

Medical assistance	Psychosocial assistance
<p>Hospitals, health centres and clinics with appropriate facilities to treat and assist rape survivors/witnesses. Facilities should offer as a minimum:</p> <ul style="list-style-type: none"> ● treatment and referral for life-threatening complications; ● treatment or preventive treatment for sexually transmitted infections; ● emergency contraception; ● care of wounds; ● supportive counselling; and ● referral to social support and psychosocial counselling services. 	<p>Counselling services, victim support groups, organisations with case management capabilities, and community centres that may offer:</p> <ul style="list-style-type: none"> ● confidential emotional support and direct counselling; ● family mediation and counselling; ● reintegration and livelihood assistance; and/or ● skills training and income-generation programmes.
Legal assistance	Protection assistance
<p>Legal clinics, victim support groups, programmes that offer:</p> <ul style="list-style-type: none"> ● legal education on the rights of survivors/witnesses under the law; ● confidential advice regarding legal rights and options; and/or ● legal representation for survivors/witnesses. 	<p>Organisations, victim support groups, centres that offer:</p> <ul style="list-style-type: none"> ● safe shelters; ● relocation and transport assistance; and/or ● witness protection programmes.

Annex 6

Physical Evidence: Principles on Chain of Custody

1. When practitioners are in the field, they may come across an item that suggests to them that an act of sexual violence has occurred, or that might provide a connection between a crime and either its victim or its perpetrator. For example, at a crime scene they might find a piece of bloodied or soiled clothing; or they might be given a weapon that a survivor/witness tells them was used to commit a rape; or they might make a voice recording of an army officer stating that s/he ordered rape to be committed as part of a military campaign.
2. Any of these items might be “physical evidence” that a sexual violence crime has occurred. As a general rule, a practitioner should not collect any item of physical evidence unless s/he has been trained as an investigator or as a health practitioner in the proper collection of forensic evidence. If practitioners do collect physical evidence without having undertaken the proper training, they can severely harm a survivor and may contaminate evidence, making it unusable. That said, in some very limited circumstances, if it is safe to do so and the only viable option, it may be appropriate to collect physical evidence. The decision to collect physical evidence should be taken with seriousness and care, and thought through very carefully.
3. Before even considering collecting an item of physical evidence, practitioners should first of all: take a note of the item(s) they have found; sketch the crime scene; take photographs of the item and the crime scene; and, if possible, take video recordings of the item and the crime scene **[cross refer to other annexes]**.
4. One of the main reasons practitioners should make such a record is because the methodology they have used may later be subject to independent assessment - particularly to assess whether their actions have altered the evidence. They should also conduct interviews with any witnesses near to the crime scene and follow leads to other witnesses to the crime **[cross refer to other annexes]**. This other evidence - if collected properly - can be very powerful and may remove the need for the physical evidence.
5. It is very important to remember that although physical evidence might appear to be the “best” evidence of a crime, this is not necessarily the case. Physical evidence without survivor/witness testimony describing the origin, ownership and use of the item, or the events leading up to collection of the item, will not be very useful from an evidentiary point of view. While survivor/witness evidence can replace physical evidence, the reverse is not true: physical evidence cannot, in most instances, replace survivor/witness evidence.
6. Also, if practitioners are not trained investigators or health practitioners, they may wish to avoid putting themselves in a position where they are called as a witness to explain how they came across an item of physical evidence.
7. In the very unusual circumstance where practitioners decide to collect physical evidence, the “Chain of Custody” principles set out in this Annex should be followed.
8. However, practitioners must note that the collection of physical evidence must at all times be accompanied by the collection of information verifying its authenticity and/or explanatory evidence, in order for it to be of any use. “Chain of Custody” is a way of

demonstrating where the item has come from. It is also a way of demonstrating that the item has not been tampered with in the intervening period between its collection by the practitioner and its use as evidence of a sexual violence crime. “Chain of Custody” is very important, because without it a court or tribunal might refuse to consider the item as evidence in the prosecution of a sexual violence crime, or might decide that the item is not very good evidence of a crime. It is a question of reliability - the finder of fact must be convinced that the authenticity of a piece of evidence can be relied upon, that it has not been planted or tampered with or inadvertently contaminated. The “Chain of Custody” procedure must allow practitioners to do this - in that way the evidence can be given its due weight.

Principles

9. To maintain the “Chain of Custody” of an item, practitioners need to record:
 - A. how the item was collected; and
 - B. whether (and how) possession of the item was transferred between different individuals and/or organisations.

Practitioners should also be aware of the legal requirements in the relevant jurisdiction concerning “Chain of Custody”.

A. How was the item collected?

Although collection methods will differ according to the item in question (e.g. bodily fluids are collected and packaged differently from a piece of clothing or a document), the general principle is that each item should be labelled with at least the following information:

1. a case identifier - a number assigned to a particular case which can link all the information pertaining to that case;
2. the date of collection;
3. the name of the practitioner who collected the item and the names of any other people present during the collection;
4. the precise location of the item when it was collected; and
5. the kind of evidence that was collected.

Practitioners should also include notes on what measures were put in place to ensure that the item was kept secure while it was in their possession (e.g. it was kept in a locked cupboard that only the practitioner’s team had access to).

Practitioners should also make a note of how soon after the incident of sexual violence the physical evidence was detected; how close in proximity to the location of the incident the physical evidence was detected; and how they know these facts.

If the practitioner did not personally collect the evidence, s/he should also set out the details of any agreement, terms or discussion as to the use of the evidence between the person handing over the physical evidence and the practitioner.

Any item that that practitioner collects should be placed in an evidence bag (an easily sealable plastic bag will suffice if there is no water/dampness on the item; if water/

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dampness is present, an acid-free paper envelope is preferable). The bag/envelope ought to be sealed and the seal signed by the person who collected the item. This bag/envelope should not be opened at any time.

Ideally, all of this information should be set out on a single sheet of paper, which is attached to the evidence bag/envelope in which the item has been placed.

This information need not be completed for each and every item if the source, date and location are the same, and if the person doing the collecting is the same. However, the process should be repeated if any of these variables differ, particularly the source of the items.

B. Was possession of the item ever transferred between individuals or organisations?

If an item has ever been transferred between individuals or organisations, it is important to keep a record of the details of that transfer. This can easily be shown in a “transfer log”.

This transfer log should set out, for each transfer of each item:

1. the case identifier - a number assigned to a particular case which can link all the information pertaining to that case;
2. the type of evidence collected;
3. the date of transfer;
4. the reason for the transfer; and
5. the signatures of both the transferor and transferee.

Ideally, the log should also set out the security conditions observed during handling or storage of the item.

In general, it is best to try to keep the number of transfers of custody to a minimum.

Annex 7

Documentary Evidence: Principles on Chain of Custody

1. When practitioners are in the field, they may come across documents of interest. For example, they might come across a document in an abandoned army building that sets out the structure of command in an army patrol team at a given time, or they might meet a doctor in a refugee camp who has in his/her possession a medical examination form for a rape survivor, or they might meet with a government official who can provide them with a document that helps to identify a perpetrator. Any of these items might be “documentary evidence” that a sexual violence crime has occurred.
2. In general, practitioners can collect these documents even if they have not been trained as a criminal investigator. As such, the guidelines that apply to “documentary evidence” differ from those that apply to “physical evidence” (**see Annex 6, “Physical Evidence: Principles on Chain of Custody”**). However, some restrictions do exist:
 - If practitioners are not trained criminal investigators, they may wish to avoid putting themselves in a position where they are called as witnesses to explain how they came across a document of interest.
 - Original documents of interest should only be collected in certain circumstances. Usually, it is best practice to obtain copies of documents of interest that are accompanied by authenticating evidence. Using the examples set out above:
 - a. If practitioners come across a document in an abandoned army building that sets out the structure of command in an army patrol team at a given time, they might have reason to believe that this document may be destroyed if left in the building. In this case, practitioners should aim to take a copy of the document and obtain authenticating evidence (i.e. evidence detailing the document’s information and circumstances of discovery, such as a witness statement). However, if this is not possible, the original document can be collected.
 - b. If practitioners meet a doctor in a refugee camp who has in his/her possession a medical examination form for a rape victim, they must not collect the original document. The patient may require the original document for his/her own purposes, and in any event medical examination forms are less compelling evidence of sexual violence crimes than survivor/witness evidence. Practitioners’ focus should be on taking an authenticated copy of the document (if consent to do so is obtained) and conducting interviews with the doctor, survivor and any other relevant witnesses (**see Annex 3, “Interviewing: Fundamental Principles and Top Practical Tips”**).
 - c. If practitioners meet with a government official who can provide them with a document that helps to identify a perpetrator, and they have reason to believe that they can safely collect, store and maintain that document until it is required in any future justice proceeding, and they have reason to believe that another version of this document can be produced by the official if required, they can collect the original document.
3. In circumstances where practitioners decide to collect documents (whether an original document or a copy of a document), the “Chain of Custody” principles set out in this

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Annex should be followed. "Chain of Custody" is a way of demonstrating where the document has come from. It is also a way of demonstrating that the document has not been tampered with between the time it was collected by the practitioner and the time it is being used as evidence of a sexual violence crime. "Chain of Custody" is very important because without it, a court or tribunal might refuse to consider the document as evidence in the prosecution of a sexual violence crime, or might decide that the document is not very good evidence of a crime. To maintain the "Chain of Custody" of a document, practitioners need to record the following.

Principles

- A. How the document was collected.
- B. Whether (and how) possession of the document was transferred between different individuals and/or organisations.

A. How was the document collected?

The general principle is that documents should be labelled with at least the following information:

1. a case identifier - a number attributed to a particular case which can link all the information pertaining to that case;
2. the date of collection;
3. the name of person who collected the document and the names of any other people present during the collection;
4. the precise location of the document when it was collected; and
5. the kind of document that was collected.
6. Practitioners should also include notes on what measures were put in place to ensure that the document was kept secure while it was in their possession (e.g. it was kept in a locked cupboard that only the practitioner's team had access to).
7. If practitioners did not collect the document themselves, they should also set out the details of any agreement, terms or discussion as to the use of the document between the person handing over the document and themselves.
8. Any document that practitioners collect should be placed (with care) in an evidence bag (an easily sealable plastic bag will suffice if there is no water/dampness on the document; an acid-free paper envelope is preferable if water/dampness is present). The bag/envelope ought to be sealed and the seal signed by the person who collected the document. This evidence bag/envelope should not be opened at any time.
9. Ideally, all of this information should be set out on a single sheet of paper that is attached to the evidence bag/envelope in which the document has been placed.

This information need not be completed for each and every document where the source, date, location and name of the person collecting are one and the same. However, the process should be repeated where any of these variables differ, in particular the source of the documents.

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B. Was possession of the document ever transferred between individuals or organisations?

If a document has ever been transferred between individuals or organisations, it is important to keep a record of the details of that transfer. This can easily be shown in a “transfer log”.

This transfer log should set out for each transfer of each document:

1. the case identifier - a number attributed to a particular case which can link all the information pertaining to that case;
2. the type of document collected;
3. the date of transfer;
4. the reason for the transfer; and
5. the signatures of both the transferor and transferee.
6. Ideally, the log should also set out the security conditions while handling or storing the document.

In general, it is best to try to keep the number of transfers of custody as low as possible.

Annex 8

Guidance on Photographing, Video-Recording and Sketching Crime Scenes, Physical Evidence and Physical Injuries

When you are in the field, you may come across scenes which may appear to be the place where a sexual violence crime has occurred (e.g. a room with a bloodstained floor containing soiled mattresses), an item that suggests to you that an act of sexual violence has occurred (e.g. a weapon that you are told by a witness was used to commit a rape) or a victim whose sexual violence injuries are apparent (e.g. a woman with bruising and scratches on her back who has informed you that these injuries resulted from the act of sexual violence).

Along with the information that you gather from survivors/witnesses by way of interview, it is important to photograph, sketch and (where possible) video-record this information. This information - if collected properly - can be very powerful evidence in any future justice proceedings.

In the case of physical evidence in particular, it is *much* better to photograph, video-record or sketch the evidence rather than collect it. In general, you should not collect any physical evidence unless there are exceptional circumstances and you have obtained the proper training (see [Annex 6](#), “**Physical Evidence: Principles on Chain of Custody**”) and you have the ability to transport and secure that evidence.

In the case of physical injuries, it is generally advisable that trained medical examiners photograph these injuries. However, other actors may (if the guidelines set out below are followed) photograph basic injuries not located in intimate areas of the body, with the express permission of the injured party.

These guidelines apply generally to anyone who decides to photograph, video-record or sketch a crime scene, a piece of physical evidence or a physical injury to a victim. However, certain actors may not have the mandate to take photographs, make video recordings or create sketches, so it is important to coordinate your approach with other actors in the field to ensure basic information-sharing and to avoid duplicating efforts. What will be key is what is set out in your mandate and your organisation’s policy in relation to situations that may necessitate temporarily acting outside that mandate.

Remember that in situations of danger, the top priority is the safety of the survivors/witnesses and their community; if you cannot obtain a photograph/video that meets all these suggestions, that does not mean that the photograph/video will never be admitted into evidence.

Photographing and video-recording crime scenes, physical evidence and physical injuries

Photographs can be very useful evidence in any future justice proceedings if the “authenticity” of those photographs can be demonstrated. “Authenticity” means that the photograph or any other evidence can be shown to be genuine. Ensuring that you have sufficient information demonstrating authenticity is not always easy, and there are steps that can be taken to reduce the opportunities of others to challenge the authenticity of the evidence.

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Before the investigation:

1. Learn how to use your camera and other photographic equipment. In particular, learn how to operate the date and time function of your camera and how to balance colour and light. If you work across multiple time zones, you should set your camera at Greenwich Mean Time.
2. By way of training, refer to existing guidance.

If you decide to take photographs:

3. If any individuals are involved in the taking of the photographs, obtain their informed consent to take the photographs.
 - This may include seeking authorisation to take the photographs from: a community that has control over a crime scene; a survivor/witness who has possession of a piece of physical evidence; or a victim who has suffered physical injuries.
 - Be considerate of the individual's comfort and privacy. The taking of photographs can be considered to be inappropriate behaviour in some cultures. This is especially important when taking photographs of physical injuries.
 - Inform the individuals involved of the intended use of the photographs. In particular, discuss the issue of anonymity: to be admissible evidence in any future justice proceedings, any individuals photographed (e.g. a victim of sexual violence) will generally not be able to remain anonymous.
 - If the individuals involved do not consent, do not take photographs. Explain to the individuals involved the consequences of not taking the photographs.
 - If the photographs involve human remains in any way, it is important to treat them, and any cultural practices associated with them, with respect.
 - Once photographs have been taken, link the individual's identity to the photographs (e.g. ensure that every photograph contains a case identifier or, alternatively, print or write the case identifier on a sheet of paper and photograph this sheet at the beginning and end of the roll of film or memory card - note that this case identifier should not include details that divulge the individual's name and address).
4. Take the photographs immediately.
 - If you are photographing a crime scene or a piece of physical evidence, take care not to disturb it before you photograph it.
 - If you are photographing a physical injury and if the sexual violence happened recently, photographs should be taken as soon as possible. However, you should also consider whether to take follow-up photographs of the injuries, as certain bruises take hours to appear after trauma.
5. Take photographs from different angles and using scales.
 - For crimes scenes and physical evidence:
 - i. First, take a photograph of the entire crime scene, using an everyday item for scale (e.g. a newspaper).

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- ii. Take medium-range or context photographs of each separate item to show its placement in the crime scene.
 - iii. Take close-up photographs of any significant items that aim to capture the context of the sexual violence crime (e.g. clothes, bloodstains, or instruments used to commit the sexual violence).
- For physical injuries:
 - i. Use a consistent method in the taking of photographs: e.g. take all photographs from left to right and from top to bottom of the victim for consistency.
 - ii. Preserve the privacy and the modesty of the victim while taking the photograph.
 - iii. Take a first photograph of the victim's face for identification purposes. This is not necessary if the person photographed is clearly identified on each picture.
 - iv. Take at least two shots of each injury from different angles. A photograph of the lesion at a 90 degree angle should always be taken.
 - v. Take close-up photographs of each injury or lesion and use a scale to enable the proper measurement of the injuries sustained.
 - vi. Take medium-range photographs of each separate injury to show clearly which part of the body has been injured.
 - vii. When taking full-length photographs of the victim to show the scope of the injuries, consider dressing or draping the victim appropriately.
6. Remember that only clear and accurate photographs will be admissible in any future legal proceedings.
 - If possible, photographs should be taken in daylight or with background lighting to avoid over-exposure.
 - The background of the photograph should be as neutral as possible: colourful or crowded backgrounds should be avoided as they can alter the accuracy of the photographs.
 - Digital cameras should have a minimum of 4 megapixel capacity or more of picture size. Taking photographs with smartphones is not recommended unless there is no other alternative.
 - Where possible, include a colour bar in the photograph to ensure accurate colour reproduction.
 - Photographs and videos are rarely self-authenticating – in other words, without survivor/witness and other testimony to explain what is in the photograph/video and to provide the context for what is being seen, the photograph/video risks being of low evidentiary value.
7. Date the photographs.
 - Use the camera's date and time function, or, if unavailable, take a picture at the beginning of the roll of film or memory card of that day's newspaper. If you work across multiple time zones, set the camera's time function to Greenwich Mean Time.

- By doing so, you will raise the evidentiary value of the photograph and will help authenticate the evidence.
8. Maintain the “Chain of Custody”.
- See **Annex 6, “Physical Evidence: Principles on Chain of Custody”**.
 - You must be able to authenticate photographs as being unaltered originals. If they are altered - e.g. rotated from portrait to landscape - document this and be in a position to explain why.
 - All photographs should be clearly labelled and the “Chain of Custody” must be maintained.
 - All photographs and video evidence should be catalogued within an established numbering system, and that numbering system should link to the other corroborative evidence in relation to this particular photograph/video (e.g. survivor/witness evidence).
 - Make sure that you note down all information relating to the photograph/video - who took it, when, where, why and how, who provided the information that led the photographer/filmmaker to record this, and who else was present.
 - For photographs taken with film, note the production serial number of the roll of the film and original item number of each pose in the roll in relation to each photograph captured.
 - For digital cameras, use a technical solution which brands or “watermarks” (an identifying code or logo) the photographs at the time of capture and can be used to authenticate the photographs subsequently. Each digital photograph file usually will include metadata that holds a large amount of information (e.g. date and time taken, date and time altered, type of camera, exposure and focal length).
 - In order for a photograph to be used as evidence it must be an original. Nothing must be deleted from the genuine photograph image and nothing must be added to the original image. If you only have a copy of a photograph, you must be able to show that it is a genuine, unaltered copy of the original.
 - Where possible, where recording a video, try not to stop and start too many times to protect against the suggestion that something has been removed from the recording.
9. Store and maintain the photographs in a safe manner.
- Film negatives should be kept away from the heat or the light because they may decay the films.
 - Printed photographs, whether film or digital, should be bound with a note stating how many photographs make up the full set.
 - For digital photography, transfer the content of the flash card on a computer, burn a WORM (Write Once, Read Many) CD or store the images on a password-protected memory key. Make two copies.
 - Keep the rolls of film, printed photographs, CDs and flash cards in a locked cupboard with limited access and keep a record of access granted (name of the person, date, time, and purpose of the access should be recorded).

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- Plan where the evidence will be stored and who will have control over it. Ideally, use a central storage location that is overseen by an evidence custodian, even if your organisation retains “ownership” of the photographs.
- Take care when going through checkpoints, as you may be asked to show any photographs (printed and digital) or negatives that you may be carrying.
- Again, all photographs and video recordings should be catalogued within an established numbering system, and that numbering system should link to the other corroborative evidence in relation to this particular photograph/video (e.g. survivor/witness evidence).

10. When taking video-recordings:

- Try to avoid narration if possible; rather, supplement the video evidence with evidence from survivors/witnesses. In other words, when filming live, ongoing events, do so silently and as they occur without narration. Then conduct interviews with eyewitnesses who are aware of what happened as it appears in the video recording, and ensure that there is a method of connecting the survivor/witness statement(s) with the video recording. Together, the video recording and the survivor/witness statements are the evidence.
- Ensure that you write down all information about who is filming, who else was present, the date, time and place of the recording, and note down all those who have custody of the film from the moment of filing onwards (**see Annex 6, “Physical Evidence: Principles on Chain of Custody”**). Also note down any copies made of the video and who made or kept the copy.
- Note that anonymous evidence is only useful for leads.
- To the extent possible, try not to stop and start the filming too often when filming the same event or location. This will help avoid accusations of having cut out any part of the video.
- The more the content of the video shows the location, time of day, date, surroundings on the macro level and detail on the micro level, the greater the likelihood that it will serve as valuable evidence. Corroborative survivor/witness evidence can serve to bolster video evidence.
- Avoid dramatisations – film as if you are not there, as if you are a camera that is present but not someone who is trying to send a particular message. Show as much of the full story as possible; evidence is more credible if it is not very clear-cut, as these events are hardly ever clear-cut.
- When filming a violent act in progress, prioritise your security rather than the evidence. If you have determined that it is safe enough to film, try as much as possible to film a large area and then focus in on a detailed area without stopping and starting the filming.
- When filming a victim (deceased) or other crime scene, film 360 degrees around, from far and from close, and circle the body while continuously filming if possible, progressively getting closer and closer to the body while circling, and ultimately zooming in on any identifying evidence and wounds.
- It is always a good idea to film with the date and time showing on the screen; but bear in mind that this can be tampered with so make sure to have the date and time accurately set.

Sketching crime scenes, physical evidence and physical injuries

A sketch can provide a useful alternative or back-up to a photograph as it is also a permanent record of the size and distance relationship of the crime scene and the physical evidence within it. Although this sketch might not ultimately be used as a primary form of evidence, it will assist you in refreshing your memory.

You may choose to produce a sketch to clarify the information present in any photographs you have taken (including the position of the camera and photographer, etc.).

11. Create your sketch after photographs have been taken and before anything is moved.
12. Sketch the entire scene, the objects, and the information contained (e.g. the identity of individuals involved).
13. You can either create a “rough sketch” (e.g. setting out the crude layout of a crime scene and recording measurements of items and structures, and distances between items), or a “final/finished sketch” (e.g. a finished rendition of the rough sketch, usually produced during any future justice proceedings).
14. If you are sketching a crime scene, you can either do a “bird’s-eye view” sketch (which is the most common form of sketch, but which cannot represent heights of items) or incorporate other perspectives (e.g. side view).
15. Be sure to include:
 - a title explaining what the sketch represents;
 - a legend explaining any symbols used in the sketch;
 - date, time and place of the sketch (and any other important identifying information);
 - name of the person who drew the sketch;
 - indication of direction (e.g. north);
 - scale of the sketch (e.g. 1:1); and
 - measurement table (explain the distances and measurements associated with the sketch - although a note should be made that all measurements are approximate).
16. If you have the capacity, consider “mapping” the crime scene, which can utilise:
 - baseline mapping (using a baseline, e.g. a fence to measure the scene accurately);
 - rectangular coordinate mapping (using two baselines);
 - triangulation (using two fixed points); and/or
 - polar/grid coordinate mapping (using a fixed or known point to demonstrate the angle and distance) to record the scene.

Also consider using GPS and Total Stations, which are mapping systems that can take measurements in polar coordinates and then convert the measurements into grid coordinates. This is best done by professionals. If using GPS, check it for degree of accuracy

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(there will be a reading for this - few will show under a metre degree of accuracy). It is best to take a GPS coordinate of a fixed immovable object and then physically measure items from there.

Examples of photographs, sketches and mapping

Outdoor crime scene



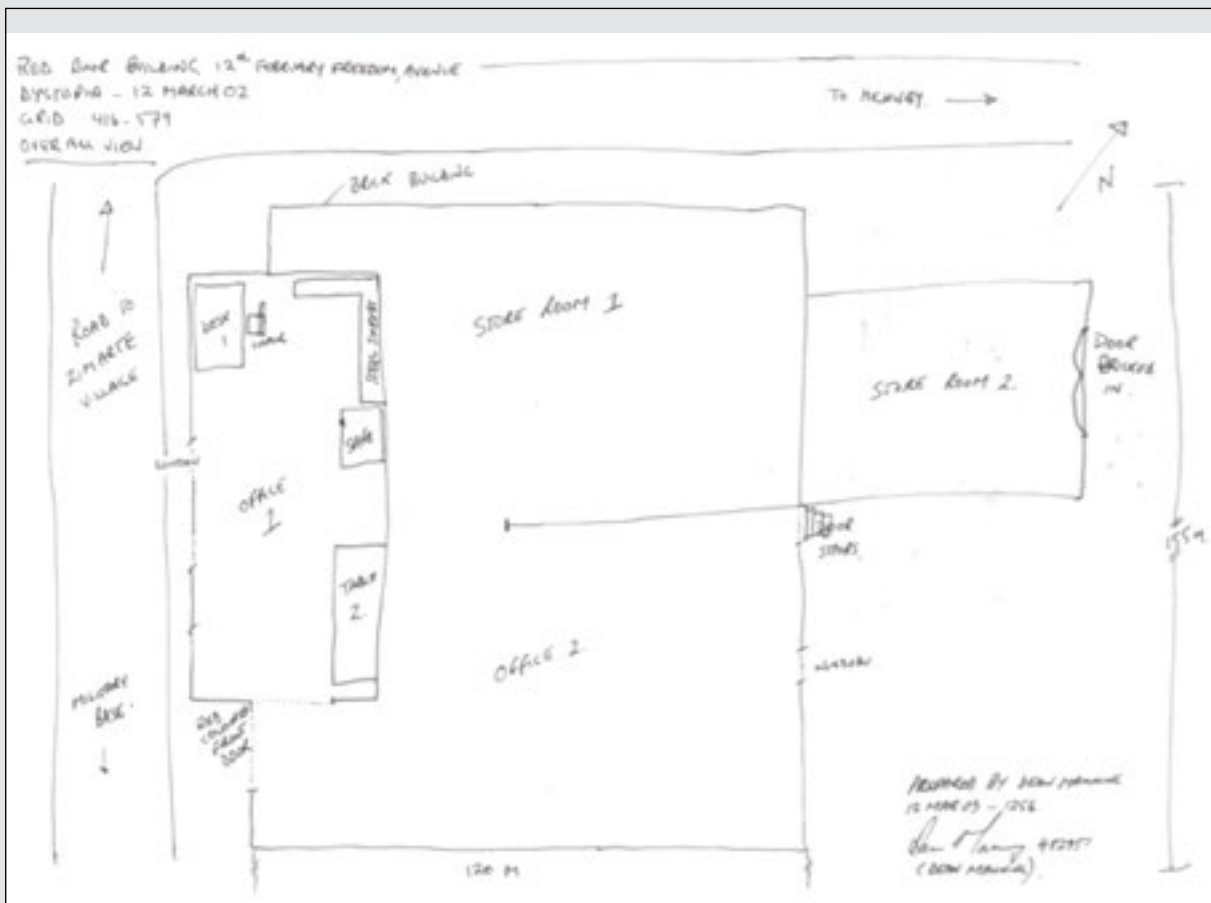
Poor photography vs good photography



Use of scales and markers



Use of scales and markers



Annex 9

Rules of Evidence and Procedure as Tools for Protection of Survivors/Witnesses

There are particular mechanisms which can be applied by practitioners in the courtroom with a view towards protecting survivors/witnesses during their testimony. Each jurisdiction is different and each court will have different rules of procedure and evidence. This section sets out briefly some examples of possible procedures for courtroom protection which practitioners can strive to apply in the context of their trials (if the applicable rules of procedure and evidence permit). It is hoped that these suggestions may also inspire the application of creative solutions on the part of prosecutors and judges for survivors/witnesses testifying in court.

International criminal practice has in place the following rules of procedure and evidence:⁶⁷

1. No corroboration required for sexual violence crimes

Under principles of international criminal procedure, no corroboration is required in cases of sexual violence. What this means in practice is that a survivor's own testimony can be sufficient evidence of the commission of a crime of sexual violence, in the absence of any other corroboration from witnesses, documents, medical reports, photos, or any other potentially corroborative evidence.⁶⁸

However, this may often mean that the survivor's credibility is challenged on cross-examination in an attempt to discredit his/her testimony. Practitioners should be aware of international and national case law that sets out that survivor testimony is not inherently less credible, that corroboration is not required to show credibility and why this is the case, in light of the particular nature of the crime.

2. No questions regarding consent may be asked of the witness without the express permission of the court

In domestic contexts, survivors of crimes of sexual violence are often obliged to demonstrate to the court that they did not consent to the sexual act. Lack of consent is not an element of sexual violence as a crime under international law. In international criminal practice, the jurisprudence has developed to protect the survivor from questions relating to consent. This is due to the fact that sexual violence committed in the context of armed conflict, mass atrocities or genocide is being committed in circumstances that negate consent. There is an acknowledgement that it would be absurd to put questions about consent to a survivor of crimes committed during the context of international crimes, and that the potential harm that a suggestion of consent could cause to a survivor far outweighs any evidentiary benefit of posing the question. Genuine consent under circumstances of mass violence, duress, detention, threats, coercion and all the circumstances in which international crimes are committed is viewed as being essentially impossible.

⁶⁷ These concepts are reflected in various ways in the Rules of Procedure and Evidence at the International Criminal Court (ICC), ad hoc and hybrid tribunals. This section of the Protocol sets out the concepts in general terms without specific reference to a particular jurisdiction. Practitioners can use this section as a resource to advocate for application of these and other rules which can serve to improve a survivor/witness's participation in the justice process and accountability for the crimes to which s/he will be testifying.

⁶⁸ Note that the ICC Rules of Procedure and Evidence explicitly state that no corroboration is required for any crime being prosecuted under the Rome Statute. In practice, corroboration can strengthen a case, of course, but the absence of corroboration does not mean that the evidence will be insufficient on which to base charges or indeed a conviction.

Rules of procedure and evidence may oblige the defence team to inform the judge before the survivor enters the courtroom that they plan to ask the survivor about consent; in that case the judge will review that purported evidence of consent in advance of the survivor entering the courtroom, and determine if the defence may be permitted to ask the witness questions.

In turn, the prosecution team may argue against it and the court will decide. In order to demonstrate that the circumstances in which the act took place were such that consent was impossible, the prosecutor must ensure that s/he presents sufficient evidence of the circumstances which made consent impossible.

In international criminal practice, if the court allows questioning about alleged consent it is done in an in camera hearing, i.e. the public are excluded from the gallery and any transmission is suspended. As a matter of good practice, closed session should also be used to hear parties' arguments about allowing questions concerning alleged consent.

3. Support persons present in courtroom

In some contexts it may be possible to seek permission from the judge to have a support person present in the courtroom within the line of sight of the witness in order to provide him/her with a sense of support. This is something which can serve to put the witness at ease in a relatively uncomfortable situation.

4. Prohibition on questions on prior and subsequent sexual conduct

Most international criminal tribunals prohibit questions relating to the prior or sexual conduct of the survivor. The ICC Rules also prohibit questioning on subsequent sexual conduct. These questions can be particularly humiliating, and in the context of war crimes, crimes against humanity and acts of genocide, are viewed as being irrelevant and incongruous. For example, questions such as "Are you/were you a virgin?" should not be permitted as they can be distressing for survivors and are irrelevant to proving or disproving the alleged crimes. Practitioners can look to international practice as a basis for advocating for procedures precluding such questions.

5. Other protective measures

Victims, in particular (or their families and close associates) should never be exposed to risk of retaliation or re-traumatisation as a consequence of their cooperation as a witness. Each judicial system should have protective measures available for survivors/witnesses. Such measures may include the following.

Physical/out-of-court witness protection

- Witness relocation programmes.
- Secure witness transport and/or accommodation during testimony.

Procedural/in-court witness protection

- Closing hearings to the public.
- Remote testifying, for example by video link.
- Testifying under pseudonym.

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- Testifying using voice and image distortion.
- Separate entrances and waiting areas for witnesses.
- Delayed transmission (of televised proceedings).

Witness support


- Legal advice about the rights and duties of witnesses.
- Explanation about the testifying process by a neutral party.
- Counselling.
- Administrative support with logistics, for example translation, travel, and claiming expenses.
- Providing for a “companion” to accompany the witness throughout the trial process as an additional support

It is for the practitioner to explore the scope of these measures and to advocate for their broadening for survivors/witnesses of these types of crimes.

Annex 10

Sample sexual assault medical certificate

This forensic medical certificate is a sample of what can be used by trained doctors and nurses conducting forensic medical evaluations and documenting physical and behavioural observations in their health clinics, where possible.

SEXUAL ASSAULT MEDICAL CERTIFICATE DEMOCRATIC REPUBLIC OF THE CONGO		This certificate is granted free-of-charge to victims of sexual violence based on the n°251/143/B.MIP/SK/2012 memorandum of the Province Health Inspection Department.	
Confidential Document			
<small>Law n° 06/019 of 20 July 2006 amending and supplementing the Decree of 6 August 1959 on the Congolese Code of Criminal Procedure, Article 14: "In accordance with Articles 48 and 49 of the Code of Criminal Procedure, the public prosecutor or the judge calls for a doctor and a psychologist to assess the condition of the victim of sexual violence and to determine the appropriate care and to assess the degree of prejudice suffered by the latter and further aggravation."</small>			
Today's Date / / Time : :		Location of medical exam	
A. PATIENT INFORMATION			
1. Last name		2. Post-name	3. First name
4. Address		5. Gender <input type="checkbox"/> Female <input type="checkbox"/> Male	
6. Age <input type="checkbox"/> Not known	7. Date of birth / / <input type="checkbox"/> Not known	8. Place of birth <input type="checkbox"/> Not known	
9. Marital status <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Widowed			
<i>Note: If the patient is male, skip to question 14.</i>			
10. Date of last menstrual period / / <input type="checkbox"/> Premenarchal <input type="checkbox"/> Post-menopausal <input type="checkbox"/> Not known			
11. Number of pregnancies	12. Number of live births	13. Currently pregnant <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not known	
14. Patient had consensual intercourse within 7 days before the assault <input type="checkbox"/> Yes <input type="checkbox"/> No			
15. Patient had anal/vaginal wounds, injuries, diagnostic procedures or medical treatments within 60 days before the assault that could affect the interpretations of the current medical exam <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If "Yes," explain :</i> _____			
16. Date and time of the assault / / : : <input type="checkbox"/> Not known		17. Place of the assault <input type="checkbox"/> Not known	
18. Use of force, threats or weapons (check all that apply) <input type="checkbox"/> Physical force <input type="checkbox"/> Use of weapons <input type="checkbox"/> Threats to the patient <input type="checkbox"/> Threats to others <input type="checkbox"/> Not known			
19. Type of force/weapons (check all that apply) <input type="checkbox"/> Sticks/batons <input type="checkbox"/> Knives <input type="checkbox"/> Blindfold <input type="checkbox"/> Hands <input type="checkbox"/> Not known <input type="checkbox"/> Other (such as forced nudity, suspension, electrical torture, witness or participation in torture of others, etc.): _____ <input type="checkbox"/> Guns <input type="checkbox"/> Restraints <input type="checkbox"/> Gag <input type="checkbox"/> Feet			
20. Forced chemical intoxication of patient (check all that apply) <input type="checkbox"/> No <input type="checkbox"/> Drugs <input type="checkbox"/> Alcohol <input type="checkbox"/> Not known <input type="checkbox"/> Other : _____			
B. SUSPECT INFORMATION			
1. Number of suspects <input type="checkbox"/> One (1) <input type="checkbox"/> Two (2) <input type="checkbox"/> Three (3) <input type="checkbox"/> More than three <i>If "More than three," specify the number : _____</i> <input type="checkbox"/> Not known <i>First suspect: answer questions 2 through 6. Second suspect: answer questions 7 through 11.</i>			
2. Relationship of suspect to patient (check all that apply) <input type="checkbox"/> Acquaintance <input type="checkbox"/> Family member <input type="checkbox"/> Stranger <input type="checkbox"/> Intimate partner / ex-partner <input type="checkbox"/> Not known <input type="checkbox"/> Other : _____		7. Relationship of suspect to patient (check all that apply) <input type="checkbox"/> Acquaintance <input type="checkbox"/> Family member <input type="checkbox"/> Stranger <input type="checkbox"/> Intimate partner / ex-partner <input type="checkbox"/> Not known <input type="checkbox"/> Other : _____	
3. Suspect gender <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Not known		8. Suspect gender <input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Not known	
4. Approximate age of suspect <input type="checkbox"/> Not known		9. Approximate age of suspect <input type="checkbox"/> Not known	
5. Suspect is <input type="checkbox"/> Civilian <input type="checkbox"/> Police <input type="checkbox"/> Military <input type="checkbox"/> Militia <input type="checkbox"/> Not known		10. Suspect is police/military/militia <input type="checkbox"/> Civilian <input type="checkbox"/> Police <input type="checkbox"/> Military <input type="checkbox"/> Militia <input type="checkbox"/> Not known	
6. Language(s) spoken by suspect <input type="checkbox"/> Not known		11. Language(s) spoken by suspect <input type="checkbox"/> Not known	
<i>If three or more suspects, answer question 12.</i>			
12. Describe the suspects in detail (including relationships to patient, genders, approximate ages, whether suspects are police/military/rebels, languages spoken, etc.): _____ _____ _____			
Name of clinician _____		N°C.N.O.M. _____	
Signature of clinician _____		Date / / _____	

SEXUAL ASSAULT MEDICAL CERTIFICATE (continued)

C. SUMMARY OF EVENTS REPORTED BY THE PATIENT

	Yes	No	Attempted	Not known	Comments:
1. Penetration of female genitalia with:					
a. penis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. finger(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. foreign body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Penetration of anus with:					
a. penis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. finger(s)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. foreign body	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Oral contact with genitalia:					
a. suspect to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. third party to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. patient to suspect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
d. patient to third party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Oral contact with anus:					
a. suspect to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. third party to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. patient to suspect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
d. patient to third party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Genital touch / contact:					
a. suspect to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. third party to patient	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. patient to suspect	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
d. patient to third party	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
e. patient to self	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Ejaculation:					
a. inside body orifice of patient	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	_____
b. outside body orifice of patient	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	_____
c. specify location of ejaculation:	_____				

D. POST-ASSAULT PATIENT HYGIENE

1. After the assault, the patient (check all that apply)

Ate Drank Brushed teeth Urinated Showered Took a bath Not known

E. PATIENT ACCOUNT OF EVENT

Provide a summary of the key elements of the assault as described by the patient. (If there are additional facts or observations that are not otherwise represented in this form, please attach a typed narrative.)

F. GENERAL PHYSICAL EXAM OF THE PATIENT

1. Blood pressure /	2. Pulse	3. Respiration	4. Temperature (Celsius)
------------------------	----------	----------------	--------------------------

5. Behavior and psychological state (check all that apply)

fear withdrawn sad ashamed impaired mental status

angry shocked crying mute anxious

REMEMBER TO: COLLECT EVIDENCE (wet and dry secretions, stains, clothing and foreign materials from the patient's body); USE RAPE KIT (when available) AND CHAIN OF CUSTODY FORMS; and TAKE PHOTOGRAPHS

Name of clinician _____ N°C.N.O.M. _____

Signature of clinician _____ Date _____ / _____ / _____



SEXUAL ASSAULT MEDICAL CERTIFICATE (continued)

F. GENERAL PHYSICAL EXAM OF THE PATIENT (continued)

Legend: Findings

A Abrasion	BI Bite	BU Burn	DB Debris	DF Deformity	DS Dry secretion	EC Ecchymosis (bruise)	ER Erythema (redness)	FB Foreign body (describe)
FI Fiber (include hair)	G Gunshot wound	I Incision	L Laceration	M Moist secretion	O Other injury (describe)	P Sensitivity (include pain)	S Swelling	V Vegetation (include soil, dirt)

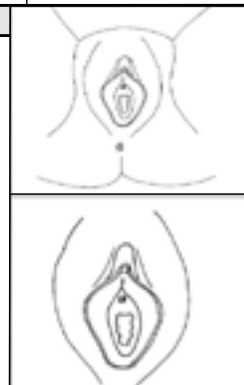
Number each discrete injury/finding on the diagrams below.
In the table below, write the number with the corresponding abbreviation for the type of finding (see table of findings above).

		Location on the body	Findings	Comments :

G. GENITAL EXAM (FEMALE)

Use the legend above to identify and localize elements of the genital exam.
Examine the inner thighs, external genitalia, and perineal and anal areas (check the boxes if there are relevant sexual assault findings)

- | | | | | | |
|---|------------------------------|-----------------------------|------------------------|--|-----------------------------|
| 1. Inner thigh injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | 9. Vagina injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Periarethral / urethral meatus injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | 10. Cervix injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Perineum injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | 11. Exam position used | <input type="checkbox"/> Supine
<input type="checkbox"/> Knee-chest
<input type="checkbox"/> Other | |
| 4. Labia majora injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| 5. Labia minora injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| 6. Hymen injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| 7. Clitoris/surrounding area injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |
| 8. Buttocks / anal verge / folds / rugae injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No | | | |



H. GENITAL EXAM (MALE)

Examine the inner thighs, external genitalia, and perineal and anal areas (check the boxes if there are relevant sexual assault findings)

- | | | |
|---|------------------------------|-----------------------------|
| 1. Inner thigh injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Glans penis or penile shaft injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Scrotum injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 4. Testes injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 5. Patient is circumcised | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 6. Buttocks / anal verge / folds / rugae injury | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 7. Rectal bleeding | <input type="checkbox"/> Yes | <input type="checkbox"/> No |



Name of clinician _____ N°C.N.O.M. _____
 Signature of clinician _____ page 3 of 4 Date _____ / _____ / _____

SEXUAL ASSAULT MEDICAL CERTIFICATE (continued)

I. LABORATORY AND OTHER TESTS

PERFORMED:	Yes	No	RESULTS:	PERFORMED:	Yes	No	RESULTS:
1. HIV serology	<input type="checkbox"/>	<input type="checkbox"/>	_____	6. Urinary analysis	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Syphilis	<input type="checkbox"/>	<input type="checkbox"/>	_____	7. Wet mount for sperm / infection	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Hepatitis B	<input type="checkbox"/>	<input type="checkbox"/>	_____	8. Ultrasound	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. PAP smear	<input type="checkbox"/>	<input type="checkbox"/>	_____	9. Other testing	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Pregnancy test	<input type="checkbox"/>	<input type="checkbox"/>	_____				

J. TREATMENT / PLAN

1. Post-exposure Prophylaxis (PEP)	Yes	Non	Comments:
a. PEP	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Medications	Yes	No	Comments:
a. Antibiotics	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. Pain medicine	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. Emergency contraception	<input type="checkbox"/>	<input type="checkbox"/>	_____
d. Other	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Referrals	Yes	No	Comments:
a. Patient will be referred to specialist today	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Police requisition	Yes	No	Comments:
a. Police requisition completed	<input type="checkbox"/>	<input type="checkbox"/>	_____
b. If 4a is "No," does the patient want to report to the police?	<input type="checkbox"/>	<input type="checkbox"/>	_____
c. If 4b is "No," was the patient counseled on the value of a police investigation?	<input type="checkbox"/>	<input type="checkbox"/>	_____

K. EVALUATION FINDINGS

- History of event: _____
- Behavioral observations: _____
- Physical findings: _____
- Laboratory tests: _____
- Completed documents attached to this certificate:
 Laboratory test results Written narrative (preferably typed) Photographs Not applicable

L. EVALUATION CONCLUSIONS

- The medical evaluation findings are: (choose only one option)

CONSISTENT with _____

HIGHLY CONSISTENT with _____ **SEXUAL assault.**

DIAGNOSTIC of _____

NOT CONSISTENT with _____
- The medical evaluation findings are: (choose only one option)

CONSISTENT with _____

HIGHLY CONSISTENT with _____ **PHYSICAL assault.**

DIAGNOSTIC of _____

NOT CONSISTENT with _____

M. CLINICIAN OATH

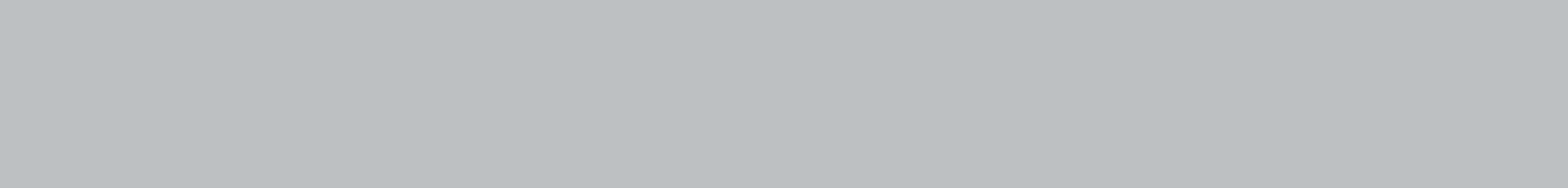
I have provided informed consent to the patient for the evaluation, photographs, and transfer of affidavit to the legal system or law enforcement.

Yes No

I hereby solemnly swear that the information provided in this form is true and complete to the best of my knowledge and belief.

Name of clinician _____
 Signature of clinician _____
 Date _____ / _____ / _____

Name of clinician _____ N°C.N.O.M. _____
 Signature of clinician _____ page 4 of 4 Date _____ / _____ / _____



Basic Standards of Best Practice on the Documentation of
Sexual Violence as a Crime under International Law

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