

Toolkit for Basic Investigative and Evidence Gathering Standards for International Crimes

This toolkit is designed to provide necessary guidelines on how to conduct investigations and gather evidence in compliance with the widest accepted standards, including at the International Criminal Court (ICC) in view of increasing the chances for efficient investigations and gathering of evidence.

The risk of investigating and gathering evidence without complying to generally acceptable standards is that important evidence will not be admissible in a court of law, namely in criminal proceedings at the national and international level.

The pamphlet below includes guidelines on:

- **10 Essential Investigation Rules;**
- **Physical Information;**
- **Testimonial Information;**
- **Digital Information;**
- **Documentary Information;**
- **Sexual and Gender Based Violence Information**

The International Criminal and Humanitarian Law Clinic team led by its founding director, Adv. Yael Vias Gvirsman who has extensive experience in the field of International Criminal Law and related fields, is readily available to provide professional training and build cooperation in view of promoting accountability for core international crimes following the highest international standards of fair trial principles and promoting remedy for victims. Our approach based on extensive professional experience and sensitivity to conflict-ridden contexts, based ourselves in a conflict-ridden situation. If interested, **please contact the Clinic Director, Adv. Yael Vias Gvirsman at yaelgman@gmail.com.**

To complete the succinct pamphlet below and for further reading, please see: The Romes Statute 1998, ICC Rules of Procedure and Evidence and other 'Core Legal Texts' available at <https://www.icc-cpi.int/resource-library/core-legal-texts>

Global Rights Compliance (GRC), Basic Investigative Standards for First Responders to International Crimes (BIS), 2018 available at:

<https://globalrightscompliance.com/wp-content/uploads/2022/03/Basic-Investigative-Standards-for-International-Crimes-Hardcopy.pdf#page7>

Investigative Team to Promote Accountability for Crimes Committed by Da'Esg (ISIL) (UNITAD), Collect, Store and Preserve Evidence at the Highest POSSible Standards: <https://www.unitad.un.org/content/collect-store-and-preserve-evidence-highest-possible-standards>

Maria Nystendt (Eds), Christian Axboe, Nielsen and Jann K. Kleffner, A Handbook on Assisting International Criminal Investigations, The Folke Bernadotte College, The Swedish National Defense College, 2011, available at:

<https://fba.se/contentassets/6f4962727ea34af5940fa8c448f3d30f/Handbook-on-assisting-international-criminal-investigations.pdf>

Bergsmo and Whiley, Human Rights Professionals and the Criminal Investigation and Prosecution of Core International Crimes, in Manual on Human Rights Monitoring, Norwegian Center for Human Rights (PRIO) Oslo University, 2008:

<https://www.jus.uio.no/smr/english/about/programmes/nordem/publications/manual/current/kap10.pdf>

Institute for International Criminal Investigations (ICI) official website:

<https://iici.global/>

Secondary Sources:

Steven Wilkinson, Standards of Proof for International Humanitarian and Human Rights Fact-Finding and Inquiry Commissions, Geneva Academy:

<https://www.geneva-academy.ch/joomlatools-files/docman-files/Standards%20of%20Proof%20in%20Fact-Finding.pdf>

Carsten Stahn, Fair and Effective Investigation and Prosecution of of International Crimes, Nuremberg Principles Academy, 2019:

https://www.nurembergacademy.org/fileadmin/user_upload/Fair_and_Effective_Investigation_and_Prosecution_of_International_Crimes.pdf

European Union Agency for Criminal Justice Cooperation (Eurojust) website on international crimes- namely on the joint investigative efforts in Ukraine:

<https://www.eurojust.europa.eu/crime-types-and-cases/crime-types/core-international-crimes-note>; Eurojust is hosting cooperation for Ukraine

TEN ESSENTIAL INVESTIGATION RULES:

1. **DO NO HARM:** Ensure, at all times, that your activities do no harm to yourself, victims and witnesses, colleagues, and local communities. Under no circumstance should an investigative activity be undertaken if you are unable to respect the 'do no harm' principle.

2. **Maintain MINIMUM STANDARDS:**

- The investigation is well planned and executed
- Any decision to enter a crime scene is taken with care and due consideration for the risks
- Any collection of information/evidence is timely and followed by adequate record keeping.
- Any engagement with persons relevant to an incident or potential witnesses is only conducted when relevant risk assessments have been made.
- That the investigation conducted is verifiable, accurate, independent and impartial. A failure to meet these demands may undermine the viability of future proceedings, and justice as a whole.

3. **Maintain IMPARTIALITY and OBJECTIVITY:**

When conducting interviews or gathering information/evidence, ask open-ended questions that allow victims and witnesses to provide their testimony freely, without being led. For example:

What? (e.g., What happened? What is the source?)

Who? (e.g., Who was involved? Who did what?)

How? (e.g., How did that happen? How does the person know that?)

Where? (e.g., Where did this take place? Where is this information from?)

When? (e.g., When did this happen? When was this information obtained?)

Why? (e.g., Why does the person believe that?)

4. **Be confident of your own COMPETENCE:** Anyone engaging in investigative processes needs to be confident of their own competence prior to undertaking a task. If you believe you do not have the competence to undertake the task, you should refrain and seek advice from appropriately qualified personnel.

5. **Focus on the INFORMATION / EVIDENCE,** not law or opinion

6. **RECORD, COLLECT and PRESERVE** all information / evidence

7. **Implement an ORGANISED SYSTEM** to **RECORD** the investigative steps and the results

8. **Ensure INFORMED CONSENT, CONFIDENTIALITY, and PROTECTION** of witnesses and sources

9. **Always Implement a CHAIN OF CUSTODY**

10. **Be aware of your own IN-HOUSE GUIDELINES**

Physical Information

	Description
01	<p>Physical objects as well as prints (such as fingerprints, footprints, cut marks, tool marks etc) found at a crime scene. physical information may include weapons or ammunition (such as bullet casings or a knife used in an attack), explosive devices (including shrapnel), human remains, or communications equipment related to the crime.</p> <p>Physical information may be provided by a source or retrieved from the crime scene.</p>
	Gathering the Information
02	<p>It is not recommended to manage a crime scene if you are not a professional investigator because crime scenes can easily be contaminated. In an event that a professional investigator is not able to access the crime scene, or in the event that the information arising from the crime scene will be lost or damaged you must take the following steps in observing and documenting the scene. Step One: Preserving the Crime Scene. A. Assessing the Safety of the Area where the Crime Scene is Located – making sure that the scene is safe and free of dangers. B. Identifying the Crime Scene – central point of the crime scene and consider a possible secondary crime scene. C. Securing the Crime Scene – record the location, sketch the site, cordon off the crime scene, establish a common entry point, monitor access and keep a log of whoever enters, promptly photograph and shelter from weather damages.</p>
	Recording the Information
03	<p>Recording facts regarding the crime scene, ensure notes are correct, detailed and professionally kept, record date and time of the incident and entry/exit, location and size of the scene must be noted through the GPS coordinates (maps should be signed, dated and preserved), note observations in written/voice/photo/video (what, when, where, why, who), and prepared a bird's eye sketch of the scene.</p>
	Storing the Information
04	<p>Practitioners will come into possession of physical information in two ways: collecting it from a crime scene or receiving it from a source, such as a witness or victim of the crime. Avoid receiving information in exchange for money. Record the personal and contact details of the provider. Store the information in a secure, safe place such as a room or a closet space with a lock, free from environmental factors (extreme heat or cold, water, etc.) and unauthorized access</p>

Testimonial Information

01	<p>Description</p> <p>The most appropriate way to gather testimonial information from a witness is to conduct an interview, allowing the witness to describe their account of the events related to the commission of the crime in question.</p>
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	<p>Gathering the Information</p>
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02	<p><u>Witness Statement vs Witness Summary:</u></p> <p>A witness statement signed by a witness is considered to 'belong' to the witness. If later statements or accounts are materially different, it may be used in court to impeach the reliability of their account. Therefore, interviewing a witness with a view to obtaining a signed statement should only be attempted if the practitioner is confident that the circumstances are amenable to an accurate and comprehensive interview (e.g., sufficient time, safe and secure environment) and they have the required skills and experience.</p> <p>If in doubt, it may be prudent to aim only to obtain a witness summary with a view to recording the broad "four corners" of the testimony. This will preserve the main aspects of the testimony and provides a trained practitioner (in the future) with sufficient material to conduct a more formal interview or gather other information or obtain evidential leads. A summary belongs to the practitioner and not the witness and thus has limited impeachment value.</p> <p><u>Rules for writing a Witness Statement :</u></p> <ol style="list-style-type: none"> 1. A chronological sequence of events witnessed by the person making the statement. 2. Identification details of all perpetrators, if known. 3. A comprehensive description of all the crimes witnessed. 4. A description of the scene of the crime. 5. Actual words spoken by the suspects and by other people in the presence of the suspect. 6. The ability of the witness to see or hear the things mentioned in the statement. 7. Anything else of relevance which might assist the court in determining the credibility of the witness. 8. Information learnt from other people, which should be separated from what the witness saw or heard or knew him or herself. <p><u>Rules for Writing a Witness Summary:</u></p> <ol style="list-style-type: none"> 1. Summarise the witness's information accurately 2. Take notes and record the summary a witness wishes to make. You should be aware that your notes may later be requested by the ICC 3. Focus on facts and not opinions: whom they saw, where and when they saw it and what happened 4. Record dates accurately, but bear in mind a witness may be genuinely confused. The summary should indicate whether the matters indicated are from: <ul style="list-style-type: none"> o The witness's personal knowledge and observation or o Common information or belief (and not first hand). In this case, the summary should describe clearly the source of the information or belief 5. Exclude obviously irrelevant material 6. Include "hearsay" information. It can often be used as evidence at the ICC. Hearsay information is a statement from someone other than the immediate witness or victim. For example: the witness may say, "My mother told me that she saw him enter the house through the backyard." 7. Classify the witness in the summary: are they sensitive, i.e., someone who may be in jeopardy if their associations were to be known? 8. Do not ask the witness to sign the summary or it will become their statement.
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Digital Information

	<h2>Description</h2>
<p>01</p>	<p>Any information stored on, received, or transmitted by an electronic device. This includes photographs and videos, audio recordings, email communications, posts on social media and data downloaded from websites. In addition to digital information recorded personally by the practitioner, digital information from other sources including eyewitnesses, NGOs and other public organisations, the internet, and social media may provide relevant and probative evidence of international crimes.</p>
	<h2>Gathering the Information</h2>
<p>02</p>	<p>Assess the content, provenance, source or author of the digital information as well as that persons role in the relevant events.</p>
	<h2>Recording the Information</h2>
<p>03</p>	<p>Record the chain of custody (see p. 20) from the time the information is created or downloaded or otherwise seized until its submission to the relevant authority or court, and consider any other relevant information that might help in establishing the authenticity of the digital information. Before being admitted as evidence, a court will require proof of the photograph or video's originality and integrity.¹⁶⁵ The relevance of the photograph or video depends on the date and/or location of the recording so the practitioner must ensure that this information is always provided.</p>
	<h2>Storing the Information</h2>
<p>04</p>	<p>Take the photographs/videos immediately</p> <ul style="list-style-type: none"> • Date the photographs and videos. In addition, record the date in your Photograph Log • Try to activate GPS settings on the device itself or otherwise note the location where the photograph was taken (e.g., by ensuring that the location is clearly visible in the photograph itself) • Maintain the chain of custody • Do not attempt to alter the photograph/video (e.g., crop/filter or add anything to the original) to ensure that it can be authenticated as originals. If an alteration is necessary, record the reason why • All photographs should be clearly labelled and recorded in the 'Photograph Log' including who took the photograph or video, when, where, why and how, what it depicts and other contextual information • Consider if witnesses can provide information for essential context, for example by describing what is in the photograph/video, when, where and why it was taken and by whom • Practitioners should be aware of specific digital tools that allow photographs and video recordings to be verified during their creation (TRUEPIC or IWITNESS). <p>Same as above and following the guidelines of IICI Guidelines For Investigating Conflict-Related Sexual And Gender-based Violence Against Men And Boys.</p>

Recording the Information

03

1. Keep a clear record of all interactions with the witness
2. Use a safe and secure method of communication that will not put anyone at risk
3. Explain who you are and the purpose of your call
4. Inquire whether the witness has a preferred method of communication
5. Ask whether an interpreter is needed
6. Establish whether the witness has already been interviewed by another organisation. Avoid unnecessary recounting of the event producing multiple statements
7. Ensure you do not promise benefits to the witness (for example, free health care, education, expenses beyond the cost of attending for interview)
8. Explain to the witness that their consent may be withdrawn at any time during the interview process
9. Explain to the witness how their statement may be used and the possible consequences of giving a statement. Specifically, explain that if the statement contains relevant and probative information:
The statement may be passed on to the relevant authorities
The witness may be called to testify before a court. The identity and the statement of the witness may be disclosed to a court and the defense at some point in the proceedings
If the witness has any concerns regarding his/her safety, explain that it is at the discretion of the investigating and prosecuting authorities using the information to provide protective measures
10. Ask whether the witness has any concerns regarding their involvement in the investigation.
If, in the knowledge of the foregoing, the witness provides informed consent to be interviewed:
 1. Ask for preferences on time and location of the interview
 2. Ask for preferences regarding the gender of the interviewer.
 3. Ask whether the witness would like to have any support persons present, such as a guardian, psychologist or a social worker.

Storing the Information

04

- Create a 'Witness Statement File' that contains all the written or digital witness summaries or statements, as well as a 'Witness Communication Log' chronologically recording all contact the practitioner had with the witness. These documents should refer to the witness only by his/her designated code (see below), not by name or any other identifying information
- A separate 'Confidential Witness Information File' containing all confidential information about the witness should be kept in a secure place separately from the Witness Statement File. This includes a Witness Code Sheet (identifying each witness and a corresponding code) and a Witness Information Sheet (providing sufficient information to ensure they can be located in the future)
 - Do not share the original copies of the witness statement with third parties (unless consent has been obtained e.g., to disclose to professional investigators from trusted domestic or international authorities). Appoint a person to be responsible for the storage area and access to the Witness Log or the statement
 - Institute a logbook to record who is entering the storage area and for what purpose.
 - Ensure that any subsequent handling of the witness statement after storage is properly recorded.

Documentary Information

	<h2>Description</h2>
01	<p>May be gathered from public and private sources, and includes state authorities, international organisations, non-governmental organisations, victims and witnesses, private individuals and organisations, national or international media, including radio broadcasts, online posts, newspapers and online sources.</p>
	<h2>Gathering the Information</h2>
02	<p>In receiving documentary items from external sources, practitioners should:</p> <ul style="list-style-type: none"> • Avoid receiving documentary items in exchange for money • Ensure that the provider obtained the document through valid means (see p. 244) • Consider the motivation of the creator/provider in creating/providing the documentary item • Not promise the provider that the item or his/her identity will remain confidential in any circumstances • Wear protective clothing (e.g., gloves) in handling the document to avoid contaminating any possible forensic information (if applicable) • Avoid altering the original state of the document in any way (e.g., stapling the document) • Make copies of the original document as soon as practicable and store the original appropriately to prevent loss or damage. Avoid making too many copies of the original document • Explain to the provider that domestic or international authorities who will receive the document may be able to address his/her confidentiality and security concerns through protective measures.
	<h2>Recording the Information</h2>
03	<p>Establish authenticity of all documents. Identify the author and provider of the document (including the organization he/she belongs to) and his/her motivation in producing/providing the document</p> <ul style="list-style-type: none"> • Establish when, where and for what purpose the document was produced • Identify witnesses (ideally the author of the document) who can speak to the creation or origins of the document • Establish the provenance (i.e., the origins and source) of the information relied upon by the author in the preparation of the document • Find (if possible) copies of the document from different sources and cross-check its content • Record how the document was obtained (in order to assess whether the document was obtained through valid means) • Maintain a chain of custody of the document from the time of its creation until its provision to domestic or international authorities • Collect additional information to demonstrate the authenticity of a document

Storing the Information

04

Create a document log that includes:

- A description of the document
- The provenance/origin of the document
- The date of the document
- A short summary of the content of the document
- The location of the original copy of the document
- The provenance of the document, including who authored it and provided it to the practitioner
- When the document was provided to the practitioner
- The chain of custody of the original version of the document
- Whether the document contains confidential information or not

A copy of the document as a countermeasure against the possible loss or deterioration of the original version. Do not share the original document with third parties. Ensure that any handling of the document is properly recorded.

Sexual and Gender-Based Violence (SGBV) Information

	Description
01	<p>“Any act that is perpetrated against a person’s will and is based on gender norms and unequal power relationships. It encompasses threats of violence and coercion. It can be physical, emotional, psychological, or sexual in nature, and can take the form of a denial of resources or access to services. It inflicts harm on women, girls, men and boys (Rome Statute).”</p> <p style="text-align: center;">When interacting with victims of SGBV crimes, practitioners should consult the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict</p> <p>Victims and witnesses of SGBV crimes may include a wide variety of persons, including:</p> <ul style="list-style-type: none"> ◦ Direct victims/witnesses of sexual violence describing their experience of the crime committed against them or other victims ◦ Family members, members of the community, service providers or relief workers who witnessed or have knowledge of the attacks ◦ Pattern witnesses such as doctors, nurses, counsellors, local leaders, human rights/military officers and observers who may have information on the existence of additional victims/witnesses of sexual violence and the timing and location of the acts ◦ Members of government or armed groups: insiders often provide the most critical information linking directly to the perpetrators - but approaching insider witnesses is something which should be done with the utmost care and only by trained practitioners.

	Gathering the Information
02	<p>Practitioners investigating sexual and gender-based violence (‘SGBV’) should be trained.</p> <p>When preparing any investigation, practitioners should be aware of the high risk of SGBV having occurred and the likelihood of underreporting. To this end, practitioners should make specific provision for the investigation of SGBV crimes within their Investigation Plan. Research into the occurrence of SGBV should be an essential component of the Investigation Plan and should be revisited throughout.</p> <p>While gathering SGBV information- you must be aware of physical information for SGBV crimes, Documentary Information for SGBV crimes, and Digital information for SGBV crimes.</p> <p>You must be aware that the IICI has specific guidelines on Collecting Testimonial Information from Victims and Witnesses of SGBV against <u>Men and Boys</u>, and against <u>Children</u>.</p> <p>The Investigation Plan should include specific protective measures to mitigate risks associated with investigating SGBV, in particular:</p> <ul style="list-style-type: none"> ◦ Contact victim/witnesses for an emotional check after interviewing them and, if possible, at regular intervals after that ◦ Keep victim/witness personal information separate from the interview notes and use a coding system ◦ Provide assistance specifically tailored to the individual safety and security risks of victims/witnesses to avoid giving them the impression that the testimony is rewarded ◦ Be cautious about engaging with courts and other accountability mechanisms that do not protect victims and witnesses

Typical testimonial information of sexual violence should include the following details (if known by the victim or witness):

- As accurate a record as possible of the date, time and location of the sexual violence
- A description of the type of crimes and violence the victim /witness was subjected to and/or
- witnessed
- A description of how the perpetrator exercised control over the victim

- A description of the process of how the victim was taken to the place of violence, what the place looked like, who else was present, how long the victim walked or was driven for, etc.
- A description of the appearance, demeanour and clothing worn by the perpetrator(s) (e.g. civilian clothing, uniform, insignias) and their identity, if known
- A description of the language spoken by the perpetrator(s) and how they referred to each other (e.g. nicknames, title such as 'Captain', 'Chief') which may help to determine the command structure
- Any other relevant information relating to the identity of the perpetrator
- A description of the use of specific derogatory words or language to help prove the intent e.g., for genocide, the intent to destroy, in whole or in part, a specific group (if relevant)
- A description of any eyewitnesses to the sexual violence
- A description of the physical and mental harm the victim suffered as a result of the sexual violence and the subsequent economic, social, psychological loss it may have caused
- Information about the context in which the crimes took place to help prove, for instance, the existence of an armed conflict or a widespread or systematic attack against a civilian population