

[Challenges of investigating SGBV/CRSV](#)

1. **Overview.** Despite the overall challenges of investigating grave human rights violations committed in the context of armed conflicts, investigating and prosecuting CRSV/SGBV crimes presents its own, unique challenges. However one positive aspect is that the definition of rape as a war crime, crime against humanity or underlying act of genocide has evolved through a series of judgments of the ad hoc international it is very important to be aware of the legal and procedural framework applicable to conflict-related sexual violence case.
2. Since the late 1990s, the successful prosecutions of sexual violence as war crimes, crimes against humanity, and genocide by the ICTY and ICTR opened a new phase of development in this area of international criminal law. The ICTY and ICTR, as well as other tribunals, have been applauded for several breakthroughs in international criminal law and procedure related to sexual violence investigation and prosecution. They, however, have also received criticism for inadequate and incoherent investigation and prosecution policies that fail to include charges of sexual violence in the indictments against the accused, dropped charges of sexual violence over the course of proceedings, charges not being representative of the sexual violence committed, and the inability to link the sexual violence crimes to the accused. These failings are partly due to the perception that sexual violence crimes are lesser crimes and a continued tendency to mischaracterize sexual violence crimes as incidental, non-violent crimes. This Part will confront two important issues that must be addressed in order to improve the investigation and prosecution of sexual violence before international tribunals: the gathering of evidence during the investigation phase and the evidence required to link sexual violence to high level accused.
3. Users of this document should critically assess their potential modified applicability in different institutional, national, international and other relevant contexts. It is assumed that the main intended audience of this document already is familiar with one or another set of egregious-violation investigation approaches and practices, including SGBV-investigation approaches and practices, as well as related legal, policy, institutional and procedural frameworks. As the guidelines are meant to be complementary to existing relevant investigation frameworks and practices, this is not a comprehensive, step-by-step guide to investigating CRSGBV against women, girls, men and boys. By and large, that which is or should be standard or common to accountability-focused investigations into other forms of egregious violations (including SGBV against women and girls) is not repeated in this document.
4. **Challenges.** Broadly, barriers to reporting CRSV/SGBV are of both social and structural nature. Following are some of challenges:
 - a. Under- or non-reporting of sexual violence,
 - b. Social stigma facing both male and female SGBV victims,
 - c. Fear of retaliation
 - d. Community pressure to settle case informally
 - e. Limited awareness of legal rights
 - f. Lack of trust in police.
 - g. Limited domestic investigations and
 - h. The lack of available evidence.

- i. Euphemisms and other verbal and non-verbal communication used by witnesses or victims to describe and refer to acts of sexual violence.

5. **Investigation.** The investigation of SGBV/CRSV is unique as it deals with a crime which is very intimate in nature and hence special attention must be paid to following aspects during investigation:

a. Recording the Statement of Victim:

- i. Record the statement of victim preferably by an officer of the same sex as the victim or in presence of an officer of the same sex as the victim.
- ii. Record the statement in the language that the victim is comfortable in/ if not provide translation facilities to the victim with the victim's permission.
- iii. Understand that the victim will be distressed and will probably want to get clean and change clothing. Sympathetically explain the need to preserve all evidence prior to a medical examination.
- iv. The medical examination of the victim is an essential aspect of the investigation to prove a sexual assault. In such cases, there are two crime scenes, one is the place of occurrence and the other is the body of the victim. In most cases, the most urgent service is to refer the victim to a hospital for medical attention. The immediate referral is crucial both for the health of the victim and in order to gather medical evidence of the offence.
- v. Abrasions, bruises and lacerations on the victim help elucidate how a rape was carried out. 8 to 45 percent of victims show evidence of external trauma, most commonly at the mouth, throat, wrists, arms, breasts and thighs: trauma to these sites comprise approximately two thirds of injuries, while trauma to the vagina and perineum account for approximately 20 percent. Absence of physical marks on victim's body does not mean that victim gave her/his consent as it might have happened under intimidation.
- vi. Victim should be advised not to take a bath/wash before medical examination.
- vii. After medical examination, take possession of all clothing from the victim as productions in the case and arrange clean alternative clothing.

b. Crime Scene

- i. Reconstruct what happened and establish that a crime occurred;
- ii. Identify, document and collect evidence of what occurred;
- iii. Link the victim and the suspect to the scene of the crime;
- iv. Identify and locate any witnesses; and
- v. Identify and apprehend the person(s) who committed the crime.

c. **Criminal evidence** is any exhibit or testimony regarding a **crime**. It can take many forms, and is typically used to establish that a **crime** has been committed and identify the accused in a **criminal** case. Evidence can be of following types:

- i. **Physical Evidence.** Physical Evidence is something at the scene of the crime that links the perpetrator to the crime. It is objective and remains the same for each observer e.g. Fingerprints, Fibers, Hair, Glass, Footprints, etc.
- ii. **Documentary evidence.** Documentary Evidence is a form of evidence that is presented and allowed as evidence in a trial or hearing. It is distinguished from oral testimony and

physical evidence. Photographs, tape recordings, films, and printed emails are all forms of documentary evidence

- iii. **Testimonial evidence.** Testimonial evidence is of the most common types of evidence during most trials, which consists of statements that are offered in court by victim/witnesses as proof of the matter asserted, or of what is being discussed.
- iv. **Miscellaneous Evidence** does not fall into the three previous groups. It can be subjective or objective and not always admissible in court depending on Evidence Act of place of occurrence of crime e.g. polygraph test, voice analysis, digital evidence and psychological exams.

Note: One must be careful of collecting and preserving evidence as evidence plays a crucial role in linking crime to criminal.

6. After investigation is complete, a charge sheet is prepared and submitted in court after due deliberations with prosecutors (depending on Procedure Code). A good follow up mechanism of a case involves all steps of investigation of a SGBV Case. The role of Police is to ensure smooth investigation, good coordination amongst all agencies involved in case management and victim support system.
7. It is duty of police to provide protection to victim and witness. Victim should be kept informed of progress of the case. Support groups provide counselling, support and refuge services for women who have been the victims of domestic violence and sexual assault. If a Children and Women Desk does not have support from Women in Need, it should find out about other government approved services available in their area of work.
8. **Confidentiality.** The care should be taken to maintain confidentiality of the victim.
 - Investigating Officers should never disclose information about the victim/witnesses to outsiders such as friends, media, family members, neighbors, etc.
 - Information about the victim can be provided to care providers (NGOs, health or psychosocial care providers) only with the informed consent of the victim (or the victim's parent/legal guardian in case of minors).
 - All interviews with victims/witnesses should be conducted in a private room, in the presence of investigating officer and other person(s) whose presence is allowed /requested by the victim/witness.
 - Investigators should keep all records on such cases confidential.
 - All files/documents should be kept in a secure area, ideally a locked cabinet.
 - Files should never be left unattended at the station and/or in Court.
 - Investigators should remove all personal information (such as name or contact address) on the victim from those documents that will be made public.

It will be pertinent to note that capacity building and awareness raising of the host state police is an important step towards ensuring better investigation of SGBV/CRSV crimes.