Basic Investigative Standards

FOR FIRST RESPONDERS TO INTERNATIONAL CRIMES

Global Rights Compliance
Basic Investigative Standards for First Responders to International Crimes
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Introduction

These basic investigative standards (“BISs”) identify the minimum standards that a first responder to a suspected crime, which may amount to an international crime, should adhere to in collecting, handling and preserving information in order to facilitate the subsequent work of professional investigators and prosecutors. The BISs are aimed at non-lawyers and non-professional investigators, including those who work for non-governmental organisations (“NGOs”), attempting to collect, handle and preserve information concerning international humanitarian or criminal law violations. As well as being intended to optimise practical cooperation with the International Criminal Court (“ICC”) Prosecutor, they are designed to achieve the most effective and robust foundation for any subsequent investigation and adjudication at the domestic or international level.

Overview of the Role of First Responders and the International Criminal Court

CHECK LIST

1. The ICC is a last resort jurisdiction intended to step in when national justice systems are unwilling or unable to carry out genuinely the investigation and prosecution of those alleged to be most responsible for the crimes committed.

2. The ICC can prosecute genocide, crimes against humanity and war crimes.

3. Often, the role of a professional investigator differs from that of a first responder. A first responder will seek to gather credible and relevant information that tends towards a broad description of the events. Professional investigators attempt to assess this information to identify relevant and probative evidence pointing towards specific theories concerning what happened in order for it to be used in a trial process to establish individual responsibility for any alleged crime.

4. The ICC Prosecutor can receive such information in the form of “communications” pursuant to article 15 of the Rome Statute to decide whether a “reasonable belief” exists that crimes within the jurisdiction of the Court have been committed, sufficient to apply to the ICC to open a full investigation to establish who might be responsible.

5. In order to seek information or assistance on victim participation in proceedings before the ICC, the first responder can make contact with the ICC through the Registry subdivision, named the “Victims Participation and Reparation Section”.

6. The most important evidential principles at the ICC are:
   a. The Prosecutor must prove her case beyond reasonable doubt;
b. The relevance, probative value and weight of evidence are fundamental considerations that enable a court to determine whether the Prosecutor has proved her case;

c. Before evidence may be used at trial, it must be ruled admissible;

d. Before evidence can be ruled admissible, it needs to be shown to be authentic and its provenance should be demonstrated;

e. Information and evidence submitted to the ICC Prosecutor is likely to be disclosed to other organs of the court, including the Defence;

f. First responders and professional investigators must investigate exculpatory, and not only incriminatory, information or evidence; and

g. Hearsay evidence is admissible at the ICC.

The ICC
The ICC is the world’s first permanent, autonomous international criminal court. It is based in the Netherlands. It is designed to investigate, prosecute and try alleged perpetrators of the most serious crimes of concern to the international community as a whole, namely the crimes of genocide, crimes against humanity, war crimes and, at some point in the future, the crime of aggression.¹

The ICC as a court of last resort
The ICC is a last resort jurisdiction intended to complement national justice systems when they are unwilling or unable to carry out genuinely the investigation and prosecution of those alleged to be most responsible for the crimes committed.

The entities within the ICC
The Court has four organs: the Presidency, the Chambers, the Prosecutor and the Registry. The Court also has defence teams representing accused before the Court, and the Office of the Public Counsel for Victims, which, while administered by the Registry, is independent. First responders may have contact with the ICC Prosecutor during the preliminary examination and investigation phases for the purposes of submitting information on crimes and associated witness issues. When seeking information about, or assisting with, victim participation in proceedings or situations before the ICC, first responders and other

¹ The Court may exercise jurisdiction over the crime of aggression, subject to a decision to be taken after 1 January 2017 by a two-thirds majority of States Parties – those who have ratified the Rome Statute that is the ICC’s governing law - and subject to the ratification of the amendment concerning this crime by at least 30 States Parties.
concerned persons should contact the Registry subdivision, entitled the “Victims Participation and Reparation Section”.2

The role of the first responder

A first responder’s role in relation to a suspected crime may be divided broadly into three steps: (i) gathering as much credible and relevant information as possible; (ii) following leads to discover new information; and (iii) transmitting the final record of information to the relevant authorities.

First, gathering as much credible and relevant information as possible will involve either collecting and preserving information, or carefully noting the details of information. This exercise usually involves only gathering and preserving information, not seeking to use it to postulate theories about what happened or who may be to blame. The information will, however, need to be recorded accurately and assessed preliminarily to see whether it leads to other inquiries and relevant information.

Second, a first responder will ordinarily be directed toward other lines of inquiry flowing naturally from their initial information gathering. This may include becoming aware of other crime scenes, being introduced to witnesses or locating documentary or physical information that tends to reveal the story of what happened during an incident. A first responder should attempt to improve the quality of information already obtained and seek to “fill in the blanks”. This may involve an array of actions, from conducting follow-up interviews, obtaining corroborative information or seeking out the provenance of a piece of information.

Third, first responders should submit a report of the details of their information on crimes to the intended recipient – this may be the local authorities or the ICC Prosecutor. The ICC Prosecutor can receive such information in the form of “communications” pursuant to article 15 of the Rome Statute. The ICC Prosecutor may seek and receive information from States, organs of the United Nations, intergovernmental or non-governmental organisations or other reliable sources that he or she deems appropriate and may receive written or oral testimony at the seat of the Court. These communications are vital during a preliminary examination and investigation and allow the ICC Prosecutor to decide whether a “reasonable belief” exists that crimes within the jurisdiction of the Court have been committed, sufficient to apply to the ICC to open a full investigation into a situation. As such, the first responder’s information may be the gateway for an ICC or other professional investigator’s future investigation.

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2 Victims International
P.O. Box 19519, 2500 CM
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Fax: +31 (0)70 515 9100
Email: vprs.applications@icc-cpi.int
https://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/victims/Pages/forms.aspx
The role of professional investigators

Often, the role of a professional investigator differs from that of a first responder. The professional investigator is bound by applicable rules that circumscribe their procedural, substantive and ethical conduct; an example is the ICC Code of Conduct for Investigators that regulates their professional actions. The professional investigator must move beyond information that tends towards a broad description of the events and attempt to gather evidence that points more decidedly toward specific theories, or a theory, as to what happened and who may be responsible. An investigator will collect and examine information that supports his or her case theories and consider the information in light of basic legal principles and concepts (e.g., burden and standard of proof and prospective modes of liability, crimes and defences), to forecast the merits of a case, assess any gaps in the information or evidence and calculate next steps to ensure the gaps are filled.

Evidence

The difference between information and evidence rests on the stage of criminal proceedings and its use. Evidence is a formal term for information that forms part of a trial in the sense that it is used to prove or disprove the alleged crimes. Therefore, information is the original, raw form of evidence: all evidence is information, but not all information is evidence.

There are two types of evidence - direct and indirect evidence. Direct evidence is something that tends to prove a fact without needing further explanation; for instance, a woman recognises a man shooting someone. Indirect (or circumstantial) evidence does not prove a fact in and of itself; it needs to be corroborated by other evidence, human experience and common sense to indirectly establish a fact. The two types of evidence may exist in one of three forms: testimonial evidence, physical evidence and documentary evidence.

Physical evidence: incorporates objects and also materials detected through scientific means that can be produced before a court. Examples of physical evidence include computers, equipment or weapons, as well as scientific evidence such as DNA or fingerprints.

Documentary evidence: is anything in which information of any description is recorded. This includes official documents, e-mails, databases, maps or photographs. It is commonly a combination of physical and testimonial evidence, such as a document containing a military order written by someone. Ordinarily, a witness will provide this evidence and be expected to ‘tender’ (formally produce) it to the ICC.

Testimonial evidence: usually involves witnesses attending court to give evidence orally, or providing a written statement, on either matters of fact or matters of expertise, as a witness, victim or suspect. The ICC generally requires that witness testimony must be given in person.

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Expert evidence is oral (often opinion) evidence given by an expert on matters outside the court’s ordinary knowledge.

The principles enumerated below are some of the key principles governing the treatment of evidence at the ICC.

**Burden and standard of proof**

It is for the ICC Prosecutor to prove her case against an accused beyond all reasonable doubt. The accused need not prove she or he is innocent. In practice, the Court must be satisfied so that it is sure that the quantity and quality of evidence before it – from testimony, documents and/or physical evidence – establishes the case against the accused beyond all reasonable doubt.

**Relevance, probative value and weight**

The relevance of a piece of evidence, its probative value and its weight are fundamental considerations that will enable a court, including the ICC, to determine whether the Prosecutor has established her case to the relevant standard.

First, evidence is relevant if it is germane to the issues in the trial. If it is relevant, it goes to an assessment of the accused’s individual responsibility. For instance, a video of the crime would likely be highly relevant to the issues.

Second, the probative value of evidence addresses the degree to which a piece of evidence proves something in issue. Probative value is determined by reference to a number of considerations pertaining to the inherent characteristics of a piece of evidence, for example, an authentic video of a suspect waving a knife would be highly probative of whether that person had a weapon in their hand.

Third, the weight of a piece of evidence concerns the relative importance that should be attached to that piece of evidence in deciding whether a certain issue has been proven or not. It is a qualitative assessment of the evidence. Weight, a highly subjective issue, depends on the intrinsic quality and characteristics of the item of evidence, but also the amount and quality of other available evidence on the same issue. For instance, an authentic but low clarity video of a suspect waving a knife may be given less weight than an eye witness to the attack, providing the witness’s testimony is deemed reliable and credible. When considering the weight of evidence, courts will consider the overall nature of the evidence (for instance, whether it was automatically generated through technology or produced by a person with an interest in the outcome of the process), including whether it is direct or indirect and, particularly, whether it is hearsay. Less weight may be afforded to witness evidence that is

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5 Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the Prosecutor's Bar Table Motions, ICC-01/04-01/07 (17 December 2010), para. 13.

6 ibid.
not given in person at the Court because it has not been subjected to cross-examination or
given under oath.\textsuperscript{7}

Weight addresses the reliability, credibility and accuracy of the evidence. Reliability
addresses the source of the evidence: is the source proven to be reliable, or do they have
motivation to give false or inaccurate evidence? Credibility concerns whether or not it is
believable. Accuracy concerns the degree of precision employed within the evidence itself
(for example, in naming people or dates). It can also incorporate whether a document is
internally consistent or contradictory.\textsuperscript{8}

Throughout all of the above, is the question of corroboration: does other evidence corroborate
the evidence? If so, it is likely to be considered more reliable, credible and accurate. The
Torture Reporting Handbook produced by the Human Rights Centre at the University of Essex
outlines a formula for attaining the best quality evidence:

"First hand + detailed + internally consistent + corroborated from several
angles + demonstrating a pattern + fresh = highest standard".\textsuperscript{9}

\textbf{Admissibility}

Even if it is relevant, a piece of evidence must be “admissible” to be used at trial. The ICC
requires that the testimony of witnesses must be given in person, except in limited
circumstances (for example, hostile interference with a witness, death or inability of the
witness to attend court, the evidence concerns matters not in dispute or background
information or there has already been a prior examination of the witness).

A question of admissibility may be raised when the evidence is submitted to the ICC. When
ruling on the admissibility of evidence, the ICC will also consider the probative value of the
evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation
of the testimony of a witness.

\textbf{Authenticity}

Before placing weight on evidence, the ICC will consider the provenance of a piece of
evidence. In other words, where did the item come from? If the document is to be given its
full weight, its provenance should be clear. If a document is introduced but lacks

\textsuperscript{7} Nancy Amoury Combs, \textit{Evidence} (William and Mary Law School, 2011) p. 329,
<http://scholarship.law.wm.edu/facpubs/1178> accessed 2 March 2016, citing to Prosecutor v. Dusko Tadic, Decision on
the Defence Motions to Summon and Protect Defense Witnesses and on the Giving of Evidence by Video Link, IT-94-1-T
(25 June 1996), para. 21; Prosecutor v. Zlatko Aleksovski, Decision on Prosecutor’s Appeal on Admissibility of Evidence,
IT-95-1 4/1-AR73 (16 February 1999), para. 15; Prosecutor v. Dusko Tadic, Judgment on Allegations of Contempt against

\textsuperscript{8} See, D. Pigaroff in O. Triffterer (Ed.), Commentary on the Rome Statute – Observers’ Notes, Article by Article (Nomos
Verlag, 2\textsuperscript{nd} Edn, 2008), pp. 1322 and 1323; Cyrol Laucci, The Annotated Digest of the International Criminal Court: 2009
(Martinus Nijhoff, 2009) p. 324; In relation to ‘reliability’, see similar characteristics: Prosecutor v. Germain Katanga and
Mathieu Ngudjolo Chui, Decision on the Prosecutor's Bar Table Motions, ICC-01/04-01/07 (17 December 2010), paras 26
– 27.

\textsuperscript{9} C. Giffard, \textit{The Torture Reporting Handbook} (Essex: The University of Essex Human Rights Centre, 2000) at II.2.2.
authentication by a witness or through some other means (e.g., official stamp, signature, etc.),
then its admissibility may be questioned and the item may be ruled inadmissible.

Guidance on how to authenticate a document is considered in detail below (page 41 “Specific
guidance to authenticate particular types of evidence”).

Confidential evidence
Investigators must exercise extreme caution when agreeing to accept evidence confidentially.
Evidence is generally subject to disclosure at some stage to other organs of the Court (for
example, the Judges) or to the Defence once a trial begins. Any decision to accept evidence
confidentially should be in writing and should reflect a uniform policy established by those
ultimately responsible for the investigation. Although there is a provision in the ICC Rules of
Procedure and Evidence (“Rules”)\(^\text{10}\) that allows the Prosecutor to maintain the confidentiality
of some information throughout proceedings as long as it is not used for any purpose other
than generating new evidence, this is an exception and should not be expected.

The question of how to react to confidential evidence is dealt with below (page 38).

Exculpatory evidence
Not all evidence is evidence of a person’s guilt. It is often difficult to tell whether information
will prove to be incriminating or exonerating. Whether information suggests guilt or lack of
guilt, it must be collected and, if it points towards a lack of guilt, it will be disclosable to an
accused. As discussed in the next section (page 13), it is vital that you remain impartial and
objective. There is a positive duty on the ICC Prosecutor to investigate exonerating and
incriminating circumstances equally. First responders should assume this requirement
applies to them. You must also keep the presumption of innocence in mind at all times. These
approaches may seem burdensome, but they are the bedrock of any robust information
gathering exercise and any prosecution case at trial.

Hearsay evidence
You should include “hearsay” evidence. Hearsay is admissible at the ICC and can be used in
evidence for or against an accused at the ICC. Hearsay evidence is evidence of a statement
made by someone other than the witness in court that is being used as evidence of a fact.
An example: “my mother told me that she saw him enter the house through the backyard.”

\(^{10}\) International Criminal Court, Rules of Procedure and Evidence, UN Doc. PCNICC/2000/1/Add.1 (2000) (as amended)
(“ICC Rules of Procedure and Evidence”),
Ten Basic Investigation Principles

CHECK LIST

You should ensure you adhere to the following basic principles for all investigation activities:

1. Do no HARM;
2. Maintain MINIMUM STANDARDS;
3. Maintain IMPARTIALITY and OBJECTIVITY;
4. Be confident of your own COMPETENCE before undertaking a task;
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 investigation steps and the results obtained;
8. Ensure CONFIDENTIALITY and PROTECTION of witnesses and sources;
9. Always implement a CHAIN OF CUSTODY; and
10. Be aware of your own IN-HOUSE GUIDELINES.

Whether you are writing a summary of a witness’s evidence, downloading a website or taking photographs of a crime scene, the following ten principles should be kept firmly in mind and guide your information/evidence gathering activities.

Do no HARM

This is a fundamental principle of all human rights or international humanitarian law (“IHL”) activity. First responders should first and foremost know what not to do. A first responder must at all times appreciate that serious and sometimes life-threatening consequences flow from the intervention of those placing themselves in the role of information gatherers or investigators, including harm to oneself.

This principle requires calm and careful reflection, the balancing of risks and forecasting of potential harm and remedial action in the event that harm occurs, with particular attention paid to civilians and those who are vulnerable. At a minimum, this involves being aware of, and managing the, expectations, security, privacy, health and other similar concerns of victims and witnesses.
The requirement to “do no harm” underpins all other basic tenets. It should guide any investigation activity, including any decision to enter crime scenes, all collection of information/evidence, any engagement with persons associated with an incident or potential witnesses and all record keeping. Amongst other essential cautionary steps, first responders should be alert for signs of emotional distress or re-traumatisation and stop, pause or postpone any process or interview as required.\textsuperscript{11}

Maintain MINIMUM STANDARDS

You should always ensure your conduct and the conduct of your subordinates and colleagues adheres to a minimum standard. This means exercising care, consideration and a high degree of professionalism during any task. This obligation also underpins all other principles and is closely associated with the “do no harm” principle.

This principle demands that any investigation is well planned and executed; any decision to enter crime scenes is done with care and consideration for the risks; any collection of information/evidence is timely and supported by adequate record keeping; any engagement of persons relevant to an incident or potential witnesses is only conducted when relevant risk assessments have been made; and that the investigation conducted is verifiable, accurate, independent and impartial. Risk assessments should, at a minimum, identify potential risks, estimate the likelihood that potential risks will occur and consider how risks can be mitigated.\textsuperscript{12} A failure to meet these demands may undermine the viability of future proceedings and justice as a whole.

Maintain IMPARTIALITY and OBJECTIVITY

This standard might be seen as a subset of the requirement to maintain minimum standards. The ICC Prosecutor is under a statutory mandate to act independently, impartially and objectively as confirmed by articles 42 and 54 of the Rome Statute and regulations 24 and 34 of the Regulations of the Office of the Prosecutor. The role of the first responder is similarly exacting.

It is important to collect all relevant information. This includes looking equally at exonerating and incriminating information and being open to alternative inferences and explanations. Any presumption that one side is bad and one side is good will undermine the credibility and reliability of the information/evidence collected and risks undermining future prosecutions. Any competent lawyer will highlight any perceived bias or lack of impartiality at any stage in an investigation of their client.


\textsuperscript{12} PILPG Protocol, p. 14.
Always maintain an open mind when recording a potential crime. Separate your opinion from where the information/evidence leads. Be objective and maintain a healthy scepticism about any information you receive. Never assume particular pieces of information are accurate. Always question your own assumptions. The final arbiter of what is correct or not will be any future court and not the first responder, investigator or lawyer and will be made on the basis of all the relevant evidence, not isolated pieces of information – however significant or probative they may at first appear.

Therefore, ask open-ended questions that allow a witness to provide their testimony freely and without presumption:

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

Be confident of your own COMPETENCE before undertaking a task

You should be confident of your own competence before undertaking a task. In one sense, this requirement is a distillation of the first three (do not harm, maintain minimum standards and maintain impartiality and objectivity). If you feel you cannot undertake a particular task without violating these core requirements, then assistance should be sought or the activity should be abandoned.

Focus on the INFORMATION/EVIDENCE, not law or opinion

It is the role of the ICC or national prosecutorial authorities to analyse and weigh information to decide what is or is not relevant and probative evidence. This is distinct from the role of most first responders, whose role is more generally to collect and preserve credible and relevant information of an incident or indications of the existence of other information/evidence of that incident. The determination of what information can constitute evidence rests on a determination of the relevance, credibility, accuracy and reliability of the information.\textsuperscript{13} While a first responder should bear in mind the future need for any prosecutor to prove their case beyond a reasonable doubt – hence the need to maintain impartiality and objectivity – you should focus on ensuring the careful and comprehensive collection of credible and relevant information/evidence that will provide those subsequently involved in

prosecuting cases with a clear view of what information may eventually constitute evidence and its precise relevance and probative value.

**RECORD, COLLECT and PRESERVE all information**

You should never disregard or discard any information/evidence that *appears* even tangentially relevant. It is not your primary role to select the most relevant information/evidence. Naturally, there has to be a selection process – not everything can be collected, recorded and preserved – but at the early stages of any investigation it is not possible to know what might turn out to be relevant and probative of an individual's responsibility or guilt. Accordingly, it is important to avoid placing yourself in the role of trial investigator or prosecutor, second-guessing what might or might not happen at any subsequent trial. Instead, the focus should be on recording, collecting and preserving all information/evidence in a manner that assists the later identification of evidence and assists in allowing those more intimately connected to the eventual proceedings to renew or bolster the information or evidence through the identification of relevant and probative evidential leads.

You should be aware that any information/evidence you collect or report could be used in a court of law at some stage and will likely be disclosable or disclosed to future defence teams. Whenever talking to witnesses or collecting sources of evidence, you should inform them of this fact and discuss the confidentiality of their evidence and any protection concerns they may have (see page 46).

**Implement an ORGANISED SYSTEM to RECORD the investigation steps and the results obtained**

Any obvious departures from the basic principles concerning the collection, handling and preservation of information/evidence may eventually be examined with a view to undermining the evidence and establishing reasonable doubt at trial. As any professional investigator or lawyer knows, the way in which an investigation is conducted and recorded may turn out in the courtroom to be as important as the evidence itself. Defence lawyers have an obligation to exploit any mismanagement or irregularity to cast doubt on the propriety, credibility and reliability of a prosecution case.

Therefore, it is vital that these processes are conducted and recorded in a careful, transparent and verifiable manner. Although there is no fixed or rigid approach, any system needs to be careful, transparent and verifiable. There are three principal components to any reliable system: an investigation folder (a system for collecting and handling the three types of information/evidence (physical, documentary and testimonial)); investigation notebooks (outlining the chronology/steps and recording personal observations); and an investigation
plan. These requirements are discussed below (page 26 “Implement an Organised System to Record the Investigation Steps and the Results Obtained”).

**Ensure CONFIDENTIALITY and PROTECTION of Witnesses and Sources**

The maintenance of confidentiality of witness' personal details and their personal protection is paramount. At the outset, you should explain to a potential witness how you intend to ensure confidentiality or ensure security. At the end of any interview, the witness should be asked whether he or she consents to disclosure of their information/evidence to the ICC or other national criminal investigation or other relevant fora. This acknowledgement should be recorded.

You should ask a witness if they are willing to testify in later proceedings. The response should be recorded. If a witness informs you that they are fearful or in need of help for any reason, you should note this in the witness statement.

It is important to implement measures to guard against the wrongful disclosure of a witness’s identifying information. The protection of a witness’s identity not only guards against people potentially seeking retribution against a witness, but also reassures a witness and facilitates the information gathering exercise. The following are minimum safeguards:

- An organised record keeping system capable of ensuring the confidentiality of a witness;
- Being witness-centred: always discuss and verify the witness’ own views concerning confidentiality and respect them if possible. Discuss with the witness if this is not possible, and ensure consent remains when circumstances change;
- Ensure your computers are secure. Files with sensitive details on your computer should be encrypted with an encryption software (available online, often for minimal cost); and
- You should give each witness a code name and use it throughout your record keeping and work (for example, never refer to another witness by name when talking to other witnesses. This is needless and dangerous).

**Always implement a CHAIN OF CUSTODY**

According to the International Criminal Tribunal for the former Yugoslavia (“ICTY”), the proper collection of information is based on: (i) the implementation of a chain of custody; (ii)

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14 Groome, p. 76.
15 Groome, p. 75.
preservation and conservation; and (iii) accuracy in identification and labelling.\textsuperscript{16} At a minimum, this involves ensuring a proper description of the source of the evidence, the correct labelling of the information/evidence and a record of its removal from its original place, its storage and removal from storage until it is handed over to the relevant authorities.

It is vital that the moment information/evidence is disturbed or removed from its original place (scene or witness) there should be a record of every person who had control or possession of it, when, where and why. This is vital for a court if it needs to determine whether it is in its original condition or not; this is how the chain of custody begins. It is an essential record that protects the integrity of the item and reduces suspicion that it been deliberately or inadvertently tampered with. As few people as possible should handle the information/evidence.\textsuperscript{17}

As part of this basic standard, you should attempt to source and authenticate the information/evidence. Depending on the item, this could be as simple a step as asking particular questions from a witness who hands you a document, or taking corroborative steps when downloading material from the Internet. See below for ICC requirements for particular information/evidence (page 41 “Specific guidance to authenticate particular types of evidence”).

Be aware of your own IN-HOUSE GUIDELINES

Generally, it is difficult to maintain standards consistently across the wide range of complicated documentation and investigation processes. Correspondingly, it is also difficult to protect your processes from subsequent accusations of arbitrariness or violations of basic investigation principles without some form of in-house standard operating procedures that help to maintain minimum standards and consistency and subsequently justify or explain investigative conduct. You may have in-house operating procedures in place already. If you do not, it is prudent to develop them. You should keep these in mind throughout the information/evidence gathering processes to ensure the credibility, accuracy and reliability of the information/evidence collected.


\textsuperscript{17} Groome. p. 103.
Basic Substantive Knowledge for IHL Investigations

CHECK LIST

You should ensure you have a basic understanding of:

1. The way in which a criminal case against an individual will be constructed from “crime base” (the crimes and their immediate context) and “linkage” (the evidential link to named individuals) evidence;

2. The legal elements of genocide, war crimes and crimes against humanity: including the individual criminal acts and their contextual elements; and

3. The “modes” or “forms” of liability or responsibility: the legal elements that must be shown before it can be established that an individual’s actions are responsible for the crimes.

This section identifies the basic IHL investigation knowledge required by first responders to guide them when gathering credible and relevant information with a view to preserving it for subsequent investigations. It provides the basic substantive knowledge that will inform the information-gathering exercise. Before you collect information or interview a witness, you should understand: (i) the two basic purposes of evidence that generally constitute ICC trials – “crime base” and “linkage” evidence; (ii) what constitutes the ICC crimes of genocide, war crimes and crimes against humanity, namely the contextual elements and individual criminal acts; and (iii) the basic modes of liability (i.e., how the crimes are committed).

Crime base and linkage evidence

Professional IHL investigators (should) ordinarily direct their investigations in a two-step manner. First, they should assess all the evidence of the actual crimes committed during a particular situation. This ordinarily comes from eyewitnesses and victims. Second, they should then consider the evidential links between the crimes and the (chain of) people responsible for them.

Crime base evidence usually provides direct or indirect evidence of crimes or witnesses close to the location and time when the crimes were committed. Linkage evidence is the evidence that links those crimes to the political and military structures that are responsible for coordinating or otherwise facilitating the crimes. It will often be difficult for first responders to draw these clear distinctions because much of the information gathered may eventually lead to evidence of both types. In the end, the final decision on what will be relied upon for which purpose will be made only by professional prosecutors who will make decisions on how each
item or witness will be used to build the particular evidential case against a particular accused. Nonetheless, it is important to bear in mind the distinction so that you can interview witnesses or approach information/evidence with a view to gaining a better understanding of the crimes, their contextual elements and the nature of the links between the crimes on the ground and the superiors at the top of the political or military hierarchy.

Crime base evidence: potential offences at the ICC

Contextual Knowledge

When you talk to a potential witness or gather other information, you should be able to interview or collect with a basic understanding of the crimes prosecuted at the ICC and their constituent elements. For the three types of crimes under the ICC’s jurisdiction, it is important to bear in mind that there are various elements that at trial must be demonstrated beyond reasonable doubt and that serious violations of IHL are distinguishable from ordinary crimes, in part due to the context in which they are committed. The ICC has jurisdiction over the following crimes: genocide, crimes against humanity and war crimes. To establish that one or more of these crimes have been committed, the associated “contextual” elements must be established.

Genocide requires the following “contextual” elements:

- The act (such as killing) was committed with intent to destroy in whole or in part a group; and
- The group is a national, ethnical, racial or religious group.

Crimes against humanity have the following “contextual” elements:

- There is an occurrence of an “attack”;
- The attack was either widespread or systematic;
- The attack was directed against a civilian population involving the multiple commission of acts against civilians pursuant to, or in furtherance of, a State or organisational policy to commit such an attack;
- The alleged crime is committed as part of the attack; and
- The accused had knowledge of the attack and the way in which his actions were part of that attack.

War crimes have the following “contextual” elements:

- There is a conflict of an international or non-international nature;
- The armed conflict is distinct from internal disturbances and tensions such as riots, isolated and sporadic acts of violence or other similar acts;
• The crime is committed during, and has a sufficient nexus to, the armed conflict; and
• The accused had an awareness of the factual circumstances that established the existence of an armed conflict.

Knowledge of Individual Acts
There are certain individual acts that, when committed in the above contexts, can constitute genocide, a crime against humanity or a war crime.

First, genocide requires one of the following acts committed in the context of the above elements:

• 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; and
• Forcibly transferring children of the group to another group.

Second, crimes against humanity requires one of the following acts committed in the context of the above elements:

• Murder;
• Extermination;
• Enslavement;
• Deportation or forcible transfer of population;
• Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
• Torture;
• Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity;
• Persecution;
• Enforced disappearance of persons;
• Apartheid; and
• Other inhumane acts of a similar character.

Third, the ICC prosecutes an extensive list of “war crimes” as outlined in article 8 of the Rome Statute. A war crime is defined as behaviour that is in serious violation of the laws and
customs applicable during war. There are overarching principles in IHL; a breach of one of these principles is a strong indication that one or more of the article 8 war crimes has been committed. The key principles are:

- **Distinction**: obliges parties to a conflict to at all times distinguish between civilians and combatants. Any attack must not be directed against civilians;
- **Humanity**: requires the humane treatment of protected persons (for example, civilians and people placed *hors de combat*) in all circumstances;
- **Proportionality**: requires that all military measures must be proportionate to the aim they seek to accomplish;
- **Precaution**: requires that all feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects; and
- **Non-discrimination**: requires that all people must be treated without discrimination based on sex, nationality, race, religion or politics.

According to article 8, examples of individual acts potentially constituting war crimes include: murder, slavery, collective punishment, hostage taking, use of human shields, rape and sexual offences, arbitrary detention and enforced disappearance.

**Linkage evidence: potential modes of liability at the ICC**

The ICC focuses on individual responsibility – that is, not groups or organisations. It is necessary therefore to understand the ways in which individuals may commit crimes. The crimes at the ICC and in national jurisdictions may only be committed in specific ways. These are generally known as the “modes” or “forms” of liability or responsibility. In order to be responsible for a crime, the prosecution must demonstrate that the alleged conduct amounts to one or more of these forms of commission.

There are nine main modes of liability contained in articles 25 to 30 of the Rome Statute. There is no need for first responders to understand the minutiae of each mode. However, for the purposes of collecting information/evidence, including interviewing witnesses, the important aspects to bear in mind are as follows.

**Perpetration**: the ordinary manner in which one might expect someone to commit a crime. It involves the direct physical commission of a criminal act by an individual with an intent and knowledge of the circumstances or consequences. This is generally known as “committing” (for example, if a soldier shoots a civilian).

**Co-perpetration/indirect perpetration/indirect co-perpetration**: these modes are a form of commission that encompasses perpetrators acting in groups pursuant to a common plan and/or within an organisation to commit crimes with the requisite knowledge and intent of the
criminal plan or crimes. For example, a commander in control of a militia that under his
direction joins up with another militia to burn down a village may be responsible for his
contribution to the criminal acts, even though he was not present at the scene of the crime.

For these various modes, an interviewer needs to focus on collecting information/evidence of
the existence of common criminal plans and the control by individuals of an organisation used
to commit crimes. For example, in order to gather information/evidence that identifies the
criminal conduct of the highest group of commanders, it will be important to focus on the
military or police or political force and the execution of the agreed plan by subordinates within
those organisations to commit a crime.

Further, the interviewer will need to focus on the knowledge, awareness and intent of any of
the participants in the plan, including those subordinates who have positions of authority over
the direct perpetrators.

**Superior/command responsibility:** a superior or commander can be held responsible for
crimes committed by his subordinates even without joining their criminal plan or controlling
an organisation with the aim of using it to further the crimes. For example, this mode of
responsibility would be relevant if a commander of a prison fails to stop his men from abusing
the detainees or discipline them for the crimes after their commission. A first responder should
focus on gathering information of the crimes and those who may have been acting effectively
as military commanders, but failed to take reasonable and necessary measures to control
forces or report their crimes (or intended crimes) to the competent authorities for investigation
and prosecution.

**Instigating:** a person may be held responsible for instigating in certain circumstances where
an individual exerted influence over another person to either commit a crime which in fact
occurs or is attempted, or to perform an act or omission as a result of which a crime is carried
out. For example, a commander’s preparation of a unit to carry out a military operation to
indiscriminately attack civilians combined with his presence during the operation would likely
amount to instigation. The first responder should consider: (i) whether there is information
showing an act that amounts to an inducement and whether it had a direct effect on the
commission or attempted commission of the crime; and (ii) whether the “inducer” was at least
aware that the crimes would be committed in the ordinary course of events as a consequence
of his/her acts or omissions.

**Ordering:** is a commonly understood word. Important considerations include the following
factors: (i) the person was in a position of authority; (ii) the person instructed another person
to either (a) commit a crime that in fact occurred or was attempted or (b) perform an act or
omission in the execution of which a crime was carried out; (iii) the order had a direct effect
on the commission or attempted commission of the crime; and (iv) the alleged person passing
the order was at least aware that the crime would be committed in the ordinary course of
events as a consequence of the execution or implementation of the order. For example, this
mode would be satisfied if a commander passed an instruction to his subordinate men to kill all the civilians in an area and they killed one or more of the targeted civilians.

**Aiding and abetting:** is a commonly used mode of responsibility in international criminal law and many national jurisdictions. In order to establish an individual’s responsibility for aiding and abetting, important considerations include: whether the individual carried out an act to assist, encourage or lend moral support to the commission of a specific crime and that support had a substantial effect upon the perpetration of the crime. Further, the alleged aider and abetter should have known their acts would assist in the commission of the crime and they must have been aware of the essential elements of the crime. For example, a military commander supplies a substantial cache of weapons to a paramilitary group with the awareness that the group will use them to kill civilians and they do use them.

**Complicity:** in order to establish an individual's responsibility for complicity, important considerations include whether: (i) a crime within the jurisdiction of the Court was attempted or committed; (ii) the commission or attempted commission of such a crime was carried out by a group of persons acting with a common purpose; and (iii) the individual contributed to the crime in any way other than in a mode set out above. The perpetrator must have intentionally contributed with the aim of furthering the criminal activity or criminal purpose of the group or in the knowledge of the intention of the group to commit the crime.
Implement an Organised System to Record the Investigation Steps and the Results Obtained

CHECK LIST

1. You must implement an organised system to record the investigation steps and the results obtained.
2. There are three principal components to any reliable system: (i) an investigation folder; (ii) two investigation notebooks; and (iii) an investigation plan.

This chapter addresses the basic standards that should be maintained when first responders handle different types of information/evidence. From the outset, an organised system to record the investigation steps and the results obtained must be instituted. As outlined above (page 16), there are three principal components to any reliable system: (i) an investigation folder (a system for collecting and handling the three types of information/evidence (physical, documentary and testimonial)); (ii) two investigation notebooks (outlining the investigative chronology/steps and recording the personal observations); and (iii) an investigation plan. As for any system adopted, although there is no fixed or pro forma approach, it needs to be careful, transparent and verifiable.

Preliminary Investigation Steps

Step One: Investigation Folder

A court must have confidence in a first responder or investigator: incomplete records reflect poorly on the information/evidence gathered, the abilities of the first responder or investigator and in due course may undermine the coherency and cogency of a prosecution or defence case. The information has to be organised in a way that it can be easily, quickly and logically retrieved when needed.

Structuring information involves organising it in a consistent manner. One way to achieve this is by using templates to record the relevant information.

Consequently, as a first responder, it is prudent to create an organised folder or its equivalent that includes every record of your investigative activity. The records within the folder are

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18 Groome, p. 73.
intended to document the result of the investigation and the investigation itself.\textsuperscript{20} This system should be instituted before the investigation begins.\textsuperscript{21}

The folder should contain different files for each significant aspect of the investigation. Each file will ordinarily have a log of activity in relation to that file and will adequately describe the relevant content and contain a copy of the collected information. For example, the witness statement file will have a log of all the witness information collected and copies of the information obtained. The log should identify who did what and when.

Dermot Groome identifies the following as necessary files:

- A case management file that includes an “Activity Log” to record and describe all investigative activity and copies of all investigators’ or first responders’ notes;
- A communication file that includes a “Communications Log” identifying a chronological record of all communications and copies of written correspondence (witness interviews are not recorded in this file but in a “Witness Interview Log”);
- A witness statement file that includes a “Witness Interview Log” (chronological record of all contact with witnesses) and copies of all witness statements (using only code names). A sub-file with confidential information including a “Witness Code Sheet” and a “Witness Information Sheet” containing information about the witness and original statements should be locked away in a secure location;
- A physical evidence file that includes a “Physical Evidence Log” recording all physical evidence and their descriptions collected during an investigation;
- A photograph file that includes a “Photo Log” recording and describing all the relevant information about the existing photographic evidence (photographer, time, place, etc.) and also the physical evidence collected during the investigation. The file should log all original photographs taken as well as photocopies;
- A document file that includes a “Document Log” recording and describing all documents obtained during the investigation. The file should log all original documents as well as photocopies; and
- A sketch and diagram file that includes a “Sketch Log” recording and describing all scene sketches and diagrams created as part of the investigation. The file should log all original sketches as well as photocopies.\textsuperscript{22}

Please note, not only should there be a log for each file and a copy of the collected information/evidence, but the originals – namely, physical, documentary and testimonial documents and confidential witness information (with corresponding code names) – should
be locked away in a separate and secure location. Originals should be stored safe from the sun, rain, wind and unauthorised access.\textsuperscript{23}

It is important for each witness to be identified only by a code name in the investigation folder, with the name of the witness contained in a file kept in a locked, secure location (see “Witness Code Sheet” in Annex III).

The log for each file should ordinarily be sufficient to register incoming and outgoing activity. This should be inserted into the relevant file to log the receipt of information. Each document/information included in the file should be numbered and recorded on the relevant file log. Proposed examples of file logs for the Communication, Witness Statement and Physical Evidence Files are annexed to these BISs (see Annex II).

In sum, the investigations folder should contain different files for each significant aspect of the investigation. Each file should contain:

- A Log File; and
- A copy of the collected information.

**Step Two: Notebooks**

In sum, it is advised that first investigators use two notebooks to record details on the investigation: (i) to record information on your actions and objective details of the investigation; and (ii) to record your own reflections, comments and analysis.

It is of vital importance that you systematically record anything that could assist in providing information on your actions and the detail of an investigation. Your record should be in writing, preferably in a notebook. This allows you to maintain a short description of where you were, who was there, what you observed and when. It should include a step-by-step description of the investigation, a comprehensive note of any information received and any relevant occurrences, such as leads provided and by whom. It needs to be capable of use in later analysis by criminal investigators. It is far preferable to record matters contemporaneously while they are fresh in your mind as opposed to at the end of the day or at a later date. Any aspect of an investigation could turn out to be contentious in a courtroom setting. A contemporaneous record of these issues will help to resolve such disputes in favour of those responsible for the investigation and case.

Further, any conclusions you reach or notations made about information/evidence or witnesses should be kept separate to the factual information you record in this notebook. It is best to have a second notebook that acts as an *aide memoire* for your own reflections, comments or analysis that is intended to assist you to reflect in a nuanced way on the progress of the investigation. Whereas the first book contains all your objective notations, the

\textsuperscript{23} PILPG Protocol, p. 7.
second book contains subjective reflections, comments or analysis that enables you to better formulate ideas. It is a personal book that should not be entered into evidence (opinion evidence and work products are generally not admissible at the ICC).

**Step Three: Investigation Plan**

Once an organised investigative record system has been instituted, a team has been composed and leads identified, a plan should be formulated on how you intend to conduct the investigation, including how to approach the scenes and follow up leads, for example, with particular witnesses. In broad terms, this plan should outline the steps to be taken:

- Identify the steps that might be taken to generate further leads and ensure a sufficiently broad information gathering exercise;
- Identify all the places where information might be found (including where the crime may have taken place, where the victims were immediately before, during or after the incident and any place the possible perpetrators were immediately before, during or after the incident);\(^{24}\)
- Visit and process each potential scene (including necessary prioritisation, bearing in mind their relative importance and the likelihood that evidence may be lost due to deterioration or human interference);\(^{25}\)
- Retrieve and find information at each crime scene;\(^ {26}\)
- Identify potential witnesses who might provide relevant and probative investigative leads or information about the incident; and
- Identify potential original and documentary evidence that must be preserved.

The above identifies the initial preparatory steps that must form part of any organised system to execute and record an investigation. In sum, when conducting investigations, first responders should ensure that they record their investigations by:

- **Maintaining an investigation folder** containing separate files according to which information can be categorised. Every record of the first responder’s investigatory activity should be logged within this folder.
  - A log to register activity and information should be included within the folder.
  - Copies of collected information should be included within the folder.
- **Maintaining two investigation notebooks** to record all investigative steps and personal accounts.
- **Maintaining and updating** an investigation plan.

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\(^ {24}\) Groome, p. 83.
\(^ {25}\) Groome, p. 83.
\(^ {26}\) Groome, p. 80.
Standards for the Collection, Handling, and Preservation of Information/Evidence

The specific steps concerning the recording and preservation of physical information, documentary information and witnesses are outlined below. The first section addresses the standards for collecting and recording physical information/evidence. The second addresses the collection and handling of documentary information. The third addresses testimonial information/evidence, including how to engage with a witness before speaking to them, while discussing their information and, lastly, during post-interview follow-ups. The final section outlines basic standards concerning how to collect information “in the field”.

Collection and Handling of Physical Information

CHECK LIST

1. Never collect, handle or store information or items that you are not qualified to receive or have the basic capability to store.

2. Observing and documenting a crime scene: if you are required to conduct this activity, you should meticulously document what you can observe at the crime scene in as much detail, including recording your own activities in relation to the scene, with a view to establishing its original state.

3. Receiving and recording physical information/evidence: when receiving and recording physical information/evidence, you will need:
   (i) A “Physical Evidence Log” to put into the physical evidence file that logs all physical evidence and their descriptions collected during an investigation (contained within the investigation folder);
   (ii) Your notebook (recording the investigation);
   (iii) A sealable storage bag or envelope to store the item in a secure location;
   (iv) An associated record on the bag or envelope to describe the item and the circumstances of its arrival for the chain of custody (recording the items movement and handling commencing with its removal from its original place);
   (v) A secure location for storage of the item or information; and
   (vi) A chain of custody: once information is moved from its original position there should be a record of its movement and everyone who has come into contact with it.

4. You should not promise the provider of the information that their involvement will remain
It is commonplace for NGOs to gather information about incidents, observe events, visit sites such as demonstrations or places of detention and then report their findings.\textsuperscript{27} The basic standards below outline foundational principles that should be maintained if you encounter, or are placed in a situation where you must receive physical information/evidence. You should never collect, handle or store information or items that you are not qualified to receive or have the basic capability to store. This subject may be usefully divided into two parts: (i) observing and documenting a crime scene; and (ii) receiving and recording physical information/evidence.

**Observing and documenting a crime scene**

Ordinarily, first responders will not be required to secure, or intervene in, a crime scene. The management of a crime scene is a technical process that generally requires the expertise of a professional criminal investigator.\textsuperscript{28} A crime scene may be easily contaminated in a variety of ways, including: accidental fingerprint mixing, depositing or destruction of DNA or other body fluids, the disturbance of vital evidence from its original place and so on. Therefore, if practicable, you should contact the relevant (appropriate) national or international investigators within your locale. However, a first responder may still play an important role, and may in fact need to secure a crime scene to secure vital information.

You should document what you can observe at the crime scene in writing in as much detail as possible – and record this information in the investigations folder (in the activity log) and your notebooks. Your focus should be on documenting how it looked when you arrived and ensuring that any future interference will be able to be established. It is important to also record your own activities in relation to the scene (i.e., what you did when entering the scene) and your various vantage points.\textsuperscript{29}


Securing and detailing the scene

First, make sure that the site is safe. You may not be able to see dangers, such as unexploded devices, traps or other hidden perils. Do not enter a crime scene until you know it is safe to do so. Professional military or civilian authorities should check the site.

You should make efforts to secure the crime scene site. You should attempt to mark the site with crime-scene tape to cordon it off. Those who are not involved in the examination of the scene should be excluded. Someone should be in charge to coordinate the examination of the site and delegate tasks.

Whether you enter the crime scene or not, you should attempt to:

• Note the date and time and location (preferably with GPS coordinates and on a map to be stored away in your filing system);

• Note the size of the site;

• Make a sketch (i.e., a named, signed and dated bird’s eye view to scale with north indicated and key features such as location of evidence included) and take photographs or videos, providing information concerning distance and scale (for example, placing rulers next to objects). These should be treated as original pieces of information and filed accordingly;

• Note who is present;

• Note what you do in relation to the scene (i.e., how you entered the scene). If not, you should note your vantage point; and

• Note the condition of the scene (for instance, was something moved or removed at any time) and whether the scene had been disturbed upon arrival.

Photographic and video information

Photographs are of great value. Each time you take a photograph, you should log it in your notebook. The log should note who took the photograph, where it was taken at the site, the time and date and what it is intended to depict.

Film is another form of evidence/information that can be useful when documenting international crimes. However, it should be noted that, realistically, only a fraction of the video captured by frontline documenters will ever meet the trial-ready standards and be presented as evidence inside a courtroom. It is important that the date and time of the filming, the location of the filming, the content of the video and, if safe, the details of person that captured

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the footage, are recorded.\textsuperscript{32} To obtain video footage of the highest quality and standard, with a view to such footage becoming evidence in a court of law, the following principles should be followed:

- **Get ready to film:** by determining your role; conducting a security assessment; determining which images to film which would best provide crime-based evidence or possible linkage evidence;
- **Press record:** record the date, time and location of the film; record the names and contact information of the person filming, the people being filmed and other people on the scene who may have information about the events; film strategically and logically to ensure that viewers will understand what has happened and where; create a separate document that summarises, in written form, the key information about your footage;
- **Safeguard your footage:** protect your media in the field by keeping memory cards safe from physical damage or confiscation; protect the media when you return from the field; organise your videos; track where you store the footage and who you share it with; and
- **Share your video:** for videos with the purpose of documenting international crimes this is most likely to be with the ICC Prosecutor or local authorities.

**Preserving physical information/evidence**

The ICTY’s Manual on Developed Practices suggests that the proper collection of physical information largely focuses on three parts:

- **Receiving:** accurate recording of the information or item;
- **Handling:** implementing a chain of custody; and
- **Storing:** preservation of the information or item.\textsuperscript{33}

These steps are outlined below.

**Step One: Receiving: accurate recording of the information or item**

As noted in the basic principles, when you observe and/or collect any form of information/evidence that you feel is relevant, it should be recorded in writing. It is prudent to recall the procedure for recording information:


Maintaining an investigation folder with separate files according to which information can be categorised. Every record of the first responder’s investigatory activity should be logged within this folder.

- A log to register activity and evidence should be included within the folder.
- Copies of collective evidence should be included within the folder.

Maintaining two investigation notebooks to record all investigative steps and a personal account respectively.

For physical information/evidence you will need, in addition to the two steps above:

- A storage bag or envelope to store the item with an associated record of the chain of custody (recording the items movement and handling commencing with its removal from its original place).

Within the investigator folder, you should include a “Physical Evidence Log” to put in the relevant information. The Log File must identify:

- The log number;
- The full date of the collection;
- The name and organisation of the collector;
- The time and location of the collection;
- Who provided the item, the address of the provider, contact telephone number and e-mail address;
- A title for the item, a description and nature of the item (for example, appearance, quantity, size, weight and distinguishing features);
- Information on the actions taken (such as where the item is stored, whether it was moved); and
- Any additional comments (e.g., any notes about the context in which the item was received, a note as to whether the provider has confidentiality concerns about their item and their role).

An example form is annexed to these standards as Annex II.

**Step Two: Handling: implementing a chain of custody**

The chain of custody is the record of possession of information/evidence that includes a proper description of the origin of the evidence, the correct labelling of the information/evidence and a record of its storage and removal from storage until it is handed over to the relevant authorities. It records all who handled the information or item from its collection to when it is presented in court (if required). A chain of custody ensures that once evidence is moved from its original position, there should be a record of everyone who has
come into contact with the item or information. If a link in the chain is missing or questioned, a court may need to consider whether the item or information has been intentionally or inadvertently altered from its original state and this may have significant forensic and evidential consequences. The chain has already begun when you initiate the “Physical Evidence Log”.

In addition to the “Physical Evidence Log”, to implement a reliable chain of custody and to preserve the physical information/evidence, you should:

- Put the evidence in a storage bag or envelope;
- Either on the bag/envelope, or on a piece of paper to be attached to the bag/envelope you should include the chain of custody record. This will include a unique reference number for the item, a description of the item (for example, appearance, quantity, size, weight and distinguishing features), name of the collection person, date and time it was received and where from;
- Seal the bag/envelope with adhesive tape (in a way that enables any interference to be detected); and
- Store it in a secure location where it will not be disturbed.

An example envelope/form is annexed to these standards as Annex I.

You should strive to keep the chain as short as possible. As few people as possible should handle the evidence. Any handling should be recorded on the chain of custody sheet.

If you feel you cannot accept a piece of information/evidence due to concerns about your ability or for safety or other reasons, you should still make a note of the information in your notebook. You should record details of where the information is and (if applicable) the contact details of the provider. You should provide this information to the relevant authorities – the ICC investigators or national authorities – as appropriate. You should ensure you write down enough information to enable an investigator to obtain the information/evidence at a later date.

Second, if a person wishes to provide information or an item confidentially, you should consider carefully what to do. You should not promise that this information or the item would remain confidential. Criminal investigators usually need to trace the information back to its source and this information may be crucial evidence against a perpetrator of an international crime (see page 41, outlining specific guidance on authentication). However, although no guarantees may be offered, it is also important to explain to a provider or potential witness the manner in which the ICC may be able to address confidentiality concerns (see generally page 46).

For example, you could advise that the ICC Prosecutor and investigators can accept information confidentially at least initially and that a request may be made to the Court for the
provider/witness to be referred to publicly by a pseudonym. These explanations may allay their fears. If it does not, they may wish to approach the ICC Prosecutor or investigator directly for further clarification or reassurance.

**Step Three: Storing: preservation of the information or item**

Once you have completed the necessary paperwork, you should store the item or information in a secure, safe place. It should be free from environmental factors (extreme heat or cold, water, etc.) and unauthorised access to the item or information.

It is recommended that you use a room or a closet space with a lock. Access to the room should be restricted. One person should be responsible for the storage area and access to the physical items. It is wise to institute a logbook to record who is entering the room and why they do so. In any event, any handling of the item itself needs to be recorded.

**Collecting and Handling Documentary Information**
CHECK LIST

1. Documentary information from private and public sources often constitutes important evidence in an international trial. First responders should focus on both public and private sources of documentary information such as newspapers, radio broadcasts, correspondence, etc.

2. When handling documentary evidence, there are two important steps to follow: (i) you should implement rules for the receipt, handling and preservation of information in accordance with the above standards on physical information; and (ii) you should make every effort to record the provenance and authenticity of information gathered.

3. The ICC has provided some specific guidance on how particular types of evidence should be authenticated:
   a. For open source information a first responder should record information about where the document was obtained;
   b. Reports from NGOs, IGOs or third state governments will usually be considered reliable on their face and first responders should focus on providing information on source and the underlying methodology employed to assess and present factual claims;
   c. Official documents will be presumed authentic if the identified official has signed them and the authenticity of that signature is not called into question. You should be careful to note how you obtained the information and its purported source;
   d. An official document with no identified author may be accepted without certification: a first responder should make a careful note of the person submitting the document and the originating organisation and be careful to note how you obtained the information and its purported source;
   e. Private documents that can be readily authenticated will be presumed authentic or they may be corroborated with other evidence;
   f. Digital evidence requires evidence of originality and integrity. Evidence must be provided regarding the date and/or location of recording;
   g. Media articles and press reports do not often provide detailed information about their sources and opinion evidence is only admissible at the ICC from an expert. The first responder should aim to collect information on who wrote the opinion and how they reached their conclusions; and
   h. Letters, manifestos and political statements and other similar documents are likely to provide only opinion evidence. If such a document mentions military or political events, it will likely be admissible only if it can be shown that the authors have made a reliable and objective report.
Documentary information from private and public sources often constitutes important evidence in an international trial. Authenticated documents are difficult to dispute and may constitute the best evidence of specific elements of crimes against humanity, war crimes or genocide. Unlike oral testimony, documentary evidence, if not produced for the purposes of subsequent trial processes, is more likely to be contemporaneous and free of ill will or bias.

You should consider open sources as well as private. Local or national media can be important, particularly if not available online. This may also include radio broadcasts, posts you see online or newspapers only available electronically.

Even though it is important for first responders to be clear on the reasons for collecting the information, the documentary information does not have to directly indicate crimes or be directly probative of the involvement of individuals in suspected violations. Documentary information often provides the best evidence of military and political structures or activity that is required to demonstrate the relevant contextual elements of the crimes in question or simply to provide future investigators with a better understanding of the background and circumstances in which the crimes occurred. Ordinarily, a witness should bring this evidence to Court and “produce” it as part of their testimony. This means that a witness will need to be able to speak authoritatively about its origins, relevance and probative value.

**Basic principles on documentary evidence**

First, you should implement the rules for the receipt, handling and preservation of information/evidence in accordance with the above standards on physical information/evidence (see page 36).

Second, a vital issue with regard to the collection of documentary information/evidence is the necessity of establishing the source and authentication of the information. This involves identifying the author, the author’s organisation and the ultimate source of the information relied upon by the author. You should make every effort to obtain this information. Essentially, you should determine and document in detail what was produced when, where, by whom and for what purpose. As for basic rules ensuring integrity, as with all other types of the information/evidence, minimise access to and transfers of the documents/data and keep a log detailing who accessed it, when and for what purpose. Furthermore, unless shared with professionally trained investigators, avoid sharing original copies of documentary information; photocopies of the information should be used instead.

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34 PILPG Protocol, p. 7.
Additionally, there are some basic steps you can take to enhance the value of the information/evidence you obtain, particularly with regard to future ICC proceedings. As outlined next, the steps may vary according to the type of information under consideration.

Specific guidance to authenticate particular types of evidence

Open source information
Open-source information is material that is publicly available from a readily available public source. For the purposes of the ICC, a first responder should record information about where the document was obtained. If the item of evidence is no longer publicly available, this should be clearly indicated, along with the date and location from where it was obtained. You should be careful to note where you obtained the information from, such as a webpage, and its purported source.

Reports from NGOs, IGOs or third state governments
For the purposes of the ICC, reports from NGOs, intergovernmental organisations or governmental bodies will be considered reliable on their face (i.e., without more) if they provide sufficient guarantees of non-partisanship and impartiality. In sum, first responders should focus on providing information on sources and the underlying methodology employed to assess and present the factual claims. Without this, or if the sources are not identified or they are based on hearsay, their reliability may be doubted.

Official documents
When the author of a public document is an identified representative or agent of an official body or organisation, such as a member of the executive, public administration or the judiciary, that document will be presumed authentic if it has been signed by the identified official and the authenticity of that signature is not called into question. Official documents that are not publicly available from official sources are not self-authenticating and must be certified by the relevant authority. You should be careful to note how you obtained the information and its purported source.

Official document with no identified author
Official documents with no identified author but whose origin is immediately apparent from the documents themselves (for example, from a letterhead or logo) may be acceptable without certification, unless their authenticity is challenged in the court process. You should make a careful note of the person submitting the document and the originating organisation. You should be careful to record how you obtained the information and its purported source.

Private documents
Private documents that can readily be authenticated will be presumed authentic. Private documents whose authenticity is dependent upon a link to a third person or organisation should be authenticated by corroborating, independent evidence. Such evidence must provide proof of authorship or adoption or other indices of integrity, e.g., that it has been
adopted by the third party and possesses sufficient integrity in and of itself to be relied upon. If the date of the document cannot be inferred from the document itself, evidence of it should also be provided. You should be careful to note how you obtained the information and its purported source. Clearly, any form of authentication by the alleged author of the document is most preferable.

**Digital evidence**

This information includes videos, films, photographs and audio recordings. Before photographic, video or audio material can be admitted, the ICC will request evidence of originality and integrity. If this can be established, this type of exhibit may often be admitted as evidence that speaks for itself and may be regarded, in this respect, as physical evidence. Since the relevance of audio or video material depends on the date and/or location of recording, evidence must be provided in this regard. You should be careful to note how you obtained the information and its purported source.

**Media articles and press reports**

Press reports and media reports do not often provide detailed information about their sources and provide opinion evidence. Opinion evidence is only admissible at the ICC from an expert. Therefore, the first responder should endeavour to gather information that helps the ICC to understand who wrote the opinion and how they might have come to their conclusions, e.g., the background of the journalists and their sources and other material relied upon.

**Letters, manifestos, political statements and similar**

These documents will likely provide only opinion evidence. If it mentions military or political events, it will likely be admissible only if it can be shown that the authors have made a reliable and objective report. More likely than not, they will merely contain assertions by people with subjective interests which seriously reduce their probative value. Conversely, the documents may attest to circumstantial information about the status of people in a certain organisation. Again, it may be probative of a belief as to an individual’s particular position or power. You should ask the author for further information concerning how they arrived at the conclusions or opinions contained in the document.

**Collecting and Handling Testimonial Information**

**CHECK LIST**

1. A first responder should ordinarily consider not formally interviewing a witness. Interviewing witnesses is a highly specialised activity that involves a range of legal, ethical, psychological and security issues. Often it will be preferable to produce a summary of the information and not a formal statement.
2. You should produce a summary of the information provided with a view to recording the broad “four corners” of the potential testimony so that it provides a future professional investigator with signposts to conduct a more formal interview, or gather other information or obtain evidential leads.

3. However, a formal interview may be prudent or necessary where there are objective fears the evidence may be lost or deteriorate, for example if the witness might die, or if there is no prospect of a prompt professional investigation.

4. A first responder should be aware that a witness summary or statement might be more relevant and probative of events if supported by “corroborating” information/evidence.

5. When taking a witness’s information, there are six key “Protection” steps to bear in mind to protect the witness:
   a. First, the confidentiality of a witness’s personal details and identity should be at the forefront of your mind, e.g., personal identifying information must be locked away in a separate, secure location and code names allocated to witnesses. You should explain this to the witness;
   b. Second, obtain the witness’s specific consent before processing or using the information they provide in any way;
   c. Third, implement measures to guard against wrongful disclosure of any information that may lead to, or does in fact, identify a witness (e.g., use a code name for witnesses) and encrypt your computer to prevent unauthorised access;
   d. Fourth, ask the witness about any security concerns they might have and relay this to the relevant authorities as necessary, particularly the ICC.
   e. Fifth, watch for signs of emotional distress or re-traumatisation and stop, pause or postpone any interview as required;
   f. Sixth, take all necessary measures to protect the safety, physical and psychological well-being, dignity and privacy of vulnerable witnesses — such as children, the elderly or sexual assault victims.

6. When interviewing witnesses bear in mind six key “LISTEN’ rules:
   a. Let a witness lead you through their story and avoid asking “leading questions”;
   b. Identification: ask the witness to explain all the identifying details of the events;
   c. Story: obtain their story chronologically;
   d. Thoroughness: explore gaps and inconsistencies, but do not force consistency;
   e. Ethics: do not rehearse, practise or coach a witness about what they remember and be cognisant of unconscious influence on the witness; and
   f. No others: only speak to one witness at a time.
Pre-Interview

As a general rule, and bearing in mind your role as a first responder, you should ordinarily not interview a witness. Ordinarily, a professional investigator will prefer the opportunity to take the first formal statement from a witness. Instead, you should produce a summary of the information provided with a view to recording the broad “four corners” of the potential testimony so that it provides a future professional investigator with signposts to conduct a more formal interview, or for them and you to gather other information or obtain evidential leads. Minute detail is less important than obtaining an overall understanding of what the witness may know concerning the events, their motivations in providing evidence, other potential witnesses and other information relevant to the future investigation of the crimes. However, any security concerns should be recorded in full detail.

On some occasions, it will be prudent for a first responder to take a formal statement. Usually, these circumstances arise when there are objective fears that the evidence may be lost or unobtainable by the time of any trial process, for example, if the witness might die. Generally, international courts, including the ICC, have rules of procedure and evidence that allow written statements to be admitted in certain circumstances without the witness being present. Moreover, the first responder may not be focused on the ICC, but may want to provide the local prosecutor or some other authority with a formal statement to ensure an expeditious local trial process and/or to secure the best evidence.

The PILPG Protocol on Investigation and Documentation Field Guide offers a useful strategy for collecting testimonial evidence by implementing PEACE: Prepare and plan; Engage with the victims or witnesses; obtain an Account; Close an interview appropriately; and conduct an Evaluation.

Before you produce an interview, you should be aware of the basic investigative techniques and the basic knowledge of crimes and modes of liability (see page 19).

The following considerations may be given to the preparation of interviews: conduct a risk assessment; prepare an interview plan or questions; identify care and support providers for referral; consider language to be used; familiarise yourself with the context; prepare documents, diagrams, photographs and maps to show; bring the necessary equipment (pens, paper, camera, ruler); engage and carefully select reliable interpreters and/or intermediaries; choose a safe, private, culturally appropriate and comfortable location; determine a safe and confidential system for recording information; bring a recording device; and bring drinking water for everyone.

Measures to Protect Witnesses

37 PILPG Protocol, p. 9.
There are six key “Protection” steps to bear in mind to protect witnesses whenever processing their information: (i) confidentiality; (ii) ensuring consent; (iii) taking measures to protect; (iv) guarding personal information; (v) watching for signs of emotional distress or re-traumatisation; and (vi) taking specific steps for vulnerable witnesses.

First, the confidentiality of a witness’s personal details and identity should be at the forefront of your mind (as they will be for the witness at some point in the process). This is why the organised investigation folder must ensure that personal identifying information is locked away in a secure location (separate from the folder) and code names allocated to witnesses (see page 28 and Annex II). You should explain to a witness at the outset of an interview how you intend to ensure confidentiality.

Second, at the end of the interview, the witness should be asked whether he or she consents to disclosure of their evidence to the specific agency/court, e.g., ICC or other national criminal investigation. This is called gaining informed consent. The response should be recorded. A witness must make an informed choice in full awareness that statements or documents provided to the ICC Prosecutor will likely be disclosed to a potential accused. Similarly, if documents have been handed to the Defence, the Prosecutor may inspect them if they are to be entered into evidence at trial. This acknowledgement should be recorded in your document.

As for your notebooks or other records, as an interviewer, information gatherer or investigator, you may be called to give evidence at the ICC. Your internal documents will likely not be disclosable. You may not have to answer certain questions about your sources and may be able to keep some evidence confidential under a qualified form of privilege. However, the cautious approach is to assume that all documents and information that you generate may be used in court.

Third, if a witness informs you they are fearful or in need of help for any reason, you should note this in the witness statement. The ICC can take appropriate measures to protect the safety, physical and psychological wellbeing, dignity and privacy of victims and witnesses with measures to protect the witnesses before trial or measures to help the witness during the trial (protective or special measures) and other schemes. These measures may even include taking such steps as relocation to another country. These should be explained to the witness so the witness can make an informed choice about disclosure of their statement or agreeing to testify.

Fourth, it is important to implement measures to guard against the wrongful disclosure of a witness’s identifying information. The protection of a witness’s identity not only defends against people potentially seeking retribution against a witness, but also reassures a witness to encourage them to provide a more comprehensive and accurate account. International

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courts, including the ICC, employ a variety of special measures to ensure that the identity of certain vulnerable witnesses remain concealed from public disclosure. These measures include redacting documents that include identifying information, excluding the public or press from court hearings and voice or image distortion of the witness appearing in Court. Your organised record keeping system should be capable of ensuring the confidentiality of a witness. At the very minimum, you should remember to give a witness a code name that does not reveal the witness’s true identity.

Fifth, to ensure compliance with the “do no harm” principle, first responders should watch for signs of emotional distress or re-traumatisation and stop, pause or postpone the interview as required.40

Sixth, you should take all necessary measures to protect vulnerable witnesses – such as, children, the elderly or sexual assault victims. You must take appropriate measures to protect their safety, physical and psychological well-being, dignity and privacy. In so doing, you should consider all relevant factors, including age, gender, health and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The ICC will ordinarily have a psychologist pre-screen a vulnerable witness. Examples of measures you should consider for vulnerable witnesses may include:

- Obtaining permission of a parent or guardian in the case of a child;
- Ensuring the parent or guardian is present during the interview for a child; for vulnerable adults, ensuring an independent support person is present; the parent, guardian or support person should not answer for the witness;
- Exploring whether the witness has any specific preferences for the gender of the interviewer and other preferences, such as interview location;
- Considering an audio or video recording of the interview, unless they do not consent; or
- Taking all steps possible to provide counselling or psychological support.

As reiterated in the basic investigation principles (pages 16 to 17), witness identities should remain confidential and computer security should be ensured.

**Interview**

At the outset, you should outline what will happen. You should emphasise throughout that all you expect from the witness is that they tell the truth. You should explain that you are not there to seek particular evidence or to coach them.

If interpretation services are necessary, one should ensure that any interpreter is: (i) properly qualified; and (ii) capable of providing an accurate translation.

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40 PILPG Protocol, p. 11.
Never make any promises as to benefits the witness could receive.

*Six Key “LISTEN’ Rules for Conducting the Interview*

First, **Let** the witness lead you through their story: avoid asking 'leading‘ questions. A leading question is a question that suggests an answer – “Were you then punched by that man?” or “Your mother was then hurt badly, wasn’t she?”

Second, **Identification**: ask the witness to explain all the identifying details of the events, including their own identifying details and role. Ask the witness to elaborate or encourage them to tell you what happened next – “Why did you do that?”, “What happened next?”, “Where did that happen” or “What did she do after?”. You may take notes of points for further clarification. Additionally, you should attempt to obtain a full description of identifying physical characteristics of any person described in the interview.\(^41\)

Third, **Story**: obtain their story in a chronological fashion.

Fourth, **Thoroughness**: explore gaps and inconsistencies, but do not assume that they must be eradicated – they are sometimes indications of reliability and credibility, and not the converse. If there are inconsistencies, take the witness back through their story step-by-step. Ask them to clarify or explain why they believe events unfolded in the manner in which they describe and try asking your questions in a different way. If you still cannot reconcile an inconsistency, note it and move on.

Fifth, **Ethics**: do not rehearse or practise the interview with the witness beforehand or coach a witness about what they remember and be cognisant of unconscious influence. Does your organisation or anyone else provide the witness or victim with support that may mean they are likely to provide unreliable evidence (for example, free health care, education, expenses beyond the cost of attending for interview)?

Sixth, **No others**: you should only speak to one witness at a time; other witnesses should be excluded from the room.

Additionally, when closing an interview first responders should:

- Summarise using the witnesses own words;
- Confirm everything has been covered;
- Ask the witness whether they have any questions;
- Reconfirm informed consent and allow them to change their minds or withdraw consent if they wish;
- Offer to refer witness to care providers;

\(^{41}\) PILPG Protocol, p. 25.
• End on a positive and neutral topic; and
• Use culturally appropriate gestures when departing.42

**Seven Key Rules for Writing a Summary**
First, you should summarise the witness’s information accurately.

Second, you should maintain notes and record the statement a witness wishes to make. You should be aware that your notes may later be requested by the ICC.

Third, focus on facts and not opinion: whom they saw, where and when they saw it and what happened.

Fourth, always record dates accurately, but bear in mind a witness may be genuinely confused. The statement should indicate whether the matters indicated are from:

• The witness’s personal knowledge and observation; or
• Common information or belief (and not first hand).

If the latter, the statement should describe clearly the source of the information or belief.

Fifth, exclude obviously irrelevant material.

Sixth, you should include “hearsay” evidence. It can often be used in evidence against an accused at the ICC. Hearsay evidence is a statement from someone other than the witness or victim testifying at the court hearing. An example: a witness statement or summary recording the witnesses account that “My mother told me that she saw him enter the house through the backyard.”

Seventh, you should classify the witness: are they sensitive, i.e., someone who may be in jeopardy if their association were to be known?

**Seven Formalities for Writing a Witness Statement**
For witness interviews, the ICC Rules of Procedure and Evidence mandate that a ‘record’ shall be made of formal statements made by any person who is questioned in connection with an investigation. This record should ideally:

• Be signed by the person who conducted the questioning;
• Be signed by the person who is questioned and their counsel, if present;
• Be signed by any prosecutor or judge who is present;
• Be dated with the time noted;
• Have the place of interview noted;

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42 PILPG Protocol, p. 25.
• Include a note of all persons present during questioning; and
• Include a note of anyone who was present but did not sign the record, as well as the reasons for this.

Post Interview
A witness summary or statement may be more relevant and probative if supported by ‘corroborating’ information/evidence. At the ICC, the ordinary way of introducing documentary items into evidence is through a witness. If a witness makes particular claims that could potentially be corroborated by documentary or physical evidence, they should be annexed to the statement. Examples include medical reports, police reports, sketches of locations or images. Any documentary evidence referred to should be clearly referenced with a number or other identifying sign, such as “GRC3”.

It is always helpful to ask a witness to sketch out any geographical descriptions. This could be on any form of paper, but should be referenced and annexed to the witness statement.

Report to the ICC
It is important to send all details about information you possess to the ICC Prosecutor. There is no specific form for this report. It is good practice to formulate a full list of the information. You should not send the original information to the ICC Prosecutor, but rather describe it in a written report. You should cite and describe the evidence you have in your report.

Your report should be sent to otp.informationdesk@icc-cpi.int, by fax to +31705158555 or by post to International Criminal Court, Office of the Prosecutor, Communications, Post Office Box 19519, 2500 CM The Hague, The Netherlands.

It is recommended that you include:

• An introduction to describe who you are and your contact details;
• A summary of the content of your submission, outlining the scope of your investigation, the nature of crimes in your submission and the principal groups or individuals implicated in the evidence;
• The methodology used in your approach to the investigation;
• A description of your investigative findings on criminal events and witnesses identified:
  o Group the witnesses into criminal events or particular crimes;
  o For each criminal event or crime, introduce each witness by their pseudonym, date of statement and what was described. Summarise the main parts of their evidence;
If the witness has particular security or privacy concerns, they should be noted. Use a code name to refer to the witnesses;

Describe each document and piece of physical evidence in your possession or control that relates to the witness or appears relevant to the criminal event or crime described;

- Identify protection and confidentiality concerns:
  - Write in detail the protection and safety concerns identified by any witnesses;
  - Identify, in detail, any information transmitted in confidence or any related confidentiality concerns;

- Identify any information on local prosecutions of similar crimes;
- Any outstanding issues or relevant concerns such as difficulties or problems arising from your investigation;
- Conclusions; and
- Annexes if appropriate to list witnesses and documents.

Do not send the original evidence unless requested by the ICC Prosecutor or the Court.
Authorities Used


Annex I

EVIDENCE ENVELOPE EXAMPLE
ANNEX I: Evidence Envelope Example

**EVIDENCE ENVELOPE**

<table>
<thead>
<tr>
<th>Unique reference number</th>
<th>GRC1BYU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of evidence</td>
<td>Knife. Brown Handle. 6” x 1” blade. Rusted. Originating from Yaroslaviv Street in Volnovakha.</td>
</tr>
<tr>
<td>Date, time and location of receipt or collection</td>
<td>18 November 2015. 15:32. Office of GRC, #11 Reitarska Street, #1, Kyiv, 01030.</td>
</tr>
<tr>
<td>Name of provider or location obtained</td>
<td>Ivan Kolinko</td>
</tr>
<tr>
<td>Name of collector</td>
<td>Krisina Boiko, GRC</td>
</tr>
</tbody>
</table>

**INSTRUCTIONS**

1. Attach a tag to the piece of information itself. Put your initials and the date of collection;
2. Write the relevant details on the envelop;
3. Put the information in this envelope;
4. Close the envelope;
5. Apply adhesive tape to seal the envelope;
6. Write your name, the date and your signature across the adhesive tape;
7. If anyone handles the envelope, it should be noted on the rear of the envelope; then
8. Store the evidence in a safe, secure location.

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43 Adapted from D. Groome 99 – 109.
| Name of additional handler 1 |  |
| Date, time and location handling |  |
| Reason |  |
| Name of additional handler 2 |  |
| Date, time and location handling |  |
| Reason |  |
| Name of additional handler 3 |  |
| Date, time and location handling |  |
| Reason |  |
Annex II

EXAMPLES OF LOG FILES
**COMMUNICATION LOG**

Investigation no.: GRC/MRC/DLG

<table>
<thead>
<tr>
<th>Number</th>
<th>Name of first responder</th>
<th>Date of communication</th>
<th>Name</th>
<th>Nature and summary of communication</th>
<th>Actions proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Jack Smith</td>
<td>20 January 2016</td>
<td>Sergeant Kostorovic</td>
<td>Sent a letter to Sergeant Kostorovic requesting to attend our offices for an interview</td>
<td>Interview with Sergeant Kostorovic at 10am on 15 February 2016</td>
</tr>
<tr>
<td>2</td>
<td>David Brown</td>
<td>21 January 2016</td>
<td>GRC1</td>
<td>Made a telephone call to witness GRC1 requesting to discuss new information</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Jack Smith</td>
<td>30 January 2016</td>
<td>Unknown person</td>
<td>Received unknown letter concerning witness GRC2</td>
<td>Call GRC2 to follow-up</td>
</tr>
</tbody>
</table>

44 Adapted from Groome, pp. 65 – 70.
## Witness Interview Log

Investigation no.: GRC/MRC/DLG

<table>
<thead>
<tr>
<th>Number</th>
<th>Date of Interview</th>
<th>Name of first responder</th>
<th>Name of witness or Code Number</th>
<th>Nature of the interview</th>
<th>Actions proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20 January 2016</td>
<td>Jack Smith</td>
<td>GRC1</td>
<td>Preliminary interview at GRC1’s house</td>
<td>GRC1 will come to GRC’s office on 23 January 2016</td>
</tr>
<tr>
<td>2</td>
<td>21 January 2016</td>
<td>David Brown</td>
<td>GRC2</td>
<td>5 min discussion</td>
<td>GRC2 refused to schedule a longer interview.</td>
</tr>
</tbody>
</table>
### PHYSICAL EVIDENCE LOG

Investigation no.: GRC/MRC/DLG

<table>
<thead>
<tr>
<th>Number</th>
<th>Date of collection</th>
<th>Name of the collector</th>
<th>Time and location of the collection</th>
<th>Provider</th>
<th>Name, description and nature of the item</th>
<th>Actions taken</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20 January 2016</td>
<td>Jack Smith</td>
<td>14h30 Office of GRC, #11 Reitarska Street, #1, Kyiv, Ukraine, 01030</td>
<td>GRC1</td>
<td>A white shirt covered with blood alleged to have been worn by the GRC1</td>
<td>Sealed and stored at GRC’s Office (Room 2)</td>
<td>The shirt may also be covered with the blood of another victim.</td>
</tr>
<tr>
<td>2</td>
<td>21 January 2016</td>
<td>David Brown</td>
<td>12.00 Office of GRC, #11 Reitarska Street, #1, Kyiv, Ukraine, 01030</td>
<td>GRC3</td>
<td>One knife. Brown Handle. 6” x 1” blade. Rusted. Heavy.</td>
<td>Stored at GRC’s Office (Room 2)</td>
<td>They key was moved to Room 1 on 23 February 2015. Apparently originated from Yaroslaviv Street in Volnovakha. He has confidentiality concerns. He does not want it known he is handing over information.</td>
</tr>
</tbody>
</table>
Annex III

WITNESS CODE SHEET
ANNEX III: WITNESS CODE SHEET

Investigation no.: GRC/MRC/DLG

<table>
<thead>
<tr>
<th>Number</th>
<th>Name of first responder</th>
<th>Date of information entry to log</th>
<th>Name of witness</th>
<th>Code number</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>David Brown</td>
<td>20 January 2016</td>
<td>Sasha Boiko</td>
<td>GRC1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Jack Smith</td>
<td>21 January 2016</td>
<td>Ivan Kolinko</td>
<td>GRC2</td>
<td></td>
</tr>
</tbody>
</table>