

VIDEO AS **EVIDENCE** FIELD GUIDE

**USING VIDEO TO SUPPORT JUSTICE AND ACCOUNTABILITY FOR
SEXUAL AND GENDER-BASED VIOLENCE**



ACTIVISTS | LAWYERS
SUPPORTING | SUPPORTING
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USING VIDEO TO SUPPORT JUSTICE AND ACCOUNTABILITY FOR SEXUAL AND GENDER-BASED VIOLENCE

“Thank you very much for this honor, but the fact remains that the only prize in the world that can restore our dignity is justice and the prosecution of criminals.”

~ **Nadia Murad**, in her lecture upon receipt of the Nobel Peace Prize on 10 December 2018 for her work to end the use of sexual violence as a weapon of war in armed conflict.



CONTENT & TRIGGER WARNING

This section will discuss and provide examples of sexual and gender-based violence (SGBV). For this reason, much of the content may be difficult to engage with, and some readers may have a heightened physical, emotional, and mental response. We will warn readers of especially graphic or intense content with this icon.

If we can take any additional steps to improve the content or format of this guidance to ensure it is as accessible as possible, please share your feedback with us: feedback@witness.org.

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INTRODUCTION

Human rights defenders tackling sexual and gender-based violence (SGBV) are already using video as a tool for advocacy and to empower survivors. Documenters, activists, advocates, and survivors already produce impactful films and documentaries that create space for survivors of SGBV to tell their stories and effect change.

However, the use of video to investigate and document SGBV crimes has yet to reach its full potential as trial-ready evidence. There are good reasons for this. Complex ethical considerations and personal safety challenges make it difficult to secure accountability for SGBV crimes. Additionally, these crimes often happen 'behind closed doors' and if survivors do want to come forward, they can face strong stigma. The result is that these crimes are often invisible to society. Nevertheless, considering the widespread impunity of perpetrators of SGBV, there is a real, urgent need for better documentation and more reliable accountability and justice for survivors.



Women's rights defenders designing a video advocacy campaign to pass legislation protecting Somali women © Alex Pritz

To help combat impunity, this section looks at how video can be gathered and used to document the legal elements of SGBV crimes. While the core SGBV evidence is almost always survivor or witness testimony, video evidence can strengthen fact-finding and monitoring reports. It can also be used in criminal justice processes to bring perpetrators to justice and to achieve other forms of justice for victims and survivors.

Our hope is that high-quality, trustworthy, and actionable video documentation will help to secure accountability and justice for survivors of SGBV.

KEY POINT

Deliberate attention to how violence is differently experienced among genders—gendered analysis—should always be at the core of any accountability or justice process. And so, paying thoughtful attention to the gender dynamics of human rights violations and serious crimes should also be at the core of any documentation effort—no matter the circumstances under investigation. Collecting video footage for the purpose of documenting acts of SGBV is just one way to do this.

BEFORE WE START: SOME KEY DEFINITIONS

GENDER

Gender is a concept created by society and 'based on the roles, behaviors, activities, and attributes assigned to women and men, and to girls and boys. The gender of a person is based on a personal identification of being a man, a woman, or neither of these two, rather than on their biological sex.'¹

GENDER-BASED VIOLENCE

Violence or aggression directed at a person because of their gender or perceived gender. Violent acts or behaviors that disproportionately affect people of a certain gender identity.²

SEXUAL VIOLENCE

'Sexual violence involves singular, multiple, continuous, or intermittent acts which, in context, are perceived by the victim, the perpetrator, and/or their respective communities as sexual in nature. Such acts are to be characterized as sexually violent if they violate a person's sexual autonomy or sexual integrity.'³ Sexual violence is a form of gender-based violence.

GENDERED ANALYSIS

Examines the underlying differences and inequalities between genders or perceived genders, and the power relationships and other dynamics that determine and shape gender roles in a society, giving rise to assumptions and stereotypes.

VICTIM

The term victim includes those who have been directly harmed by SGBV, their families, and their community members, including children born as a result of pregnancy from rape. Importantly, the term victim refers to people who have survived SGBV as well as those who may have died as a result of their injuries or been murdered after an SGBV attack. The use of the term 'victim' rather than 'survivor' is in no way meant to diminish the agency, autonomy, and resilience of individual victims, which the term 'survivor' likely better captures.

SURVIVOR

A person who has experienced sexual and/or gender-based violence. The terms 'victim' and 'survivor' may be used interchangeably. 'Victim' is often used in the legal and medical sectors, whereas 'survivor' is generally preferred in the psychological and social support sectors because it implies resiliency.

This section will use both terms—'survivor' and 'victim'—in a context-dependent manner, but will favor the term 'survivor' to honor this resiliency.



For a glossary of key terms to use when working on issues of SGBV and engaging with survivors and witnesses of these crimes, see *Sexual and gender-based violence: A glossary from A to Z* available here [wit.to/SGBV-Glossary](https://www.wit.to/SGBV-Glossary)



In 2019, the Women's Initiative for Gender Justice led efforts to research and draft the *Civil Society Declaration on Sexual Violence*, which sought to foreground the voices of survivors in discussions about accountability for sexual violence. The declaration presents an important and nuanced understanding of sexual violence and is based primarily on consultation with self-identified survivors. You can find the declaration here [wit.to/Declaration-SGBV](https://www.wit.to/Declaration-SGBV)

The Civil Society Declaration on Sexual Violence is part of the Hague Principles on Sexual Violence, which also include: *International Criminal Law Guidelines* for international criminal law practitioners; and *Key Principles for Policy Makers on Sexual Violence*. You can find all of these resources here [wit.to/Hague-SexualViolence](https://www.wit.to/Hague-SexualViolence)



SGBV AGAINST MEN AND BOYS: A CLOSER LOOK

Men and boys who are also victimized by the same, harmful gender dynamic at the core of all acts of SGBV. Men and boys who are survivors may face, in particular:

- Stigmatization as a result of same-sex relations, even though the act was non-consensual
- Assertions of being less masculine or 'less than a man,' which can create serious social consequences

These harms often follow men and boys who are survivors, impacting them in their own homes, in their broader communities, when seeking medical care, and even in their country of asylum.

FOR MORE INFORMATION

To learn more about investigating SGBV against men and boys, see *Guidelines for Investigating Conflict-Related Sexual and Gender-Based Violence Against Men and Boys*, from the Institute for International Criminal Investigations at wit.to/IICI-InvestigationGuidelines

For more on working with survivors, especially in forced displacement contexts, see *Working with Men and Boy Survivors of Sexual and Gender-Based Violence in Forced Displacement* from the United Nations High Commissioner for Refugees and Refugee Law Project at wit.to/MenBoys-SGBV-Displacement

WHO IS THIS GUIDE FOR?

The primary responsibility to investigate and document SGBV lies with the state. However, when states fail to do so—or fail to do enough—or when state officials are themselves the perpetrators of the violence, documenters and advocates with the appropriate training, tools, and mandate may need to fill this gap to the extent that they are equipped to do so.



DOCUMENTERS

This guidance is for human rights documenters who are in a difficult position and face a tough choice: to document SGBV or not? It is for activists who are witnessing or otherwise know that incidents of SGBV are happening around them and do not have access to professional investigators, professional training, or vast resources, but who can't stand by and do nothing.

If you have to make a decision on your own about whether or not to collect documentation of SGBV, this guidance will help. However, it is important to make clear that no guidance can possibly cover every situation and that documenting acts of SGBV comes with many ethical and security challenges. You will need to think about the circumstances of the victim or survivor, your community, yourself, and how best to serve everyone in light of the guidance offered here.



ADVOCATES

This guidance is also for local human rights advocates or those who work remotely or behind-the-scenes to support frontline documenters. If remote, you may be better placed to provide support given your distance from the violence. You may also be facing serious security concerns or may have been denied access to the areas where the SGBV is being committed. Advocates all over the world face this problem. In September 2016, Zeid Ra'ad Al Hussein, the U.N. High Commissioner for Human Rights, called out 19 countries from North Korea to the United States for denying their citizens access to human rights monitors. So in some circumstances, collection by community documenters is the only option.

This guide will help both local and remote advocates more easily convey what is needed from frontline and community documenters. This will help ensure that the collection efforts made, knowing all the associated risks, are worth it.

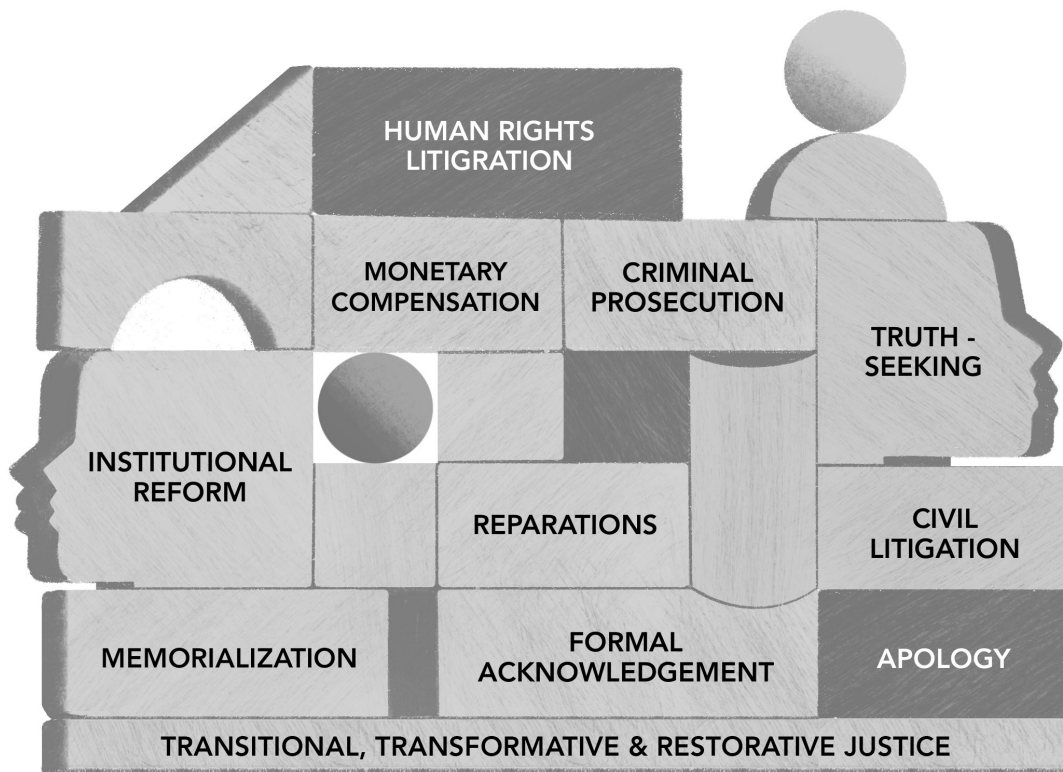
GOAL

There are many barriers to accessing justice for SGBV through legal accountability. The barriers are even higher in cultures where survivors experience stigma and shame if they speak out. It is important to acknowledge, directly, that the vast majority of survivors will never receive justice, let alone justice in a court of law.

It is also important to remember that justice can take many forms, and survivors have a right to define their path to justice. This may include:

- criminal prosecutions
- human rights litigation
- civil litigation
- truth-seeking
- reparations, including economic, medical, social, or psychological support
- monetary compensation
- institutional reform
- formal acknowledgement of wrongdoing
- apology
- memorialization
- transitional, transformative and/or restorative justice

This section provides guidance on how to use video as evidence to overcome barriers and support all paths to justice for survivors while also minimizing asks for survivors to undertake additional risks for the sake of documentation. Because justice comes in many forms, the end goal of this section is to ensure that any visual documentation collected will, in fact, be usable in any effort to secure accountability and justice and provide positive impacts for victims and survivors.



FOR MORE INFORMATION

For a summary of the primary human rights justice and accountability processes, see **'The Role of Video Beyond the Courtroom'** from the *VaE Field Guide* at wit.to/VAE-Courtroom

SECTION ROADMAP

This section is broken down into the following parts, which can be read separately or together:

PART I - THE BIGGER PICTURE

Here we outline the support that victims and survivors need.

PART II - STOP AND ASSESS

Here we discuss what you should think about before you begin filming, including what you should learn, how to assess risks, and the importance of planning ahead before collecting video documentation.

PART III - THE LAW

Here we summarize the categories of laws that exist to protect people against SGBV.

PART IV - WHAT TO FILM?

Here we set out some ideas for areas of focus when deciding what to film by breaking down ways to prove WHAT crime was committed, WHO committed (or who is responsible for) the crime, HOW they are responsible for the crime, and—as applicable—the CONTEXT of SGBV crimes.



AN IMPORTANT NOTE FROM:

Dorchen A. Leidholdt, Legal Director, Sanctuary for Families

Michelle Kaminsky, Chief, Domestic Violence Bureau, Kings County District Attorney's Office

EVIDENCE-BASED PROSECUTIONS

“If we can prosecute murderers without the testimony from the victim, why can't we successfully prosecute perpetrators of gender-based violence without victim testimony?”

~**Casey Gwinn**, former City Attorney of San Diego & President and Founder of the San Diego Family Justice Center

To help explain why we think video is a particularly useful tool for proving SGBV crimes and accessing justice for survivors, let's take a moment to consider the evidence-based approach used for prosecuting domestic violence (DV) in the United States. Pioneered by San Diego City Attorney Casey Gwinn in the mid-1980's and subsequently embraced by DV prosecutors throughout the United States and many other countries around the world, the evidence-based approach to prosecuting DV cases effected a breakthrough in the way prosecutors view and handle DV cases and treat victims.

Prior to this time, prosecutors of criminal cases involving allegations of intimate partner violence relied heavily, sometimes exclusively, on victims' testimony to meet their burden of proof. Historically prosecutors gave short shrift to other forms of corroborating evidence, even though such evidence, such as photographs of victims' injuries, tangible evidence like a victim's bloodied nightgown, and the eye or ear witness testimony of family members or neighbors, was not only highly probative but was often abundantly available at the pendency of the criminal investigation and prosecution.



Soundproof, steel, and concrete bunker holding victims of sexual slavery. Based on a real crime scene in Sweden.

Law enforcement officials' failure to recognize, gather, and preserve such powerful corroborating evidence, the consequence of their failure to recognize the importance of prosecutions of domestic violence perpetrators to victim and community safety, led to the wholesale dismissal of intimate partner cases accompanied by the blaming of victims. The pervasive common wisdom of law enforcement and too often the general public at that time was that it wasn't law enforcement who was responsible for these failed prosecutions but the victims themselves, who were too psychologically damaged or unenlightened to know what was good for them. Left unrecognized was the validity of victims' fears of retaliation by their abusers and the massive pressure abusers and their family, friends, and community members put on victims to deter their cooperation with law enforcement.

All of this changed with Casey Gwinn's groundbreaking recognition that despite the private nature of intimate partner violence, abusers often leave a telltale trail of evidence, if only police and prosecutors are motivated and savvy enough to recognize and preserve it. Law enforcement officials began to realize that placing victim testimony at the core of DV cases is not only a self-defeating approach that too often leads to failed prosecutions but is physically dangerous and psychologically harmful to victims, contributing to abuser retaliation, intensified dynamics of coercive control, and heightened trauma to victims, who are inadvertently placed in the cross hairs by law enforcement when they bear the burden of proving the criminal case.

So, the evidence-based approach to DV prosecution seeks to remove direct victim involvement altogether: police and prosecutors set out to thoroughly investigate and document each case such that it could be won without victim participation. **By being alert to and building cases with evidence other than the victim's testimony—such as emergency calls, text messages, medical records, photographs and non-testimonial video—prosecutors can avoid the risks associated with victim testimony while also gaining new benefits, including redirecting the focus of the case squarely on the offender instead of on the victim.**

The Role of Video for Evidence-Based Prosecutions

Video evidence can be especially valuable. In one case of Sanctuary for Families', when a young DV victim who had been groomed and then trafficked by her abuser refused to testify as a result of the condition of traumatic bonding he had instilled in her and her genuine terror of him, the prosecutor succeeded in proving his felonious violence against her beyond a reasonable doubt by introducing into evidence the video footage of a brutal beating the abuser subjected his young victim to in the halls of the homeless shelter in which they were residing.

For over twenty years, the Brooklyn District Attorney's Office has been a leader in pursuing evidence-based prosecutions against DV offenders. Video surveillance footage, jail house phone calls, and police officer body-worn camera footage has changed the landscape of DV prosecutions by enabling prosecutors to go forward without victim participation.



Based on a screenshot from surveillance video documenting the commercial sexual exploitation of children in the United States.

In a recent case, a surveillance camera located outside of an apartment building captured an abuser violently and repeatedly slamming the victim's head against a concrete pavement in front of her two small children. The victim suffered a serious concussion and was too traumatized and conflicted to testify against her abuser, who was also the father of her children. The video footage enabled the prosecutor to negotiate a top count plea, and thus avoid calling the victim to testify at a trial.

In another case, police officer body-worn camera footage captured the aftermath of a DV assault. The police, responding to an emergency call for help, turned on their cameras as soon as they got out of their car. The body camera footage captured the abuser running outside of the home, agitated while the victim was at the front door bleeding and crying. This footage also enabled the prosecutor to negotiate a top count plea, and thus avoid calling the victim to testify at a trial.

Investigating and pursuing justice and accountability for SGBV is a sensitive undertaking, especially where victims and survivors are involved. Learning how to collect and use video as evidence to help prove SGBV crimes with lesser dependence on testimony from victims and survivors can really help to mitigate potential risks to survivors throughout this process.

WHAT THIS SECTION DOES NOT COVER

Before moving on, it is also important to share what this section does not cover. Here, we do not provide guidance on how to **document injuries** resulting from acts of SGBV or **how to film the testimony of survivors of, and witnesses to, acts of SGBV**.



You may be wondering why we aren't including these two issues here since injuries and testimony tend to form the core evidence in SGBV cases. There are many complicated and highly sensitive factors to consider when photographing injuries and filming testimony related to SGBV. So, we've provided guidance on photographing injuries in a separate section titled **'Documenting Injuries'**. Guidance on filming testimony is discussed in depth in the *Field Guide* section, **'Testimony: Filming Preliminary Interviews'**. We also expand on this topic in the **'Annex for Frontline Documenters: Preliminary Interviews with Survivors as Evidence of Sexual and Gender-Based Violence'**.

There are two key reasons why we decided to provide guidance on recording testimony separately.

First, a poorly conducted interview risks **'re-traumatization'**. Re-traumatization of an interviewee occurs when the interview process triggers trauma-based responses. Given the importance of avoiding this, we have included a note below, which summarizes why you should not film testimony relating to SGBV unless you are properly trained.

Second, a poorly conducted interview also risks documenting inaccurate or misrepresented information. Exposure to trauma can affect a person's ability to process information, talk about their memories, and communicate clearly with others. Therefore, when an interview with a traumatized person is improperly conducted, the consequences may seriously damage the goals of your investigation. Namely, **an improper interview with a traumatized person may create inconsistencies in the formal record, which, in turn, can undermine the witness's credibility, including in future legal proceedings.**



FOR MORE INFORMATION

To read **'Documenting Injuries'** go to wit.to/DocumentingInjuries

And for the **'Annex'** on interviewing survivors of SGBV go to wit.to/SGBV-Testimonies



AN IMPORTANT NOTE FROM:

Katherine Porterfield, Ph.D., Bellevue/NYU Program for Survivors of Torture

TRAUMA-INFORMED INTERVIEWING: AN ESSENTIAL SKILL SET IN DOCUMENTATION WITH TRAUMA SURVIVORS

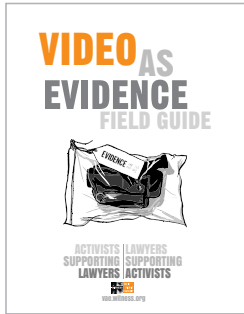
SGBV crimes are traumatic to victims and witnesses. Trauma is a biopsychosocial experience in which an overwhelming event or events cause the body and brain to enact nervous system reactions in order to survive. These survival reactions—fight, flight, freeze, and even faint—while adaptive in the moment of threat, can leave physical, psychological, and interpersonal symptoms in survivors. These can include feeling hyper-aroused (in a fear state), intrusively re-experiencing images and memories, feeling shame and humiliation, withdrawing, and shutting down or avoiding discussions of the trauma. All of these reactions can then be triggered by interviews or questioning of survivors. A video interview may heighten the intensity of the survivor's reaction, so it must be conducted carefully.

A poorly conducted interview risks re-traumatization of a survivor. 'Re-traumatization' involves the triggering of trauma-based responses through the interviewing process. Questioning about an assault, for example, requires a survivor to recount memories that may thrust them into a fight or flight cascade of reactions, with racing heart, sweating, and stomach distress. An interviewer who is not aware of these signs of hyperarousal may 'press on' with the interview, rather than respond to the survivor's condition. This inadvertent triggering of a trauma reaction can result in survivors becoming highly distressed and symptomatic.

Advocates and others who interview survivors of SGBV must be trained in trauma-informed practices. This type of training can prepare interviewers in best practices for interviewing a survivor. Preparing for an interview with knowledge of the person's cultural background, social history, or any other data regarding the traumatic events may help an interviewer be more attuned to the survivor. Learning about the human response to trauma and to revisiting trauma memories can assist the interviewer in recognizing the survivor's reactions and responding to them sensitively. Understanding how memory inconsistencies can be a product of neurophysiological trauma responses that were elicited during the trauma is crucial to conducting non-confrontational interviews with survivors who may seem to confuse or lose details of their experience. Training in structuring an interview with a trauma survivor teaches interviewers about the importance of giving control to subjects when possible, building rapport and ending an interview with time for the survivor to regain composure or plan for their next steps.

Interviews with survivors of sexual violence can be effective, safe and, even in some cases, healing for the victim. However, this requires an informed, sensitive interviewer, trained in the impact of traumatic stress on individuals and attuned to survivors' reactions, as much as what they say.

ESSENTIAL READING



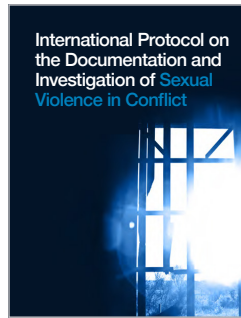
Criminal courts and tribunals have strict rules when it comes to setting standards for evidence in court. Throughout the *Video as Evidence Field Guide* (*VaE Field Guide* or *Field Guide*),

WITNESS provides basic and advanced practices that activists and advocates can use to collect evidence and document elements of these crimes at a trial-ready standard. In practice, you will need to adapt this guidance to your circumstances and the resources available to you. But, if you aim to collect video as evidence at the highest possible technical and ethical standard, that careful and thorough work increases the likelihood that your video documentation can be used in all forms of human rights advocacy and legal processes.

The usefulness of this section and your understanding of the material depend upon your having read and reviewed key sections of the *Field Guide*. At certain points, we will flag specific sections of the *Field Guide* with the phrase **For Review** or **For More Information** which you will see on the right hand side of the page. However, we encourage you to become familiar with all of the information in the *Field Guide* so you will have a baseline understanding of video evidence, the technical skills you will need, and next steps.

Your ability to properly, ethically, and safely document SGBV also depends on your having read these key texts from the conflict-

related sexual violence field. Of course, not all SGBV is related to conflict. Regardless, here you will find essential information for all SGBV-related work:



The *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, known as the *PSVI Protocol*, which was drafted by over 200 experts

in the field. The PSVI Protocol outlines current techniques, best practices, and key ideas on how to collect high-quality information with the goal of strengthening evidence collection to end impunity for sexual violence.



The *Global Code of Conduct for Investigating and Documenting Conflict-Related Sexual Violence*, known as the *Murad Code*,

which was drafted by over 160 experts, survivors, and other stakeholders from across the globe. The Murad Code is for everyone who collects information from survivors of conflict-related sexual violence. It aims to make the work of investigating, documenting, and recording survivors' experiences safer, more ethical, and more effective in upholding their human rights.

These are essential reads.

ESSENTIAL READING

Review the *Video as Evidence Field Guide* here vae.witness.org/video-as-evidence-field-guide

Review the *PSVI Protocol* here wit.to/PSVI-Protocol

Review the *Murad Code* here wit.to/MuradCode

A NOTE ON ESSENTIAL BACKGROUND READING

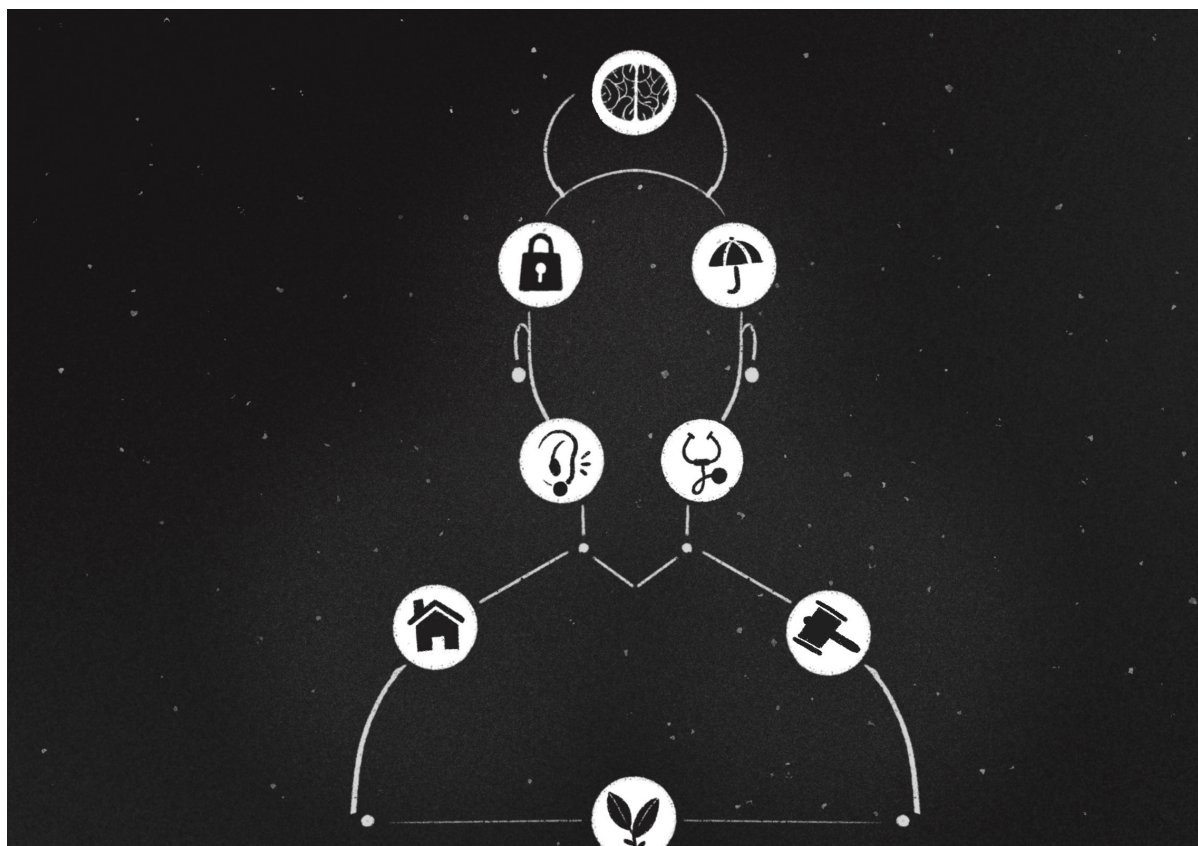
We recognize that this section, the full *VaE Field Guide*, *PSVI Protocol*, and *Murad Code* are long and in-depth documents. We also understand that it's a lot to ask you to read. But if you are documenting SBGV as part of your human rights work, reviewing these resources is time well spent and will help us honor the human rights and dignity of the victims and survivors we have the privilege to work with.

Finally, since this is such a specialized area of human rights documentation, we have included key learnings and important notes from experts and practitioners in the field throughout this section. Keep an eye out for these opportunities to hear from a few of our friends who have spent many years supporting survivors in their pursuit of justice and learning how to hold perpetrators accountable for acts of SGBV. Their input will help ensure that you become a better informed, more responsible, and highly strategic advocate.

PART I:

THE BIGGER PICTURE

It is essential to recognize that access to justice for victims or survivors of SGBV, their families, and their communities is only one part of the support they need. We realize that documenters and advocates often work in situations with few resources and that some—or most—of the additional services listed below may not be available to the people you are trying to help. In these circumstances, **if you decide to move forward with your documentation work, be sure you know what additional support is needed and do your best to secure this for victims and survivors of SGBV.**



Here's what survivors will likely need:

- **Psychological Support**—psycho-social support to ensure survivors have the emotional strength to withstand the rigorous, complex physical recovery process
- **Right to Privacy**—unequivocal respect for survivors' right to personal and digital privacy, and recognition that this may mean no disclosure if they so choose
- **Further Protection**—protection from further traumatization arising from both the original violence and from potential retaliation because of survivors' work with investigators, documenters, or human rights defenders
- **Medical Care**—access to health services
- **Safe Space**—support so survivors can re-enter their communities or if they cannot return due to their injuries, ongoing violence, or stigma, then support survivors to rebuild their lives outside the place they once called home
- **Legal Empowerment**—provide ways for survivors to have their voices heard in the judicial system
- **Address Root Causes**—support for education that builds tolerance or combats discrimination, supporting civil society mobilization around efforts to address the root causes that perpetuate SGBV, and advocating for long-term change

While each of these pillars is key to addressing this global issue, in this section we only discuss how to use video effectively, ethically, and safely to strengthen civil society, and access justice and accountability. The other areas outlined above are beyond the scope of this guide, but if you plan to document SGBV, we strongly recommend that you learn more about them.



Remember: Each survivor is a unique individual. And, their individual needs and priorities must always be placed above yours, as a documenter or advocate.

PART II:

STOP AND ASSESS



AN IMPORTANT NOTE FROM:

Kim Thuy Seelinger, Director, Center for Human Rights, Gender and Migration
at Washington University in St. Louis

MINIMIZE HARM

In any work related to unearthing or recording survivors' experiences, one is often reminded to 'do no harm.' It is a fundamental ethical principle upon which other important objectives like 'providing care,' 'pursuing justice' or even 'seeking truth' can be built. However, what the principle requires in practice is not always clear. **What does 'harm' even mean and who decides? What measure of 'harm' or 'discomfort' is acceptable in order to achieve a greater good? Who decides?**



Take, for example, a service provision context. One form of harm is psychological: discomfort, or even re-traumatization. A survivor may accept some level of discomfort in disclosing their experience of SGBV to a service provider because that discomfort feels outweighed by the benefits they expect to receive from that interaction—perhaps speaking of SGBV despite personal discomfort will enable the survivor to access urgently needed healthcare or shelter. A survivor's 'harm calculus' may be influenced by their motivation to disclose SGBV: there is a perceived benefit. And even in these situations, service providers who offer a direct benefit should still take precautions to avoid 'doing harm.' In sitting with a survivor, they are often able to build rapport, pick up on nuance, use familiar terms, read through the lines to understand discomfort and fear. The existence of discomfort and fear does not mean one must avoid the conversation—there is often, after all, a benefit the survivor seeks. Using best practices including active listening, trauma-informed care, and effective referral mechanisms, service providers can minimize psychological harm in their interactions with survivors of SGBV.

Harm can of course also be more tangible. Survivors who reveal their experiences may be abandoned by spouses, rejected from communities, punished for (being forced into) sexual relations outside of marriage. They may be threatened with retaliation. They may lose their jobs. To understand the barriers to, and consequences of, disclosing SGBV requires contextual knowledge of a society, culture, or space. Many service providers, if from the local community

themselves, already have an understanding of these forces. Awareness of these risks requires them to engage in additional layers of precaution: ensure confidentiality, be able to provide or refer a survivor to protection or shelter.

So, what does this mean for frontline documenters?

Even when SGBV crimes are perpetrated on a widespread and systematic scale, these crimes are often largely 'invisible' in a traumatized society. Exposure by a video crew can shed light on these hidden crimes, thus contributing to a broader justice effort. **However, exposure can also bring about significant risk of harm to a survivor, particularly in a community where SGBV is stigmatized or where perpetrators may retaliate with impunity.** There may be consequences not just for the survivor but for their loved ones as well.

Frontline documenters should make every effort to understand and ensure that there is indeed a good reason for documenting SGBV in the first place—and, hopefully, a benefit to the survivor or their community. Where this is the case, documenters should then avoid causing harm when carrying out fact-finding work, monitoring situations, and collecting evidence of SGBV crimes, including visual evidence. This also means constantly balancing the need for information with the potential risk of harm to those being filmed or those who provide access to such information. In some circumstances, this may mean forgoing the collection of information altogether.

If in doubt, do not photograph or film.

FOR MORE INFORMATION

For more details on important ethical considerations and how to apply the 'Do No Harm' principle to documenting SGBV, see **'Chapter 7: Do No Harm'** in the *PSVI Protocol*, here wit.to/PSVI-Protocol

STEP 1: LEARN

Documenting SGBV crimes has complexities beyond what can be explained here.

Again—at minimum—in addition to reading this section and the *Field Guide*, we strongly encourage you to read the *PSVI Protocol* and *Murad Code*.

It is also important to receive proper training on issues and crimes relating to SGBV. Training is not always possible for many reasons, including time and cost, difficulties getting a visa to attend trainings, and security issues that may arise for you personally if you pursue training or even have training materials in your possession. That said, we strongly recommend you do what you can to learn as much as possible about this field before you begin documenting.

Not everything happens 'in an ideal world.' You will need to do the best you can under the circumstances in which you are working.



LEARN
MORE



Learn more by reading the suggested materials, going online and researching, or participating in training if possible.

STEP 2: ASSESS

When documenting SGBV, the importance of thorough, context-specific, and individual risk assessments, reviewed by experts in the field whenever possible, cannot be overstated.

Even within a known context, each interaction with a survivor of SGBV should be assessed for risks and possible unintended consequences on a case-by-case basis. This is because of the strong stigma and underlying cultural and social norms that can surround SGBV. It is very possible, for example, that survivors have not disclosed abuse to their communities or even close family members due to a fear of being ostracized, blocked from access to certain spaces and resources, or publicly shamed. It is vitally important that documenters and advocates understand the exact parameters and the full, personal context of each case before seeking to document it or even contact survivors.

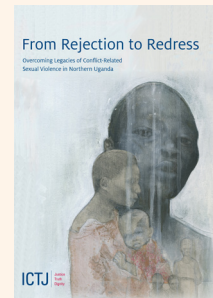


AN IMPORTANT NOTE FROM:

Virginie Ladisch, Senior Expert, International Center for Transitional Justice

A STORY OF SGBV STIGMA

In 2015, the International Center for Transitional Justice undertook research into how, without redress, the harms and violations suffered by survivors of conflict-related sexual violence in Northern Uganda have continued well beyond the crimes committed.⁴



The following is testimony from a survivor of conflict-related sexual violence and a mother of children born of that sexual violence. Her statements reflect the deep stigma that survivors of SGBV (and their families) can experience and demonstrate how the resulting harms can even transform, multiply, or amplify over time and across generations:

“ I have two daughters, and those children can’t marry because if a man comes to take their hands in marriage, community members send the man away by saying my daughters are children of the rebels. These children are not allowed to make any decision in the community, even in the meeting. At the borehole, even if they are the first when other people come they have to leave way and let those be the first to fetch water because if they try to resist, they tell them, ‘You don’t belong to this place, go look for your father.’ ”

~Mother from Soroti, Uganda

Before deciding to document sexual violence crimes, documenters, activists, and advocates should assess what impact their work might have on the expectations or hopes of survivors in that community. At a minimum, documenters should be sure to obtain fully informed consent. As a reminder, obtaining informed consent means that the survivor comes to wholly understand and agree to the use or sharing of the information they provide and are aware that they can place conditions on the consent or withdraw consent at any point in the process.

As summarized above, this section does not provide specific guidance on how to film survivor or witness testimony relating to SGBV crimes, in part because placing victim testimony at the core of SGBV cases is risky, challenging, and even dangerous. Additionally, we address interviewing elsewhere in the *Field Guide*.

So, this section and the checklists below focus on: when and how to film all other evidence that can be used to build a case. **If done well, non-testimonial evidence can minimize the need for survivor testimony and, when properly and expertly collected testimony is gathered, corroborate that testimony.**



FOR REVIEW

To review good informed consent practices, see **'More About Informed Consent'** in the *Video as Evidence Field Guide* at wit.to/VAE-Interviews

See also the **'Informed Consent'** section from **'Chapter 7'** of the *PSVI Protocol*, here wit.to/PSVI-Protocol

And see the three-minute video explaining informed consent for a medical or forensic evaluation produced by Physicians for Human Rights here wit.to/PHR-InformedConsent

PROSECUTOR V. NTAGANDA: SUPPORTING SURVIVOR TESTIMONY WITH VIDEO



This illustration shows Bosco Ntaganda, a convicted war criminal and the former military chief of staff for an armed militia group operating in the Democratic Republic of the Congo.

The case against Bosco Ntaganda before the International Criminal Court (ICC) is an example of how video in a courtroom can interact with other forms of core evidence in an SGBV case, like witness testimony. During trial, one of the prosecution's witnesses testified to her membership in the armed forces under Ntaganda's command when she was 13 years old, her time as Ntaganda's personal escort, and the sexual violence she witnessed and personally experienced during that time. As part of her testimony, she was shown video footage of a visit by Ntaganda and his escort to a training camp. According to the trial judges, the witness' ability to identify herself in the video and describe the events shown in the video footage while testifying in court helped them to determine that she was a credible witness.⁵

On 8 July 2019, the Trial Chamber found Ntaganda guilty of 18 counts of war crimes and crimes against humanity including rape and sexual slavery.⁶ On 7 November 2019 the Trial Chamber sentenced him to 30 years of imprisonment. Ntaganda appealed both the verdict and sentence. On 30 March 2021, the Appeals Chamber of the ICC unanimously confirmed the guilty verdict on all counts and the 30-year sentence making this the first final conviction for SGBV crimes by the ICC.

ASSESSMENT CHECKLISTS: TO COLLECT VIDEO ABOUT SGBV OR NOT?

The decision to collect information about acts of SGBV is complicated—even before introducing a camera or other recording device. You will need to make this decision based on the information you have at the time. We have broken this process into two categories of questions: essential questions and guiding questions.

You must be able to answer 'yes' to all the questions in **LIST I: ESSENTIAL QUESTIONS**. If you can't, you should not use video to document evidence of SGBV. Here are the key questions.

LIST I: ESSENTIAL QUESTIONS

If you can't answer 'yes' to all the questions below, do not collect video.

YES	NO	QUESTIONS TO ASK YOURSELF
		Are you able to do a physical security assessment and understand the security risks to survivors, their communities, and your team? For survivors and witnesses, this might include social and economic problems arising from stigma, criminal charges being brought against the survivor, or even further violence. For communities, this might include retaliatory attacks on the broader community by alleged perpetrators. For documenters, this might include a number of potential physical and political consequences.
		Are you able to do a digital security assessment and understand the risks to digital security and information storage of the evidence collected?
		Are you able to reduce the security risks you have identified to minimize harm?
		Can you protect the confidentiality of victims and survivors shown in the video footage?
		Can you safely store the footage and protect it from falling into the wrong hands?
		Do you have a plan for when, how, and why you would destroy the footage if necessary?
		If the filmer, survivor, or witness will be identifiable in the video or photo, do you have their informed consent?



FOR REVIEW

For detailed guidance on assessment procedures, review **'ANNEX 2: Conducting Threat and Risk Assessments'** from the *PSVI Protocol* at wit.to/PSVI-Protocol

For a thorough presentation of the ethical considerations that should guide your assessment process, review the *Murad Code* at wit.to/MuradCode

The following **LIST II: GUIDING QUESTIONS** provides additional questions you should ask yourself before deciding to collect the information and use a camera as part of your efforts. These guiding questions are here to help you make the best assessment and judgment call possible before choosing to press ‘record!’ Ideally, you want to be able to answer ‘yes’ to each of the questions below, but we know that—practically speaking—this is unlikely. Nevertheless, as part of your initial assessment, these are some of the most important factors for you to consider carefully and thoughtfully.

No checklist could cover every situation or context so modify this list to match your specific context.

LIST II: GUIDING QUESTIONS

The more questions you answer ‘yes’ to, the more likely it is that you can safely, effectively, and ethically document with a camera.

YES	NO	QUESTIONS TO ASK YOURSELF
		Is it possible to complete preliminary research and understand the situation prior to collecting information, including video footage? This will involve taking steps to understand the specific crime, the context, and the alleged perpetrators.
		If your collection efforts involve disclosing the identity a survivor of SGBV, are support services available before, during, and after you speak to them? This may include access to protection measures or key health and psychosocial services.
		Is there a purpose for your video documentation? Is there a viable path to access advocacy, justice, or accountability?
		Will this footage help you achieve the outcomes you seek? Are there next steps for this specific footage? Another way to think about this is: do the potential benefits of documenting outweigh the risks?
		Is it possible to develop a ‘Collection Plan’ to ensure you are effectively capturing relevant footage? (See Step 3 below).
		Are you planning to document information that has not been collected before, or are others already collecting it?
		If the information has been collected before, is there a good reason to re-document the information?
		Can you leverage the footage in advocacy, justice, or accountability processes? Or, can you share the footage with someone who can leverage it for good?
		Can you safely transfer the footage to others?
		Can you safely and accurately document chain-of-custody of the footage?

Remember, many obstacles often stand in the way of survivors accessing justice and accountability. This does not mean we should abandon our plans to document SGBV. But it does mean we must have a realistic idea about what is possible, be thoughtful about our collection efforts, and commit to only making promises we can keep to survivors who step forward.

STEP 3: PLAN

For all documentation work, you should prepare appropriate Security, Evacuation, and Collection Plans.

The preparation of Security and Evacuation Plans are beyond the scope of this guide. Instead, you will want to access the resources at the end of this section and consult directly with local experts. As a starting point, however, when planning for potential security issues, keep in mind that likely harms are not always the most obvious ones. Good planning is entirely dependent on having gone through an effective and thorough risk assessment process, which can begin with **LIST I: ESSENTIAL QUESTIONS** above.

Guidance on how to develop a Collection Plan can be found in the section titled **‘Developing a Collection Plan’** in the *Field Guide*. In short, however, it is a detailed summary of the crimes that were, or are, being committed. Collection Plans list each element of the crime that needs to be proven, the evidence that has already been collected, and the evidence that needs to be collected, along with a plan for how best to collect it. **Part IV** below provides ideas on the visual evidence you could collect to help prove SGBV crimes.

COLLECTION PLAN EXCERPT: VISUAL EVIDENCE

Imagine you are a human rights defender working to build a case against members of the **Islamic State of Iraq and Syria (ISIS)** for their role in imprisoning Yazidi women and girls and forcing them to engage in sexual acts. You receive a call that a group of opposition fighters have discovered, and secured, an empty prison facility. They believe that ISIS detained and enslaved women in this facility. They have given you access to the facility. Based on your security assessment, it is reasonably safe to go document. You look at your Collection Plan before you head out to collect visual documentation of the building. Below is an excerpt from your plan.

Keep in mind that you will never be able to collect all the visual evidence you need during one documentation trip to the suspected crime scene, but gather what you can on this trip. Continue to collect your own documentation, documentation from trusted sources, and open-source information.

This excerpt lists ideas for relevant footage you would likely want to collect to prove each element of a crime if safe and possible. **This list is not exhaustive.** You may see other evidence that will help prove one or several of the elements of the crime. Capture that!



FOR REVIEW

To review how to create a Collection Plan see **‘Developing a Collection Plan’** in the *Video as Evidence Field Guide* here [wit.to/VAE_CollectionPlanning](https://www.wit.to/VAE_CollectionPlanning)

SEXUAL SLAVERY AS A CRIME AGAINST HUMANITY AS ORDERED BY ISIS COMMANDERS

*The elements listed below are based on the Rome Statute of the International Criminal Court

WHAT BASE CRIME: Sexual Slavery

Specific elements of the crime and relevant facts	TO DO: What could you put in your camera's frame that could help prove this element/fact, if it is possible to capture safely? Remember that some images can help prove multiple elements and facts.
The accused perpetrator exercised any or all of the powers attaching to the right of ownership	<ul style="list-style-type: none"> • Visuals documenting the physical location where you suspect victim(s) were forcibly held, including: <ul style="list-style-type: none"> - The exterior of the building with identifiable features included so it is easy to verify the location - The exterior of the building with surrounding landmarks included so it is easy to verify the location - Any security measures on the exterior such as guard stations, fences, gates, locks, razor wire, security cameras, painted-over windows - Any signage or symbols on the exterior warning outsiders to stay away such as an ISIS flag or a sign saying 'No entry permitted' - The layout of the interior of the building such as hallways, rooms, number of rooms and bathrooms, windows, doors, high points to watch from • Visuals documenting items inside the location including: <ul style="list-style-type: none"> - Indicators that a person/people lived there such as toiletries, clothing, graffiti, food wrappers - Indicators of the living conditions imposed on them such as size of rooms, heating, flooring, access to light, availability of clean water, sleeping areas, blankets, bath facilities - Indicators of how many people were held in the facility such as number of pillows and mattresses per room - Signs of prolonged captivity such as household goods, personal decoration, graffiti, size of trash piles - Items that could have been used to confine, restrain, or control victims such as handcuffs, zip ties, fortified doors, locks on windows, alarms, prods, rope, hoods, guns, knives, sedative drugs, isolation holes - Signs of a struggle such as broken glass, broken furniture, blood stains • Photos or video placing the perpetrators or their troops at that location such as ammunition, empty bullet casings, helmets, uniforms, flags, documents • Photos or video of the perpetrator interacting with the victim(s), this will likely be visuals that you do not capture yourself • Photos or video of the perpetrator asserting claims of control or ownership over the victim(s) such as in directive messages, public comments, and social media posts



FOR MORE INFORMATION

For more information, read the Field Note from this section titled 'The Camera as a Substitute for the Collection of Physical Evidence'

To review a full Collection Plan, read the Field Note 'Capturing Multiple Elements of a Crime' at wit.to/EN-AIMahdi

over one or more persons , such as by	<p>For brevity's sake, many of the visuals above could also be used to prove that one or more persons were victim(s) such as:</p> <ul style="list-style-type: none"> - the exterior and interior of the building - the number of rooms - variety of household goods and personal objects - items used to restrain victims - ... and more
Purchasing or selling or lending or bartering or by imposing a similar deprivation of liberty on such a person or persons	<p>This will likely be difficult to capture with visuals, but video and photos that may be shared with you or found online could include:</p> <ul style="list-style-type: none"> • Visuals of the advertisements selling the victim(s) such as on social media, online forums, and in print • Visuals documenting the exchange of—or offers to exchange—money or other valuable goods for access to the victim(s) • Visuals documenting the reproductive fitness of the victim(s) under ISIS-construed Islamic law such as: <ul style="list-style-type: none"> - birth control boxes - negative pregnancy tests - menstruation cycle documentation - official ISIS publications on sexual slavery
The perpetrator caused and meant to cause such person or persons to ...	<p>In addition to some of the visuals already listed above, the following could also be collected:</p> <ul style="list-style-type: none"> • Footage showing how the perpetrator might enforce or exercise control over victim(s) such as footage of the perpetrator carrying a gun or giving orders to loyal or hired subordinates • Footage showing how the perpetrator and their subordinates communicate with victims' family members as a way of enforcing threats • Recorded interviews of the accused perpetrator, their troops, and/or their colleagues promoting the practice of sexual slavery
engage in one or more acts of a sexual nature .	<ul style="list-style-type: none"> • Footage documenting the location where you suspect victim(s) lived, situating items potentially linked to sexual acts such as: <ul style="list-style-type: none"> - condoms, injectables, pills or other contraceptives - drugs (including alcohol) or syringes - bodily fluids, like blood, vomit, semen, urine, feces - materials used for bondage, like rope, handcuffs, or zip ties - pregnancy tests - sex toys or other items intended for sexual use • Footage of victim(s) being driven to local hospitals or receiving treatment on-site • Recorded interviews with doctors who administered birth control or performed abortions for victim(s) • Photos of injuries on a survivor (if not located in an intimate area) such as bruises, chipped nails, or cuts • Photos or video of the perpetrator's communications, especially clear or coded references to sexual acts

Now that you have determined how you need to prove the base crime of sexual slavery, you need to take some additional steps to prove that the **sexual slavery** is a **crime against humanity** by **ordering**. To elevate the base crime of sexual slavery to a crime against humanity, you will also have to prove the context. This requires proving specific circumstances surrounding the commission of the base crime. Next, to prove the mode of liability of ordering, you will need to show the role that the perpetrator played in the commission of the crime. The Collection Plan would continue to list the elements the prosecution needs to prove and ideas for evidence that could be collected to prove these elements. The rest of the elements for the left-hand column then would be:

WHAT INTERNATIONAL CRIME/CONTEXT: Crime Against Humanity

The crime of sexual slavery was part of a:

- **widespread or systematic attack**
- **directed**
- against a **civilian population**, and
- the **perpetrator knew** that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population

MODE OF LIABILITY: Ordering

The suspected perpetrator:

- **gave** an **express or implied order**
- to a **person over whom** the **suspected perpetrator was in a position of authority**
- the crime was **attempted or committed in execution** of or otherwise **in furtherance of such an order**
- the suspected perpetrator intended to order the commission of the crime, **or was aware of** the substantial likelihood that the commission of the crime would be a consequence of their acts, and
- the perpetrator **was aware** that the crime was attempted or committed in execution of or otherwise in furtherance of an order issued by the perpetrator

PART III: THE LAW

The steps and specific procedures required when seeking legal accountability for SGBV crimes are very complex. These details are well beyond the scope of this section. Here, we will instead outline only the most relevant legal considerations. We do this only to the extent that is helpful to inform your documentation practices and enable you to work effectively with lawyers.

THE AREAS OF LAW

Different laws and areas of law protect individuals from SGBV crimes, as well as provide recourse or remedy to survivors and victims. Each source of law defines SGBV crimes somewhat differently. You should know a little bit about the most essential and relevant areas of the law, including:

International Human Rights Law—this area of law sets out the basic, inherent human rights that people are entitled to and that states are required to protect and enforce.

You should also know...

These rights have been made enforceable under international law mainly by various treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United Nations Convention Against Torture (CAT). The rights included in these treaties are enforceable at a national level once a State voluntarily agrees to be bound by the treaties. Failure to meet obligations under these treaties is often evaluated by international and regional *treaty bodies* such as the Committee on the Elimination of All Forms of Discrimination and the Committee Against Torture.

Regional conventions like the African Charter on Human and Peoples' Rights or the European Convention on Human Rights also bind states to uphold human rights.

International Humanitarian Law—this body of rules protect civilians and restrict methods of warfare in order to limit the destructive impacts of conflict. These laws apply only during armed conflict and are complementary to International Human Rights Law.

International Criminal Law—courts apply this body of international law to individuals who are personally charged with participating in crimes such as war crimes, crimes against humanity, or genocide.

You should also know...

- The International Criminal Court (ICC) is the main international court that exclusively addresses international criminal law. It was established by the Rome Statute, a treaty that came into force in 2002, and determines how the ICC will evaluate and classify SGBV (e.g., as war crimes, crimes against humanity, or genocide).
- At the heart of that Rome Statute is the idea that, first and foremost, domestic courts should provide accountability for serious violations. The ICC should only step in if the national courts fail to appropriately prosecute these grave crimes.
- Cases brought before other international tribunals—such as the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda—have also contributed to determining how SGBV fits into definitions of international crimes.

Customary International Law—this is a set of certain general practices that apply to states and individuals as law because they are so widely practiced and accepted that they are considered custom. As such, they have reached the level of universality needed to become legally enforceable.

Domestic Criminal and Civil Law—though local laws differ from jurisdiction to jurisdiction, SGBV crimes are also prohibited under national and local laws. By use of the ‘universal jurisdiction principle,’ many domestic legal systems are legally empowered to prosecute SGBV crimes that fall under a category of exceptionally grave international crimes, including: crimes against humanity, war crimes, genocide, and torture.

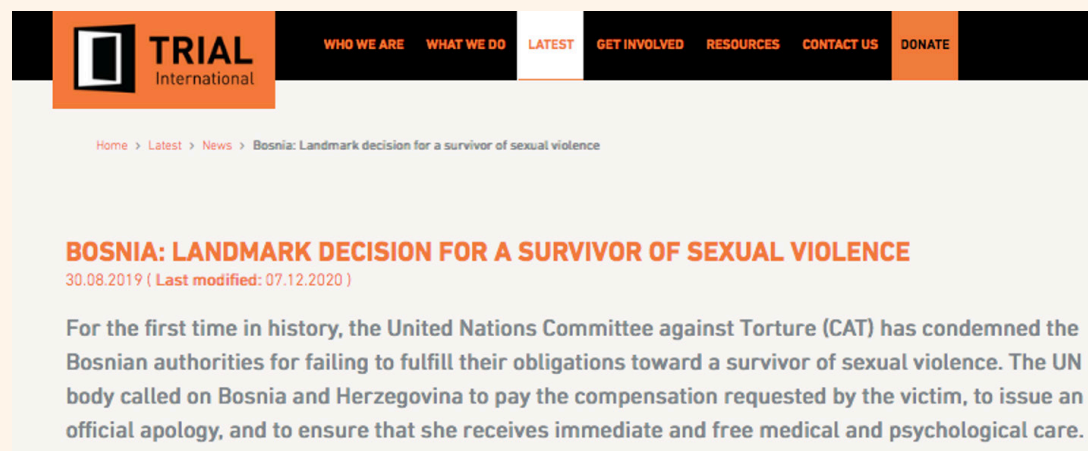
Other Key Forums—especially shortly after a conflict ends, governments and the international community will often enact transitional justice mechanisms to deal with the crimes committed during the conflict. Examples of this include truth commissions, or customary law mechanisms like the Gacaca courts in Rwanda.



AN IMPORTANT NOTE FROM:

Lamija Tiro, Legal Advisor, TRIAL International

HOW A TREATY BODY ORDERED REPARATIONS FOR SEXUAL VIOLENCE



In August 2019, the United Nations Committee Against Torture (CAT) issued a landmark decision, holding Bosnia and Herzegovina internationally responsible for failing to meet its obligations to a survivor of sexual violence, especially because of the failure to provide her with redress, fair and adequate compensation, and as full rehabilitation as possible.⁷

The flawed domestic legislation and an ill-conceived corresponding jurisprudential interpretation make it impossible for many survivors of conflict-related sexual violence to obtain reparations. The treaty body called on Bosnia and Herzegovina to issue an official apology and fulfill the survivor's right to compensation and other reparations including medical and psychological care. Further, the CAT required Bosnia and Herzegovina to establish a reparations scheme at the national level for victims of war crimes—including sexual violence and to amend its legal framework.

This is the first decision by the CAT concerning the obligation to provide redress to a victim of conflict-related sexual violence, and it affirms that the corresponding compensation claims cannot be subjected to statutory limitations, and that pursuant to subsidiary liability, States must ensure that survivors' right to redress is enforceable even when the perpetrator has not been identified or is unable or unwilling to pay compensation.

The decision of the UN treaty body for the Convention Against Torture conveys a powerful message of hope, by showing that, when survivors are left without remedies at the domestic level, they can turn to an international body to seek justice and redress.

WIDELY RECOGNIZED SGBV CRIMES

While these crimes can go by different names or have different definitions in different jurisdictions, widely recognized and criminalized acts of SGBV include:

- Rape
- Genital mutilation
- Sexual slavery
- Enforced prostitution
- Forced pregnancy
- Enforced sterilization
- Forced abortions
- Total abortion bans
- Forced witnessing
- Forced nudity
- Sex trafficking
- Domestic violence
- Sexual harassment, including online
- Gender discrimination
- Sexually-oriented hate speech
- Child pornography

Although the illegality of these acts is widely established, courts and tribunals have often deprioritized or made SGBV crimes invisible in early international criminal jurisprudence. For example, a perpetrator who committed the crime of:

- Forced marriage might be charged with committing an ‘inhumane act’⁸
- Rape might be charged with ‘torture’⁹
- Forced sterilization might be charged as committing ‘discrimination’ on the basis of sex¹⁰

Sometimes, these kinds of legal arguments—fitting SGBV crimes into other crimes that are more dependably ‘accepted’ in courts, tribunals, or other international bodies—may be necessary to ensure justice and accountability, especially under international law. However, this roundabout legal maneuvering undermines the important goal of moving this field forward.



AN IMPORTANT NOTE FROM:

Dorine Llanta, Programme Officer, International Federation for Human Rights (FIDH)
Former Coordinator of the *Call It What It Is* Campaign at Women's Initiatives for Gender Justice

CALL IT WHAT IT IS

Consider the stigma associated with SGBV. Such stigma has been shown to contribute to the relative invisibility and persistent lack of justice for victims and survivors. Moreover, the case law for these crimes remains acutely underdeveloped. For these reasons, it's crucial for lawyers to keep pushing and advancing the jurisprudence by prosecuting SGBV directly: calling a rape a rape in the courtroom means that more survivors of rape can directly pursue justice instead of trying to contort the rape into ill-fitting definitions for other, technically related crimes. Prosecuting more SGBV crimes and building case law for these crimes keeps us moving towards ending widespread impunity.

“This trial shows again that the Syrian intelligence services systematically employ sexual violence as a weapon to oppress civil society. For us Syrians, for the many survivors and their families it is an important signal that the German court now treats it as such. This step can empower those affected—women and men—and give them hope to be acknowledged and seen.”

~**Joumana Seif**, Syrian lawyer and women's rights activist, European Center for Constitutional and Human Rights (ECCHR), speaking about the importance of the 17 March 2021 decision by Germany's court in Koblenz to update the charges against the main defendant in the al-Khatib trial to classify sexual violence committed by the Syrian intelligence services as a crime against humanity.

It's important to know that in the short-term, lawyers may be forced into less-than-ideal legal arguments because the existing jurisprudence is underdeveloped.¹¹ In turn, they may need to be creative about which claims to raise or which charges to bring. Consequently, documenters and advocates gathering evidence should keep these alternative routes in mind when making Collection Plans with the goal of pursuing justice and accountability for SGBV crimes.

The bottom line is: while many laws exist to account for and protect against SGBV and while it's extremely important to advance jurisprudence by prosecuting SGBV crimes as SGBV crimes, for now, documenters should be sure to cover all possible bases when planning evidence collection. We still need to think creatively to ensure that perpetrators are held accountable and justice is rendered.

If you're interested in learning more about the law on SGBV, we've listed some additional resources at the end of this section.



FOR MORE INFORMATION

For more about ECCHR's efforts—like in the al-Khatib trial—to advance the prosecution of SGBV committed in Syrian detention centers as a crime against humanity, see [wit.to/Syrian-Detention-SGBV](https://www.wit.to/Syrian-Detention-SGBV)

For more information about the 'Call It What It Is' campaign, visit the website at 4genderjustice.org/home/campaigns/defining-sexualviolence/

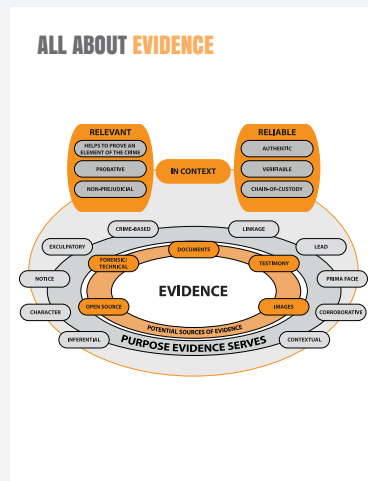
PART IV: WHAT TO FILM?

Next, we are going to think about what images—besides testimony—to place in your camera's frame to best support accountability for acts of SGBV. It's important to read these sections of the *Field Guide* at vae.witness.org/video-as-evidence-field-guide before moving to this next section.



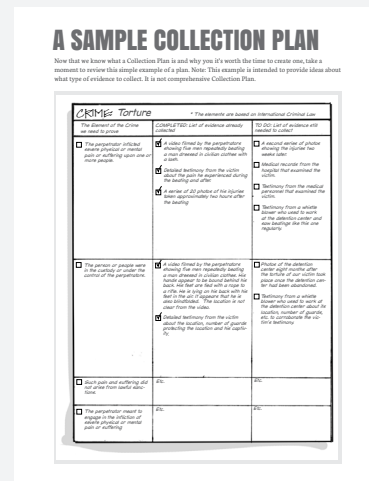
Anatomy of a Crime:

to learn more about the elements of base crimes, international crimes, and modes of liability.



All About Evidence:

to learn what evidence is, what it's used for, and how to turn information into high-quality evidence.



Developing a Collection

Plan: to learn how to identify and organize what content to put in the camera's frame to build the strongest case possible.

Lawyers have to break every crime—including SGBV crimes—down into their individual elements and then prove each element. For example, to prove murder under criminal law, lawyers have to establish:

- that there was a killing
- of a person
- and the attacker intended to kill

So, when building your Collection Plan specifically for video as evidence of SGBV crimes, you should consider focusing your efforts on the individual elements of the crimes, which include:

1. **The WHAT:** Footage to help prove the base crime or act of SGBV (e.g., rape, forced marriage, domestic violence).
2. **The WHO:** Footage to help prove exactly who should be held accountable for the crime.
3. **The HOW:** Footage to help prove how the perpetrator participated in the commission of a crime or, in other words, what their role was.

Additionally, if lawyers believe that the crime rises to the level of an international crime, they will also have to prove the elements of the INTERNATIONAL CRIME, or **the CONTEXT** the crime was committed in. For a crime to rise to the level of an international crime, certain elements must be present in the context in which they are committed. For example:

- To prove *rape as a war crime*, both the elements of rape and the elements of a war crime have to be proved.
- To prove forced marriage as a *crime against humanity*, both the elements of forced marriage and the elements of a crime against humanity have to be proved.
- To prove forced sterilization as an aspect of *genocide*, both the elements of forced sterilization and the elements of genocide have to be proved.



So next we will:

- Share ideas on how to document the WHAT, WHO, HOW, and CONTEXT with video,
- Illustrate how this can be done through one or more Field Notes, and
- Provide a sample list of possible footage that could help prove each aspect of the crime.

FOR MORE INFORMATION

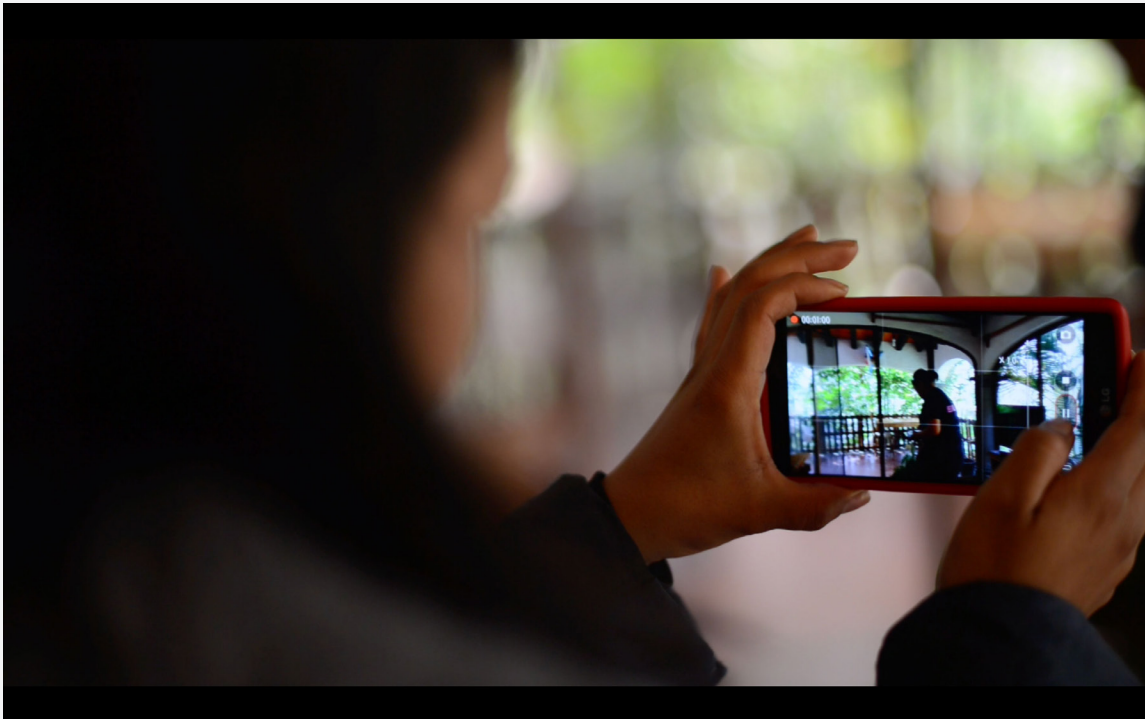
To learn more about how to film the elements of the three primary international crimes see, **‘Documenting International Crimes: Crime Against Humanity, War Crimes, and Genocide’** in the *Video as Evidence Field Guide* at witness.to/VAE-Documents/InternationalCrimes

'FIELD NOTES': LEARNING FROM EXAMPLES

In this section, we will be discussing many different kinds of footage that have been captured and either have been, or could be, used to secure accountability for SGBV and justice for survivors. These real-world examples are essential because they allow us to learn how the footage we collect could be leveraged. Crucially, they also offer insight into how decision-makers will evaluate the footage.

The examples discussed below include **found footage**, such as videos posted on social media and discovered by dedicated researchers. They also include instances of filmmakers **filming with the intention of creating video as evidence**. Using video to support justice and accountability for SGBV is still a developing field, especially when it comes to efforts towards criminal prosecutions and other public record examples of justice for survivors.

Regardless of how the footage came to be, remember: all of the videos discussed below provide valuable lessons for what you can plan to place in your camera's frame.



DOCUMENTING THE ‘WHAT’:

FOOTAGE TO HELP PROVE THE BASE CRIME OR ACT OF SGBV

In this section, we'll start by discussing how to prove the crime or act itself.

First, consider that **in most circumstances, documenters and advocates cannot—and should not—plan on being able to film or even collect video of SGBV as it is happening.**

That said, this can and does happen. SGBV—or, in other words, WHAT happened—is sometimes caught on camera by an eyewitness who happens to be present and filming at the precise place and moment that the crime is committed. This rare footage can be impactfully leveraged to meet your and the survivor's goals and needs, but must not be used at the expense of any safety or ethical considerations. However, even if you can't collect footage of acts of SGBV, the camera is an impactful tool for confirming and corroborating other types of evidence, including the layout of the crime scene, forensic findings, testimony, and more.

Next, we will explore these ideas with two Field Notes. The first will explore how an SGBV crime can be caught on camera by eyewitnesses and then used as valuable evidence. The second will show how video can capture the scene of an SGBV crime and create visual recordings of any physical evidence.

EYEWITNESS EVIDENCE OF SGBV



AN IMPORTANT NOTE FROM:

Raja Althaibani, Senior Program Manager, Middle East and North Africa, WITNESS

CAUGHT ON CAMERA: EYEWITNESS VIDEO

Eyewitness Video—also referred to as user-generated content, open-source video, and citizen video—is taken by individuals at the scene of an incident. These videos are often shot by bystanders, activists, victims, survivors, and increasingly, by perpetrators or co-perpetrators of abuse. As a human rights defender or journalist viewing this footage, it is important to assess the filmer's intentions, in order to gauge the authenticity of the footage and further contextualize the event.



FOR REVIEW

To review key information on basic filming practices to use if you find yourself witnessing a crime or violent incident, see

‘Basic Practices: Capturing, Storing, and Sharing Video Evidence’ at wit.to/VAE-BasicPractices

For a quick reference, see *Video: Mobile Filming Tips* at wit.to/MobileFilmingTips

To review key information on eyewitness video from the *Video as Evidence Field Guide*, see

‘Ethical Guidelines: Using Eyewitness Video in Human Rights Reporting and Advocacy’ at wit.to/VAE-Ethical-Guidelines

FIELD NOTE

GENDER-BASED HATE, CAUGHT ON CAMERA BY AN EYEWITNESS STATE OF MARYLAND V. BROWN AND ANONYMOUS MINOR



CONTENT & TRIGGER WARNING

Please proceed with the understanding and knowledge that the following includes descriptions of an SGBV hate crime shown on video, as well as its traumatizing impacts for the person attacked. You may find this difficult to read.

PART IV:
WHAT

The Basics

Paths to Justice: Baltimore County Circuit Court, Maryland State's Attorney's Office, widespread advocacy for the protection of the transgender community from hate crimes

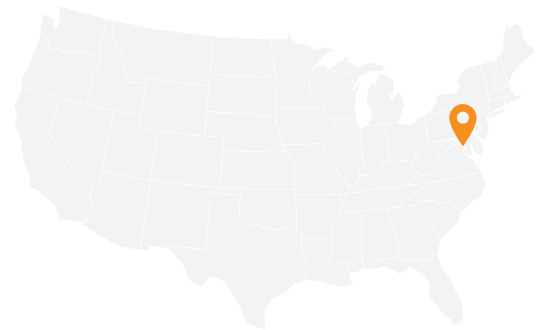
What Crimes:

- First degree felony assault, and
- U.S. federal hate crime

Who:

- Victim: Chrissy Lee Polis
- Perpetrators: Teonna Monae Brown together with an unnamed 14-year-old minor
- Filmer: Vernon Hackett

How: Individual and Co-perpetration



Backstory

On 18 April 2011, Chrissy Polis, a transgender woman, went into the ladies' bathroom at a McDonald's restaurant in Rosedale, Maryland, USA. When Polis came out, two teens, Teonna Monae Brown and an unnamed 14-year-old minor, began verbally and physically assaulting her for expressing her gender. McDonald's employee, Vernon Hackett, made no attempt to stop the assault, apparently did not call the police, and instead filmed the attack on his smartphone, later posting it to his YouTube page as entertainment.

The video shows the last three minutes of the assault, where we first see Polis on the ground with her hands covering her head while being repeatedly kicked by Brown and the other teen. Later, we see her being dragged by her hair across the floor where she then suffers a seizure. The video also shows 56-year-old Vicky Thoms, a bystander (not the filmer), attempting to intervene on Polis's behalf. She was also assaulted.

FOR ACCESS TO THE VIDEO

A link to the video of this assault is not included here as it contains images of transphobic and physical violence. If you need access to this video to support your human rights work, please contact feedback@witness.org.

Video's Role

In the Media

The video was widely circulated and subsequently used by mainstream media outlets and other platforms covering the story.

The local TV affiliates (ABC, NBC, CBS, and Fox) as well as the *Baltimore Sun's* crime reporters covered the case extensively as it broke and continued coverage through the charging and sentencing of the attackers. The case and video continue to be used in coverage of legislative efforts to protect transgender people in housing, banking, and employment. On 30 April 2011, The *Baltimore Sun* reported:

Not only has the McDonald's video been watched millions of times, nearly every major news organization has covered it. More than a hundred thousand people signed an online petition urging McDonald's to take action against employees that didn't help Chrissy Lee Polis and hundreds more people are planning benefits and rallies in different cities across the United States.

By the Prosecutors

Prosecutors cited the video as direct evidence when they charged Teonna Brown with assault, as the video footage clearly shows repeated physical attacks. Prosecutors also cited the video and subsequent derogatory comments made on Hackett's Twitter and Facebook accounts in the decision to charge Brown with a hate crime. To charge Brown with a hate crime, prosecutors needed to prove that she committed the underlying criminal act—assault in this case—and did so with intent that involved bias. The video records Brown yelling slurs about Polis's gender presentation as she kicked, hit, and dragged Polis across the floor by the hair. Brown was indicted by a Baltimore County grand jury on a number of charges. Before the case could go to trial, Brown pled guilty to first-degree assault and a hate crime.

Had the case gone to trial, the prosecutors would certainly have shown the jury the video as proof that Brown repeatedly physically attacked Polis while yelling gender-related slurs.



Illustration of an image from the video documenting the assault.

The Result

McDonald's fired Hackett four days after he posted the video as entertainment. Brown plead guilty and was sentenced to five years for first-degree assault and a hate crime. Her 14-year-old co-defendant also admitted her role in juvenile court and was committed to a detention facility.

While the widespread media attention supported the call for accountability, the attention also resulted in severe consequences for Polis. In an interview with *The Washington Examiner*, Polis shared that the media attention was overwhelming. During the trial, Polis's arrest history was made public. She reported being harassed online by 'men with fetishes for transgender women' who inundated her with calls and Facebook messages. A year after the attack, Polis told *The Baltimore Sun* that she was humiliated after the 18 April beating and that she wasn't looking to tell her story. 'You're embarrassed after you get into a fight,' Polis says. 'I didn't even tell anyone I got into a fight at McDonald's.'

TAKE HOME POINTS

First, prioritize stopping the violence because the protection of the victim matters most.

Here, the McDonald's employee filmed the assault for a full three minutes without any attempt to mitigate the violence, apparently failed to call the police, and then callously shared the video online as entertainment. If you are an eyewitness to an SGBV crime and, if it is safe for both you and the victim, the absolute top priority is to stop the violence and protect the victim by either intervening yourself or calling for help. Once you have done all you can and ensured that help is on the way, filming is a follow-up priority because video evidence can be key to the pursuit of all of the important benefits listed above. You should also be sure to learn about bystander intervention and consider the full scope of actions—big or small—that you might take to have a safe, positive, and effective influence on situations of ongoing harm. If it is safe to do so, you might perform some bystander intervention *while* filming. Always balance when and how the introduction of a camera or any intervention as a bystander are useful and when they might actually be harmful.

Second, share video ethically and responsibly. If you're an eyewitness to SGBV, it's unlikely that you will have time to conduct a thorough risk assessment prior to filming, so the key question to ask yourself before pressing record is: 'How do I best protect the victim, myself, and anyone else nearby?' However, once you have video, you should *definitely* do a complete assessment before sharing or otherwise using the footage. For Polis, the widespread attention to the video created serious security risks and significantly contributed to the humiliation and fear that she felt in the aftermath of the attack. As a responsible, ethical filmer and advocate, you must be sure to avoid these kinds of traumatizing and harmful impacts from sharing eyewitness video of SGBV crimes. While in-the-moment risk assessments are difficult, let this example remind you of the value of performing extensive risk assessments after filming, adhering to good informed consent practice, and being extremely careful with any eyewitness video you collect—especially if you are considering sharing it.

Third, leverage video ethically and responsibly. As shown by the Polis case, eyewitness video of abuse that is taken, viewed, or shared unethically as a source of entertainment may nevertheless be used to benefit victims, survivors, and their communities. Eyewitness video, if used responsibly and strategically, can be leveraged:

- as evidence in an investigation of a crime,
- to humanize abuses against marginalized groups or communities,
- to catalyze a human rights movement,
- to hold corporations accountable for the safety of all patrons, and
- to inform platform usage policies (such as YouTube's site policies) by educating platforms as to how their sites are being used in problematic ways.



FOR MORE INFORMATION

To learn good strategies and important lessons for bystander intervention, see the National Sexual Violence Resource Center's Tip Sheet at wit.to/NSVRC-Bystander

By sourcing, indexing, and analyzing videos of violence against transgender and gender-nonconforming people that are taken and shared as entertainment, *Capturing Hate* looks to expose these patterns of discrimination and abuse. It also aims to equip advocacy groups and the media with the tools to more effectively and ethically use eyewitness videos to document and report on violence affecting the lesbian, gay, bisexual, transgender, queer, intersex, agender, asexual, and other queer-identifying community (LGBTQIA+) community. To read the full report go to wit.to/WML-CapturingHate

You should also think carefully before sharing any eyewitness footage you capture. The **'Ethical Guidelines for Using Eyewitness Videos in Human Rights Reporting and Advocacy'** from WITNESS will help wit.to/VAE-Ethical-Guidelines

CORROBORATING EVIDENCE OF SGBV

If you do not have footage of the crime itself, video may still be helpful for proving the WHAT. The core evidence in SGBV cases is most often testimonial, and testimony can be problematic or challenging for many, many reasons. See the note above on the dangers associated with interviewing survivors of trauma for more detail. Then review the section on filming testimonies in the *Video as Evidence Field Guide*. Video can help corroborate testimony from survivors of SGBV crimes. Corroboration is key.

However, it can be very difficult to collect corroborating evidence for a survivor's testimony. This is particularly true if the survivor has not received medical assistance or reported the incident to authorities, which could generate helpful documentary and/or physical evidence. Thus, any evidence that might corroborate the survivor's testimony can be particularly helpful. This is where video comes in!



AN IMPORTANT NOTE FROM:

Ulic Egan, Swansea University Research Excellence Scholar with the Hillary Rodham Clinton School of Law

VISUAL EVIDENCE AS CORROBORATING EVIDENCE

More often than not, the actual SGBV crime will not be captured on camera. **But, the camera can nevertheless be used to collect important video evidence of the aftermath of an SGBV crime: this includes documenting a crime scene and filming to augment the collection of physical evidence or testimonial evidence.**

Understanding the extreme care with which SGBV should be investigated or documented and in following with the 'Do No Harm' principle, as another rule you should not collect any physical evidence¹² unless you have the proper authority to collect and you have been trained as an investigator or as a medical practitioner on the proper collection of physical and forensic evidence. This is because without authority, training, and resources you could further traumatize a survivor and contaminate the evidence, making it unusable later in court. Instead, in circumstances where it is safe to do so, it is generally better to take notes of what you saw and documented, take photos, hand-draw a sketch, or record a video showing any physical evidence you come across. This photo and video evidence may then be used as corroborating evidence to prove what happened. For example, if a survivor testifies they were violated in a small room, painted yellow with a twin mattress and graffiti on the walls, and photo and video footage of the alleged crime scene matches their description, the photo and video footage corroborate and lend credibility to their testimony.



DEFINE

Corroborating evidence is evidence that strengthens, adds to, supports, or verifies already existing evidence. In other words, it's evidence that backs up other evidence and makes it more credible.



FOR MORE INFORMATION

To understand the challenges with witness testimony and for a set of questions that will help you determine whether to record an interview or not, see **'Testimony: Filming Preliminary Interviews'** at wit.to/VAE-Interviews

For more about interviewing victims of SGBV crimes see the forthcoming **'Annex for Frontline Documenters: Preliminary Interviews with Survivors as Evidence of SGBV'** at wit.to/SGBV-Testimonies

“Practitioners who do not have the necessary authority or training should not collect [certain types of evidence, such as physical evidence] as they may mishandle and contaminate it, making it inadmissible in courts. That said, they may record or document it in other ways, for example by photographing it.”

~PSVI Protocol

Moreover, because of the nature of SGBV, much of the physical evidence (e.g., DNA evidence, blood splatter, signs of a struggle) is often lost within hours of the crime being committed. If an expertly trained investigator or medical practitioner is not accessible or available to collect physical evidence in a timely manner, video, photographic, and testimonial evidence may be the only evidence available to corroborate the victim’s account of the violation and prove the SGBV crime.

To illustrate, here is a Field Note about filming a prison facility following the retreat of the Islamic State in Iraq and Syria (ISIS) from the city of Manbij in Syria.



**FOR
REVIEW**

For more information on physical evidence and investigations into sexual violence, review **‘Chapter 10: Types of Evidence of Sexual Violence in the PSVI Protocol’**, here wit.to/PSVI-Protocol

FIELD NOTE

THE CAMERA AS A SUBSTITUTE FOR THE COLLECTION OF PHYSICAL EVIDENCE ISIS SEXUAL ENSLAVEMENT PRISON FACILITY IN MANBIJ, SYRIA



CONTENT & TRIGGER WARNING

Please proceed with the understanding and knowledge that the following includes a description of SGBV and other crimes shown in a video. This may be difficult to read.

The Basics

Paths to Justice: To our knowledge, this video has yet to be used in a legal action; however, it was published in the media to help expose ISIS's systematic violation of women and girls. Exposure is often the first step in a long path to accountability. The video was also shared with the UN International, Independent, Impartial Mechanism (IIIM). The IIIM is responsible for assisting the investigation and prosecution of perpetrators of crimes during the conflict in Syria.

What Crimes: Possibly rape, sexual slavery, enforced prostitution, forced pregnancy, sex trafficking, or others

Who: Suspected members of the Islamic State in Iraq and Syria (ISIS)

How: To be determined



Backstory

From 21 January 2014 to 12 August 2016, ISIS controlled the Syrian city of Manbij in the northeast of the Aleppo governorate. During this time, the armed group perpetrated extensive harms against civilians.¹³ Witness accounts from those who have fled ISIS-controlled cities as well as photographs and video footage released by the armed group itself have shown regular public displays of violence and mutilated bodies. This footage includes executions, amputations, and lashings, education as a tool of indoctrination, attacks against minorities, and attacks against journalists or those found in possession of phones, among other terrorizing acts.

ISIS's perpetration of gendered harms and violence leveled against women and girls living in areas under the group's control are also well documented.¹⁴ This pattern of violence has reportedly included:

- confining women and girls to their houses, effectively removing them from public life
- dictating what women must wear and who they may socialize with
- emphasizing a subordinate role for women in society
- enforcing harsh rules violently

Further, investigators have discovered widespread accounts of women and girls—most prevalently Yazidi women and girls—being imprisoned and held in sexual slavery. ISIS itself has publicized various intentions behind its sexual slavery of Yazidis, including forcible pregnancy demonstrating genocidal intent: ‘the armed group views the offspring as belonging to the father, superior to the mother, [which] prevents another generation of Yazidis from being born.’¹⁵ As determined by the UN Human Rights Council: ‘ISIS attacks on Yazidi women and girls now being held inside Syria are violations of international humanitarian law and amount to the war crime of sexual slavery, sexual violence, rape, and forced pregnancy.’¹⁶

Video's Role

The video shows Syrian Fighters from the Manbij Military Council—part of the US-backed, Kurdish-led Syrian Democratic Forces—who have discovered a prison facility where they believe women were detained by ISIS in connection with the war crime of sexual slavery.

In lieu of collecting physical evidence, a camera can—and in this case did—help with the documentation of:

The alleged **crime scene**, which included:

- prison facilities
- prison conditions

The placement and existence of **physical evidence** at the crime scene, which included:

- soiled mattresses
- blankets
- pillows
- a hairbrush
- bowls on the floor with unknown contents
- books
- messages written on the walls by the alleged perpetrators
- messages written on the walls by detainees



TO WATCH THIS VIDEO

To watch this 2-minute video, go to wit.to/ISIS-Prison



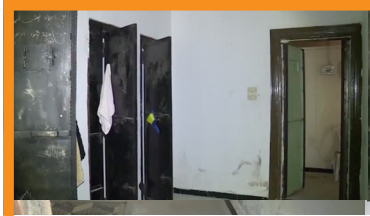
Bedding



Soiled bedding



Hairbrush and books



Doors to rooms and bars on doors



Bowl



Graffiti

Frames from the video showing the facilities where women were likely held and sexually violated by members of ISIS.

For a more comprehensive list to help you brainstorm possible footage for proving the base crime, please see below.

The Result

To our knowledge, this video has yet to be used in a legal action. Only a small number of crimes related to the conflict in Syria have so far been prosecuted; however, it was published in the media to help expose ISIS's systematic violation of women and girls. Exposure is often the first step in a long path to accountability.

Further, this video has the potential to serve as corroborative evidence of—or, at minimum *lead evidence* of—many different SGBV crimes. Lead evidence is initial information that points to a crime and allows us to make an educated guess about what may have happened. The information alone is not sufficient to determine what actually happened, but it will help prosecutors decide whether to launch an investigation or not. This video leads us to believe many SGBV crimes may have been committed in the prison—crimes such as rape, sexual slavery, enforced prostitution, forced pregnancy, sex trafficking, or others. This illustrates the broad potential of video as lead evidence. So even when you aren't working a specific case, video could provide more general information that might lead to the pursuit of a case. Knowing the importance of lead evidence may help documenters catch things on camera that might otherwise be considered unimportant.

A QUICK REMINDER ON NARRATION

In this video, the Syrian Fighters from the Manbij Military Council walk viewers through the prison, interpreting what they are filming based on their understanding of the architecture and physical evidence left behind when the facility was abandoned/evacuated. In a few instances, narration includes an unsupported opinion or an assumption. Some examples from the transcript are:

0:10 – Fighter points to green cell door (number handwritten on door ‘56’) and speaks to camera: ‘This prison was where women were brutally tortured.’

- > The Fighter does not explain how he knows that the women were brutally tortured, and instead states this assumption as a fact.

1:12 – Fighter speaks to camera: ‘There were pills to increase libido, contraceptive pills, and anesthetic pills that they used with women to have sex. Their methods were strange and weird.’

- > The Fighter shares his opinion on ‘their methods.’ This is unnecessary. He also states an assumption about the purpose of the pills when he really has no idea if the pills are to increase libido: they could simply be ibuprofen or vitamins. Only a scientific test of the pills could determine what they are. Instead of stating an opinion on what the pills were, the filmer could have carefully filmed any pills and pill bottles saying nothing.

Including assumptions and opinions can make a video ‘prejudicial,’ meaning it is thought to be biased and will not be admitted or weighed by a court of law. It’s important to keep any narration that you might add impartial, stating only the following (when safe and with consent):

- the filmer’s name and contact information
- time, date, and specific location, including GPS information if available
- names and contact information of others filming with you
- names and contact information of others who may have relevant information about what you are filming
- any factual information that helps the viewer understand what they are seeing e.g., ‘I will start filming looking north toward the entrance to the hospital located on the main road through Manbij. Once inside, I will begin filming room-by-room. I will start with the rooms on the west side of the hall and then film the rooms on the east side.’

Adding only this type of information and otherwise staying silent allows the facts to shine through and powerfully speak for themselves.



To review key information on adding narration to your video evidence from the *Video as Evidence Field Guide*, see ‘**Adding Essential Information**’ at wit.to/VAE-Essential-Information

To learn about how to verify video that comes from public platforms, see ‘**How to Verify and Authenticate User-generated Content**’ by Aric Toler in *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability*, or review the *Verification Handbook*, here wit.to/VerificationHandbook

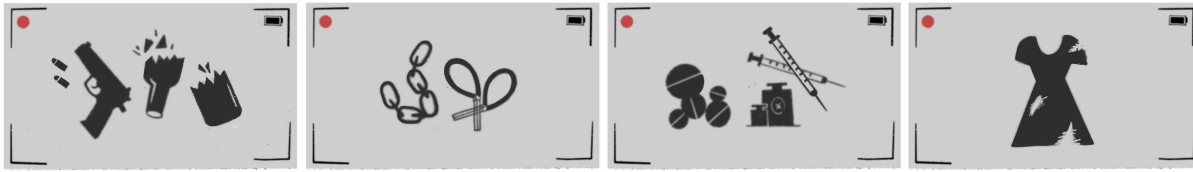
TAKE HOME POINTS

First, if you come across a location that appears to be a place where acts of SGBV were perpetrated, a camera can help with documentation so you don't have to take and store any physical evidence if you are not prepared, trained, or otherwise authorized to do so. This documentation may in turn help investigators or prosecutors connect the dots with other pieces of evidence such as witness testimony in order to: identify alleged perpetrators, piece together the organization of a group of perpetrators, confirm what crimes were committed, and confirm how these crimes were committed—among other possibilities. You never know how the footage you capture may help support future justice efforts.

Second, in addition to corroborating witness testimony, another way that video evidence from filmers can be particularly useful is when it serves as lead evidence for prosecutors and investigators to direct their own investigations.

Third, when filming scenes relating to SGBV, avoid subjective, opinionated narration. State only facts about the time, date, and location that make the video easy to verify. It is especially important when filming any live, ongoing events to do so silently or to include only unbiased facts.

FOOTAGE LIST: FILMING THE 'WHAT'



Strategically planned and collected video evidence can help to overcome many of the key challenges faced when seeking to document and prove the WHAT. Overall, your Collection Plan for proving the base SGBV crime should focus on capturing corroborating evidence (instead of depending on being in the right place at the right time as an eyewitness).

To help with your filming, planning, and video collecting, here's a list of ideas for footage to gather and images to place in the frame when you can't capture the crime itself.

Crime Scenes

For crime scenes, it's important to capture the:

- Exterior and interior
- Size, including some sort of item, marker, or scale in the frame so remote investigators have a reference by which to measure the crime scene. For example, for the exterior, include a car, flagpole, door, fence, plants, etc. in the video. For the interior, include doors, windows, furniture, fixtures, etc. in the image.
- Conditions (e.g., access to light, ventilation, sanitation facilities, and bedding)
- As many unique traits as possible that would help confirm the location
- Date and time of filming

Physical Evidence

Specifically, you should be sure to film the physical evidence at crime scenes, including:

- Bodily fluids (e.g., blood, vomit, semen, urine, feces)
- Human remains (e.g., bodies, skin, hair, bones, teeth)
- Stains
- Drugs (including alcohol) or syringes
- Powders
- Weapons (e.g., sharp objects, blunt force objects, firearms, prods, tasers)
- Ammunitions (e.g., bullets, fragment of bullets, cartridges)
- Deflagrating materials or traces of explosive materials (e.g., shrapnel pieces, leftover of a mortar)
- Fire debris
- Materials used for bondage (e.g., cloth ligatures and gags, rope, zip ties, handcuffs, chains, blindfolds, head covers)
- Household goods or tools which may help to show a prolonged captivity or corroborate accounts of everyday items being used for torture
- Clothing
- Condoms or other contraceptives
- Signs of a struggle (e.g., broken glass, broken furniture)
- Communications documentation (e.g., graffiti, written or typed pages, text messages, audio messages, or recordings)
- Identification documents (e.g., travel documents, bank notes, identity cards, official documents, handwritten documents, notebooks)
- Electronic devices and in general any communication devices (e.g., computer, laptop, fax, tablets, phones, camera, GPS)
- Identifiable markers (e.g., shoe marks, tire marks, visible fingerprints)
- Even seemingly random, everyday objects may be relevant to a case (e.g., as an instrument of torture)



FOR REVIEW

To review key information on filming a crime scene—including physical evidence—from the *Video as Evidence Field Guide*, see **‘Filming Secure Scenes’** at wit.to/VAE-SecureScenes

To watch a fictional example of how a crime scene could be filmed, go here wit.to/SecureScenes-Example

Injuries of Survivors

This may include:

- Bruises
- Cuts
- Bite marks
- Burns
- Redness
- Scratches
- Chipped nails or teeth
- Signs of swelling
- Fractures
- Shrapnel wounds

Only photograph injuries if consent is given and after learning how to photograph injuries with and without a scale. Never take photographs or otherwise film a person's private areas.



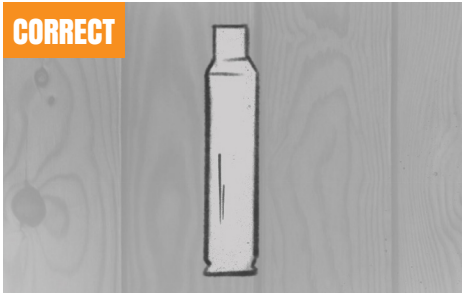
Remember: This list gives suggestions and ideas for the kinds of video footage and photographs that might be helpful. It's not comprehensive. Be creative and adapt to your facts and context when thinking about what to film. Also, when documenting use the 'Parallel Plane' Rule and, whenever possible, document the evidence 'in situ' and with a 'scale'



FOR MORE INFORMATION

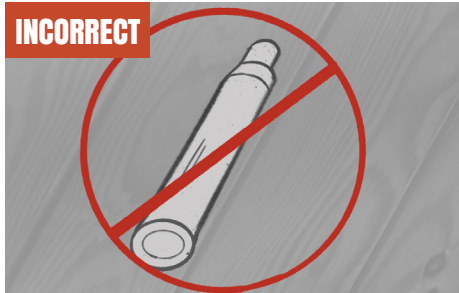
To review how to photograph and film injuries, see **'Documenting Injuries'** at wit.to/DocumentingInjuries

CORRECT



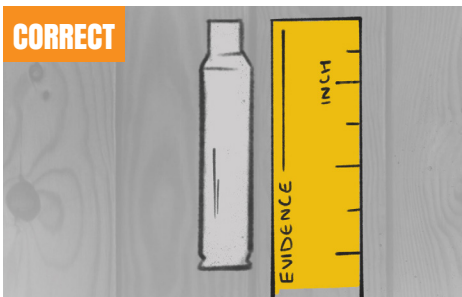
'In situ' meaning in place, unmoved, unaltered

INCORRECT



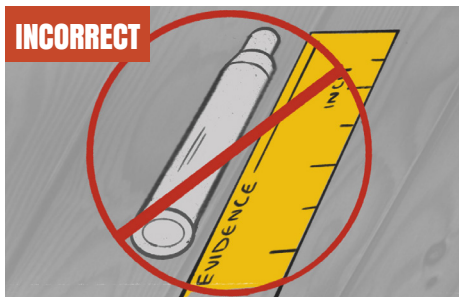
'In situ' meaning in place, unmoved, unaltered

CORRECT



With Additional Information

INCORRECT



With Additional Information

DOCUMENTING THE ‘WHO’: FOOTAGE TO HELP PROVE WHO DID IT

Now, let’s think about how video could help prove who perpetrated the SGBV act. There are two main categories of footage that help prove the WHO—footage that:

1. **Shows the direct perpetrator committing the crime**
2. **Links the direct perpetrator or otherwise responsible party to the crime**

For the first category of footage: again, it’s rare that you will find yourself in a position logistically, security-wise, or ethically to film an act of SGBV as it’s being perpetrated. But when you do capture or discover this type of eyewitness footage—like the Field Note video showing **Teonna Monae Brown attacking Chrissy Polis for gender-related reasons in the Maryland McDonald’s**—it can be crucial for holding a perpetrator accountable. For the second category, we have so far seen the Field Note example of footage that may directly link **ISIS forces** to the crime of **sexual slavery** in Syria.

In the next section on the HOW, we will discuss in more detail the importance of evidence linking the criminal act to perpetrators who are physically remote but ultimately responsible. This will include Field Note examples discussing footage that:

- may link the **National Council for the Defence of Democracy-Forces for Defence and Democracy (CNDD-FDD)** to the crime of **rape and forced pregnancy** in Burundi; and
- was used in an ultimately unsuccessful effort to link **Jean-Pierre Bemba** to the crime of **rape** in the Democratic Republic of Congo (DRC).

PERPETRATOR VIDEO OF SGBV

Returning to footage that captures the perpetrator committing SGBV, eyewitnesses are not the only people documenting SGBV as it happens. The phenomenon of perpetrators filming *themselves* while forcing acts of SGBV on victims is actually fairly common.



AN IMPORTANT NOTE FROM:

Raja Althaibani, Senior Program Manager, Middle East and North Africa, WITNESS

CAUGHT ON CAMERA: PERPETRATOR VIDEO

In some cases, an 'eyewitness video' can also be 'perpetrator video.' Perpetrator video is a term used to describe videos taken by an individual or eyewitness at the scene of an incident, with the express *intent* to do harm. The filmer is complicit in the act of abuse when they intentionally film and/or share the video in order to: spark fear, promote hate, dehumanize an individual or community, glamorize violence, recruit new members to an organization, entertain abusers, share tactics, or confuse/mislead the viewing public. Ultimately, the underlying distinction between a perpetrator video and other eyewitness video is their relationship to the violence and intent.

You should absolutely be on the lookout for this type of footage, as perpetrator video will often positively identify the individual committing an SGBV crime while also showing the crime itself.

However, there are a number of important things to keep in mind when approaching perpetrator video of SGBV. Here is a Field Note about the use of SGBV as an instrument of torture and sexual violence against imprisoned men. This Field Note explores how perpetrator video can be essential to the pursuit of advocacy, accountability, and justice against those perpetrators identified. But beyond these potential benefits for your work, this example also demonstrates how the discovery of perpetrator video also raises certain collection and preservation challenges as well as important ethical considerations.



FOR MORE INFORMATION

To learn more about perpetrator video, see *Perpetrator Video in the Middle East and North Africa* at wit.to/Perpetrator-Video

FIELD NOTE

FILMING AS SEXUAL ASSAULT

PUBLIC PROSECUTION V. ISLAM NABIH ABD AL-SALAM AWAD AND REDA FATHI AL-SAYED ABU FATMA



CONTENT & TRIGGER WARNING

Please proceed with the understanding and knowledge that the following includes a description of SGBV and other crimes shown in a video. This may be difficult to read.

PART IV:
WHO

The Basics

Paths to Justice: Public Prosecution v. Islam Nabih Abd al-Salam Awad and Reda Fathi al-Sayed Abu Fatma, and online advocacy by citizen journalists and bloggers

What Crimes: Unlawful detention, sexual assault, torture, and the making and possession of indecent video images¹⁷

Who: Egyptian Police Officers Islam Nabih and Reda Fathi

How: Individual and Co-perpetration



Backstory

On 18 January 2006, Imad al-Kabir, a 21-year-old minibus driver, was detained by Egyptian police while reportedly breaking up a fight between his cousin and law enforcement officers. After the altercation, al-Kabir was taken to Bulaq al-Dakrur Police Station in Cairo, Egypt where multiple police officers beat him, at times with a stick. The following day, the public prosecutor's office ordered that al-Kabir be released on bail. However, al-Kabir was not released and instead was kept at Bulaq al-Dakrur Police Station. In the early hours of 20 January 2006, while still in detention, multiple police officers again beat al-Kabir, stripped him from his waist down, tied his wrists and ankles, and raped him with a stick. A police officer filmed the torture and rape with his phone.



Prominent Egyptian bloggers who had been documenting police brutality obtained the video of al-Kabir's rape and shared it publicly in early November 2006. The video, which includes al-Kabir begging for mercy as numerous police officers look on, was widely viewed across Egypt and created public outcry. In December 2006, al-Kabir made an official complaint about the incident to the public prosecutor and the police officers that abused him were identified: Captain Islam Nabih and Corporal Reda Fathi. On 27 December 2006, warrants were issued for Nabih's and Fathi's arrest. In early January 2007, al-Kabir was sentenced to three months imprisonment for resisting arrest.

Video's Role

Video played a multifaceted role in this situation. First, video served an advocacy role. It was reported that al-Kabir believed Egyptian police initially created the video to circulate it among minibus drivers to 'break his spirit' and intimidate others. However, when the video fell into the hands of activist Egyptian bloggers that had long been documenting police abuse, it caused outrage. The video was shared widely. Ultimately, it led to al-Kabir, with public support, seeking out State intervention to bring his abusers to justice in a country where few police torture victims feel confident to seek help.

The video was also central to the judicial process during Nabih's and Fathi's trial. The police officers' lawyers argued that the video was fabricated to undercut investigators' identification of Nabih and Fathi, who a voice expert originally identified by analyzing the video. Additionally, Nabih and Fathi were charged with creating and possessing indecent video images, alongside the violent crimes they committed. Thus, the court had to analyze whether or not Nabih's and Fathi's creation and dissemination of the video in itself was a crime.



ACCESSING THE VIDEO

Video of the assault is no longer easily accessible online as it contains graphic imagery of a rape. Even if it were publicly available, we would not include a link here as the video undermines the dignity of the survivor. Instead, the video has been archived offline for advocacy and accountability purposes.

The Result

On 3 March 2007, Nabih and Fathi's 10-month trial began. On 5 November 2007, Nabih and Fathi were convicted of unlawful detention, sexual assault, torture, and the making and possession of indecent video images. They were sentenced to three years in prison, even though they faced up to 15 years for the charges against them. The court said it offered the police officers leniency because they were inexperienced and young. Nabih and Fathi were released on 26 March 2009, after serving three-quarters of their sentence. Not long after his release, the Assiut Security Directorate hired Nabih at the same title and rank he had before his conviction.

TAKE HOME POINTS

First, not often (but sometimes!) a perpetrator of SGBV is caught on camera. Where this is the case, the video—if properly archived, analyzed, and presented—is powerful, damning evidence. Perpetrators filming their own video of SGBV crimes is not uncommon as it can further humiliate victims, which is often a primary intention behind such crimes. In this case, intimidation was identified as one specific reason the video was created. Perpetrators are also known to film their crimes simply as ‘trophy to show colleagues or as a form of political protest.’¹⁸ *Be on the lookout for perpetrator-filmed video.*

Second, perpetrator video should be properly collected and preserved quickly, especially if it was found on a public platform. Automated or otherwise undiscerning content takedown processes mean that important evidence posted online can and does disappear from popular video sharing platforms such as YouTube. In this case, the video of the crime was posted on YouTube, which led to its original widespread dissemination. However, the video has since been removed from YouTube and is no longer accessible.

Third, in addition to collecting the video evidence and archiving it properly and securely, the collector should also document how the video was discovered. Did they receive it through another source? If so, when and how was the video delivered? Or was it found through an open source or social media? If so, when was it found and how was it taken from the internet and moved into an archive? These are the kinds of questions that will be asked as part of any legal process, to help show that the video wasn’t fabricated.

Fourth, video can be used as evidence to prove a crime happened, but keep in mind that creating video can itself also be a crime. Domestic jurisdictions outlaw filming, compiling, and sharing certain kinds of incidents and events. As a filmer or investigator, it is important to properly secure and archive such video immediately to record that a crime has occurred. You should also know the laws relevant to possession, dissemination, and reporting requirements when you have these types of videos so you avoid potential prosecution as well.

Fifth, even if you did not film the video, be sure to STOP and ASSESS on a case-by-case basis the risks associated with posting or publishing videos showing SGBV. Always remember your ethical duties as an advocate and your responsibility to the individuals filmed. Remember, ‘Do No Harm.’ A key practice for upholding this principle is to obtain informed consent. In this situation, the video was humiliating to its torture subject, al-Kabir, yet the outrage it caused publicly gave al-Kabir crucial support to report his abuse to the proper authorities. Even still, al-Kabir potentially faced repercussions as he was sentenced to three months in prison for resisting arrest after reporting that he had been tortured.

Sixth, consider your own safety as well. Since 2006, the Egyptian government has targeted bloggers, activists, and journalists. By using or publishing perpetrator video, you risk becoming the target of harassment or mistreatment—especially if the perpetrator holds power in your area.

FOR MORE INFORMATION

Since technical guidance on collecting, verifying, and storing perpetrator video is beyond the scope of this section, see the below resources.

To learn more about:

When it’s okay to share graphic content and when it’s not, check out

‘Ethical Guidelines: Using Eyewitness Video in Human Rights Reporting & Advocacy’ here: wit.to/VAE-Ethical-Guidelines

Archiving video, be sure to explore WITNESS’s *Activists’ Guide to Archiving Video* here wit.to/ArchiveGuide-Online

Collecting, verifying, and storing open source video, be sure to download the *The Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law* at wit.to/BerkeleyProtocol

PROSECUTOR V. JUNG JOON YOUNG

Another example of perpetrator video playing a significant role in a legal case is the recent conviction of Jung Joon Young, a South Korean singer-songwriter and television personality.¹⁹ In this case, Young was accused of gang rape, filming the rape, and distributing a video of it. The case exposed that Young was notorious for filming sexual assaults and/or distributing the filmed sexual assaults without the consent of the victims in group chats where he and friends would then discuss and joke about the encounters. Police documented at least 12 incidents where Young shared videos. Young reset his phone as police began investigating the situation, erasing evidence of potentially many more videos. Young's 'trophy' videos were ultimately used against him and led to multiple convictions, including a rape conviction, and a six-year prison sentence.



Illustration of Jung Joon Young, speaking to the media.



AN IMPORTANT NOTE FROM:

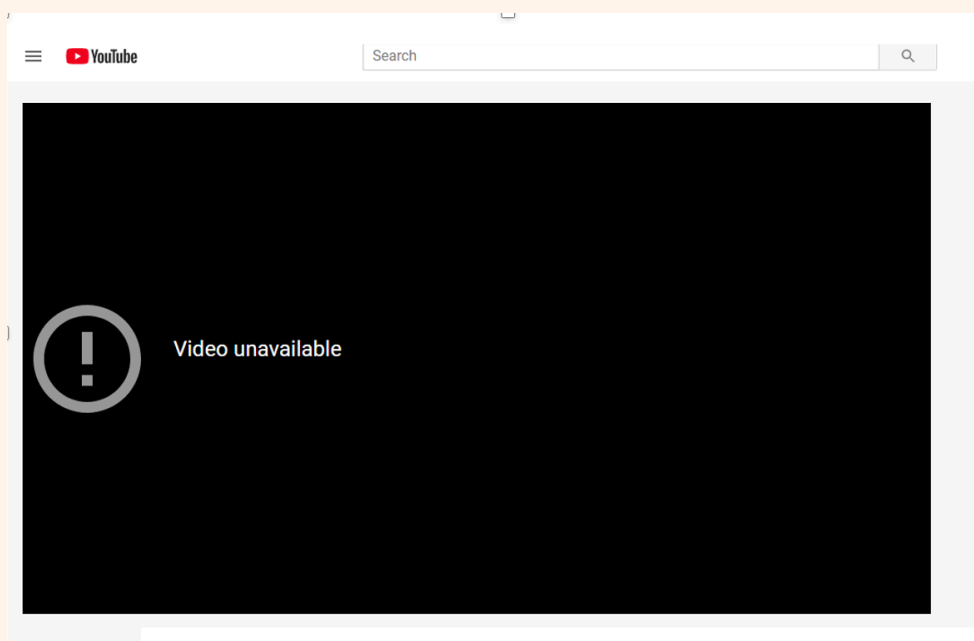
Jeff Deutch, Director of Operations and Research, Mnemonic

CONTENT TAKEDOWNS

A very common way to find relevant perpetrator and eyewitness video is through online open source investigation, or 'the process of identifying, collecting, or analyzing information that is publicly available on or from the internet as part of an investigative process.'²⁰ This involves careful use of special tools to search publicly available content to discover key pieces of evidence, including video evidence posted by eyewitnesses or perpetrators.

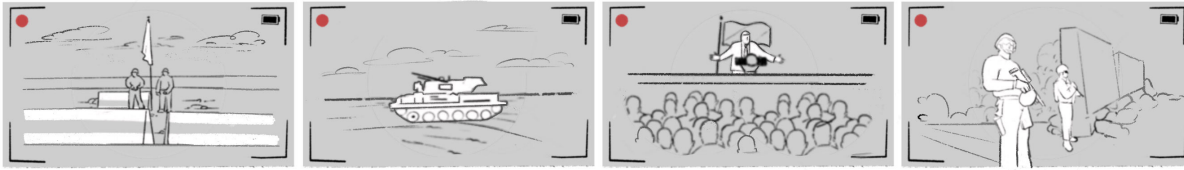
Unfortunately, however, while many of these videos posted online contain valuable footage of terrible crimes and human rights violations, many are becoming increasingly unavailable for a variety of reasons:

- Repeated targeting of media houses through cyberattacks, often in the form of coordinated 'flagging' of videos or hacking of media houses' social media channels,
- The user removes the video due to fears concerning their personal safety,
- Automated termination by a platform's machine learning technology or manual termination by a platform's employees for allegedly violating platforms' terms of service or community standards that prohibit graphic or sexual content,
- Flagging of inappropriate content by external stakeholders followed by takedown by the platform, and
- Deliberate and targeted attacks against activist posts resulting in suppression, for example, governments falsely claiming the post violates intellectual property laws.



If content has not been properly preserved beforehand, once taken down, this footage often becomes entirely inaccessible or undiscoverable; for investigative purposes, this valuable evidence disappears, potentially forever. These content takedowns introduce additional barriers for lawyers, activists, and advocates working towards justice and accountability. Further, these takedowns can be more impactful in circumstances where there's little information or evidence available to begin with—such as SGBV.

FOOTAGE LIST: FILMING THE 'WHO'



Strategically planned and collected video evidence can help to overcome many of the key challenges faced when seeking to document and prove WHO committed a crime.

Since it's unlikely that *you* will be filming the perpetrator in the act of committing the crime itself, we need to be creative about how we might collect video evidence to prove who did it. To help with your planning and video documentation work, here's a list of ideas of images to place in your camera's frame or collect from online platforms.

Linkage & Other Corroborating Evidence

First, think about how you could collect corroborative evidence to show who the perpetrator is, who the perpetrator may be, or that links the perpetrator to the individuals who directly committed the crime. Video that may help prove who committed the SGBV crime might include footage of the alleged perpetrator:

- In the presence of the victim
- Arresting or detaining the victim
- Beating or harassing the victim
- Bragging about the crime
- Wearing clothing with identifying information (e.g., badges, insignia, uniform, name patch)
- Providing field reports to commanders (e.g., 'We cleared the area and took care of the women.')
- Giving orders to troops
- Participating in a military or security raid where the SGBV took place
- At the crime scene at the approximate time that the crime took place
- Giving conflicting, inconsistent information about the crime over multiple videos
- Seen circulating in the area close to the crime scene the day of the event or closer to the event
- Touching the victim in a sexual or inappropriate way, particularly if the perpetrator argues he or she did not have a sexual encounter with the victim

Finding Perpetrator (& Eyewitness) Video

Sometimes, the most valuable video showing the WHO isn't video that you film yourself, it's footage you find. Nevertheless, whenever this essential evidence is found online, it must be collected and preserved properly to help support efforts towards justice and accountability for SGBV. Further, knowing and understanding where to find this video and how to locate the content originators can help frontline filmmakers identify and potentially contact key eyewitnesses. Be sure to adhere to the 'Do No Harm' principle, which requires you to assess who (among many stakeholders) may be harmed and how, and determine how to minimize those harms. While platforms change from year to year, in 2021 some key or common places to look for eyewitness and perpetrator video online are:

- YouTube
- Twitter
- Facebook
- Snap Map
- TikTok

Ultimately, when determining which platforms to use, it's critical to know which social media sites are common in the areas under investigation, and the demographics of those users. For more information on open source tools and methods, the resources list at the end of this section should be a good starting point.



Remember: This list gives suggestions and ideas for the kinds of footage that might be helpful and the online platforms where you might search for this footage. It's not comprehensive. Be creative and adapt to your facts and context.

DOCUMENTING THE 'HOW'

FOOTAGE TO HELP PROVE PERPETRATOR RESPONSIBILITY

The person on trial may not be the direct perpetrator of an SGBV crime. In addition to proving the crime itself, lawyers must prove how the chosen defendant participated in the crime, or in what way(s) they were responsible for the commission of the crime. **In other words: what role did this defendant play in relation to the crime? This is called 'mode of liability' or 'form of participation.'**

As a reminder, here are the common modes of liability:

- Individual (direct) perpetration
- Co-perpetration, conspiracy, or joint criminal enterprise
- Aiding and abetting
- Instigation or incitement
- Ordering
- Command or superior responsibility

One of the Field Notes above—**'Gender-Based Hate, Caught on Camera'**—showed us an example of individual and co-perpetration. Individual perpetration is when the perpetrator commits the crime with their own hands. Co-perpetration is when two or more perpetrators directly participate in the execution of the crime. In the Chrissy Polis case, Teonna Monae Brown and a 14-year-old minor both individually and together assaulted Polis at the Maryland McDonald's.

For another Field Note—**'The Camera as a Substitute for the Collection of Physical Evidence'**—which took us into an ISIS prison facility possibly used to house sexual slavery activities in Syria, we don't yet know the mode of liability because we don't know who will be charged for the crime or even in which court a case will be brought. Here are some options:

- If the ISIS forces who actually enslaved the women are charged, the mode of liability would likely be 'co-perpetration,' as they acted together to personally commit the crime.
- If a commander ordered his forces to enslave the women, the mode of liability for the commander would likely be 'ordering' as he instructed others to commit the crime.
- If the owner of the building knowingly, voluntarily, and willingly gave ISIS forces free access to the building to imprison the women, the mode of liability would likely be 'aiding and abetting' as the building owner substantially helped the ISIS forces commit the crime.

As is the case with the commander giving orders above, the person charged with the crime will not always be the one who directly committed the crime. This is more often the case in international courts because these courts seek to prosecute higher-level decision-makers—those most responsible for the broader scope of international crimes. Let's look back at linkage and notice evidence quickly.

As a reminder, **linkage evidence** is relevant and reliable information that helps prove responsibility by connecting perpetrators—including both direct and remote perpetrators—to crimes on the ground. For example, this might include things like footage of uniforms, as uniforms can reveal who commands the direct perpetrators. It can also include footage of perpetrators training their forces or speeches where the suspect admits she or he was in command of the forces who perpetrated the crime, etc. As discussed above, linkage evidence can also help to identify and prove the WHO.

Notice evidence is also important to proving responsibility. This is information that proves a military commander or civilian leader received information that ensured they knew—or should have known—that the people they had authority over were committing crimes.

Both linkage and notice evidence contribute to proof of an individual's 'mode of liability' or 'form of participation' in a crime, or—in other words—HOW a perpetrator committed crime, even if this was done remotely. So, to establish a specific perpetrator's responsibility, you may need to prove a direct link between the perpetrator and the crime. Or you may need to prove that a remote perpetrator is ultimately responsible for driving the commission of SGBV crimes, even if from afar.

You should be sure to remember—and account for in your Collection Plan—that strong linkage and notice evidence are absolutely essential, but can be hard to come by. **Proving responsibility is particularly difficult for prosecutors pursuing SGBV cases.**

“Proving that a crime took place is typically only 10% of the work in a complex criminal trial. Proving that a commander, who is not present at the scene of the crime, should be held criminally responsible for their role in the commission of the crime is the other 90%. It is critical to capture linkage evidence in addition to crime-based evidence.”

~Dr. William Wiley, Director, Commission of International Justice and Accountability



**FOR
REVIEW**

To review key information on proving mode of liability, see **‘Proving Responsibility: Filming Linkage & Notice Evidence’** at [wit.to/VAE-LinkageNotice](https://www.wit.to/VAE-LinkageNotice)

Given the importance of proving responsibility, we are going to look at two Field Notes. The first is a straightforward example from Burundi of eyewitness video that points to a mode of liability. The other—a conclusion to the Bemba case discussed in the *Field Guide*—is much more complicated, but still teaches some important lessons on command responsibility. Looking at both case studies should offer some good ideas for what video evidence you can collect to help prove HOW a perpetrator is responsible for the commission of an SGBV crime and make your case stronger!

To illustrate key lessons on what to keep in mind when filming linkage evidence as an eyewitness, here is a Field Note about how video points to, and could potentially help prove, Incitement to commit SGBV by members of the Imbonerakure in Burundi.

FIELD NOTE

INCITING RAPE, CAUGHT ON CAMERA

NTEGA, BURUNDI

The Basics

Path to Justice: Widespread condemnation by the international community

What Crimes: Potentially rape and forced pregnancy as crimes against humanity

Who: The Imbonerakure, the youth wing of Burundi's ruling party, the National Council for the Defence of Democracy-Forces for Defence and Democracy (CNDD-FDD)

How/Mode of Liability: Potentially incitement



Backstory

Under President Pierre Nkurunziza and his CNDD-FDD party, the people of Burundi have been subjected to widespread and severe human rights violations including the killing, disappearance, abduction, torture, rape, and arbitrary arrest of people perceived to oppose the government. An acute political crisis began in 2015 when Nkurunziza announced he would seek a disputed third term.

In April 2017, a video circulated over social media showing over 100 members of the Imbonerakure at a rally in the Ntega commune, Kirundo province, chanting, 'Impregnate opposition [women] so they give birth to Imbonerakure! This video prompted an international response, including from then-UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, who issued a public statement calling on Burundian authorities to respond. While CNDD-FDD officials condemned the actions in the video and rejected responsibility, reports emerged placing government officials at similar rallies across the country, either as organizers or participants.

Importantly, the language of these chants—calls to impregnate or kill opponents—mapped onto the 'campaign of terror' being waged in Burundi at the time, as well as allegations of more targeted, ethnic violence by the Imbonerakure against the Tutsi. In 2016, the UN Special Adviser on the Prevention of Genocide warned that the Imbonerakure were 'reported to have threatened ethnic violence' against Tutsis.²¹

Video's Role

This video is a good example of evidence that could someday support a case arguing incitement to commit crimes against humanity. This is because: 1) the language of the chant indicates intent to rape and impregnate civilian women on a widespread scale; and 2) the chant serves as a rallying cry to directly and publicly rouse members of the militia to commit this crime against humanity.



While a legal case doesn't yet exist to demonstrate how a court might weigh and evaluate this video, this example illustrates the value of eyewitness video, even when it doesn't involve a specific incident of SGBV. This chant arguably reveals important information about the intent behind SGBV allegedly committed by the Imbonerakure during this period, should these crimes be proven.

Moreover, the official UN condemnation and the heightened global attention motivated by this video show how compelling evidence of SGBV can be successfully leveraged to combat impunity and pursue accountability even where justice in court is not yet an option.

PART IV:
HOW



**SHOWN IN
THIS VIDEO**

Well over 100 men in matching shirts form three long, organized lines along a road in front of an office of the ruling party in the community of Ntega, Burundi. In unison, they clap and sing, *'Impregnate the opposition so they give birth to Imbonerakure . . . There are lots of girls. Impregnate them, Imbonerakure!'* To watch this video, go to [wit.to/Imbonerakure](https://www.youtube.com/watch?v=Imbonerakure)

TAKE HOME POINTS

First, video as evidence of SGBV doesn't necessarily need to show or even relate to a specific incident to be valuable. When trying to prove responsibility, for example, footage that indicates trends, intent, or tactics relating to ongoing or potential SGBV can provide an essential link.

Second, and as always, remember your filming techniques! Here, the filming techniques are very good because the filmer:

- Captured a building, which allows human rights advocates to easily verify the location
- Filmed while walking along the line of the men marching which means a fairly accurate number of participants can be determined
- Did an excellent job of keeping silent so the audio could be clearly heard

The audio here is key because what is being said is the essential and incriminating evidentiary information. Other things to keep in mind are the importance of capturing context to help situate a video and connect dots to other pieces of evidence as well as the importance of filming identifying information of alleged perpetrators whenever possible (here, the uniforms).

Next, we are going to look at a case where the linkage evidence gathered by the prosecution ultimately did not prove command responsibility. Nevertheless, the prosecution's use of video evidence teaches us important lessons about the potential for video to strengthen a case and help prove responsibility for SGBV crimes. So, here is a Field Note update on the resolution of the Bemba case before the ICC.

FIELD NOTE

USING VIDEO TO PROVE COMMAND RESPONSIBILITY INTERNATIONAL CRIMINAL COURT V. BEMBA

The Basics

Path to Justice: Prosecution at the ICC

What Crimes:

- Murder as a war crime and crime against humanity,
- Rape as a war crime and crime against humanity, and
- Pillaging as a war crime.

Who: Jean-Pierre Bemba Gombo

How/Mode of Liability: Command responsibility



PART IV:
HOW

Backstory

In October 2002, the Movement for the Liberation of Congo (MLC) crossed the border from their stronghold in the northern Democratic Republic of Congo (DRC) into neighboring Central African Republic (CAR), originally believed to be at the command of Jean-Pierre Bemba Gombo to help then-President Ange-Félix Patassé put down a coup attempt.



Jean-Pierre Bemba Gombo, politician and former Commander-in-chief of the MLC



**FOR
REVIEW**

To review key backstory on the case against Jean-Pierre Bemba Gombo at the ICC, see the Field Note Parts I and II on *ICC v. Bemba* at [wit.to/VAE-LinkageNotice](https://www.iccnv.org/en/to/VAE-LinkageNotice)

Bemba stood accused of leading a devastating and widespread campaign of rape, murder, and pillage in CAR, with rape being the primary method used to terrorize civilians. According to prosecutors at the ICC, Bemba's army raped women and girls in front of their families, as well as men and important elders to publicly humiliate them. The Trial Chamber of the ICC agreed, and on 21 March 2016 unanimously declared Bemba guilty beyond any reasonable doubt of two counts of crimes against humanity (murder and rape) and three counts of war crimes (murder, rape, and pillaging) under the theory of command responsibility. Many praised the conviction as a strong signal and a significant step in the development of international criminal law.

However, on 8 June 2019, the Appeals Chamber overturned Bemba's conviction setting him free. He has since returned to the DRC. This decision has been the source of deep contention and disheartened advocates. But it is also considered an example of good defense of due process, considering the shortcomings in the prosecution's evidence of responsibility.

Here, we will not discuss the merits of the case. Instead, we will look only at the Bemba case to analyze the role of video evidence. By taking a deep dive into the Trial Chamber's weighing of the evidence, we can learn some important lessons about how courts treat and consider video evidence submitted to help prove the mode of liability.

Video's Role

The main video introduced by the prosecution and admitted by the judges in the *Bemba* trial is a 39-minute report apparently produced by TnpInfos.TV that shows sweeping footage of MLC operations and the territory under its control. The minutes most scrutinized by the court, however, focus on footage of 'what appear to be Mr. Bemba's daily activities for six days.'²² Bemba is shown in military attire communicating with troops in Lingala—the language that his troops spoke—through a series of radios.



Jean-Pierre Bemba Gombo as seen in footage submitted as evidence to the ICC.

TO WATCH THIS VIDEO

To watch this full 39-minute video report, go to witto/ICC-Bemba-Video

To watch the minutes most scrutinized by the court, go to witto/ICC-Bemba-Clip

The video also includes footage of a person that served as a key witness at trial. For security reasons, the witness's name is not public; he goes by Witness D04-15. Since the judges could see him in the video, the court allowed him to answer questions during the trial about the footage. In turn, this allowed the prosecution to clarify the facts established by the video.

While the footage does not show Bemba giving orders directly related to the war crimes and crimes against humanity for which he was on trial, the prosecution introduced this video as part of its efforts to establish Bemba's mode of liability: command responsibility. The Prosecutor argued that this video helped to prove, in part, that Bemba was liable for the crimes because he was effectively acting as a military commander and had the ability to take measures to prevent the troops committing SGBV crimes.

What's important to understand here is that some video evidence in SGBV cases has nothing to do with the SGBV crime itself. The prosecution didn't admit this video to prove WHAT crime was committed—in this case rape, among others—but instead to help prove HOW Bemba participated in the crimes.

Specifically, the prosecution introduced this video in Trial Chamber as evidence to establish the following elements and details.

To help prove Bemba was in Effective Command of MLC troops, the prosecution presented video footage that showed:

- **Bemba's use of various communication devices including walkie-talkies, Kenwood long-range radios, and satellite phones.**

According to the prosecution, Bemba maintained command responsibility over his troops deployed in the neighboring country by communicating orders directly with these devices: 'He retained operational command during the course of the conflict. He gave instructions to progress or maintain their position or perform specific tasks.'²³

The Prosecutor then asked Witness D04-15 to confirm that one of the radios shown in the video was, in fact, the Kenwood radio, and that this type of radio was used for long-range transmissions.²⁴ This confirmation demonstrated that Bemba had the ability to communicate with, and send commands directly to, his soldiers well outside of his immediate vicinity in the DRC.

While deciding whether to admit the video evidence or not, the Court found that the footage appeared to show Bemba in his family home '... surrounded by a wide range of communication devices, including a Kenwood radio, telephones and walkie-talkies, devices that he apparently operates by himself. He is also shown in what appears to be the MLC's headquarters speaking through a hand-held communication device, similar to a walkie-talkie. Mr. Bemba also appears using a communication device while driving, and outside a building.'²⁵ The Trial Chamber was satisfied that the contents of the video were relevant to help show Bemba's command and control of the MLC and could be relied upon because Bemba appeared in the video at times with Witness D04-15.



The Kenwood long-range radio used by Jean-Pierre Bemba Gombo in footage submitted as evidence to the ICC.

- **Bemba wearing a military uniform**

The prosecution reasoned that, on its face, video of Bemba in a military uniform could suggest his role and responsibility in MLC operations. However, when the prosecution asked Witness D04-15 about this, the witness insisted that anyone could wear a uniform and Bemba was not, in fact, a soldier.²⁶ When deciding whether to admit the video evidence, the Trial Chamber did not comment on whether it considered the video clips showing Bemba in uniform relevant.

- **Bemba's use of a baton/swagger stick**

The prosecution called attention to Bemba's use of a 'swagger stick' in the video because, traditionally, a military commander holds this type of stick to show he is in charge. Witness D04-15 corroborated this when he testified that a 'customary chief'²⁷ would have a baton of the type seen in the video and that Bemba was the 'supreme commander of his army'²⁸—both points acknowledged and considered by the Trial Chamber in its judgment on the evidence.²⁹

- **Bemba speaking Lingala to MLC troops**

The prosecution asserted that Bemba's decision to speak Lingala to his troops instead of French demonstrated that he was aware that many of his soldiers did not speak French and, in turn, to exercise command and control, he needed to speak Lingala. Witness D04-15 corroborated what the Court saw in the video when he testified that Bemba would most frequently speak to his troops in Lingala. The witness said, 'Every time he had the opportunity, he could only speak in that because most people spoke Lingala.'³⁰ And in the decision to admit evidence, the Trial Chamber noted that in the video evidence, 'indeed [Bemba] appears to address the MLC troops and the populations in Lingala.'



FOR REVIEW

To review the elements of Command Responsibility in more detail, see '**Part II: Focus on Command and Superior Responsibility**' in the section '**Proving Responsibility: Filming Linkage and Notice Evidence**' at [wit.to/VAE-LinkageNotice](http://www.wit.to/VAE-LinkageNotice)

In sum, these are the types of small—but important—pieces of evidence we need to think about when trying to prove responsibility for SGBV. Ultimately, the linkage evidence was deemed insufficient by the Appeals Chamber, but the way the prosecution approached the problem of HOW will help us brainstorm creative ways to address this element in the future. Again, footage of the WHAT isn't being discussed here.

The Result

In its judgment on the admission of this video evidence, the Trial Chamber acknowledged some shortcomings, namely:

- The date on which the footage was captured was not specified
- The splicing and combining of many clips from unknown, different occasions gave the judges pause³¹

However, even though the video evidence was not perfectly captured, the Trial Chamber found that the audio-visual material and related transcripts and translations were relevant to the case and should be considered by the judges. In particular, the judges found that the video was relevant as proof of:

- The composition and organization of the MLC troops
- Bemba's effective command and control of MLC troops
- The credibility of Witness D04-15
- To help analyze and understand Witness D04-15's testimony

The Trial Chamber did not give much weight to the video showing Bemba in military uniform, as the judgement states that he may have worn a uniform for practical or symbolic reasons.³²

TAKE HOME POINTS

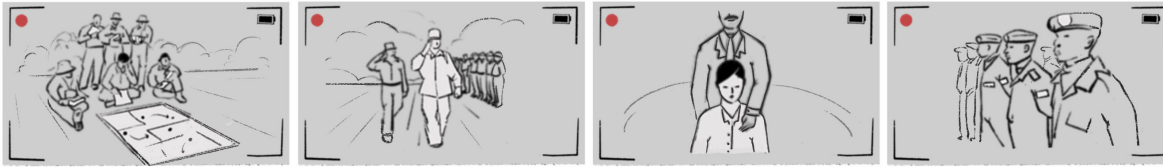
First, while the judgment as a whole was overturned by the Appeals Chamber, the Trial Chamber found Bemba guilty of rape as a war crime and crime against humanity, relying, in part, on video to prove that Bemba effectively acted as a military commander and had the ability to take measures to prevent the troops committing SGBV crimes. In fact, the Trial Chamber's judgment specifically references this video as relevant to establishing the MLC command structure. This is key to our understanding of how the video—specifically—is and will continue to be evaluated by the Court.

Second, how this video was used in trial emphasizes the importance of avoiding focusing solely on the immediate subject or action when proving mode of liability. The Witness D04-15's appearance in the video and his related testimony was essential to clarifying central facts and giving context to guesswork or expert opinion that is often used to interpret the images shown. When planning and filming video as evidence for mode of liability purposes, then, it may be important to consider who, aside from your targeted suspect, could be included in the video. Who knows? They may later provide crucial testimony in trial as a witness, victim, or even as a co-conspirator.

Third, while in practice it can be difficult to prove in court that a video is 'reliable,' in principle it's quite straightforward. In short, the lawyer presenting the video in court must somehow prove that the video accurately shows what the lawyer says it shows. Often, this is done by calling a witness who was present at the time the video was made who can testify that it accurately depicts the scene. This could be the filmer, which in this case would have been someone with the TnPIInfos.TV, the company that appears to have produced the full 39-minute report, or it could be another witness—in this case, Witness D04-15. Here, the Trial Chamber found that the video and related transcripts were still valuable even though the prosecution asked only D04-15 to testify. The prosecution did not call witnesses from TnPIInfos.TV to the stand 'because the accused and other persons are *clearly identifiable* in the video and *the accused and some locations appearing in the video were recognized and referred to by Witness D04-15* in the context of his testimony.'³³ So while it is clearly possible that a court can admit video evidence when verified by only one witness, you may want to consider other ways to reinforce the reliability of your video evidence.

Fourth, the decision by the Appeals Chamber to overturn Bemba's conviction was unexpected. It underscores that ICC jurisprudence is anything but settled. And, while this raises concerns relevant to the specific challenges of proving command responsibility for crimes on the whole, strategies for collecting video as evidence should largely maintain course.

FOOTAGE LIST: FILMING THE 'HOW'



Strategically planned and collected video evidence can help to overcome many of the key challenges faced when seeking to document and prove HOW a perpetrator committed a crime. To help you plan to film and collect relevant video, here's a list of ideas for footage to gather and images to place in the frame.

Linkage Evidence

Pinning responsibility to a specific (especially remote!) perpetrator often requires creative thinking about the kinds of evidence that either directly or contextually construct the mode of liability. Examples of video footage that might contribute to proof of responsibility include:

- **Troop activities including:**
 - training
 - working at check points
 - standing guard
 - patrolling of foot
 - driving military equipment
 - moving gear and forces from one location to another
 - participating in rallies
 - using communications equipment
 - singing or chanting (see the Field Note about the Imbonerakure above)
- **Activities undertaken by Commanders, including any time a Commander:**
 - speaks at an event
 - uses any form of communications equipment
 - interacts with their troops anywhere (e.g., at training camps, rallies, in the field, and at checkpoints)
 - interacts with other officials (e.g., other commanders and/or government officials)
 - provides a media interview
 - visits areas where crimes have been reported
 - visits bases of military operations

- **Objects including:**

- Structures and buildings where a security force's operations are based
- License plates or registration numbers of equipment and any insignia on equipment
- Uniforms including any insignia, name tags, or badge numbers
- Military equipment such as small arms, large arms, protective gear, tanks, planes, helicopters, etc.
- Serial numbers on military equipment and headstamps on bullet casings
- Visible communications equipment such as satellite dishes and radio towers

Notice Evidence

As discussed in the section on *Filming Linkage Evidence*, sometimes proving responsibility requires proving that a commander **knew or should have known** about the crimes being committed and then **did nothing** or otherwise **failed to act**. In the Bemba case, for example, in addition to presenting evidence that Bemba was effectively acting as a military commander and had the ability to take measures to prevent the troops committing SGBV crimes, the prosecution also needed to have established that Bemba knew, or in other words, was on notice, that the troops under his command were committing crimes. The prosecution did not use video to prove this element but examples of video that prove 'notice' include:

- Action showing that armed forces have been equipped to commit sexual violence, such as by supplying condoms/Viagra/contraceptive pills
- Video evidence of the prevalence of SGBV in a specific and connected armed conflict of the recent past
- Interviews given by medical practitioners reporting an increased number of SGBV incidents in a specific area during a specific time
- Drunkenness of troops or guards
- Displaced women being forced to pass through ad hoc checkpoints
- Sudden changes in the mobility patterns of women, such as increased absence of women from marketplaces, water collection points, firewood collection sites, etc.
- Videos in which victims, witnesses, medical personnel, or members of the community describe the SGBV that has been occurring
- Military bases with rooms or areas in them where SGBV was allegedly committed, e.g., rooms with beds, ties, bodily fluids
- Presence of young girls in camps under the control of combatants



Remember: A video can be useful evidence even if it does not show a crime or the perpetrator of the crime. It can be just as important to capture video of locations, what's happening at the location, exchanges between government officials, commanders, and troops, and military activity. All these little pieces of information help investigators figure out the chain-of-command, and the structure and operations of armed groups, which, in turn, can help bring perpetrators to justice.

DOCUMENTING THE ‘CONTEXT’:

FOOTAGE TO HELP PROVE THE INTERNATIONAL CRIME

To this point, we have looked at how video can be effective to help prove:

- WHAT base crime or act of SGBV was committed
- WHO did it
- HOW the perpetrator committed the act, or the mode of liability

As a final step, let's consider one more way in which video could be helpful.

As review, for a base crime to also be proven as an international crime,³⁴ lawyers have to prove the context in which the crime was committed. For base crimes such as rape, sexual slavery, and forced pregnancy to be proven as **War Crimes**, they have to be committed during and in connection with an armed conflict. For these crimes to be proven as **Crimes Against Humanity**, the base crimes must be widespread or systematic and committed against civilians in either wartime or peacetime. For these crimes to be proven as **Genocide**, the base crimes must be committed as part of a plan to destroy all or part of a group of people based on their nationality, ethnicity, race, or religion.

For example, Bemba was charged with **Rape as a War Crime** and **Rape as a Crime Against Humanity**. This meant that in addition to proving the base crime of rape, it was essential for the prosecution to also prove that:

- Rape happened during and in connection with the war, and
- Rape was committed as part of a widespread or systematic attack against civilians

If you're seeking to collect evidence that can support the prosecution of international crimes at an international tribunal or in a national court, you will need to keep in mind the necessary step of proving the international crime. If you haven't already read these sections of the *Field Guide*, you will want to do so first so that all of the following makes sense!

‘Anatomy of a Crime’ & ‘Developing a Collection Plan’: to learn more about how lawyers break crimes down into ‘elements’ and then create a plan to collect video that will help prove each of the elements at wit.to/VaE-Crime and wit.to/VAE_CollectionPlanning.

‘Documenting International Crimes: Crimes Against Humanity, War Crimes, and Genocide’: to learn more about what a base crime is, how to turn it into an international crime, and how to use video to prove the international aspect of the crime at wit.to/VAE-DocumentingInternationalCrimes

Now, let's look specifically at visual images that can help show the context in which an international SGBV crime is committed.

Regardless of what specific legal requirements you're dealing with or which criminal elements you need to prove in your Collection Plan, it is almost always a good idea to collect evidence of the context in which an SGBV crime is committed. It situates your footage. This can be done by thinking about ways to film:

- 1) the **broader situation** at hand, which may reveal evidence of context-based elements of the crime, and
- 2) other **indicators** of an environment or patterns in which SGBV is known to occur.

CONTEXTUAL INDICATORS OF SGBV

When thinking about **broader situation footage** for more generally proving the **CONTEXT** of an international crime, also consider that certain patterns or activities are **SGBV indicators**: essentially 'red flags' indicating that SGBV may be occurring. These might serve as corroborative evidence and prove—for example—that individual survivor testimony fits into an observed, known pattern commonly linked by experts to SGBV. See the List of Possible Footage below for ideas for the specific kinds of things you might consider filming as indicators that SGBV is occurring in a given context.

IMAGINE THIS...

The NGO you work with has asked if you could collect video documentation in a small community that was just attacked by an armed group. The community's men were all killed while the women were abducted and sexually assaulted or raped. In this instance, video showing that the armed groups attacked civilians could help prove that this may be a **Crime Against Humanity**. In other words, this video can help prove the **CONTEXT** of the crime to qualify it as an international crime. Additionally, video showing the separation of men and women would help **prove the gender dimension** of the crime.

As discussed a few times throughout this section, you should almost never expect to be able to capture footage of the SGBV crime itself. For Collection Planning purposes, then, we should most often assume that any footage showing the crime itself—the WHAT—or direct perpetration—the WHO—may necessarily be some form of eyewitness or perpetrator video found online.

However, we've also introduced helpful tools throughout this section to help you think creatively about the kinds of footage you can film that may help to prove a crime that is often rendered relatively invisible in complex and violent settings. **SGBV indicator footage** is one of these important tools, and it overlaps with and reinforces the other tools now in your Video as Evidence toolkit. These include: corroborative evidence, crime scene footage, footage of physical evidence, documentation of injuries, and lead evidence (among others!).

Remember to be creative and really use your knowledge of the context to your advantage. When SGBV crimes are being committed, filming new patterns and changes in social behaviors, political structures, allocation of resources, or movements of certain people may be useful or even invaluable support for the prosecution's legal arguments.

FOOTAGE LIST: FILMING THE 'CONTEXT'

Strategically planned and collected video evidence can help to overcome many of the key challenges faced when seeking to document and prove the CONTEXT. To help with your filming, planning, and video collecting, here's a list of ideas for footage to gather and images to place in the frame for documenting the broader situation as well as key SGBV indicators.

Broader Situation

While capturing the context on camera can help to prove elements of the international crime at hand, it can also help to establish responsibility, corroborative patterns of perpetrator activities, or even important lead evidence. Examples include footage of:

- Armed forces holding meetings, wearing uniforms, displaying flags, speaking to crowds, and using or transporting military equipment
- Command centres or buildings that have been taken over by armed forces
- Armed forces installing their camp/bases/positions in areas taken over
- Aerial footage of villages or areas that have been burnt, destroyed, or abandoned
- Perpetrators, or those in charge of the perpetrators, speaking about their activities, both in general and about rape
- Checkpoints, border control, military positions, etc., indicating control of the area and civilians being controlled at these areas
- Coverage of the armed conflict by the media, NGOs, or local community members
- People fleeing or living in refugee camps
- Press conferences or public statements where perpetrators discuss results of recent operations (e.g., number of casualties, people arrested, villages controlled)
- Villages or sites right after an attack
- Injured victims being evacuated to medical facilities or footage of medical facilities treating the injured
- Public statements where medical practitioners describe an increased number of victims, including SGBV victims, from specific areas around a specific time

Indicators of SGBV

Certain situations or activities are essentially ‘red flags,’ known to indicate that SGBV is occurring.³⁵ Examples include:

In **Military/Security** contexts:

- Forced recruitment and abduction
- Forced separation of men and older boys from women and younger children
- House raids
- School raids
- Looting and rampage
- Retaliatory attacks
- Checkpoints and vehicle ambushes
- Detention, interrogation, and torture

In **Political/Legal** contexts:

- Propaganda and hate speech, including demeaning and dehumanizing speech (e.g., women and girls, male opponents, members of the LGBTQIA+ community)
- Ethnic divisions
- Declaration of emergency laws, allegiances, or religious imperatives which curtail the rights of women, girls, men, and boys that support the opposition, and the LGBTQIA+ community
- Targeting of politicians, candidates, and human rights defenders
- Targeting sexual minorities such as members of the LGBTQIA+ community
- Targeting people who do not conform to societal gender standards

In **Social/Humanitarian** contexts:

- Refugee and internally displaced persons’ flight and displacement
- Poor security and infrastructure in displacement settings
- Noticeable absence of women from public spaces and activities armed control of camps
- Reports of unauthorized exchanges of goods and services between peacekeepers and other armed groups and vulnerable members of local population
- Reported presence of unauthorized civilian women and children in military camps, police stations or barracks, or peacekeeping bases



Remember: This list gives suggestions and ideas for the kinds of video footage and photographs that might be helpful. It’s not comprehensive. Be creative and adapt to your facts and context when thinking about what to film.

FINAL NOTES

The saying 'pull up your socks' is used in different parts of the world when we are about to begin a difficult task for which we are *determined to succeed*. WITNESS drafted this guidance to help each of us 'pull up our socks' and continue our efforts to safely, effectively, and ethically collect trustworthy and actionable video evidence of SGBV.

Our core hope is that this guidance provides useful information and tools to help you be as prepared as possible to capture video evidence. We hope this guidance underscores that there are many practical ways to do documentation work with a dedicated attention to the gendered dynamics of human rights violations and serious crimes. And, most of all, we hope your footage contributes to the pursuit of survivor-centric justice and accountability for SGBV.

We also thank you for all the time you took to read this guidance. Your next step may be to continue reading other key documents such as: The *PSVI Protocols*, the *Murad Code*, and other suggested sections of the *Video as Evidence Field Guide*. This will take even more time. Finally, you'll need to put the principles and techniques into practice. This is no small task. But, when it comes to the collection of evidence, taking the long road is better than taking shortcuts.

To end, here are our favorite principles to always keep in mind as you move forward:

- **Always center the survivor.** Document with a plan that always, always centers the survivor and the survivor's hopes. Do not document just for the sake of documenting.
- **Look for the telltale trail of evidence.** Remember the key point from the 'Important Note' on evidence-based prosecutions of domestic violence: *Perpetrators of SGBV leave a telltale trail of evidence, if only we can be motivated and savvy enough to recognize, document, and preserve it.*
- **Justice comes in many forms.** This guidance will help communities, journalists, and factfinders collect documentation to a legal evidentiary standard. However, legal processes are not the only form of justice and accountability. The principles set out here will ensure your documentation could be used to pursue other paths to justice from reparations, to reform, to an apology.

This resource is for you, and we welcome your comments and suggestions. To share feedback with us, please get in touch here: feedback@witness.org.

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SPECIAL
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READING & RESOURCES

ESSENTIAL READING FOR DOCUMENTING SGBV

UK Foreign & Commonwealth Office, *Second Edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, available at: wit.to/PSVI-Protocol.

Institute for International Criminal Investigations, Nadia's Initiative, and the UK Foreign & Commonwealth Office, *Murad Code*, available at: wit.to/MuradCode.

ADDITIONAL KEY RESOURCES FOR DOCUMENTING SGBV

International Federation for Human Rights (FIDH), *Sexual and gender-based violence: A glossary from A to Z*, available at: wit.to/SGBV-Glossary.

Global Rights Compliance, *Basic Investigative Standards (BIS)* Application for Android and Apple phones. The BIS App can be downloaded for free via Apple and Android stores by searching 'GRC BIS' or by scanning the QR codes on this webpage: globalrightscompliance.com/en/projects/basic-investigative-standards-for-international-crimes-investigations.

Physicians for Human Rights has a number of outstanding resources for professionals who document SGBV at: phr.org/issues/sexual-violence/program-on-sexual-violence-in-conflict-zones/program-resources/. In particular, we recommend the instructional video on how to obtain informed consent at: phr.org/what-is-informed-consent/.

Office of the United Nations High Commissioner for Human Rights, *Commissions of Inquiry and Fact-Finding Missions on International Human Rights and Humanitarian Law: Guidance and Practice* at: wit.to/OHCHR-Guidance.

RESOURCES ON PROSECUTING SGBV

Edited by Serge Brammertz and Michelle Jarvis, *Prosecuting Conflict-Related Sexual Violence* at the ICTY (April 2016), available in print.

Patricia Viseur Sellers, *The Prosecution of Sexual Violence in Conflict: The Importance of Human Rights as Means of Interpretation*, available at: wit.to/OHCHR-Prosecution.

Rosemary Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court* (2019), available in print.

International Criminal Court Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, available at: wit.to/ICC-SGBV.

International Federation for Human Rights (FIDH), *Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond*, available at: wit.to/UnheardUnaccounted.

REDRESS, *Litigation Strategies for Sexual Violence in Africa*, available at: wit.to/REDRESS-Africa.

International Criminal Tribunal for Rwanda, *Prosecution of Sexual Violence—Best Practices Manual for the Investigation and Prosecution of Sexual Violence Crimes in Post-Conflict Regions: Lessons Learned from the Office of the Prosecutor for the International Criminal Tribunal for Rwanda*, available at: wit.to/IRMT-BestPractices.

Edited by Morten Bergsmo, Alf Butenschøn Skre, and Elisabeth J. Wood, *Understanding and Proving International Sex Crimes*, available at: wit.to/InternationalSexCrimes.

RESOURCES ON SECURITY PLANNING

Front Line Defenders, *Workbook on Security: Practical Steps for Human Rights Defenders at Risk*, available at: wit.to/FD-Security.

Global Investigative Journalism Network, *Digital Security*, available at: gijn.org/digital-security/.

RESOURCES ON OPEN SOURCE CONTENT

Human Rights Center at the University of California, Berkeley, School of Law and the Office of the United Nations High Commissioner for Human Rights, *The Berkeley Protocol on Digital Open Source Investigations: A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law*, available at: wit.to/BerkeleyProtocol.

Edited by Sam Dubberley, Alexa Koenig, and Daragh Murray, *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation and Accountability* (2020), available in print.

Amnesty International Citizen Evidence Lab: citizenevidence.org/.

Human Rights Watch, 'Video Unavailable': *Social Media Platforms Remove Evidence of War Crimes*, available at: wit.to/VideoUnavailable.

ORGANIZATIONS THAT PROVIDE PROFESSIONAL TRAININGS

Human Rights Center Technology and Human Rights Program and Berkeley Advanced Media Institute, University of California, Berkeley: humanrights.berkeley.edu/programs-projects/tech and multimedia.journalism.berkeley.edu/.

The Institute for International Criminal Investigations (IICI): iici.global/.

International Investigative Interviewing Research Group (IIIRG): iiirg.org/training/.

ADDITIONAL KEY READINGS FOR UNDERSTANDING SGBV

Civil Society Declaration on Sexual Violence, available at wit.to/Declaration-SGBV.

Institute for International Criminal Investigations, *Guidelines for investigating conflict-related sexual and gender-based violence against men and boys*, available at: wit.to/MenBoys-SGBV-Displacement.

ENDNOTES

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- 11 [A] surprising number of discussions about SGBV at national, regional and international levels continue to be plagued by deep biases and misconceptions about gender-based and sexual violence. Some officials already seem to be 'fatigued' by SGBV issues after only a handful of investigations, or continue to consider SGBV a 'women's issue' or a 'lesser' crime or more difficult to prosecute. Moving the investigation of sexual and gender-based violence from its 'niche' position to a central place alongside other crimes, is still a hurdle. Gender analysis must still be mainstreamed at every level! FIDH, *Unheard, Unaccounted: Towards Accountability for Sexual and Gender-Based Violence at the ICC and Beyond* (Nov. 2018), https://www.fidh.org/IMG/pdf/sgbv_721a_eng_au_20_nov_2018_13h_web.pdf at 9.
- 12 For clarification, please see PSVI, ANNEX 3: Reasons not to Collect Physical Evidence. If you fall within the very rare circumstance of having the legal authority, capacity, and resources to collect physical evidence, please review this guidance directly.
- 13 Office of the United Nations High Commissioner for Human Rights, *UN Commission of Inquiry: Syrian victims reveal ISIS's calculated use of brutality and indoctrination* (14 Nov. 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15295&LangID=E>.
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- 30 Prosecutor v. Bemba, ICC-01/05-01/08-T-345-CONF-ENG ET, Transcript for hearing of 13 September 2013 at 27, available at https://www.icc-cpi.int/Transcripts/CR2015_06151.PDF.
- 31 Prosecutor v. Bemba, ICC-01/05-01/08, Decision on the 'Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute', ¶34 (23 Jun. 2016), available at: https://www.icc-cpi.int/CourtRecords/CR2016_04536.PDF.
- 32 Prosecutor v. Bemba, ICC-01/05-01/08, Judgment pursuant to Article 74 of the Statute, ¶389 (21 Mar. 2016), available at: <https://www.legal-tools.org/doc/edb0cf/pdf/>.
- 33 Prosecutor v. Bemba, ICC-01/05-01/08, Decision on the 'Prosecution's Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute', ¶35 (23 Jun. 2016), available at: https://www.icc-cpi.int/CourtRecords/CR2016_04536.PDF.
- 34 In July 2018, the ICC assumed jurisdiction over 'Crimes of Aggression'— its fourth 'core international crime.' This allows the ICC to hold politicians and military leaders individually responsible for using armed force against another state without the justification of self-defense or authorization by the Security Council. This crime has yet to be prosecuted, and it is unlikely that the use of SGBV would be prosecuted as a Crime of Aggression. SGBV is instead likely to be prosecuted as a war crime, a crime against humanity, or an act of genocide.
- 35 For more explanation, please see page 24 of the *PSVI*. Many of the indicators listed here are pulled from this guidance.