

# COALITION for WOMEN'S HUMAN RIGHTS in CONFLICT SITUATIONS



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## The Protection of Women as Witnesses and the ICTR

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Recommendations for policies and procedures for respecting the rights, addressing the needs and effectively involving women in the ICTR process -- 2002

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### Introduction

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Justice and successful law enforcement depend upon both availability and willingness of individuals to provide information and/or to give evidence. Experience shows that individuals will not be willing or available unless they have confidence that they will be protected. This protection attributed to witnesses must guarantee both their right to physical and mental integrity. These rights have been reaffirmed in the following international documents: Universal Declaration of Human Rights (arts. 3, 6, 7 & 12), International Covenant on Civil and Political Rights (arts. 6(1), 9, 16 & 19(2)), International Covenant on Economic, Social and Cultural Rights (arts. 9 & 12(1)), Convention on the Elimination of All Forms of Discrimination against Women (arts. 15(1), (2), (3) and (4)).

Physical and mental integrity depend in the first place on protecting the witness' identity[1]. However, this single measure does not provide a sufficient guarantee for their protection. Furthermore, witnesses should be informed that such a protection framework exists and that they are entitled to take advantage of it.

## **I. Right to life and Protection against identity disclosure**

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### **1) Prior to the trial:**

With regard to the right to life and protection against identity disclosure prior to the trial we recommend the following guidelines to the ICTR:

- In other jurisdictions, witnesses usually receive protection only once the authorities have assessed the value of their testimony[2]. Hence the protection is granted only AFTER the disclosure, which is often too late in order to guarantee the protection of the witness' identity. Protecting the identity should be done as soon as a potential witness comes forward [3] or as soon as she/he have been identified.
- Local non governmental organizations (NGOs) or any other association that assists in the identification of potential witnesses should take all adequate measures in order to ensure the protection against identity disclosure.
- Local NGOs should be offered advice on security measures for their staff and offices.
- In case of very high security risk, the witness and/or their family should be relocated to another location and be given new identities[4].
- Covert investigations[5] should be conducted and in particular:
  - Non-UN marked jeeps going to the villages of witnesses should be used. The use of such vehicles allows the whole village to know to whom the investigators have spoken;
  - Furthermore the investigators should visit several locations not only that of the particular witness in order to avoid drawing attention on this person.
- Witnesses should not be picked and transported in marked jeeps and planes from their homes to Arusha and back. They should be able to travel anonymously. They should not have to queue for hours in public waiting for a UN plane to take them to Arusha.

### **2) During the trial:**

With regard to the right to life and protection against identity disclosure during to the trial we recommend that the following protective measures be taken into consideration:

- Closing the court to the public[6];
- Banning the media form the courtroom[7];
- Anonymity: the ICTR should not name or disclose names of witnesses, or present any information which might identify them in either the proceedings or its report. Procedures of de-identification should be considered to meet this objective.: it is recommended that witness's information and statements and any other kind of recording should be kept for 50 years before being released[8];
- The Court should take such protective and special measures "on it own motion", without the need of requests from parties or participants in the proceedings;
- The name of a victim or witness, given by a witness, or any information which could lead to his or her identification should be expunged from the public records of the Chamber;
- The prosecutor, the defence or any participant in the proceedings should be prohibited from disclosing such information to a third party;
- That testimony should be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular video

conferencing and closed-circuit television, and the exclusive use of sound media;

- That a pseudonym should be used for a victim, a witness or other person at risk on account of testimony given by a witness;
- Taking into consideration that violation of the privacy of a witness or victim may create risk to his or her security; a Chamber must be vigilant in controlling the manner of questioning of a witness or victim so as to avoid any harassment or intimidation (harsh cross-examination). Special attention should be given to avoid further re-traumatisation victims of crimes of sexual violence. (Rule 75 of the ICTR Rules of Procedure and Evidence).

### 3) After the trial:

- In case of very high security risk, have the person and/or their family relocated to another location and be given new identities.
- Provide witness with contact information in case of emergency. This could be done by setting up an office in Kigali that would be mandated to provide follow-up for the witnesses in the post-trial phase.

## II. Granting Physical Integrity (*both prior and after the trial*)

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- Increase the cooperation between the Kigali and the Arusha-based witness protection units in order to ensure safety and security for the victims/witnesses at home, during their transport and during the trial.
- Recommend that the Rwandese government make it an offence for an individual or an employer to take detrimental action against a witness[9].
- Apply and/or adapt whenever possible some of the following measures that are currently in use in most of the witness protection programs throughout the world:
  - Wherever possible involve local police in patrolling the person's home on a regular basis[10];
  - Improve the person's home security by upgrading their door locks, security bars for windows[11];
  - Install an alarm monitored by the law enforcement agency[12];
  - Screen phone calls with an answering machine or have a phone system that allows only pre-approved telephone contacts[13];
  - Have malicious calls traced through the local telephone authority[14];
  - Have the witness carry cell phones automatically programmed to dial "911", or panic buttons on necklaces that are linked to "911" for use when a victim feels threatened or at any risk[15]

## III. Granting Mental/Psychological Integrity

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### 1) Investigation stage:

- The primary role of the individual (ICTR investigator, NGO representative or other) while collecting initial information about the alleged crime is to protect the persons against any form of harm or loss, and investigate the offences committed[16]. NB: The more evidence gathered during the investigation stage, the less burden is on the victim/witness testimony during the trial.
- It is important that the investigator be knowledgeable about the following issues[17]:
  - The law and standards related to sexual violence. Find out exactly what is prohibited under domestic laws and international human rights agreements;
  - The possible stigma attached to sexuality and sexual violence in the area, as well as the various phases of trauma that victims of sexual violence may experience;
  - The local or national structures (NGOs, hospitals, law firms, etc.) that may provide assistance to victims of torture, including rape. This knowledge and information may help the investigator in breaking barriers, understanding covert messages (women survivors reluctance to talk about it, sense of guilt, verbalisation of what happened, mental health and recovery) and addressing some of the pain.
- The initial information obtained from a victim/witness is very important for the entire investigation and later in the prosecution process since it can avoid any further requisitioning of the victim/witness. Special attention should therefore be given when taking a complaint about an alleged crime. All information received should be treated in complete confidentiality[18].
- In case of unwillingness of women to report human rights violations, investigators should organise focus

groups composed of women to develop a better understanding of the situation and to explain the investigation[19], and in that order:

- Bring together four or six women from the same age group;
- Begin investigation with general questions and discussion, such as how they define violence, what makes women different from men, etc;
- Avoid direct questions about rape or sexual abuse;
- Be aware of the women who do not dare to speak and find a way to talk to them in private;
- Identify female leaders who may be able to open doors for you.
- Take care in hiring and working with an interpreter (see Appendix 4).
- It is crucial to define at an early stage, the elements of an offence in order to avoid any delays in the indictment of an alleged crime. More particularly this implies, identifying the offender, identifying the elements of the offence, identifying the victim(s). The type of evidence conducting to these identifications are among others:
  - A statement from the victim describing the sexual act;
  - A statement from witnesses giving evidence about their knowledge and observations of any crime.
- All interviews done by the investigators or other agencies during the prosecution should use appropriate interviewing techniques and be carried in a private, comfortable and friendly location in order to minimize the witness' re-traumatisation[20]. Whenever a local NGO has helped the investigators identifying the potential witness, their member should be consulted on where it would be appropriate to interview the victim.
- After the interview, a debriefing should be conducted.

### Interviewing techniques and procedures

- Interviewers should particularly pay attention to the following points[21]:
  - Use any background information that has been learned about the witness in a manner that will assist her to feel comfortable and safe to disclose and talk about any sensitive manner;
  - Always show a caring and kind attitude towards the witness, but avoid touching her in the case of a sexual crime;
  - Make sure not to prejudge or show any displeasure to the witness when they speak about any details of the crime;
  - Introduce each person participating to the interview and explain their role in order to make the witness feel more at ease;
  - Try not to interrupt the witness except when clarification is needed about any particular piece of information provided by the witness;
  - Avoid asking any leading or suggestive question, and allow the witness tell their story in their own words;
  - Ensure that the interview does not last more than an hour;
  - Doing the interview with a member of the community present (member of NGO) might be useful;
  - Use simple language.
- In cases of sexual crimes, interviewers should be sensitive to gender-related and cross-cultural issues. In particular, the ICTR should fill the position of "gender advisor" in order to ensure the presence of an overseer for gender training for all the relevant staff. Interviewers should be policewomen as it is specifically provided for in some countries[22].
- A cultural mediator should assist the investigator when interviewing the victims. A member of a local NGO could act as such. Or at least, training programs should be developed and carried out to make investigators aware of cultural sensitivities.
- In order to help investigators, a catalogue of questions to be asked to the victims could be developed in cooperation with local NGOs for example.
- During the interviews and throughout the entire investigation process, a multidisciplinary approach should be adopted. This includes a psychological therapeutic component or even a therapist himself during the preparation. The same person should also be consulted during the debriefing.

### Recording

- Documentation of the women's testimony during interviews should either be carried out through note taking or audiotaping, although each method has its disadvantages. The women's consent must be obtained beforehand. The videotaped statement should be admissible as evidence in the court procedures. Make

sure that you have the relevant equipment and that it works.

### **Follow-up to statements**

- Psychosocial staff should be available on the ground to provide support to women who have been interviewed. Furthermore, NGO staff acting as support person, should be present during investigators interrogations, if the victim so wishes.
- NGO staff should be offered training in order to be able to provide psychological support for the witness before, during and after investigators interrogations and court procedures.
- Women and their communities are to be regularly up-dated on the progress of the case.

### **Illegal immigrants**

- All the necessary formalities should be conducted on behalf of victims prepared to act as witnesses in the ICTR proceedings in order to allow their temporary stay in Arusha. Proper co-ordination between judicial and police authorities should be implemented in order to avoid expulsion from the country where these victims are presently living without the necessary immigration documents. Furthermore the ICTR should try to convince the relevant authorities of the country where this witness has sought "refuge" to issue a permanent residence permit on humanitarian grounds.[23]

## **2) Overall Case-Management:**

- The prosecutors, judges and lawyers should have experience in cases involving crimes of a sexual nature and should have received gender training in order to handle these cases in a proper manner. More specifically, emphasis should be placed on: knowledge of relevant human rights instruments, understanding the impact, consequences and trauma of sexual crimes; knowledge of special measures and techniques to assist the victim or witness in the criminal justice system; knowledge of cross-cultural and gender-sensitivity issues; learning interviewing techniques that minimize any trauma to the witness while maximizing the amount and quality of information from him/her; learning how best to present the evidence and how best to question witnesses; and learning appropriate communication skills[24].
- Prosecution services should make every effort to ensure continuity in cases involving sexual crimes. Continuity allows the witness to establish a rapport with one specific prosecutor and can enhance the effectiveness of the testimony. Continuity should be established by assigning a prosecutor and lawyer at the earliest opportunity who remains on the case until its conclusion[25].
- Since the identification of victims/witnesses is often done with the help of NGOs, one of their members should be able to accompany the witnesses to Arusha in order to ensure continuity in the whole process and to provide a support person to whom the witness can refer in case of necessity. Therefore the allowances given by the ICTR to the witness should also apply to this person.
- The prosecution team should also allow the witnesses to be accompanied throughout the entire process that is also during the trial, in the courtroom, with a support person such as a member of their family or an NGO representative.
- Crimes of sexual violence should be given special attention and be always included in the indictment in order to not make it seem as a secondary crime and thus to make the victim/witness feel less heard or respected.
- The witness should never be forced in a way or another to testify in court.

### **Outside the courtroom (both prior and after the trial when applicable):**

- In order to minimize anxiety and trauma, the witness should not be left alone in a waiting room prior to an interview (be it in a police station or any other facility) or prior to her/his apparition in court. Furthermore, such waiting room should be private and comfortable providing for easy access to refreshments (for example water or coffee) and to the restrooms.
- Recommend that legislation be created that would prohibit an individual or an employer to take detrimental action against a witness[26].
- Recommend that community-wide intimidation would be reduced through community-based policing[27].
- Reduce community-wide intimidation by increasing public awareness about the importance and the right of witnesses (see section above on *Increasing Public Awareness of Measures Granting Protection to*

### *Witnesses)*

- Reduce the stress endured by women traveling to Arusha by rendering their trip as comfortable and coordinated as possible (i.e. avoid long delays at airports, etc.). More specifically, as mentioned previously, these women should travel in non-marked vehicles and should wait in public for their transportation.
- In most cases involving sexual crimes, the victim's testimony is vital and both interviewers and prosecutors should develop techniques which lessen the witness' trauma and ensure that the testimony is reliable and of good quality by:
  - Assessing the ability of the witness to give evidence (the help of a professional such as a psychologist or medical doctor might be required);
  - Appreciating the relevant language skills and conceptual ability of the witness;
  - Being informed about cultural differences and the impact they may have on the testimony of the witness;
  - Determining whether an interpreter (or translator) is necessary.
- Before participating in the ICTR process, women should be informed of:
  - The purpose of the ICTR;
  - Their role in the ICTR;
  - The confidentiality of their involvement;
  - What their involvement will achieve;
  - The roles of the statement taker and psycho-social facilitator if any; and
  - The time frame;
  - Women should be interviewed only by female staffs who have received appropriate training; they should at least be given the choice as to whether they are to be interviewed by a male or female statement taker.

### **Victim support section**

The Victims and witnesses support section established by the ICTR should provide protective and security arrangements, counselling, and other assistance. Its staff should include persons with expertise in trauma related to crimes of sexual violence. It is recommended that psychosocial staff should assist both the investigators and the prosecutors in their work with women during every phase of the process: sensitisation, statement taking and follow-up. It is also recommended that the psychosocial staff should follow the rules of confidentiality.

Whenever possible, in coordination with local NGOs and communities, psychosocial staff facilitating and supporting the ICTR process for women should contribute to achieving the following tasks:

- the sensitisation of communities, teachers and families before the beginning of the interview;
- educating communities and families of victims of sexual violence to ensure that victims are not rejected by their communities or blamed for their victimisation;
- supporting women or women groups during the whole period of ICTR activity, especially during the statement and information taking;
- facilitating and co-ordinating group discussions and group activities for women of different ages to explain the ICTR process;
- preserving the women's psychological well being during and after the process;
- recognising and assessing levels of distress in women during statement taking and using appropriate psychological techniques to ease distress;
- leading emotional debriefings and relief sessions after the interview, using expressive-supportive practises and cultural traditional methods;
- the provision of individual psychological support to women in instances of discomfort, distress and re-traumatisation;
- following up on the impact of statement taking on women, their families and their communities over a long-term period;

In coordination with the Prosecutor office, the Victim Protection Unit could contribute to the preparation of the victims and witnesses to the court process by :

Organising a role play on cross-examination (including having someone "play the judge") with the witness, once he/she arrives in Arusha. This measure would have the benefit to avoid any allegation that Prosecutor has "tampered" with the witness.

## **During the Trial:**

- Prior to the Trial, particularly sensitive witnesses should be introduced to the courtroom and explained the role of the different persons that will be in the room at the trial. More specifically they should[28]:
  - Be given the opportunity to sit in the witness box and become familiar and confident about speaking in that position;
  - Informed that whilst giving evidence they may ask permission to have a drink of water, to leave to attend the toilet, ask the prosecutor or defense counsel to repeat a question or to say that they do not understand it and take a reasonable amount of time to think about the question before answering.

### **a) Prosecutors and defense lawyers**

- Prosecutors and defense lawyers should be trained in interviewing techniques that minimize trauma and to assist the witness's testimony[29]. (See the points about interviewing in the previous section).
- Prosecutors and defense lawyers should be trained on how to best present evidence and to question the witness in order to minimize psychological strains[30].
- Prosecutors should be trained on all existing procedures that would assist the witness' testimony such as the existence of support groups or a therapist available for consultation, etc. They should also consult with the witness and assist her/him in making an informed decision regarding the use of these procedures and apply them in a timely manner prior and during the trial.
- Prosecutors should be trained on adopting a multi-disciplinary approach in order to ensure that the response to cases involving sexual crimes is coordinated and conducted in a timely manner.
- Prosecutors should contact the appropriate authorities to ensure the safety and well being of the child, when they believe that a child victim or witness is in need of protection. Prosecutors, at all stages of the case, should consider any special needs of the child victim or witness and facilitate contact with and make use of relevant agencies.
- Prosecutors should appoint advisers with legal expertise on sexual and gender violence and violence against women. In addition, both the Prosecutor and Registrar must have regard to the need for the expertise on violence against women in the appointment of their staff.

### **b) Evidence giving procedures:**

- A satellite link should be established between Kigali and Arusha in order to allow witnesses to give their evidence without having to travel to the ICTR. This would tremendously diminish their stress and anxiety and help in healing any trauma.
- Videotaped statement of the witness' evidence or the use of a closed circuit television system should be used when suitable.[31]

## **Videotaped statement**

The following measures about audio or video-recording of persons questioned by the Prosecutor should be ensured:

- The person questioned shall be informed, that the questioning is to be audio-or video-recorded, and that the person concerned may object if he or she so wishes. The person may speak in private with his or her counsel, if present, before replying;
- At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything said and to add anything he or she may wish;
- The original tape or one of the originals tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under theirs or the Prosecutor's signatures;
- In the exceptional cases that the questioning is not audio-or video-recorded, the person questioned shall be provided with a copy of his or her statement.

## **Use of closed circuit television or satellite link**

- The Prosecutor may choose to follow this procedure, in particular where its use could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence. The Prosecutor may make an application to the relevant Chamber.
- When the technical equipment or the infrastructure is not available for the above-mentioned procedures, usage of screens should be organized[32].

### **Support person/intermediary**

- In cases of sexual abuse, it might be advisable for the Court to use an experienced person to help conduct the hearing in the most appropriate manner[33].
- The presence of an independent support person while the witness is giving evidence should be allowed[34]. Such a person would not only be there to support the witness, but be able to provide a solution to any communication problems[35]. This is an important element since some words or concepts (such as "rape" for example) so not exist in certain cultures.
- Considering the use of an intermediary (translator for example) to assist the witness to give evidence[36].

### **Avoiding confrontation**

- Prohibiting the defendant himself/herself from cross-examining the witness/victim[37]
- Objecting to improper or aggressive cross-examination by the defense[38].

### **c) Judges:**

- Reducing the formality of the courtroom such as removal of advocate's robes and judge's wigs[39].
- Remove intimidating spectators from the courtroom, or close the courtroom entirely to spectators[40].
- Rule 75 of the ICTR Rules of Procedure and Evidence requires the judges to exercise their inherent jurisdiction by controlling the manner of questioning to avoid any harassment or intimidation of witnesses.
- Gender expertise needs to be considered when judges are selected.

## **IV. Increasing Public Awareness of Measures Granting Protection to Witnesses**

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### **1) General Information dissemination:**

- Potential witnesses should be informed at the very first stage of the procedure of any available services. For example, in many US states, officials in the "front end" of the justice system provide pocketsize cards to victims that enumerate their rights, including those in the post-sentencing phases of their cases[41]. Comic book with friendly language and radio programs with the same content could also be used. Theatrical play on the radio could also be used as a tool of information.
- Have toll-free telephone numbers, with automated answering systems available 24 hours a day, seven days a week that refer inquiries to the appropriate staff in Kinyarwanda. This type of service is particularly beneficial to victims for whom location or cost might be barriers to accessing rights and services[42].
- Widely distribute brochures that provide information about witness' rights, relevant agencies to contact and all other appropriate information.[43].
- Design posters that enumerate victims' and witness' rights, how victims can access these rights and related services, and who to contact for additional information. Such posters are excellent, cost-effective tools for both victims/witnesses and public outreach in general[44]. It can therefore serve as a tool that prevents or diminishes community intimidation against a witness.
- Public service audio or video announcement can also serve the same purpose[45]. They can take the form of TV announcements of videotapes shown in schools or community centers and also radio programs.
- Organize annual or bi-annual information meetings with Rwandan civil society including survivors groups and members of the Rwandan Bar Association on the progress of the work of the ICTR.

### **2) Community based Training Programme for Psychosocial Facilitators working with Women involved in the ICTR Process**

In order to develop sustainable mechanisms to support victims and witnesses, mutual training programme between local NGOs staff and members of the ICTR should provide the skills and techniques to manage the following:

- Sensitization of communities, teachers, families before the beginning of the hearings;
- Accompanying the female witnesses or groups of female witnesses during the entire period of the ICTR's activities;
- Facilitation and co-ordination of groups and group-activities for women of different ages with the purpose of collecting women's testimonies in the safest manner;
- Observance, protection and enforcement for the full respect of the rights of any witness involved in the ICTR process;
- Preservation of the witness's psychological well being during and after the process;
- Recognition and assessment of increasing distress in female witnesses during the process and the use of appropriate psychological techniques to ease this distress;
- Leading debriefing sessions after the end of the hearing process, using methods which are psychologically supportive and culturally traditional;
- Provision of individual psychological support for a child witnesses in case of discomfort, distress, or if the child is to become re-traumatized;
- Support for the family during their involvement in the ICTR process and mediation in case of possible difficulties;
- The carrying out of a follow-up on the impact of the ICTR on women, their families and their communities over a long-term period.

## **Appendix 1: *Fact finding mission - Preparation for a visit to the scene***[\[46\]](#)

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### **Carry out a thorough risk assessment:**

List all possible security concerns (e.g., your own physical security and security of your contacts) and develop contingency plans to deal with each one of them (e.g., if evacuation is necessary, how will it be carried out?). If access to and your presence on the scene entails many dangers, identify alternative means of carrying out the research (e.g., rely on a reliable local contact to bring possible witnesses outside the area).

### **Composition of the delegation:**

Women delegates: It is crucial that the delegation be composed of women with expertise in carrying out research on sexual violence and interviewing victims of sexual violence.

Experts: Identify what type of expertise will be most needed during the investigation. If possible, you should include an expert on this subject in your delegation. If it is not possible, you should meet with experts before going on a fact-finding mission.

## **MAIN SOURCES OF INFORMATION**

- List all possible contacts and sources of information you may need to interview and meet with in order to investigate and corroborate the information.
- Identify whom it may be more appropriate to meet first, provided, of course, that you can set up and organize meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials.

### **Individuals and/or groups**

- Victims
- Eye witnesses
- Other witnesses
- Relatives
- Women leaders
- Women NGOs

- Community leaders
- Lawyers
- Journalists
- Medical personnel
- Local human rights activists
- Members of political parties, civil rights groups, trade unions, ethnic groups, etc.
- Members and officials of the police force
- Prosecutor
- Other police/judicial representatives
- Members and officials of the army
- Members and officials of armed opposition groups

## **Appendix 2: What to look for? Possible evidence[47]**

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Rape or other forms of sexual assault, leaves traces. It is the work of the investigator to find and document these traces. The evidence comes in a variety of forms, which **carry different levels of weight** and pose different problems in evaluation.[48]

### **POSSIBLE LIST OF EVIDENCE**

- **Official acknowledgement**
- **Official documents (e.g., police records, court records, etc.)**
- **Medical records**
- **Photographs**
- **Autopsy report**
- **Physical signs or marks**
- **Mental state of the victim**

#### **1. ACKNOWLEDGEMENT BY AUTHORITIES**

Any statement by a government, government agency, or non-governmental entity that an individual under its authority has engaged in acts of sexual violence represents evidence that torture has occurred.

#### **2. OFFICIAL DOCUMENTS**

In some cases sexual violence has been documented by official or highly reputable unofficial sources. The most persuasive example of this is a legal document in which the State itself acknowledges that a woman has been raped. This happens, for example, in states that require a state-run forensic institute to examine prisoners at some point in their period of detention or release.

#### **3. MEDICAL CERTIFICATE**

In some cases, there may be medical certificates independently sought by the victim upon her release or escape.

Common physical marks of sexual assault include the following:

\* Genital trauma (bruising, lacerations, mutilations and damage to surrounding pelvic structures such as the bladder and rectum); \* Bruising in the arms and chest, patches of hair missing from the back of the head, bruising on the forehead;

\* Rape is often accompanied by beatings and other forms of violence. Therefore there may also be signs of violence to other parts of the body (scars, deformities, burns, etc.).

#### **4. PHOTOGRAPHS**

Sexual violence is often accompanied by beatings or other acts of physical violence, the traces of which may have been photographed. When a victim comes to see you, you may ask for her authorisation to take pictures of her

bruises or any other marks of physical violence. Expert evaluation by trauma or forensic specialists may result in strong evidence.

## 5. TESTIMONY

Access to the victims or witnesses and interviews are crucial to the investigation.

As with all forms of violation, but probably even more so with rape, the researcher will need the assistance of a •gate opener, someone who has relationships with a segment of the population because of his/her work and activities, who is trusted by the population and can act as an intermediary between the researcher and the victims. Such individuals may work for recognized organizations, such as human rights organizations, medical centres providing services to victims of torture, rape crisis centres and women's NGOs. They may also be individuals who, in the course of their life or professional activities have come to know a great deal about the population of a given area. These may be religious officials, medical doctors, community leaders, etc. Usually, through visiting some of the established organizations, the researcher should be able to meet with or identify a "gate opener," an individual working within one of these organizations, who may arrange for the researcher to meet with victims, provided sufficient trust has been built and an understanding of the nature and possible outcome of the visit have been agreed on.

### Psychological, social and political constraints[49]

In preparing and later assessing the survivor's testimony, you should keep in mind the following:

- **Survivors may appear unreliable:** Survivors may hold back information related to the violation in order to avoid painful memories, embarrassment and shame. They may experience extraordinary difficulties in recalling episodes of their experiences, confuse the location or timing of various events, or add details as they come to mind and they feel more trust toward the interviewer. This may unfairly give the impression of unreliability, if not dishonesty. [50]

- **Survivors and witnesses may exaggerate:** They may feel they must go to extreme lengths to ensure that their story makes an impression and is believed. This does not mean that the story is untrue but it may mean that there are elements of exaggeration that need to be filtered out.[51]

- **There may be a political agenda:** Opponents of the government or an armed group may have a vested interest in maximising the number and severity of allegations of human rights violations, since this could help demonstrate the moral bankruptcy of the government or armed group.

- **Sexual torture is one of the most difficult allegations that can be made** because of the social, cultural, moral, and political environment. In almost all societies, a woman, man or child coming forward with allegations of rape, sexual violence or sexual humiliation has a great deal to lose and is likely to face extraordinary pressures and ostracism from the closest members of her/his family and the society at large.

### Physical signs or marks[52]

Pay special attention to the victim's injuries

- Marks/scars/bruises
- Missing hair
- Fractures
- Deformities
- Burns
- Amputations
- Other distinguishing marks

### Mental state of the victim[53]

Be careful to note How is the interviewee behaving?

- Tone of voice (soft, loud, emotionless, etc.)
- Gaze (little eye contact)
- Tears (at which point during the interview?)
- Silence or non-stop talk
- Body language (nervous movements, no movements, etc.)
- Responses (hesitations after questions, asking for questions to be repeated, etc.)
- Other

### **Appendix 3: Recommendations for the interviewer for the interviewing session[54]**

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#### **Preparation**

- Write down a checklist of the data and facts necessary to assess the allegations.
- If this is your first investigation of sexual violence, show the checklist to local contacts who have worked on such cases to get their input: they will often be able to add questions.
- Make sure to have a private, comfortable and friendly location, free from any external noises or disturbances such as traffic or ringing telephones.
- Make sure that the room is close to any other amenities such as toilets and has adequate supplies of refreshments (water).
- Prepare the room setting so as to put the witness at ease. For example avoid sitting her/him in a corner and facing all the other attendants as such a disposition might intimidate the witness.
- Make sure that all the necessary attendants are duly informed in advance of the time and location of the interview, as well as of the list of all the participants.
- Ensure that the support person or any other necessary individual (such as psychologist or medical doctor) be advised in advance and attend the interview.
- Introduce each person participating to the interview and explain their role in order to make the witness feel more at ease.
- Make a report of all the information obtained from the person reporting the complaint.
- Prepare the necessary documents and become familiar with all relevant facts of other information. This will ensure that the interview will be done in a smooth and easier manner.
- Request the assistance of any specialized agency and contact any relevant non-governmental victim/witness care organization and request any necessary assistance.
- Prepare the interview with writing notes to be followed during the questioning.

The main points to be covered should include the following:

- What is the main issue for the child? / What happened to the woman?
- When did the events happen and where?
- Who was responsible for the events?
- What effect did the events have on the women, his or her family or the community?

More specifically; the interview should enable you to gather the following information

#### **Victim identification information**

- Name (last and first name, nickname)
- Date of birth or age
- Gender
- Profession/occupation
- Family status
- Address
- Nationality:
- Religion
- Ethnicity
- Physical description or picture

## Date and time of the alleged incident

- Precise location
- Province
- District
- City/village or nearest city/village
- Street address if applicable

In case of the rape, you should enquire about the following :

- Location (detention centre, private prison, home of the victim, etc.)
- Were any questions asked?
- Who participated? (number of persons involved; personnel such as security, military, other; etc.)
- Was a medical officer present? Did (s)he participate in the torture?
- Did the victim see a medical officer before/after the torture?
- Other forms of physical torture
- Other forms of psychological torture
- Duration and frequency of rape (several times a day, twice a week, etc.)
- Physical pains experienced immediately following the rape
- Mental reactions experienced immediately following the rape
- Was the victim made to sign any statements?
- Were charges filed against the victim?
- Did the victim have access to a lawyer during detention?
- How long did the victim remain in detention?
- Access to a lawyer
- Access to a medical professional (name, gender, day of the first examination, other examinations)
- Type of examination and diagnostic
- Date and circumstances of the release
- Did the victim file charges?
- Did the government investigate the victim's accusations?
- Circumstances of the trial
- Victim's state of health before the arrest (i.e., past illnesses, previous injuries)
- Feelings and other symptoms which the victim noted at various intervals (i.e., one week afterwards, one month, etc.)
- Current physical symptoms
- Current mental symptoms
- Medical or other treatment the victim is currently

## Beginning of the interview - establish trust

- Begin the interview with greetings appropriate to the culture of the interviewee.
- Identify yourself: describe what you do in your organisation.
- Explain what your organisation is, what it can do and what its limitations are.

## During the interview

- Ensure that your pen is working, and that you have enough paper to write down the testimony. If using a tape recorder, ensure it is working and that you have sufficient number of blank tapes. Always ask the interviewee if she/he has any objections to the use of a tape recorder before you start.
- Be aware of the therapeutic value of the interview session and of your own therapeutic but that in the short-term, the interview re-awakens post-traumatic stress. After disclosure, the survivor or witness frequently experiences traumatic reactions, including flashbacks, nightmares, etc. This is why all interview sessions should be followed by a **debriefing**, the same or next day, where you ask the survivor or witness, alone or with other interviewees, what it felt like to be interviewed.
- Show empathy and compassion
  - In the course of the interview demonstrate your caring and attentiveness by expressing your concerns: "I hear how sad, upset... you're feeling."
  - Support the strength of the interviewee; use any opportunity to reinforce it: "It took real courage on

your part to come here." "It seems to me that you showed a lot of strength in that situation."

- At the end of the interview, spend a couple of minutes finding out how close to the surface the emotions and stress are: *"Did the interview upset you?" "It seems I have upset you again..."*•If necessary, spell it out: *"It feels as if you are going through it again. But you're not."* You can also shake hands, give her/him a hug, etc. (whatever is culturally appropriate).
- Listen: begin by asking an open-ended question and allow the survivors to tell you their account in their own way and time.

"Tell me what happened on..." or "Can you describe to me your experiences at the hands of ..."
- Do not interrupt interviewees right away, even if some points appear unclear. Allow for the sequence of events to be told as they understood it.
- You should ask interviewees to speak more slowly if you are experiencing problems taking notes.
- Clarification: Go back over the survivors' accounts, asking questions requiring shorter answers. This will help you clarify certain details, such as time, dates, places, identities, numbers, positions, ages: "You told me that soldiers came to your home. Do you remember how many there were?" or "Do you remember the ranks of the soldiers? Their names? Nicknames?" or "You mentioned that three persons were killed. Do you know their names?" or "How do you know that your attackers belonged to the special branch of the police force?" or "Did you see any weapons? Which types?"
- If the context requires going back a number of years to explain relationships and background, do so.
- Door-openers: The survivor or witness may have difficulty in communicating. You can ask how she/he feels, then encourage her/him to talk further: "Would you like to say more about it?" "Do you want to talk about it?"
  - Open-ended responses give encouragement and assistance in communicating. They may be either complete or incomplete statements or questions that cannot be answered by a simple yes or no. For example: "You seem to have a number of concerns about ..." "Could you explain a little more about..."
  - Ask questions about health, possible physical pain: "How is your health?" "Do you have a headache?" You may then follow up with questions such as "Why do you think you have this pain?" If she/he cannot make the connection, you may refer to other cases of persons suffering from similar pain.
  - You may ask a more general question such as "What is it you disliked the most during your imprisonment?"
- Probing (without being intimidating): Where the individual's story appears unclear, contradictory or inconsistent with what is already known about the pattern, it is important to find out why. Doing this in a spirit of elucidation rather than criticism will help consolidate the relationship between the interviewer and the survivor.<sup>[55]</sup> In particular, ask about unclear points in different ways and at different points in the interview, establish a clear chronology of the events using reference points or events, both personal and external. For instance, establish the time, day, or week of the incident through references to the domestic schedule (i.e., going to work, court, or the market, fetching wood or water), recurrent or unusual activities or events (going to church, elections, village ceremony, military victory, etc.): "Were you arrested long after going to the mosque?" Or "Did the attack on the village happen before Christmas?" Or "Were you kidnapped before the election of the President?"
- If something still does not add up, say so: "This does not add up and I am a bit confused." Ask more direct questions.
- Be aware of the survivors' or witnesses' political position: this may influence their testimony-what is said and what is not said. For instance, a witness or survivor may not be willing to volunteer information on violations committed by the community or political parties he/she is affiliated with. However, if the question is asked, the interviewee may provide the information. For instance, you may ask, "Before the imprisonment took place, do you know whether there had been problems between X and Y?" or "Do you know what prompted the rebels' attack on the villagers?"
- Be sensitive to the survivors' or witnesses' social, and cultural attitudes: In some cases, these attitudes need to be exposed before they can speak about the violations: what has happened and how it was done. Explain that, according to international principles, certain actions constitute violations of human rights. Do not invalidate the survivor's feelings immediately away by making comments such as: "it is wrong to see rape as..." or "you are wrong to think this was not torture."
- **How to listen and respond:** Stay calm and communicate that calmness to the victim. Listen with an open mind, empathetically and without judgement or preconceived assumptions. Remember that you are talking to a person, not a stereotype. Be aware of pitch, tone, pacing, vocal inflections-both yours and hers or his. Be wary of sentences containing the value-laden words of should and ought. Try to maintain eye contact with the interviewee throughout the interview. Nod your head while listening.
- What to do if the interviewee talks non-stop: If survivors are very upset, they will sometimes talk almost non-

stop for quite a long time. Try not to interrupt too soon. If they continue to speak longer than seems reasonable, you could ask them to take some deep breaths and sit quietly without talking for a while. It may be appropriate to express your concern: tell the person how terribly upset she/he must be, how sad she/he must be feeling, etc.

## Concluding the interview

- Ask the interviewee whether she/he would like to add anything and whether she/he has any questions.
- Ask the interviewee if you can use the information and how you can use it. Make sure she/he knows what you are going to do with it.
- Do not make promises you cannot deliver.
- If necessary or if possible, refer the interviewee to other organisations in the country that can help with his/her problems.
- Demonstrate support. Emphasise that there are people who care about what he/she has gone through and his/her security. Emphasise the value of his/her actions.
- Provide emotional support: take a little longer if the person is crying, give her/him a hug, if appropriate, etc.

## The interview plan notes could have the following format[56]:

- **type of crime :**
- **Art statute :**
- **Title of the Offence:**
- **Element 1:** Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How?
- **Element 2:**Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How?
- ETC

## EXAMPLE

### Rape as torture

For example, in the Celebici case (**Delalic et al. (IT-96-21)**), the ICTY characterized the rape of Bosnian Serb women prisoners at the Celebici prison camp as acts of torture. The tribunal found Hazim Delic, a Bosnian Muslim deputy camp commander, guilty of a **grave breach of the Geneva Conventions** (torture) and **war crimes** (torture) for the rapes he committed.

- **TYPE OF CRIME : rape**
- **STATUTE : RELEVANT ARTICLE**

#### **Article 2** **Grave breaches of the Geneva Conventions of 1949**

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(a) wilful killing;

**(b) torture or inhuman treatment, including biological experiments;**

(c) wilfully causing great suffering or serious injury to body or health;

(d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;

(f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;

(g) unlawful deportation or transfer or unlawful confinement of a civilian;

(h) taking civilians as hostages.

**See also**

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, clearly defines torture in article 1 as:

*"... any act by which **severe pain or suffering**, whether physical or mental, is **intentionally** inflicted on a person for such **purposes** as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or **with the consent or acquiescence** of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.*

● **ELEMENTS**

- **Element 1:** There must be an **act or omission** that causes **severe pain** or suffering, whether mental or physical
- Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How?
- **Element 2:** which is inflicted **intentionally**,
- Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How?
- **Element 3:** and for such **purposes** as obtaining information or a confession from the victim, or a third person, punishing the victim for an act he or she or a third person has committed or is suspected of having committed, intimidating or coercing the victim or a third person, or for any reason based on **discrimination of any kind**,
- Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How
- **Element 4:** and such act or omission being committed by, or at the instigation of, or with **the consent or acquiescence of, an official or other person acting in an official capacity**,
- Notes:
  - Who?
  - When?
  - Where?
  - What?
  - How
-

## Contact information for support person and assistance

A form with all necessary contact information should be done in order to facilitate their contact and request their help:

### Act as a support person to the victim during the interview:

Name of Organization: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

Services provided: \_\_\_\_\_

### Provide Care Service and Shelter (wherever possible):

Name of Organization: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

Services provided: \_\_\_\_\_

### Hospital where victim can be medically examined (wherever possible):

Name of Organization: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

Services provided: \_\_\_\_\_

### Other organizations that can be contacted for assistance:

Name of Organization: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

Services provided: \_\_\_\_\_

Name of Organization: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

Services provided: \_\_\_\_\_

#### **Appendix 4: Working with an interpreter[57]**

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Possible interpreters may be NGO staff, medical or legal professionals, journalists, etc. If interviewing female rape victims, a female interpreter will be preferable in all cases. However, the gender of the interpreter, while possibly a necessary condition to meeting with female rape victims, is not the only one that must be taken into account.

Unless you are faced with an emergency or a crisis, you should always assess the interpreters' attitudes and skills. Spend the time necessary to recruit someone you feel is the most appropriate for interpreting; i.e., someone who knows how to listen; is not judgmental; is sensitive, caring, etc. Ask questions to assess the interpreter's personal views on gender inequality, rape, etc.

A good interpreter has the following abilities:

- accuracy in translating the testimony and awareness of the importance of details and accurate translation;
- good listening skills;
- non-judgmental attitude.

Ask questions to assess the interpreters' personal views on sexual torture.

Explain in detail the purposes of the interviews; ask for the interpreter's input; ask her/him to read and translate the questionnaire before the interview.

Test the quality of the interpretation: ask one of your contacts, or whenever possible, a delegate who speaks the local languages, to assess whether the interpreter is accurately translating the testimony and its details, etc.

Explain in detail the purposes of the interviews; ask for the interpreter's input; ask her/him to read and translate the questions before the interview.

Do NOT hesitate to rely on another interpreter if you have misgivings about the quality and/or personal politics of the person you had originally hired.

Remember that interpreting is a very difficult and demanding task: the quality of the interpretation will decrease as the number of interviews increases.

#### **Appendix 5: Checklist for the prosecutor for the preparation sessions[58]**

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- Introduction to support team
  - Introduce yourself (prosecutor)
  - Introduce the idea that the group should work as a team
  - Create a team purpose which is to support the witness to her best in court to tell what happened
  - Introduce the challenges of litigation and the importance of expressing feelings throughout the preparation
  - Speak about the possibility of acquittal or that sexual crime will not
- Background about the witness and establishment of the witness's vocabulary
- The witness description or what happened, who was told, and what they said
- Review of previous statement
- The witness's feeling about what has happened; feelings about the investigation
- Questions the witness should expect in court

- Introduction to the courtroom: a few days before the trial
- Explain some details about cross-examination
- Show: where the participants will position themselves, where she will be seating and where the questions will be coming from
- Debriefing
- Acknowledgement of service:
  - At the end of the process congratulate the witness for her outstanding courage in performance of her duty by testifying in the ICTR

## **Appendix 6: Checklist of issues that the prosecutor may wish to resolve prior to the trial**

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- Presence of therapist or support person during the witness testimony
- Use of videotape evidence
- Use of closed-circuit television, screen
- Use of amplifying microphone
- The location of the accused in the courtroom
- Counsel's concern about the language
- Presence of intermediary[59]
- Closed court, ban on publication, exclusion of witness
- If using a screen or closed circuit television, the prosecutor should make the following preparation:
  - Have the device available in advance
  - Set up the courtroom in advance to test the device and dismantle in part before the trial. Show the set-up to defense counsel in advance and attempt to reach a consensus on its acceptability (for example there can be the support person, the prosecutor one defense lawyer in the room with the witness, the camera shows every one, no need for telephone line because the accused stays in the room with another counsel defense)
  - Make the application at the trial's beginning in case time is required for set up
  - Have the witness try the devices and set up in advance

## **Appendix 7: Checklist about procedure details to tell to the witness**

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- How long the witness is likely to be on the stand
- Who the witness can have in the courtroom
- How the trial starts
- Where the witness will wait while not testifying
- Who will wait with the witness
- Where the washroom is
- How the witness will know when it is time to come into the courtroom
- Order of appearance of witnesses
- Where the witness goes to testify
- Whether she has to sit down or stand up
- Where the accused will be seated
- Whether the accused will be able to talk to witness
- How to address the judge while testifying
- What to do if witness doesn't understand
- What the people in the court will do if they cannot hear you
- What the witness can do if she cries or has to go to the washroom
- Where the witness goes when it is over
- Explaining the cross-examination:
  - The purpose
  - When it will take place
  - What form it will likely take
  - How the witness might feel
  - What the witness can do if those feelings arise
  - What the prosecutor can do or cannot do

## **Appendix 8: General Training on women rights and vulnerable witness Protection for Staff of the ICTR[60]**

## 1. Women's rights in Rwanda

- Women's rights (international and regional conventions): Why are women particularly vulnerable and why do they require additional rights for their protection? How relevant are women rights within the context of women in the Rwandan genocide? How can rights protect women?
- Why are women particularly vulnerable during situations of armed conflict? Understanding women rights violations that occur against women during armed conflict;
- Use of rape as a tool of war and importance of being treated as victims.
- The importance of prosecuting sexual crimes (the various characterisation of sexual crimes, the elements necessary to characterize sexual crimes in one way or the other, review of the legal instruments and jurisprudence concerning sexual crimes)

## 2. Women and the ICTR

- What are the Rwandese women's expectations of the ICTR?
- Importance of including Rwandese women's experiences in the ICTR and what might this achieve in relation to healing, peace building and the final report providing the foundations for a new woman rights agenda;
- Why should Rwandese women be provided with additional and specific protection during the ICTR process?

## 3. ICTR process in relation to women

- ICTR and issues related to women, including the utmost importance of confidentiality for all women participating in the ICTR; issues relating to media and confidentiality;
- Sources of information: Primary (qualitative from women), secondary and analysis;
- Methodologies of information analysis.

## 4. Structure of ICTR

- Structure of ICTR in relation to women and the importance of ensuring that women's issues are mainstreamed throughout the process;
- Examination of roles of ICTR members in relation to the protection and promotion of women's rights.

## 5. Special Procedures for Women

- Guiding principles for work of ICTR in relation to women; non-discrimination and equal treatment for all women before the ICTR (victims, witnesses and perpetrators); right to participation; protection of rights for survival and development; voluntary participation; special attention for girls and their experiences; confidentiality and anonymity;
- Special procedures for participation of women in the ICTR: Forms of participation *in camera*, such as interview techniques and statement taking, formal hearings, special hearings, child friendly environment and psychosocial support, how to take statements from women and roles of statement takers vs. psychosocial workers;
- Monitoring tools to ensure women's rights are protected throughout the process.

## Special Training Programme for interviewers for Women during the ICTR Process

In order to properly address women rights violations and provide appropriate protection and psychosocial support to women participating in the process, it is strongly recommended that all ICTR staff members, be thoroughly trained on women rights and vulnerable witness protection issues, statement taking from women who have been the victim or witness of sexual crime and the analysis of information from or about women. Such training should cover in particular the following issues:[\[61\]](#)

## Topics to be covered include the following in relation to women

- Statement taking;
- Specificity of women's oral statements - characteristics of language and lack of specific vocabulary to describe sexual crimes;
- Specificity of women's non-verbal statements;
- Interview techniques which will allow the woman to present their autobiographical history according to what they feel to be of primary importance;
- Methodology on the treatment of victims;
- Methodologies of information analysis including research, quantitative and qualitative information analysis, psychometric, psychoanalytic, ethnographic and other qualitative methodologies.
- Protection of women's rights during the statement taking process;
- Intervention guidelines in case of non-observance of women's rights;
- Methods for reinforcing the women's psychological sense of security;
- Facilitation and co-ordination of groups and group activities for women of different ages with the purpose of collecting women's testimonies in the safest and most appropriate manner;
- Guidelines relating to assessing a woman's psychological competency to provide statements;
- Protection of women's psychological well being during statement taking;
- Protection from re-traumatisation while providing evidence;
- Instruments for recognising the oncoming of psychological disorders/trauma in women before, during or after the hearing;
- Guidelines on how to act in case of extreme psychological unease during the ICTR process.
- During the training for trainers, these topics will be examined closely and the participants will be trained on teaching techniques and methodologies in relation to these issues.
- It is recommended that the training package be developed in close collaboration with Rwandese NGOs and agencies and could also include the involvement of expertise from outside-[62]

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## Notes

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[1] This aspect is underlined for example in the Canadian Witness Protection Program Act, art. 11: "Subject to this section, no person shall knowingly disclose, directly or indirectly, information about the location or a change of identity of a protectee or former protectee.". *Witness Protection Program Act 1996*, c.15, Department of Justice Canada, available online at <http://lois.justice.gc.ca/en/W-11.2/text.html>.

[2] This is for example the case in the Canadian Witness Protection Program Act, where it is stated at art.7(d): "The following factors shall be considered in determining whether a witness should be admitted to the Program: the value of the information or evidence given or agreed to be given or of the participation by the witness". *Witness Protection Program Act 1996*, c.15, Department of Justice Canada, available online at <http://lois.justice.gc.ca/en/W-11.2/text.html>.

[3] Feneley, John. *Witness Protection Schemes- Pitfalls & Best Practices & Covert Investigation*, 8<sup>th</sup> International Anti-Corruption Conference (IACC), p. 4.

[4] Ibid., p6, see also Finn, Peter & Healey, Kerry Murphy, *Preventing Gang-and-Drug-Related Witness Intimidation: Executive Summary*, Cambridge: Abt Associates Inc., Nov. 1996, p. xi.

[5] Ibid., p. 10.

[6] *Model Guidelines for the Effective Prosecution of Crimes Against Children*, IAP, p. 7 (hereinafter *Model Guidelines*).

[7] Ibid., p. 7.

[8] The Public Archives Act 44 (1965) states that documents must be kept for 25 years.

[9] Ibid., p. 2.

[10] Feneley, Op.Cit., note 3, p. 5.

[11] Ibid., p. 5.

[12] Ibid., p. 5.

[13] Ibid., p. 5, also *Promising Practices and Strategies for Victim Services in Corrections*", National Centre for Victims of Crimes, (<http://www.ncvc.org/new/Compendm.htm#VictimProtection>).

[14] Feneley, Op.Cit., note 3 p. 5.

[15] *Promising Practices and Strategies for Victim Services in Corrections*, Op.Cit., note 12.

[16] *Professional Policing: A handbook for better police investigation techniques to combat crimes against women*, Bangkok: ECPAT International, p.1 (hereinafter *Professional Policing*).

[17] See Callamard Agnès, *Documenting Human Rights violations by state agents : sexual violence*, Amnesty international, International Centre for Human Rights and Democratic Development, 1999, p. 30.

[18] *Professional Policing*, p. 8.

[19] See Callamard Agnès, *Gender-sensitive research methodology guidelines*, 1999, Amnesty International; International Centre for Human Rights and Democratic Development, p 27.

[20] *Ibid.*, p. 14.

[21] *Ibid.*, p. 17.

[22] See Parliament of Tasmania, *Law Reform Commissioner of Tasmania*, Report No.62, child witnesses 1990.

[23] As it is the case in Belgium and Italy for victims of trafficking.

[24] See Parliament of Tasmania, *Law Reform Commissioner of Tasmania*, Report No.62, child witnesses 1990 p.7

[25] *Ibid.*, p.4

[26] Feneley, *Op.Cit.*, note 3, p.2

[27] Finn & Healey, *Op.Cit.*, note 4, p.xii

[28] *Professional Policing*, *Op.Cit.*, note 18, p. .31.

[29] *Model Guidelines*, *Op.Cit.*, note 6, p. 4.

[30] *Ibid.*, p. 4.

[31] *Ibid.*, p.7, see also rule 112 of the ICC.

[32] *Ibid.*, p.7

[33] Several countries (Czech Republic, Austria or Thailand, for ex.) use a court appointed expert in cases of sexual crimes with women. However, the use of such a professional should not be limited to women but to all sensitive witnesses.

[34] *Ibid.*, p.7, also *Professional Policing*, *Op.Cit.*, note 18, p.14

[35] In Australia, in May 1997, Judge McGuire, the President of the Women's Court, has invited an aboriginal assistant to sit on the Bench and to provide information and support to the aboriginal witness and advise the court on aboriginal issues. From *The receipt of evidence by Queensland courts: the evidence of women*, Discussion Paper WP No53, Queensland Law Reform Commission, Dec. 1996, footnote 855. See also the intermediary in South Africa.

[36] *Model Guidelines*, *Op.Cit.*, note 6, p. 7, also *Professional Policing*, *Op.Cit.*, note 18, p. 14.

[37] *Model Guidelines*, *Op.Cit.*, note 6, p. 7.

[38] Ibid., p. 7.

[39] Ibid., p. 7.

[40] Finn & Healey, Op.Cit., note 4, p. xi.

[41] *Promising Practices and Strategies for Victim Services in Corrections*, Op.Cit., note 12.

[42] Idem.

[43] A similar system is currently implemented in Kansas, Washington, Pennsylvania and South Carolina Idem.

[44] Idem.

[45] Idem.

[46] See Callamard Agnès, *Documenting Human Rights violations by state agents : sexual violence*, Amnesty international, International Centre for Human Rights and Democratic Development, 1999 pp. 45-46.

[47] See Callamard Agnès, *Documenting Human Rights violations by state agents : sexual violence*, Amnesty international, International Centre for Human Rights and Democratic Development, 1999 pp. 47-49.

[48] James Welsh, *ADocumenting Torture: a Human Rights Approach*, presentation at the meeting *Science of Refugee Mental Health: New Concepts and Methods*, Harvard, Massachusetts, USA, September 29-October 1, 1992, p. 2.

[49] Callamard Agnès, *Gender-sensitive research methodology guidelines*, 1999, Amnesty International; International Centre for Human Rights and Democratic Development, p. 35.

[50] James Welsh, *Documenting Torture: a Human Rights Approach*, a paper written for the meeting entitled "Science of Refugee Mental Health: New Concepts and Methods," September 29 to October 1, 1992, Harvard University, USA, p. 5.

[51] Ibid

[52] See Callamard Agnès, *Documenting Human Rights violations by state agents : sexual violence*, Amnesty international, International Centre for Human Rights and Democratic Development, 1999 p. 57.

[53] Id., p. 58

[54] Adapted from *Professional Policing*, Op.Cit., note 18, and Callamard Agnès, *Gender-sensitive research methodology guidelines*, 1999, Amnesty International; International Centre for Human Rights and Democratic Development, pp. 33-45.

[55] Welsh, 1992, p. 8.

[56] Adapted from *Professional Policing*, Op.Cit., note 18.

[57] The content of this appendix is taken from Callamard Agnès, *Gender-sensitive research methodology guidelines*, 1999, Amnesty International; International Centre for Human Rights and Democratic Development, p. 31.

[58] Adapted from Wendy Harvey, Paulah Edward Dauns, *Sexual offences against children and the Criminal*

Process, Butterworths, Toronto and Vancouver, 1995 sp p. 53

[59] **South Africa** has introduced in 1991 a system of using an intermediary in matters involving child witnesses. This system was embodied as Section 170A of the *Criminal Procedure Act 1977*(1). Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the age of eighteen years to undue mental stress or suffering if he testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his evidence through that intermediary.

(2)(a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary under subsection (1), except examination by the court, shall take place in any manner other than through that intermediary. (b) The said intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness. ... At present the following people may become intermediaries: social worker/psychologist with 2 years experience; teacher with 4 years tertiary education and 4 years experience; trained child care worker with 3 years accredited training and 4 years experience medical practitioner (no experience requirement).

For more information on practices and protocols aimed at protecting child victims and witnesses see Selected Best Practices and Protocols Used Throughout the World in Addressing the Needs of Children as Victims and Witnesses in the Criminal Justice System, a Report submitted to: Policy Centre for Victim Issues, Department of Justice, Government of Canada by the International Bureau for Children's Rights on May 2001.

[60] Adapted from Children and the Truth and Reconciliation Commission for Sierra Leone. Recommendations for policies and procedures for addressing and involving children in the TRC. Based on technical meeting on children and the TRC 4-6 June 2001, Leister Peak, Freetown UNICEF UNAMSIL/Human Rights National Forum for Human Rights- Annex 4 General Training on Child Rights and Child Protection for Members and Staff of the Truth and Reconciliation Commission

[61] Adapted from p. 35 'General Training on Child Rights and Child Protection for Members and Staff of the TRC', in annex 4 of this report. Op. Cit. note 50.

[62] According to S. 12 (2) ICTR Statute, the ICTR can seek technical assistance from the international community in the fulfillment of its tasks.

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