

Prosecuting International Crimes Series: Management of Information

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Prosecuting international crimes: expert meeting on the collaboration between national prosecuting authorities and non-governmental organizations

This article follows the first one concerning definitions of legal concepts and frameworks regarding the investigation of international crimes, the second one related to investigation policy and principles of cooperation and collaboration, and the third one on how to document information. As it is a joint publication, the same version can be found in French and Spanishon Quid Justitiae.

Part IV: Management of Information

Once information has been gathered, its management raises multiple challenges regarding its definition and governing principles (A). The management of information requires several stages (B), while the chain of custody is a matter of particular importance (C).

A. Definition and governing principles

The management of information should be in place from the time it is collected in the field, to recording it in regular or general reports, to analysis of the information, to how to present the information in case specific reports. As a result, it includes issues related to information flow, confidentiality, data security

while it is also necessary to develop a system for managing the information and analysis[1]. It implies managing risks to practitioners, to information and to victims and witnesses[2]. Therefore, identifying risks means finding appropriate mitigating measures during the whole process of investigation[3]. From the beginning, the investigation plan should include principles and procedures concerning the capture, storage, management, confidentiality and disclosure of information and evidence[4].

Concerning storing and handling information related to sexual-violence[5], storing key principles apply. First of all, storage and maintenance have to be defined before any information has been collected. Practitioners should also be aware of the legal requirements in the relevant jurisdiction regarding chain of custody and the specificities related to storing medical, legal or forensic evidence[6]. Then, practitioners have the obligation to keep safe and confidential any information collected about sexual violence in order to ensure its integrity and to not put anyone at risk. Furthermore, various storing requirements should be utilized depending on sensitivity and ultimate use and depending on the type of information. Finally, no information or evidence should be collected if it is not possible to guarantee or maintain the necessary facilities and systems to store it[7]. As well, the information-capture and management systems and programmes should facilitate the entry, search and analysis of elements related to those specific crimes. Furthermore, data-entry staff and expert analysts should also be included in the awareness raising and capacity-building of the staff, in order to enhance the documentation process[8].

B. Steps in management of information

The management of information requires several steps to be complete and effective. First, it is important to verify the information by assessing the reliability of the source; corroborating the information with that collected from independent sources and checking the information against factual background. Secondly, information should be organized in a consistent manner by applying identical standards of management, using case sheets, cataloguing and storing documents according to a specific order. Thirdly, witnesses and contact persons must be protected by ensuring informants are fully aware of potential security risks and respect for the principle of confidentiality. Fourthly, hard information must be secured. Therefore, information should be kept stored apart in a secure location; installed in a lockable filing cabinet; coded and distorted when needed. Documents, which are no longer needed, should be destroyed on a regular basis while important documents should have copies and be kept in separate and secure places. Fifth, electronic information should also be secured by using external storage devices, encrypting sensitive files, equipping computers with a boot-up password, reliable anti-virus, anti-spyware and firewall software. It is also necessary to ensure regular back up and be careful when resorting to cloud computing. Sixth, particular attention should be given to communication and online activity. Security of the lines of communication should never be presumed to be secure and any sensitive information should never be communicated by email, phone, radio or fax. Code words and public key encryption should be used for electronic communication, while a VPN or Tor navigator should be preferred when browsing online. Seventh, during transport of information, traveling route and means of travel should be considered beforehand whereas is it

essential to remain discrete. Finally, personal security must be ensured by establishing security routines, studying contingency plans in detail, being alert and assessing risks regularly, avoiding compromising situations and going underground whenever there is a danger[9].

C. Chain of custody

The chain of custody can be described as “the process of keeping a chronological paper trail documenting the collection, custody and transfer of evidence in order to demonstrate its integrity from the time it is collected to the time it is presented before a court or other accountability mechanism”[10]. It has to outline “accurately and in detail every handler of the information concerned, from source or origin to production”[11]. It implies for those gathering information to be familiar with the legal requirements concerning this matter in the alleged relevant jurisdiction where crimes are documented. Maintaining the chain of custody of a document or item means for the practitioner recording how the document or item was collected, and whether and how the possession of the information was transferred between individuals and/or organisations. Several key steps need to be followed in order to maintain the chain of custody such as: labelling the piece of evidence appropriately; making comprehensive notes; placing the document or the item in an evidence bag, envelope or box; sealing the evidence bag or envelope and signing over the seal while attaching the notes taken to the evidence; finally, keeping a transfer log of any transfer of the document or item between individuals or organisations[12].

The chain of custody of physical evidence related to sexual violence presents several specificities in addition to the general principles mentioned above. Practitioners should be aware of the collection and packaging methods applicable to the item since they can vary between bodily fluids and pieces of clothing for example; include in the notes, besides how was the document or item collected, information about how soon after the incident of sexual violence the physical evidence was detected, how close in proximity to the location of the incident the physical evidence was noticed and how they know these facts; finally, conduct interviews with any witnesses near the site of violation and follow leads to other witnesses to the crime prior to collecting any item of physical evidence[13].

It is important to emphasize that international criminal courts and tribunals tend to be less strict in admitting documentary information as evidence than national courts. Indeed, they may admit as evidence any piece of information deemed to be of sufficient probative value[14]. Therefore, depending on the jurisdiction in which the investigation is conducted and the national tribunals that could be competent on crimes documented, it is necessary to have knowledge of the national criminal system and its requirements regarding means of proof in trial. The chain of custody regarding source and context of information and evidence is a crucial matter. Unofficial investigators can become the custodians of documentary information if they collect the document themselves, becoming its first custodian or by receiving the document from another person. Nevertheless, hard copy documents could have no evidentiary value to official criminal investigators if the source and the context of the document cannot be determined[15]. One way to overcome this obstacle is the establishment, at the beginning of an investigation, of standardized chain of custody summary sheets that will be used

meticulously for any information, evidence, document or any other item collected[16]. Besides the fact precaution that could be a deciding factor in case of prosecutions, it is also necessary to take pictures of the crime scenes and of the documents or items found in their original location, making copies and protecting any potential forensic information[17].

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References

1. *Field Manual – MRM on grave violations against children in situations of armed conflict*, pp. 31-34.
2. *International Protocol on the documentation of sexual violence in conflict*, pp. 108-117.
3. *Field guide for Civil Society Documentation*, pt. 7. The documentation process can be divided in five stages: 1. The action of first-responders; 2.The identification of the crimes; 3. The collection of information; 4. Management of information; 5. Usage of information.
4. *First-responders*, p. 12: on the risk of disclosure.
5. *International Protocol on the documentation of sexual violence in conflict*, pp. 202-210.
6. Ibid., p. 204.
7. Ibid., p. 203; s. p. 205: on manual storage system requirements and storing photographs and audio/video recordings in a safe manner; p. 206: on digital storage information.
8. *Investigating CRSGBV against men and boys*, p. 15.
9. *Handbook on Civil Society Documentation*, pp. 117-141: for a detailed presentation of each management step and the measures required or suggested.
10. *International Protocol on the documentation of sexual violence in conflict*, p. 199.
11. *Handbook on Civil Society Documentation,* pp. 36-37.
12. Ibid.
13. Ibid., p. 200; s. also Annex 9 of the *International Protocol on the documentation of sexual violence in conflict* for an example of a chain of custody form.
14. *Handbook on Civil Society Documentation*, pp. 62-63.
15. Ibid., p. 63.
16. Ibid., p. 66 for another example of chain of custody summary sheet.
17. Ibid., pp. 67-68.